

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO,
a municipal corporation

By: _____
Wilma Quan-Schechter
City Manager

Dated: _____

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Among

CITY OF FRESNO
a municipal corporation

and

BRIXTON CAPITAL AC LLC

830 Fulton Mall
Fresno, California 93721

ATTACHMENTS

Exhibit A	Site Map
Exhibit A-1	Legal Description
Exhibit B	Scope of Development and Basic Design
Exhibit C	Performance Schedule
Exhibit D	Certificate of Completion
Exhibit E	Grant Deed

DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (DDA or Agreement) is entered into as of the Effective Date (defined below), between CITY OF FRESNO, a municipal corporation (City) and Brixton Capital AC LLC (the Developer).

RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

A. The City currently owns certain real property (APN 468-255-11 & 468-255-15) located at 830 Fulton Mall, Fresno, California, consisting of approximately a 53,040 square foot retail building commonly referred to as the City-owned portion of the former Gottschalks building and a 214,292 square foot parking structure commonly referred to as the Spiral Garage and more particularly described in **Exhibit A** (Site Map) and **Exhibit A-1**, (legal description) attached (the Property).

B. Developer proposes to purchase the Property from City and develop it privately as a site for a casino and its related business, as more particularly described in the Scope of Development, attached as **Exhibit B** (the Project). Developer acknowledges the Property has been found to be potentially historic and agrees to conform to the necessary historic preservation processes, when applicable.

C. Developer agrees to undertake improvements in accordance with the combined Performance Schedule described in **Exhibit C** attached hereto and incorporated herein (the Performance Schedule).

D. This project has been environmentally assessed under the California Environmental Quality Act (CEQA) and found to be categorically exempt pursuant to Section 15332/Class 32 (Infill Development).

AGREEMENT

In consideration of the mutual promises and covenants and upon the terms and conditions set forth in this Agreement, the parties agree as follows:

1. Definitions. Besides definitions contained elsewhere in this Agreement, the following definitions will govern the construction, meaning, application and interpretation of the defined terms, as used in this Agreement.

1.1 ADA. "ADA" means the Americans with Disabilities Act of 1990.

1.2 Agreement. "Agreement" means this Disposition and Development Agreement between City and Developer.

1.3 Certificate of Completion. "Certificate of Completion" means that Certificate issued in the form attached as **Exhibit D** to Developer by City evidencing completion of the Project for purposes of this Agreement.

1.4 City. "City" means the City of Fresno, a municipal corporation, having its offices at 2600 Fresno Street, Fresno, California 93721-3605, and operating through its Council and its various departments.

1.5 Closing, Close or Close of Escrow. "Closing," "Close" or "Close of Escrow" means the closing of the escrow in which the City conveys a fee interest in the Property to Developer.

1.6 Day. "Day," whether or not capitalized, means a calendar day, unless otherwise stated.

1.7 Default. "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.

1.8 Developer. "Developer" means Brixton Capital AC LLC, or its assignee, as approved by the City or otherwise permitted under Section 5.1.1.

1.9 Effective Date. "Effective Date" means the date that City signs this Agreement, after Developer signs it.

1.10 Environmental Laws. "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation concerning environmental regulation, contamination or cleanup of any Hazardous Materials or Waste including, without limitation, any state or federal lien or "superlien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

1.11 Escrow. "Escrow" means the escrow opened with Escrow Holder for City to convey a fee interest in the Property to Developer.

1.12 Escrow Holder. "Escrow Holder" means Fidelity National Title Company; Attn: Bernadette Watson (with coordination with Missy Barth), 7475 N. Palm Avenue, Suite 101, Fresno, CA 93711; (559) 431-8050, or another title company mutually satisfactory to both parties.

1.13 Hazardous Materials. "Hazardous Materials" means any substance, material, or waste, which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance, which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyl, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*, or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and

Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing, mixed-use, or commercial developments or associated buildings or grounds, or typically used in household activities in a manner typical of other residential, mixed-use or commercial developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Section 25249, *et seq.*, which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet, and saccharine.

1.14 Improvements. "Improvements" means the construction of the Project on the Property as set forth in the Scope of Work in **Exhibit B**.

1.15 Outside Date. "Outside Date" means June 30, 2019, the last date on which the parties are willing to Close the Escrow.

1.16 Performance Schedule. "Performance Schedule" means the schedule attached as **Exhibit C**, setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Schedule from time to time on mutual written agreement of Developer and City, but any delay or extension of the completion date is subject to the requirements in this Agreement.

1.17 Phase. "Phase" means a stage or portion of the Project designated by Developer for construction. A Phase may not consist of less than an entire residential, mixed-use, or commercial structure.

1.18 Project. "Project" means the development that Developer is to complete on the Property and any off-site improvements, as generally described in the Scope of Development, attached as **Exhibit B**. The Project includes development of the Property into a site for a casino and its related businesses. The Project may be developed and constructed in one or more Phases. Developer shall develop the Project substantially in the form and manner presented herein which shall comply with the City's Downtown Development Code for a vibrant and active Fulton Street, tenant improvements should be designed in manner which promotes interaction between pedestrians and the businesses on site, as well as interactions between on-site businesses and nearby establishments. To accomplish this, windows should be transparent, with the lightest possible tint, and views into the space should be unobstructed. Pedestrian entrances should be available from public streets into each establishment on site, and should be marked by attractive, interesting, and highly visible signage. Finally, the functions with higher levels of anticipated turnover (such as restaurants, nightclubs, and bars) should be placed on the ground floor adjacent to the sidewalk, and uses which are anticipated to have lower turnover and less frequent activity (such as cardrooms, offices, and conference spaces) should be located away from the sidewalk in areas such as the basement,

mezzanine, or rear of the ground floor. Any changes, revisions, amendments, or alterations to the Project desired by Developer shall be subject to approval of the City Manager, which approval shall not be unreasonably withheld. In such event, Developer shall provide City Manager with a written request for a change to the Project accompanied by any supporting documentation the Developer deems necessary. The City Manager shall respond to the written request within thirty days. If no action is taken by the City Manager within the thirty day period, the request shall be deemed approved.

1.19 Project Completion Date. "Project Completion Date" means the date that City shall have determined the Project has reached completion in accordance with the plans and specifications in the Development Schedule, as evidenced by City's issuance of a Certificate of Completion.

1.20 Property. "Property" means the real property described in **Exhibits A and A-1**. Developer has been notified, and agrees, the City shall retain the pre-existing easement through the alley as shown on Exhibit A.

1.21 Security Financing Interest. "Security Financing Interest" means a security interest, which Developer grants in its interest in the Property, before City issues and records a Release of Construction Covenants, to secure a debt, the proceeds of which Developer uses to construct the Project.

2. CONVEYANCE OF THE PROPERTY. City will convey the Property to Developer for the purchase price and on the conditions set forth herein.

2.1 Purchase Price. Developer will purchase the Property from City for a purchase price of \$1,700,000.00 (Purchase Price). The Developer shall pay the Purchase Price upon the Close of Escrow. Within three days following the Effective Date of the Agreement, Developer shall deposit with the Escrow Holder the sum of \$50,000 (Initial Deposit) which shall be applied to the Purchase Price at the Close of Escrow as defined in Section 2.10.

2.2 Escrow. Within three days following the Effective Date of this Agreement, City and the Developer will open an Escrow with the Escrow Holder, and deposit a signed copy of this Agreement as their initial joint escrow instructions. City and the Developer will sign any supplemental escrow instructions, consistent with this Agreement that the Escrow Holder or either party hereto deems necessary or appropriate. This Agreement will control any inconsistency that may exist between this Agreement and the supplemental escrow instructions. The parties authorize the Escrow Holder to act under the escrow instructions and, after the Escrow Holder accepts the instructions in writing, it will carry out its duties as Escrow Holder under this Agreement.

2.3 Conditions Precedent to Closing Escrow. The following are conditions precedent to City's obligations to close the Escrow and convey the Property to the Developer and the Developer's obligation to purchase and accept conveyance of the Property from City. These conditions must be satisfied or waived by the time stated or, if no time is stated, then by the Outside Date set for the Closing.

2.3.1 City Conditions. The Closing is subject to the fulfillment of each of the conditions precedent described below, which are solely for the benefit of City and which shall be fulfilled consistent with the **Exhibit C** Performance Schedule, or waived prior to Close of Escrow:

A. Insurance. Developer has delivered to City, and City has approved the form and content of, certificates of insurance for all insurance that this Agreement requires Developer to obtain and maintain.

B. Notice of Accepting Property Condition. Developer has given written notice to City that it accepts the Property "AS IS" and has approved its Due Diligence Inspection pursuant to Section 2.3.2 (B).

C. No Default. Developer is not in default of this Agreement beyond applicable notice and cure periods and all representations and warranties of Developer contained herein are true and correct in all material respects.

D. Developer has executed a mutually acceptable license agreement between Developer and the Fresno Grizzlies and its affiliates.

2.3.2 Developer Conditions. The Closing is subject to the fulfillment or waiver by the Developer of each of the conditions precedent described below, which are solely for the benefit of the Developer and which must be satisfied or waived by the time stated in the **Exhibit C** Performance Schedule or below, as applicable, or if no time is stated, then by the Outside Date set for the Closing.

A. Condition of Title. Developer has approved the condition of title to the Property pursuant to this paragraph A. City shall obtain a preliminary title report and copies of all exceptions set forth therein and transmit a copy to Developer not later than fifteen days following the Effective Date. City shall also deliver to Developer within such time period any surveys of the Property that City possesses or which are reasonably available to City. Developer shall notify City in writing within thirty days after receipt of a copy of the preliminary title report and all exceptions set forth therein and surveys whether it approves the condition of title. Developer's failure to give such notice within thirty days will be deemed approval of the condition of title. If Developer notifies City that it disapproves any title exception, City may, but is not obligated to, remove that title exception within fifteen days after receipt of Developer's written notice. If City cannot or does not elect to remove any disapproved title exception or give assurance of removal satisfactory to Developer within that period, Developer will have ten business days after the expiration of such fifteen day period to either give City written notice that Developer elects to

purchase the Property subject to the disapproved title exceptions or to terminate this Agreement. Developer hereby objects to all title defects, liens, encumbrances, and mortgages evidencing a monetary obligation, other than non-defaulted real property taxes and assessments. The exceptions to title approved by Developer as provided herein shall be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any further exceptions reported by the title company after the Developer has approved the Condition of Title for the Property (which are not created by the Developer). The City shall not voluntarily create any new exceptions to title following the date of this Agreement and prior to the Closing.

B. Inspection. Because City will convey fee title of the Property to Developer "AS IS," with all faults, except as specifically provided herein, for a period of 90 days after the Effective Date of this Agreement (the Review Period), Developer or its designated representatives may conduct tests, investigations and inspections of the Property in all matters relating to the Property, including, but not limited to, the physical condition or state of the Property and improvements thereon, environmental conditions, including Phase I and Phase II environmental assessments, and all other matters relating to the Property or any improvements thereon or affecting Developer or the feasibility of the Property for the Project (Due Diligence Investigation). If Developer is satisfied, in Developer's sole and absolute discretion, with the results of the Due Diligence Investigation, Developer shall provide written notice of approval of the Due Diligence Investigation to the City and Escrow Holder. Such written notice of approval (Developer's Approval Notice) shall be provided, if at all, prior to the expiration of the Review Period. In consideration of Developer's right to conduct the Due Diligence Investigation, including the opportunity to review, inspect and examine the Property in its sole and absolute discretion, Developer shall in all circumstances pay to the City \$100.00, which sum shall be applicable to the Purchase Price.

Developer has the right to enter the Property to conduct the Due Diligence Investigation on the following conditions: (a) the tests, investigations and inspections are conducted by the Developer without cost or expense to City, (b) the tests, investigations and inspections do not unreasonably interfere with City's possession or use of the Property, and (c) Developer will assume responsibility for any loss or liability and for any damage to the Property to the extent resulting from conducting the tests, investigations or inspections; however, such assumption and Developer's indemnity under Section 2.13 shall not apply to any loss, liability or damage resulting from the mere discovery of any existing condition at the Property. The parties agree the City may

perform life and safety repairs, as needed, to the parking structure during the Review Period.

Within ten days from the Effective Date, City shall deliver to Developer any then known documents owned or procured by the City including existing plans, engineering reports, surveys, maps, soil or seismic reports, grading plans, environmental reports and assessments, and other studies, reports, correspondence or materials concerning the Property or any improvements thereon (the Materials). The Materials may include, without limitation, the following: (i) copies of any environmental reports or environmental site assessments or any other report relating to toxic or hazardous materials or the environmental condition of the Property or improvements; (ii) engineering studies, maps and cost reports (sewer, water, hydrology, storm drain, flood control, FEMA, utilities, traffic and noise); (iii) soils, geology and seismic reports; (iv) covenants, conditions and restrictions, if any, regarding the Property; (v) archaeological studies and reports; (vi) to the extent not described above, grading, erosion control, water, sewer, storm drain, street improvement, landscape and utility improvement plans; (vii) any other then known City-owned or procured documents which Developer requests in writing or City determines, in its reasonable judgment, are significant to the evaluation or use of the Property. Developer hereby requests the following to the extent not covered above: (1) any documents relating to special assessment or bonds; (2) all known current litigation affecting the Property; (3) all environmental reports; (4) any and all site plans, as-builts, or other plans for the Property, including the building and the garage; (5) list of any and all existing and in-place vendor contracts/agreements, e.g. utilities, etc.; and (6) any existing physical, environmental, soil, engineering, etc. studies/reports on the Property.

City makes no representation or warranty concerning, and will have no liability or responsibility for, the Materials or the information contained therein.

C. No Default. City shall not be in default of any provision of this Agreement beyond all applicable notice and cure period, and all representations and warranties of City contained herein are true and correct in all material aspects.

D. No Litigation. There shall be no litigation pending with respect to this Agreement, any land use, zoning, development or building permits or entitlements for the development contemplated by this Agreement or encumbering title to the Property, the outcome of which could materially interfere with the development of the Property as set forth herein.

E. Title Policy. At the Close of Escrow, Escrow Holder shall be irrevocably prepared to issue to Developer an ALTA extended coverage Owner's Policy of Title Insurance (Title Policy) with liability in the amount of the Purchase Price, showing title to the Property vested in Developer, subject only to the approved Condition of Title. Notwithstanding the foregoing, if Developer elects not to pay for the additional premium for the ALTA extended coverage policy, or if Developer does not timely provide Escrow Holder with an ALTA survey in form sufficient for Escrow Holder to issue such ALTA extended coverage policy at the Close of Escrow, then the Title Policy to be issued on the Close of Escrow shall be a standard coverage ALTA Owner's Policy of Title Insurance.

F. Building Permits. Developer, at its own cost and expense, has independently obtained all building permits and other governmental permits and approvals to construct the Project.

2.3.3 Termination for Failure of Condition. In the event there is a failure of one or more conditions described in Section 2.3.1 or 2.3.2 that are not waived, the party for whose benefit the condition is established may terminate this Agreement by written notice to the other party prior to the Closing, in which event this Agreement shall terminate and no party shall have any further rights or liability to the other under this Agreement.

2.3.4 Failure to Give Notice of Termination or Cancellation. If Developer has given Developer's Approval Notice pursuant to Section 2.3.2(B), then the Initial Deposit shall be non-refundable and released and paid over to City by Escrow Holder on the next business day immediately following the expiration of the Review Period without the need for further instructions, notice or demand from City to Developer. If, however, Developer, in its sole and absolute discretion, decides to terminate and cancel the Agreement by timely delivering a termination and cancellation notice on or before expiration of the Review Period, or if Developer does not deliver Developer's Approval Notice by the expiration of the Review Period, then the entire amount of the Initial Deposit, and any accrued interest thereon, shall be immediately refunded to Developer by Escrow Holder without the need for further instruction, notice or demand from or to City.

2.4 Escrow and Title Costs. The Developer and City shall each pay 50% of escrow fees and recording fees to convey the Property to Developer. City shall pay documentary transfer taxes and the portion of the premium for an ALTA standard owner's policy of title insurance with coverage not exceeding the Purchase Price, insuring the title to the Property as described herein. The Developer shall pay the portion of the premium for an ALTA extended owner's policy of title insurance or any special endorsements required by Developer. Any other costs associated with the Escrow shall be paid by City or the Developer according to the custom and practice in Fresno County, as declared by the Escrow Holder. City shall pay a brokerage commission equal to six percent (6%)

of the gross sales price to Cushman & Wakefield/Pacific who represents the City, at Close of Escrow. City shall defend and indemnify the Developer from any claims for commissions or fees arising from City dealing with any other broker or agent other than Cushman & Wakefield.

2.5 Prorations. The Escrow Holder will prorate all ad valorem taxes and assessments, if any, as of the Closing, between City and the Developer. If the then-current taxes and assessments are not ascertainable, the Escrow Agent will apportion the taxes and assessments based on the most recent statement of taxes and assessments. Escrow Holder will adjust the proration, if necessary, within thirty days after the actual taxes and assessments are available. Developer will be solely responsible for ad valorem taxes or assessments on the Property, or any taxes on this Agreement or any rights hereunder, which may be levied, assessed or imposed for any period after the Closing.

2.6 Form of Deed. City will convey the Property to the Developer by a Grant Deed, in the form and substance attached hereto as **Exhibit E**. The conveyance and Developer's title will be subject to all conditions, covenants, restrictions and requirements set forth in this Agreement, and the Grant Deed.

2.7 Nonmerger. Prior to the issuance of a Certificate of Completion, the provisions of this Agreement will not merge with the Grant Deed. The Grant Deed will not affect, impair or limit the provisions, covenants, conditions or agreements of this Agreement.

2.8 Possession. City will deliver exclusive possession of the Property to Developer at or immediately following the Closing, subject to the Cell Site Leases.

2.9 Sale "AS IS". City will convey the Property "AS IS" with all faults, including, without limitation, the conditions disclosed in any toxics reports delivered to Developer, any conditions disclosed in the files of the regulators such as, but not limited to, the Fresno County Health Department, and the Regional Water Quality Control Board, and any environmental or other physical conditions on or under the Property, buried debris or structures, and soil compaction, presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, and the suitability of the Property for the development purposes intended hereunder.

2.10 Close of Escrow. The Escrow will close within thirty days after the parties satisfy all the conditions precedent to Closing as set forth in this Agreement and within five days after the issuance of building permits to Developer, but not later than the "Outside Date," unless the parties mutually agree to extend the time for Closing.

2.11 Authority of Escrow Holder. The parties authorize the Escrow Holder to, and the Escrow Holder will do the following:

A. Title Policy Premium. Pay and charge City and Developer, respectively, for the title insurance premiums described in Section 2.4 of this Agreement.

B. Pay Fees. Pay and charge the Developer and City equal 50% share of the escrow fees and closing costs, excluding any costs to correct title exceptions or cure property conditions. City and Developer must agree in separate writing or instructions to the Escrow Holder to the allocation of costs to cure title exceptions or property conditions; provided, however, that City shall, at its sole cost and expense, clear (i) all liens evidencing monetary encumbrances (other than liens for non-delinquent property taxes) and (ii) all disapproved title exceptions for which City has agreed to remove pursuant to Section 2.3.2(A). Charge City to pay a brokerage commission equal to six percent (6%) of the gross sales price to Cushman & Wakefield/Pacific at Close of Escrow as set forth in Section 2.4 of this Agreement.

C. Record Grant Deed and Disburse Funds. Disburse funds from the Purchase Price, and record and deliver the Grant Deed to the appropriate party when the conditions precedent to Closing are satisfied or waived.

D. Actions to Fulfill Obligations. Take any other action necessary to fulfill its obligations under this Agreement.

E. FIRPTA, and More. Direct the parties to deliver any instrument, or to perform any act, necessary to comply with FIRPTA or any similar state act and regulation promulgated thereunder. City will sign a Certificate of Non-foreign Status, or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as the Escrow Holder may require.

F. Closing and Other Statements. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including, without limitation, an IRS 1099-S form, and be responsible for withholding taxes, if the law so requires.

G. Closing Statements. Escrow Holder will forward to both Developer and City a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

H. Termination Without Close. If the Escrow is not in condition to close by the Outside Date, then any party that is not in default of this Agreement, may demand the return of money or property and terminate this Agreement and the Escrow. If either party makes a written demand for return of documents or properties, this Agreement will not terminate until five days after Escrow Holder has delivered copies of the demand to the other party at the respective addresses shown in this Agreement. If the

other party objects within the five-day period, the parties authorize the Escrow Holder to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of this Agreement will be without prejudice to whatever legal rights either party may have against the other arising from this Agreement. If no party demands that the Escrow terminate, the Escrow Holder will proceed to Closing as soon as possible.

2.12 City's Authority to Sign Instructions and Documents. The City Manager or his designee is authorized to execute any supplemental escrow instructions for City that are not a material change hereto. The City Manager or designee may make minor modifications, not constituting a material change, to this Agreement, exhibits and the documents referenced herein, to effect the opening and Close of the Escrow.

2.13 Access Prior to Conveyance. Prior to the conveyance of title from City, representatives of Developer shall have the right of access to the Property at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall hold City harmless for any injury or damages arising out of any activity pursuant to this Section. The Developer shall have access to all data and information on the Property available to City, but without warranty or representation by City as to the completeness, correctness or validity of such data and information. Any preliminary work, other than work in connection with Developer's Due Diligence Investigation, undertaken on the Property by the Developer prior to conveyance of title thereto shall be done only after written consent of City, satisfaction of City imposed conditions including without limitation evidence of reasonably required insurance coverage(s), all at the sole expense of the Developer. The Developer shall save and protect City against any claims or liens resulting from such preliminary work, access or use of the Property. Copies of the data, surveys and tests obtained or made by the Developer on the Property shall be filed with City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

2.14 Ongoing Operations. Developer acknowledges the City has ongoing operations involving the Property.

2.14.1 The City shall maintain and operate the Property in its customary manner until the Close of Escrow.

2.14.2 The City shall retain all ownership rights and revenues to the Property, including parking revenues, until the Close of Escrow, subject to Section 2.14.3.

2.14.3 Based on Developer's understanding of the Fresno Grizzlies current usage of the existing parking agreement on the Property, Developer shall exercise good faith efforts to negotiate and execute a mutually acceptable license agreement with Developer and the Fresno

Grizzlies and its affiliates with the City's reasonable review. The License Agreement shall be agreed and executed prior to the close of escrow.

2.14.4 Developer shall refrain from taking any action which materially and adversely affects, hinders, or terminates the City's Lease Agreements with Pacific Bell and Cingular Wireless. City shall enter into a Master Lease Agreement with Developer until October 2021 to lease that certain area covered by the two current cell-site leases (Subleased Area) with Pacific Bell and Cingular Wireless (collectively Cell Site Leases) for an amount equal to \$1.00 annually for the remaining term(s) for the Cell Site Leases. The form of the Master Lease Agreement shall be negotiated and agreed upon during the Review Period. Upon mutual execution of the Master Lease Agreement, the Cell Site Leases shall be deemed subleases and the City shall continue to own and receive revenue from the Cell Site Leases until such Cell Site Leases are assigned to Developer, the terms of such assignment shall be memorialized in the Master Lease Agreement. Upon assignment or expiration of such Cell Site Leases, City shall have no further rights to the Subleased Area.

3. PROJECT DEVELOPMENT

3.1 Private Development Project; Revision of Project. Developer will complete the Project as described in the Scope of Development using contractors licensed to do business in California. Except as set forth in this Agreement, before Developer begins constructing the Improvements or undertakes any other work of improvements on the Property, Developer, at its own cost and expense, will independently secure all land use and other entitlements, permits, and approvals that City or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Except as may be expressly provided herein, Developer shall not begin construction or perform any other work on the Property until after Closing. However, the parties agree that in the event that Developer shall fail to receive all or any material portion of loans as contemplated by Developer, then the Project and Scope of Development contemplated by this Agreement shall be renegotiated and redefined in a manner consistent with a scaled down Project and Scope of Development (and the related Performance Schedule) taking into account the amount of the loan funds not received by Developer. Any such change shall be set forth in a written amendment to this Agreement. If the parties cannot agree on a revised Project and Scope of Development within a reasonable period of time not to exceed 180 days following the Close of Escrow under such circumstances, the Purchase Price less the nonrefundable Initial Deposit and any other fees for required land use entitlements, permits or other approvals shall be refunded to the Developer, the purchase and sale of the Property shall be rescinded and this Agreement shall be cancelled and the Property shall be reconveyed to the City.

3.2 Time for Completion of the Project. City will convey the Property to Developer for construction of the Project, and not for speculation in real estate. Therefore, the Developer will begin construction by the date provided in the

Performance Schedule, and will diligently complete the Project according to the Performance Schedule, or by any other date as the parties may agree in a written extension signed by the parties and subject to any extension of time provided for in Section 3.3.

In the event Developer does not perform and complete work pursuant to the Performance Schedule as set forth in **Exhibit C** or is otherwise unable to complete the Project, the purchase and sale of the Property shall be rescinded and this Agreement shall be cancelled. As set forth in Sections 7.5 and 7.6 of the Agreement, the real property shall be re-conveyed to the City. All funds previously paid by Developer less the non-refundable Initial Deposit and any other fees for required land use entitlements, permits or other approvals to City or otherwise related to this Agreement or the Project shall concurrently be refunded to Developer such that the parties shall be restored to their original positions prior to the execution of this Agreement to the greatest extent possible.

3.3 Extension of Time for Completion. In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty days after the commencement of the cause, the period shall commence to run only thirty days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by City and the Developer. City Manager, on behalf of City, may grant extension(s) which cumulatively do not exceed 180 days, any additional extension shall require City Council approval.

3.4 Certificate of Completion. After Developer has satisfactorily completed a Phase of the Project according to this Agreement and after the completion of the final Phase of the Project, Developer may ask City to record a Certificate of Completion indicating that a Phase or that all Phases are complete, substantially in the form attached as **Exhibit D**. For purposes of this section, Developer's submission of a "Safe to Occupy" Certificate or Certificate of Occupancy for the Improvements within the subject Phase of the Project shall be conclusive evidence that Developer has satisfactorily completed those Improvements. Subject to the satisfaction of the conditions to its issuance (see next subsection) and within ten days of such request, City shall provide an instrument certifying Developer's completion of the Project, or any Phase thereof, by preparing and recording the Certificate of Completion. This release, when

recorded, will evidence City's conclusive determination that Developer has satisfied the construction covenants in this Agreement as to the subject Phase of the Project. The release will not be evidence that Developer has complied with or satisfied any obligation to any person holding a deed of trust or Security Financing Interest. The release shall not terminate Developer's indemnification or other obligations, which by their nature are intended to survive Project completion. After the release is recorded in the Official Records of Fresno County, any party then owning or after that purchasing, leasing or otherwise acquiring any interest in the applicable portion of the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding the construction requirements or Project development of the completed Project.

3.5 Conditions to Issuing the Certificate of Completion. The following are all conditions precedent to City issuing the Certificate of Completion for the Project, or any Phase thereof, and each submission will be in a form and substance satisfactory to City:

A. Evidence that all mechanics' liens or material men's liens and claims recorded against the Property, or any Phase thereof, and the Project Improvements that are the subject of the Certificate of Completion have been unconditionally and finally released or, if not released, sufficiently bonded against as required by law.

3.6 Liens and Stop Notices. If a claim of lien or bonded stop notice is recorded against the Property or any Project improvements, the Developer, within ninety-one days after that, or within ten days after City's demand, whichever last occurs, will do the following:

A. Pay or discharge the same; or

B. Effect the release of it by recording and delivering to City a surety's release bond in sufficient form and amount, or otherwise; or

C. Give City other assurance that City, in its sole discretion, deems satisfactory to protect City from the effect of the lien, claim or bonded stop notice.

3.7 Annual Proof of Insurance. Annually, beginning with commencement of construction of the Project, and continuing until the issuance of a Certificate of Completion for the Project, Developer shall submit proof of insurance as required by this Agreement.

3.8 Taxes and Assessments. The Developer will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Developer's right to contest any taxes or assessments in good faith. The Developer will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Except as to property in public use and subject to the following sentence, Developer and those tenants/others holding or using the Property under Developer by lease or otherwise, shall not apply for or take advantage of or

otherwise enable any exemption from property/possessory taxes. The Developer shall not allow a use, transfer or sale of the Property/portion thereof, whether prior to or following completion of the Improvements hereunder, to an entity that is exempt from property/possessory tax and/or which would allow a removal from the tax roll, absent prior notice to and written consent of City.

3.9 Compliance with Laws. In performing its obligations hereunder, Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction, including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Developer, not City, is responsible for determining applicability of and compliance with all local, state and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. City makes no representations regarding the applicability of any such laws to this Agreement, the Project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Developer's failure to comply with any such laws, whether City knew or should have known of the need for Developer to comply, or whether City failed to notify Developer of the need to comply.

4. INDEMNITY INSURANCE.

4.1 Indemnity Prior to Escrow Closing. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Developer's (or its employees' agents' or contractors' entry upon the Property pursuant to Section 2.3.2(B) above. Developer's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the work to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

4.2 Indemnity After Escrow Closes. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend, with qualified counsel

of Developer's choice, the City, and each of its officers, officials, employees and agents from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability including, without limitation, personal injury, death at any time and property damage) incurred by the City, Developer or any other person, and from any claims, demands and actions in law or equity (including reasonable attorneys' fees, litigation and legal expenses incurred by the City or held to be the liability of the City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the performance of this Agreement by Developer; (ii) the installation of the work or Improvements by the Developer and Developer's employees, officers, agents, contractors or subcontractors; or (iii) the design, installation, operation and removal or maintenance of the work and Improvements other than those portions of the Improvements that are dedicated to the City for public use.

Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

This indemnity shall also cover, without limitation, the following: (1) any act, error or omission of Developer as to City or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives in connection with this Agreement, the Project or the Property; (ii) any use of the Property by Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives, successors or assigns; (iii) the design, construction, operation or maintenance of the Project, unless otherwise specifically excepted herein, or (iv) the failure of Developer or any of its officers, employees, contractors, subcontractors, invitees, agents or representatives to comply with any Federal, State or local law, code, ordinance or regulation applicable to this Agreement or the Project, including, but not limited to, claims based upon failure to comply fully with prevailing wage laws as may be determined by any court or agency of the State of California or United States Government; with respect to any and all claims related to prevailing wage, Developer, as provided herein and otherwise in this Agreement, assumes all responsibility for payment of prevailing wage and complying with prevailing wage laws, if required, and specifically waives any and all rights against the City, as well as City agents, employees, agencies, and consultants, pursuant to California Labor Code section 1726(c) and analogous federal law, if any, and agrees to defend and fully indemnify the City, as well as City agents, employees, agencies, and consultants, for any claims based upon failure to pay prevailing wage, including, without limitation, claims for damages, fines, penalties, litigation expenses, costs, attorneys' fees, and interest. Developer and/or City have the right to contest or challenge any finding that prevailing wage applies.

This section shall survive termination or expiration of this Agreement and the potential recordation of the Grant Deeds.

4.2.1 Survival of Indemnification Provisions. Except as otherwise specifically stated herein, the indemnification provisions in this subsection and every other indemnification in this Agreement will survive any termination of this Agreement, will survive any Closing, will survive the expiration of any covenant herein and will not merge with any other document evidencing an interest in real property.

4.3 Insurance. Prior to the commencement of the construction and until City issues the Certificate of Completion and records it in the Official Records of Fresno County, Developer shall pay for and maintain, or cause to be paid and maintained, in effect all insurance policies required hereunder with insurance companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. The following policies of insurance are required, and Developer will deliver proof of these policies before starting construction:

4.3.1 Commercial General Liability Insurance. Commercial general liability Insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$5,000,000 aggregate for products and completed operations, and \$10,000,000 general aggregate.

4.3.2 Commercial Automobile Liability Insurance. Commercial automobile liability insurance, which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 (Section 1, subsection A.1 entitled "Any Auto"), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

4.3.3 Workers' Compensation Insurance. Workers' compensation insurance, as required under the California Labor Code.

4.3.4 Employer's Liability. Employer's liability coverage with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

4.3.5 Commercial Property Insurance. Fire and extended coverage insurance for at least the full replacement cost of the Developer

Improvements on the Property, excluding foundations, footings and excavations and tenant improvements, fixtures and personal property.

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty calendar day's written notice in favor of the City, of policy cancellation, change or reduction of coverage, except the Workers' Compensation policy that shall provide a ten calendar day written notice of such cancellation, change or reduction of coverage. If any policy is due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing policy renewal not less than fifteen calendar days before the expiration date of the policy. When an insurer, broker, or agent issues a notice of cancellation, change or reduction in coverage, Developer shall immediately obtain and file a certified copy of a new or renewal policy and certificates for such policy with the City.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City and the officers, officials, agents and employees as an additional insured. Both the General Liability and Automobile Liability policies shall be or endorsed to provide that Developer's insurance is primary and no contribution is required of the City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers. Developer shall furnish the City with copies of the actual policies upon the request of its designee, or the City's Risk Manager.

The fact that insurance is obtained by Developer or its subcontractors shall not be deemed to release or diminish the liability of Developer or its subcontractors including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City, and their officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer or its subcontractors, except that any payment from an insurance policy paid towards Developer's indemnity obligation shall be applied towards Developer's total indemnity obligation for the particular claim for which the insurance policy has made such payment. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, its principals, officers, agents, employees, persons under the supervision of Developer, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If Developer fails to maintain the required insurance in full force and effect, Developer shall immediately discontinue all work under this Agreement, and take all necessary actions to secure the work site to insure that public health and safety is protected, until the City receives notice that the required insurance has been restored to full effect and that the premiums for the insurance have been paid for a period satisfactory to City. Developer's failure to maintain any required insurance shall be sufficient cause for the City to terminate this Agreement after notice and the right to cure as provided in Section 7.4.

SUBCONTRACTORS - If Developer subcontracts any or all of the services to be performed under this Agreement, Developer shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, Developer will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

The requirements of this section relating to such coverage shall survive termination or expiration of this Agreement.

5. SECURITY FINANCING INTERESTS AND RIGHTS OF HOLDERS.

5.1 Prohibition Against Transfer of Property, the Buildings or Structures Thereon and Assignment of Agreement. After conveyance of title and prior to the issuance by City of a Certificate of Completion for the Project, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign, or lease the whole or any part of the Property or the buildings or improvements thereon without the prior written approval of City. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

5.1.1 Permitted Transfers. Notwithstanding the foregoing, the following events ("**Permitted Transfers**") shall not be deemed a transfer for the purposes of requiring City's consent:

- A. Creation of Security Financing Interests;
- B. A sale, conveyance, or transfer of the Property at foreclosure (or a deed in lieu of foreclosure) resulting from a Security Financing Interest;
- C. The conveyance or dedication of parts of the Property to the City or the grant of easements or permits solely to facilitate the development of the Property before the Certificate of Completion is recorded;

D. Sale or rental of Project units/space in accordance with this Agreement;

E. Sale or assignment to an entity controlled by or in common control with Developer or its owner.

F. Assignments resulting from the death or mental or physical incapacity of an individual;

G. Assignments in trust for the benefit of a partner's spouse, children, grandchildren or other family members.

5.2 Approval or Consent of City. When a request for transfer or assignment is submitted to City for consideration, approval will be conditioned on the following:

A. Financial Strength and Business Experience. The proposed transferee will demonstrate to City's reasonable satisfaction that the proposed transferee has sufficient financial strength and the business experience in planning, financing, development, ownership, and operation of similar projects to complete the Project, or portion thereof, competently.

B. Assumption Agreement. Any transferee, by recordable instrument acceptable to City, shall expressly assume all the unfulfilled or ongoing obligations of the Developer under this Agreement, and agree to be subject to all the conditions and restrictions to which the Developer is subject with respect to the Property or applicable portion thereof.

C. Transfer Documents. The Developer or its successors shall submit all documents, proposed to affect any transfer or assignment, to City for review and approval.

D. Other Information. Developer or its successors shall deliver all information to City that City may reasonably request to enable it to evaluate the proposed transfer or assignment. City shall approve, conditionally approve, or disapprove a request for assignment within fifteen days after receiving the request and all supporting documentation.

E. Developer's Release. City's approval of any transfer, assignment, or sale will relieve the Developer from all obligations under this Agreement with respect to the portion of the Property transferred but will not relieve the Developer or any successor from any unfulfilled or ongoing obligations of Developer under this Agreement with respect to any portion of the Property not transferred. The provisions of this subsection are intended to discourage land speculation, and these provisions shall be liberally interpreted to accomplish that end.

5.3 Security Financing; Rights of Holders.

5.3.1 No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Back or Other Financing for Development. Notwithstanding Section 5.1 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable

method of financing are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the construction of the Improvements on the Property and any other expenditures necessary and appropriate to develop the Property under this Agreement. To this end, if the Developer and the Developer's construction lender provide a written request to the City Manager for the City to subordinate its interests in this Agreement to the interests of the construction lender, and the lender provides a written proposed subordination agreement, then the City Manager, or his designee, shall consider and approve the subordination agreement if the following conditions are met: (1) the lender states in writing a necessity for the requested subordination; (2) the terms of the requested subordination are commercially reasonable under the circumstances; (3) the Developer provides to the City Manager a statement of all material terms of the sources of equity and loans for construction of the Project and that information demonstrates continued financial viability of the Project through completion of construction; (4) the funds disbursed from each construction loan shall be used only for costs and charges associated with the loan and construction of the Improvements; (5) the interest on each construction loan shall be at a reasonable rate based on all the facts and circumstances; (6) Developer shall provide City with evidence of Developer's ability to satisfy any equity requirements of each construction loan; and (7) the City Attorney approves the subordination as to form. Any requested subordination shall be deemed approved by the City Manager if the above conditions have been met and the City Manager or his designee has not approved or rejected the terms of the subordination within thirty days of the conditions having been met. The Developer shall promptly notify City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the Improvements on the Property whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

5.3.2 Holder Not Obligated To Construct Improvements. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for the Property be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

5.3.3 Notice of Default to Mortgage, Deed of Trust, or Other Security Interest Holders; Right to Cure. Whenever City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust, or other security interest authorized by this Agreement who has previously made a written request to City therefor default of the Developer under this Section 5.3.3. Each such holder shall (insofar as the rights of the agency are concerned) have the right at its option within ninety days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such lender upon obtaining possession of the Property, such holder shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such holder shall not be required to remedy or cure any non-curable default of the Developer. However, nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed the Developer's obligations to City by written agreement reasonably satisfactory to City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates and submit evidence reasonably satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such Improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

5.3.4 Failure of Holder to Complete Improvements. In any case where, six months after default by the Developer in completion of construction of Improvements under this Agreement, the holder of any mortgage, deed of trust, or other security interest creating a lien or encumbrance upon the Property has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, City may purchase the mortgage, deed of trust, or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Property has vested in the holder, City, if it so desires, shall be entitled to

a conveyance of the Property from the holder to City upon payment to the holder of an amount equal to the sum of the following:

- A. The unpaid mortgage, deed of trust, or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- B. All expenses with respect to foreclosure;
- C. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property;
- D. The costs of any authorized improvements made by such holder; and
- E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by City.

5.3.5 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by the Developer on a mortgage, deed of trust or other security interest with respect to the Property prior to the completion of the Project, and the holder has not exercised its option to complete the Project, City may cure the default prior to completion of any foreclosure. In any such event, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing the default. City shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Property as authorized herein.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Developer Representations and Warranties. Developer represents and warrants that:

- A. Developer is a Delaware limited liability company duly formed and existing under the laws of the State of California, in good standing, and authorized to do business in the State of California, County of Fresno, and City of Fresno.
- B. Developer has all requisite power and authority to carry out its business as now and hereafter conducted and to enter and perform its obligations under this Agreement.
- C. The person or persons signing this Agreement for Developer have been duly authorized to execute and deliver this Agreement and to legally bind Developer to its terms and conditions.

D. Developer's execution and performance of this Agreement does not violate any provision of any other agreement to which Developer is a party.

E. Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary to Developer's execution of this Agreement.

F. Developer has or will have sufficient funds available to fund the Project and to pay all costs assumed by Developer hereunder.

G. This Agreement is valid, binding, and enforceable against Developer in accordance with its terms, except as such enforceability may be limited by principals of public policy and subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors, and rules of law governing specific performance, injunctive relief or other equitable remedies

6.2 City Representations and Warranties. City represents and warrants that: The information and Materials delivered by City to the Developer are all the Materials known by City which exist relative to or affecting the development, use, operation or condition of the Property. City provides the Materials to Developer without warranty or representation as to the completeness, correctness or validity of such data and information.

6.3 Survival of Representations and Warranties. The parties are relying upon the above representations and warranties in entering this DDA. The foregoing representations are and shall be continuing in nature and shall remain in full force and effect until all obligations under this DDA are met or this DDA is terminated in a manner provided herein.

7. DEFAULT, REMEDIES AND TERMINATION.

7.1 Default. Failure or delay by either party to perform any term of this Agreement shall be a default under this Agreement if not cured within the time set forth herein, including the cure period afforded a lender under Section 5.3.3. Any failure or delay by a party in asserting any right or remedy will not constitute a waiver, and will not deprive the party of its right to institute and maintain any action or proceeding necessary to protect or enforce any right or remedy.

7.2 Legal Actions. A party may institute a legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal action shall be brought in the Fresno County Courts, or the Fresno Division of the Federal District Court for the Eastern District of California.

7.3 Rights and Remedies are Cumulative. Except as may be expressly stated otherwise in this Agreement, the rights and remedies of the parties are cumulative. The exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other rights or remedies for the same default or any other default. In addition to the specific rights and remedies herein, the parties may resort to any other rights or

remedies available at law or in equity, including, without limitation, specific performance.

7.4 Notice and Cure Periods. If either party fails to perform under any provision of this Agreement including documents incorporated herein, the non-defaulting party shall serve written notice of the default on the defaulting party, describing the default, and the actions necessary to cure the default. A defaulting party will have thirty days from the date of the notice to cure the breach or failure unless a different time period is provided in this Agreement in which case the latter shall apply. If the default is not susceptible to cure within the thirty days, the defaulting party shall begin to cure the default within the thirty days and after that diligently prosecute the cure to completion. Failure of the defaulting party to cure within these times shall entitle the non-defaulting party to enforce any right or remedy provided in this Agreement, at law, or in equity. This provision is not intended to modify or extend any other notice or cure period specifically provided for in this Agreement. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

7.5 Right of Re-entry (Power of Termination) and Reverter. City may reenter and take possession of the Property, or part of it, and terminate the estate conveyed to Developer by the Grant Deed and revest the estate if City, after the Closing, but before recording a Certificate of Completion, any of the following occurs:

7.5.1 Developer does not begin and complete construction of the Project within the time specified in the Performance Schedule or this Agreement unless otherwise extended by the terms herein, and such failure is not cured within the notice and cure period under Section 7.4 or under Section 5.3.3, as applicable; or

7.5.2 Developer abandons or substantially suspends construction of the Project for 30 days after City gives written notice of the abandonment or suspension (however, this shall not apply to suspension due to reasons described in Section 3.3), subject to the notice and cure rights of a lender pursuant to Section 5.3.3; or

7.5.3 Developer assigns or transfers, or suffers an involuntary transfer of, any rights or obligations under this Agreement, or in the Property, in violation of the assignment provision of this Agreement.

If City exercises the rights under this Section 7.5, all funds previously paid by Developer less the nonrefundable Initial Deposit and any other fees for required land use entitlements, permits or other approvals to City or otherwise related to this Agreement or the Project shall concurrently be refunded to Developer such that the parties shall be restored to their original positions prior to the execution of this Agreement to the greatest extent possible.

7.6 Effect on Security Holders. City's right to reenter, repossess, terminate and revest shall be secured by the provisions of the Grant Deed

attached hereto as **Exhibit E**. Such right to reenter, repossess, terminate and revert shall be subject to, limited by, and shall not defeat, render invalid, or limit: (i) any Security Financing Interest permitted by this Agreement; or (ii) any provision of this Agreement protecting the holder's Security Financing Interest.

The provisions of Section 7.5 through and 7.6 shall automatically terminate on the recordation of a Certificate of Completion for the Project (or applicable phase.)

7.7. Default by the Developer to Purchase the Property – Liquidated Damages. IF THE CLOSE OF ESCROW FAILS TO OCCUR BY REASON OF THE DEVELOPER'S DEFAULT, THEN THE DEVELOPER AND CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH CITY'S DAMAGE BY REASON OF THE DEVELOPER'S DEFAULT. ACCORDINGLY, THE DEVELOPER AND CITY AGREE THAT IT WOULD BE REASONABLE AT SUCH TIME TO AWARD CITY THE INITIAL DEPOSIT AS "LIQUIDATED DAMAGES." CITY AND THE DEVELOPER ACKNOWLEDGE AND AGREE THAT THE FOREGOING AMOUNT IS REASONABLE AS LIQUIDATED DAMAGES, IS NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES AND SHALL BE CITY'S SOLE AND EXCLUSIVE REMEDY IN LIEU OF ANY OTHER RELIEF, RIGHT OR REMEDY, AT LAW OR IN EQUITY, TO WHICH CITY MIGHT OTHERWISE BE ENTITLED BY REASON OF THE DEVELOPER'S DEFAULT UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, CITY WAIVES ANY AND ALL RIGHTS WHICH CITY OTHERWISE WOULD HAVE HAD UNDER CALIFORNIA CIVIL CODE SECTION 3389, OR OTHERWISE, TO SPECIFICALLY ENFORCE THIS AGREEMENT. IF THE CLOSE OF ESCROW FAILS TO OCCUR FOR ANY REASON OTHER THAN THE DEVELOPER'S DEFAULT UNDER THIS AGREEMENT, THEN THE INITIAL DEPOSIT AND ALL INTEREST EARNED THEREON SHALL BE RETURNED TO THE DEVELOPER. CITY AND THE DEVELOPER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS PARAGRAPH AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

City's Initials Developer's Initials

8. GENERAL PROVISIONS.

8.1 Notice, Demands and Communication. All notices, elections, requests, acceptances, demands, instructions or other communications (notice or notices) to be given to any party under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service if personally served on the party to whom notice is to be given; (ii) on the date of delivery if mailed to the party to whom notice is to be given, by first class mail which is either registered or certified, postage prepaid, return receipt requested; or (iii) on the date of delivery if delivered by a recognized private courier service

(e.g., Federal Express) to the party to whom notice is to be given, all charges prepaid; or (iv) when delivered on a business day, if given by electronic format that provides verification of successful transmission. Refusal to accept delivery shall be deemed acceptance of delivery. All notices shall be properly addressed to the party receiving notice as follows:

CITY:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721

WITH COPIES TO:

City Attorney
2600 Fresno Street
Fresno CA 93721-3602
Facsimile No.: (559) 498-1815

DEVELOPER:

Brixton Capital AC LLC
120 South Sierra Avenue
Solana Beach, CA 92075
Attention:

WITH COPIES TO:

A party may change its address by notice given according to this subsection.

8.2 Conflict of Interests. No member, official, officer or employee of the Developer or City shall have any direct or indirect interest in this Agreement, or shall participate in any decision relating to this Agreement where such interest or participation is prohibited by law. No officer, employee, or agent of City who exercises any function or responsibility concerning the planning and carrying out of the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project. Developer represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.

8.2.1 No contractor, subcontractor, mechanic, material man, laborer, vendor or other person hired or retained by Developer shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Developer as their sole source of recovery if not paid; and (b) except as otherwise agreed to by City and any such person in writing, they may not enter any claim or bring any such action against City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between City and any such person, each such person

shall be deemed to have waived in writing all right to seek redress from City under any circumstances whatsoever.

8.3 Nonliability of Officials, Employees and Agents. No member, official, officer, employee or agent of City shall be personally liable to the Developer, or any successor in interest, for any default or breach by City.

8.4 Counterparts. This Agreement may be executed in counterparts, and together each executed counterpart shall constitute one Agreement.

8.5 Waiver. A party's waiver of the other's breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No provision of this Agreement may be waived except in a writing signed by all the parties. Waiver of any one provision shall not be deemed to be a waiver of any other provision herein.

8.6 Attorneys' Fees. If a party initiates or defends litigation or any legal proceeding regarding the enforcement of this Agreement, the prevailing party in such litigation or proceeding, in addition to any other relief that may be granted, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal. A party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating the action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to the action. All such fees shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not such action is prosecuted to judgment.

8.7 Governing Law. This Agreement shall be interpreted and enforced, and the rights and duties of the parties under this Agreement (both procedural and substantive) shall be determined according to California law.

8.8 Further Assurances. Each party will take any further acts and will sign and deliver any further instruments required to carry out the intent and purposes of this Agreement.

8.9 Entire Understanding of the Parties. The exhibits referenced as attached are by such references incorporated into this Agreement. This Agreement, including exhibits, is the entire understanding and agreement of the parties. All prior discussions, understandings, and written agreements are superseded by this Agreement. This Agreement shall not be modified except by written instrument duly approved as required by law and executed by authorized representatives of the parties. Should the terms of any exhibit conflict with the body of this Agreement, the body of this Agreement shall govern.

8.10 Consent, Reasonableness. Unless this Agreement specifically authorizes a party to withhold its approval, consent or satisfaction in its sole discretion, any consent, or approval, or satisfaction to be requested or required of a party, shall not be unreasonably withheld, conditioned or delayed.

8.11 Partial Invalidity. If any part of this Agreement is held to be invalid, void or unenforceable in any legal, equitable or arbitration proceeding, the

remainder of the Agreement shall continue in effect, unless not giving effect to the invalid or unenforceable part would prevent effecting the purposes of the Project and this Agreement.

8.12 Ambiguity. This Agreement is the result of the combined efforts of the parties. Should any provision of this Agreement be found ambiguous, the ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but by construing the terms according to their generally accepted meaning, considering the objective of the Agreement.

8.13 Number and Gender. Masculine, feminine or neuter gender terms and singular or plural numbers will include others when the context so indicates.

8.14 Headings. All headings are for convenience only, are not a part of this Agreement, and are not to be used in construing this Agreement.

8.15 Binding Upon Successors. This Agreement shall bind and inure to the benefit of the successors in interest, personal representatives, and assigns of each party, subject to the limitation on transfer and assignment contained in this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor, representative, or assign of the party who has acquired an interest in compliance with the terms of this Agreement, or under law.

8.16 Relationship of the Parties. Nothing in this Agreement, the Grant Deed, or any other document executed in connection with this Agreement shall be construed as creating a partnership, joint venture, agency, employment relationship, or similar relationship between City and the Developer or any of the Developer's contractors, subcontractors, employees, agents, representatives, transferees, successors-in-interest or assigns. Nothing in this Agreement establishes a principal and agent relationship between the parties.

8.17 Nature of the Project. The Project is a private undertaking of the Developer. After City conveys title or possession of the property to Developer, the Developer shall have exclusive control over the Property, subject to the terms of this Agreement and all applicable Federal, State and local laws, ordinances, codes, regulations, standards and policies.

8.18 Time of Essence. Time is of the essence of each term, condition, and covenant contained in this Agreement.

8.19 Survival of Provisions. Those provisions expressly surviving expiration or earlier termination, including each indemnification provision, shall survive the Closing and expiration or earlier termination of this Agreement, and shall not merge with the Grant Deed or other document evidencing any interest in real property.

9. Damage or Condemnation Prior to Closing.

In the event that prior to the Close of Escrow, the Property, or any portion thereof, is destroyed or damaged, the City shall first have the right to cure; if the damage is not curable; Developer shall have the right, exercisable by giving

written notice to City within fifteen (15) days after receipt of written notice of such damage or destruction, either (i) to terminate this Agreement or (ii) to accept the Property in its then condition and to proceed with the consummation of the transaction contemplated by this Agreement with an abatement or reduction in the Purchase Price equal to the amount of the deductible for the applicable insurance coverage or actual cost to cure the damage.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

By: _____
Wilma Quan-Schechter
City Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvanian Date 11.30.18
Tracy N. Parvanian
Senior Deputy City Attorney

ATTEST:

YVONNE SPENCE, CRM, MMC
City Clerk

By: _____
Deputy

Addresses:

CITY:
City of Fresno
Attention: [Name]
[Title]
[Street Address]
Fresno, CA [Zip]
Phone: (559) [#]
FAX: (559) [#]

DEVELOPER
Brixton Capital AC LLC

By: MRC
Name: MARC R. BRITTEN

Title: AUTHORIZED SIGNATORY
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____
Name: _____

Title: _____
(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

REVIEWED BY:

DEVELOPER: Brixton
Capital AC LLC Attention:
Legal Department
120 South Sierra Avenue
Solana Beach, CA 92075
Phone: (858) 683-7100
FAX: (858) 568-7742

EXHIBIT A

SITE MAP

APN 468-255-11 & 468-255-15

53,040 SF Retail Building commonly referred to as the City-owned portion of the former Gottschalks building; 214,292 SF parking Structure commonly referred to as the Spiral Garage

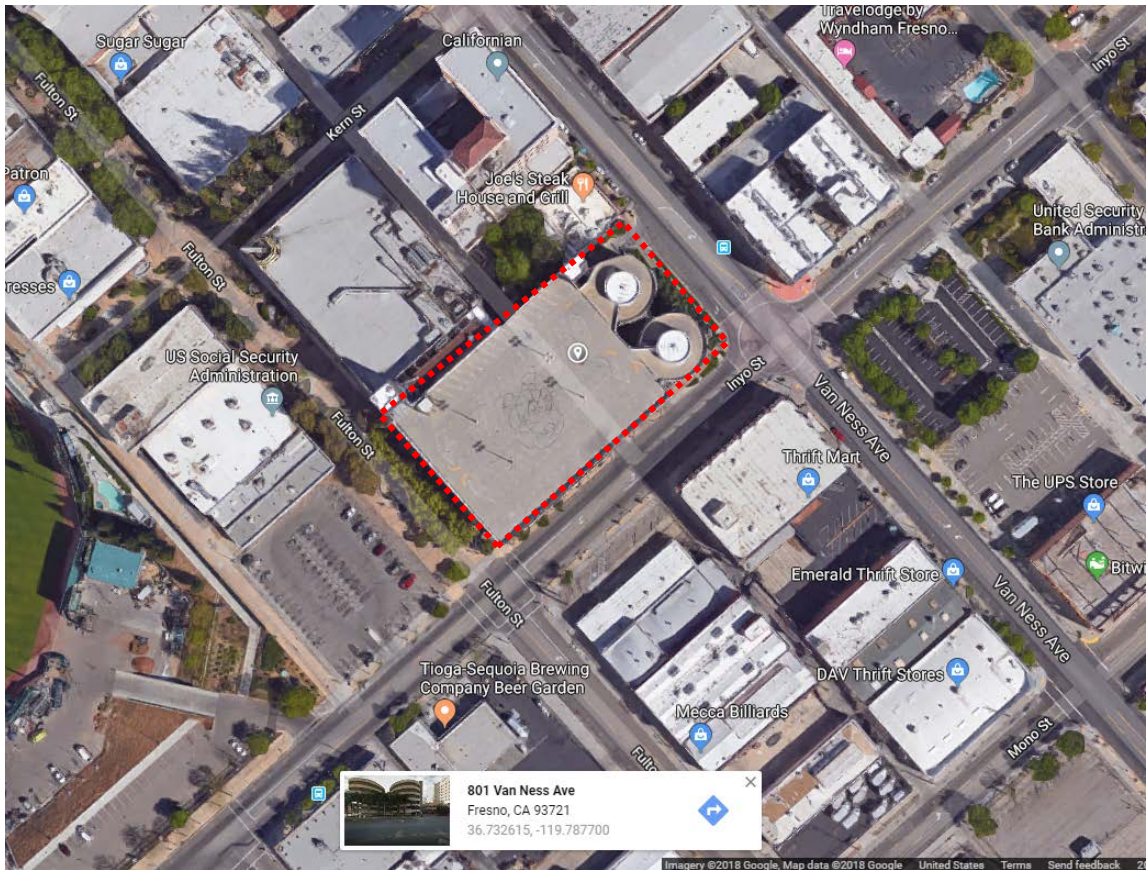


EXHIBIT A-1

LEGAL DESCRIPTION

APN 468-255-11T

Lots 11 to 16, inclusive, and the Southeast 18 feet of Lot 10, in Block 81 of the Town (now City) of Fresno, according to the map thereof recorded June 8, 1876 in Volume 1 of Plats, at Page 2, Fresno County Records.

TOGETHER WITH an easement for public parking purposes over and above a plane elevation of 309.50 feet above an Assumed Datum extending across all of the following described property:

That certain portion of the alley lying in Block 81 of the Town (now City) of Fresno, as said alley is shown on the map thereof recorded June 8, 1876 in Volume 1 of Plats, at Page 2, Fresno County Records, and more particularly described as follows:

Beginning at the most Southerly corner of Lot 16 in said Block 81; thence Northwesterly on the Southwesterly lines of Lots 10 to 16, inclusive, in said Block 81, to a point which is 18.00 feet Northwest of the most southerly corner of said Lot 10; thence Southwesterly, on a line which is parallel with and 18.00 feet Northwest of the Southwesterly projection of the Southeasterly line of said Lot 10, to its intersection with the Northeasterly line of Lot 23 in said Block 81; thence Southeasterly, on the Northeasterly lines of Lots 17 to 23, inclusive, in said Block 81, to the most Easterly corner of said Lot 17; thence Northeasterly on the Northeasterly production of the Southeast line of said Lot 17, to the point of beginning.

For the purpose of the foregoing description, "Assumed Datum" shall be ascertained and fixed with relation to the Fresno City T.B.M. (Temporary Bench Mark) #633, and located on the Southwest side of Van Ness Avenue, 57 feet, more or less, Southeast of Ventura Avenue, in the City of Fresno, County of Fresno, such bench mark for this purpose to be deemed to have an elevation of 291.458 feet above Assumed Datum.

APN 468-255-15T

Lots 17, 18, 19, 20, 21, 22, 23 and 24 in Block 81 of the Town (now City) of Fresno, according to the map thereof recorded June 8, 1876 in Volume 1 of Plats, at Page 2, Fresno County Records.

EXHIBIT B

SCOPE OF DEVELOPMENT AND BASIC DESIGN

Rehabilitation of the existing structure to include a variety of licensed gaming activities, bar/restaurant and banquet facilities, administrative and security offices, and onsite parking.

In order to comply with the City's Downtown Development Code adopted for a vibrant and active Fulton Street, tenant improvements should be designed in manner which promotes interaction between pedestrians and the businesses on site, as well as interactions between on-site businesses and nearby establishments. To accomplish this, windows should be transparent, with the lightest possible tint, and views into the space should be unobstructed. Pedestrian entrances should be available from public streets into each establishment on site, and should be marked by attractive, interesting, and highly visible signage. Finally, the functions with higher levels of anticipated turnover (such as restaurants, nightclubs, and bars) should be placed on the ground floor adjacent to the sidewalk, and uses which are anticipated to have lower turnover and less frequent activity (such as cardrooms, offices, and conference spaces) should be located away from the sidewalk in areas such as the basement, mezzanine, or rear of the ground floor

****Except as set forth in this Agreement, before Developer begins constructing the Improvements or undertakes any other work of improvements on the Property, Developer, at its own cost and expense, will independently secure all land use and other entitlements, permits, and approvals that City or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Developer acknowledges the Property is potentially historic and agrees to conform to the necessary historic preservation processes, when applicable.*

EXHIBIT C

PERFORMANCE SCHEDULE*

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
City of Fresno City Council consideration of Disposition and Development Agreement (DDA)		December 2018
Execution of DDA		December 2018
Escrow Opens	Within three days following the Effective Date of the Agreement	December 2018
Issuance of Building Permits		June 2019
Execution of License Agreement for parking		June 30, 2019
Escrow Closes	Within five days after the issuance of building permits but no later than June 30, 2019.	June 30, 2019

Commencement of Construction of Developer's Improvements. Within thirty days after receipt of building permits by the Developer, construction shall commence on the improvements to be constructed on the Project Site.		July 2019
Completion of Construction of Developer's Improvements. The Developer shall complete construction of the improvements to be constructed on the Project Site.		December 2020
Issuance – Certificate of Completion. City shall furnish the Developer with a Certificate of Completion on the Project.		December 2020

* These dates are subject to any extension based upon the extension terms expressly provided in the DDA.

EXHIBIT D

CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721

No Fee-Govt. Code Sections 6103-**SPACE ABOVE THIS LINE FOR RECORDER'S**
27383 USE
ADNc.

This **Release of Construction Covenants and Certificate of Completion** are recorded at the request and for the benefit of the City of Fresno.

- A. As agreed in a Disposition and Development Agreement including covenants, conditions and restrictions, (DDA) dated _____, 20____, entered by the CITY OF FRESNO, a municipal corporation, (CITY), and _____ (DEVELOPER), CITY conveyed certain real property to DEVELOPER under a Grant Deed, dated _____, 20____, recorded in the Official Records of Fresno County on _____, 20____, as Document No. _____ (the DEED), and the DEVELOPER agreed to complete/cause the completion of the of construction of certain improvements described therein (the Project) upon the premises described therein as the "Property" according to the terms and conditions of the DDA and the documents and instruments referenced therein, incorporated herein.
- B. The DDA or a memorandum of it was recorded _____, 20____, as Instrument No. _____ in the Official Records of Fresno County, California.
- C. Under the terms of the DDA, after DEVELOPER completes/causes completion of construction of the Project on the Property DEVELOPER may ask CITY to record an instrument certifying that DEVELOPER has completed the required improvements for such development in the form of a Release of Construction Covenants and Certificate of Completion.
- D. DEVELOPER has asked CITY to furnish DEVELOPER with a recordable Release of Construction Covenants and Certificate of Completion for of the development for the Project.

- E. CITY'S issuance of this Release of Construction Covenants and Certificate of Completion is conclusive evidence that DEVELOPER has completed the construction on a Phase of development of the Property to terminate and release DEVELOPER from the construction/improvement covenants in the DDA pertaining to such Phase.

NOW THEREFORE:

1. As provided in Section 3.4 of the DDA, the City does hereby certify that construction of all of the improvements required by the DDA on the portion of the Property described in Attachment A, attached hereto and incorporated herein by this reference, has been satisfactorily completed.
2. The DDA is therefore of no further force and effect as to such Phase of Development of the Property, and all rights, duties, obligations and liabilities of the City and the Developer thereunder with respect to such Phase of Development shall cease to exist. Any continuing and existing rights, duties, obligations and liabilities of the City and the Developer (and its successors) pertaining such Phase of development are provided in the Grant Deed conveying the Property from the City to the Developer.
3. This Release of Construction Covenants and Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of the improvements on the Property. This Release of Construction Covenants and Certificate of Completion, is not a notice of completion as referred to in Section 8182 of the California Civil Code.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, City has executed this Release of Construction Covenants and Certificate of Completion as of this ____ day of _____, 20____.

CITY OF FRESNO,

A municipal corporation

By: _____
Its: _____

Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: _____, 201____

[DEVELOPER]

By: _____
Name: _____
Title: _____

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Deputy

By: _____
Tracy N. Parvanian
Senior Deputy City Attorney

Dated: _____

Dated: _____

EXHIBIT E

FREE RECORDING REQUESTED
BY
AND WHEN RECORDED RETURN
TO:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721

SPACE ABOVE THIS LINE FOR RECORDER'S

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

CITY OF FRESNO, a municipal corporation (Grantor), hereby grants to Brixton Capital AC LLC (Grantee), the real property (Property) legally described in **Attachment No. 1** attached hereto and incorporated herein by this reference.

Consistent with the Disposition and Development Agreement including covenants, conditions and restrictions, (DDA) dated _____, 20____, entered by Grantor and Grantee, all incorporated herein by this reference, the Grantee herein covenants by and for itself and its successors, transferees, vendees, administrators, and assigns, and all persons claiming under or through it that:

1. There shall be no discrimination against or segregation of, any person or group of persons on account of any bases listed in subdivision (a) or (d) of Section 12995 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

2.

a. Grantee will take all commercially reasonable precautions to prevent the release into the environment of any Hazardous Materials (as defined in the DDA) in, on or under the Property in violation of Environmental Laws. Grantee will comply with all Environmental Laws with respect to Hazardous Materials.

EXHIBIT E

-1-

b. Until a Certificate of Completion is recorded as to the Property, Grantee will notify Grantor and give Grantor a copy or copies of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Environmental Law. Immediately after Grantee's knowledge of each incident, Grantee will report any release of Hazardous Material at the Property in violation of Environmental Law.

c. Until a Certificate of Completion is recorded as to the Property, if a release of any Hazardous Materials into the environment occurs in violation of Environmental Law, Grantee will, as soon as possible after Grantee's knowledge of the release, furnish Grantor with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Grantee will furnish Grantor with a copy of any other environmental entitlements or inquiries relating to or affecting the Property, including, without limitation, all permit applications, permits and reports, including reports and other matters, which may be characterized as confidential.

d. Grantee will indemnify, defend, and hold Grantor harmless from any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage or expense (including, without limitation, attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, first occurring following the date hereof, or (ii) the violation, or alleged violation of any Environmental Law on, under, in or about, to or from the Property first occurring after the date hereof. This indemnity will include, without limitation, any damage, liability, fine, penalty, parallel or cross indemnity occurring after conveyance, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death) tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination lease, spill, release or other adverse effect on the environment. The indemnity covers, without limitation, (a) the cost of any required or necessary repair, clean-up, or detoxification and the preparation of any closure or other required plans, and (b) costs of legal proceedings and attorneys' fees. The indemnity does not cover any presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials of Hazardous Material caused by the City or its agents, employees or contractors.

e. Grantee releases Grantor from all claims Grantee may have against, resulting from, or connected with the environmental condition of the Property. Such claims include, without limitation, all claims Grantee may have against Grantor under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other

federal, state or local law, whether statutory or common law, ordinance, or regulation concerning the release of Hazardous Materials or substances into the environment from or at the Property, and the presence of such materials in, on, under or about the Property. Grantee expressly waives the benefits of Civil Code section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release which if known by him must have materially affected settlement with the debtor.

3. Grantor is the beneficiary of the covenants running with the land for itself and for protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether Grantor has been, remains, or is in ownership of any land on the Property or any portion thereof. Grantor may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries. The provisions of the DDA which by their terms or nature are intended to survive the recordation of this Deed are fully enforceable under and shall not merge with this Deed; however, upon the recordation of a Certificate of Completion as to the Property, the only provisions of the DDA that will continue to survive are Sections 1, 2(a), 2(d), 2(e) and this Section 3.

4. If a conflict exists or arises between the provisions of this Deed and the DDA, the DDA shall control.

The obligations of the Grantee hereunder are covenants or conditions running with the land enforceable by Grantor through a reserved right to re-entry and reverter pursuant to the DDA; however, the right of re-entry and reverter shall terminate upon the recordation of a Certificate of Completion as to the Property.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on its behalf by its respective officers thereunto duly authorized, this _____ day of _____ 2018.

"GRANTOR"

CITY OF FRESNO
a municipal corporation

By:
Its:

Date:

EXHIBIT E

-4-

ATTACHMENT NO. 1

**GRANT DEED
LEGAL DESCRIPTION OF THE PROPERTIES**