

**Recording requested by and  
When Recorded Return to:**

City of Lompoc  
100 Civic Center Plaza  
Lompoc, CA 93436  
Attention: City Clerk

APN. 095-070-008

(Space Above This Line for Recorder's Office Use Only)  
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**LONG-TERM GROUND LEASE AND OPERATING AGREEMENT**

**WITH CONDITIONAL OPTION FOR DISPOSITION AND PROJECT DEVELOPMENT**

This Long-Term Ground Lease and Operating Agreement With Conditional Option for Disposition and Project Development ("**Agreement**") is made this \_\_\_\_ of \_\_\_\_\_, 2024 ("**Effective Date**"), by and between the CITY OF LOMPOC, a California municipal corporation ("**City**") and PALE BLUE DOT VENTURES, INC, a Delaware corporation and wholly owned subsidiaries ("**PBD**" or "**PBDV**"). City and PBDV are hereinafter collectively referred to as "parties" and individually as a "party."

**RECITALS**

A. The Premises. City owns that certain real property consisting of approximately eighty-two (82) acres, which acreage currently includes about forty-two (42) acres of parklands commonly known and operated by the City as the Ken Adam Park ("**Park**"), located south of Hancock Drive and west of Highway 1 in the City of Lompoc (APN 095-070-008), which is legally described on **Exhibit A** and depicted on **Exhibit A-1** hereto (the "**Premises**").

B. Current Use of Premises. City acquired the Premises from the Federal government pursuant to the following deeds (collectively the "**Restrictive Deeds**"):

- i. Quitclaim Deed dated October 23, 1984, executed by the United States of America acting by and through the Secretary of the Army ("**Secretary of the Army**") recorded on April 26, 1985, as Instrument No. 1985-021446 in the Official Records of Santa Barbara County ("**Official Records**"); and
- ii. Quitclaim Deed dated August 2, 1993, recorded on September 28, 1993, as Instrument No. 93-076002 in the Official Records and as corrected by that certain Correction to Quitclaim Deed dated March 22, 1999, executed by the Secretary of the Army and recorded on June 8, 1999, as Instrument No. 99-046629 in the Official Records.
- iii. The Restrictive Deeds specifically restrict the use of the Premises to educational and recreational purposes, open space, or both ("**Federal**

**Use Restrictions**"). To this end, the Premises are currently operated as open space or parklands.

C. Proposed Project Concept Plan; Need For Concept Exploration. PBDV has proposed to submit applications for entitlements to construct and operate a project, which would encompass space and aerospace themed educational, recreational, open space and related guest-serving amenities, with overnight hotel/lodging/camping or dormitory components and related amenities, including without limitation an "Earth Base Lodging" park/dormitory/space-camp bundle, (the "**Project**") as further detailed in **Exhibit B** ("**Proposed Concept Plan**"). The parties hereto acknowledge that Project details are yet to be determined with specificity; the listed elements herein and in **Exhibit B** are approximations based on entirely conceptual designs and precise or actual unit/square footage counts are unknown as of the Effective Date. Project entitlements have not been submitted or approved, and nothing in this Agreement approves, or commits to, any Project aspects or waives City discretion in the exercise of its police powers with respect to any Project entitlements or approvals. Any Project development will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan and zoning regulations, as may be amended by PBDV's entitlements, any and all State laws (including without limitation the California Environmental Quality Act ("**CEQA**") and statutory prerequisites applicable to any discontinuance of the Premises' public park uses), and conformance with, or amendment or repeal of, the Federal Use Restrictions. While the City is not waiving City Council discretion to consider use of the Premises for other educational, recreational, open space, or other purposes consistent with the City's General Plan, zoning, State laws and the Federal Use Restrictions, the City has agreed to exclusively negotiate with PBDV and wishes to facilitate PBDV's exploration of its proposed Project development.

D. Unfettered City Discretion Upon All Potential Entitlements. The City Council has complete discretion, within the bounds of Applicable Law, to accept or reject the Project and/or any future entitlements therefor, and this Agreement is not committing City to undertake any activity requiring the exercise of discretion. The City's approvals or conditional approvals of any Project entitlement shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council is required to make, including all necessary findings and determinations required under CEQA, as well as State and local land use provisions. As to any matter which City may be required to exercise its lawful discretion with respect to the Project, nothing herein shall obligate the City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by Applicable Law shall not be deemed to constitute a breach of City's duties under this Agreement.

E. Lease To Facilitate Project Concept Evaluation; Full Term Conditioned On Entitlement Processing. Subject to all non-waivers of City discretion set forth in the foregoing recital, the term of this Agreement shall be *the earlier* of either (i) 55-years from the Effective Date, such period being conditioned upon meeting certain entitlement thresholds, or (ii) issuance of a Certificate of Completion for the Project *and* PBDV's fee purchase of the Premises as further described below (the "**Term**"). During the Term, PBDV shall occupy, operate and maintain the Premises under those terms of a ground lease as set forth herein (the "**Lease**" or "**Leasehold**") until such point that PBDV purchases the Premises in fee. PBDV's Leasehold possession of the Premises and the continued

effectiveness of this Agreement are conditioned upon the timely satisfaction of certain Project application submittal, environmental/CEQA review, entitlement approval (or conditional approval), State law, and Federal Use Restriction benchmarks (the “**Leasehold Continuation Conditions**”). If such Leasehold Continuation Conditions are not timely satisfied, then PBDV’s Lease of the Premises (and this Agreement) may be promptly terminable by the City, subject to any force majeure and as further specified herein.

F. Premises To Be Held “As-Is” Pending Leasehold Continuation Conditions. Until all Leasehold Continuation Conditions are satisfied, PBD shall make no physical alterations to the Premises or otherwise undertake any actions or activities that may cause any environmental impact. To this end, PBDV shall hold the Premises’ use “as-is” in its current recreational/parkland condition within no physical changes until the Leasehold Continuation Conditions have been satisfied, excepting:

- i. PBDV may conduct reasonable environmental investigations (e.g., Phase I and/or Phase II studies), PBD shall not construct any permanent alterations to, or permanent structures on, the Premises, excepting that PBD may locate on the Premises one non-fixed and transitory structure (e.g. office trailer) that is easily removable such that the Premises will be restored to a condition substantially original to the Premises’ current condition as of the Effective Date. The PBD office trailer shall be primarily used as a point of operations for PBD’s environmental investigations, management and staff for same, and otherwise preparing preliminary designs/applications for the Project; and
- ii. PBDV’s Leasehold interest bears the limited purpose of (a) facilitating further investigation of the Premises by PBD for purposes of preparing preliminary designs/applications for the Project and preparing environmental review information, and (b) gathering feedback from the public regarding the proposed Project and its attendant entitlements for full City Council review; and
- iii. PBDV shall be prohibited from erecting any signage on the Premises other than such safety-related signage either required by law or as needed to duly demarcate areas of PBD’s investigation of the Premises. Until satisfaction of the Leasehold Continuation Conditions, in no event shall PBD signage refer to the potential Project, proposed Project uses, or any commitment by the City towards the Project.

G. Option To Purchase Conditioned On Entitlements. If, and only if, the Leasehold Continuation Conditions are timely satisfied, and prior to any other earlier expiration or default of this Agreement, PBDV may then exercise an option to purchase (the “**Option to Purchase**”) the Premises at fair market (or higher) value as further detailed herein (the “**Purchase Price**”). PBD’s full payment of the Purchase Price to City shall be a prerequisite to any conveyance of the Premises’ fee title to PBD. If all Leasehold Continuation Conditions are satisfied, the Option to Purchase must be exercised and Escrow

for purchase of the Premises Closed before expiration or earlier termination of this Agreement's Term.

H. Commencement of Project Development Contingent. Project development shall not proceed until PBD has satisfied all Leasehold Continuation Conditions. Thereafter, should PBD fail to proceed with due diligence in the development of the Project towards a Certificate of Completion, the City shall have the right, at its option, to reenter and take possession of the Premises with all improvements after appropriate notice, public hearings and cure periods to allow PBD to take remedial and/or corrective action.

I. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, the parties desire to enter into this Agreement.

**NOW, THEREFORE**, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties agree as follows:

**1. PURPOSE OF THE AGREEMENT.**

The Premises are currently operated as open space or the Ken Adam Park located in northern Lompoc lying off Highway 1 adjacent to the Lompoc campus of Allan Hancock College. The Premises lie at the heart of the Lompoc Valley between Vandenberg Village, Mission Hills, and the City of Lompoc. The Premises feature a large group picnic area, BBQ pit, a children's playground, individual picnic areas, horseshoes, and restroom facilities. While the City may consider the Premises under the same terms and conditions of another user as open space, or other purposes consistent with the City's General Plan, zoning, State laws and the Federal Use Restrictions, the City has agreed to exclusively negotiate with PBDV and wishes to facilitate PBDV's exploration of potential Project development as a space-themed recreational and educational attraction with overnight hotel/lodging/camping or dormitory components and related amenities, including without limitation an "Earth Base Lodging" park/dormitory/space-camp bundle, as broadly presented in concept at **Exhibit B**.

However, because the Project concept plan is entirely preliminary and presents many unknowns at this time, PBDV intends to undertake studies, investigations, reports and analyses to allow it to (i) formulate a Project concept, designs, environmental impact analysis (including a traffic analysis as well as other technical studies, as appropriate) and financing plans necessary to determine whether to undertake the Project or not, and (ii) evaluate and provide meaningful information for environmental assessment. In order to permit PBDV to undertake the aforementioned studies, investigations, reports and analyses to proceed and allow PBDV to develop and secure financing plans, while also posing no impact to ongoing public park uses and preventing any potential environmental impacts to the Premises until meaningful environmental evaluation can be achieved, the parties have agreed to Lease the Premises to PBDV on the condition that such Leasehold shall restrict PBDV's use of the Premises' to the facilitation of such environmental and other investigations necessary to develop Project plans and applications. The City shall continue to operate the Premises as "Ken Adam Park" consistent with the *status quo* operations, uses and conditions, and in such a manner that the City's undertaking of routine park maintenance, minor park improvements and other recreational improvements consistent

with the current park operations, uses and conditions shall not materially interfere with PBD's investigations or quiet enjoyment of its Leasehold. Until meaningful environmental review is complete and fully approved, PBDV may cause no changes physically nor in use or intensity at or around the Premises that could potentially result in significant environmental impacts.

Given the substantial Project unknowns, no applications or complete site plans for Project Entitlements or Permits have been submitted to the City as of the Effective Date. As of the Effective Date, the City has made no commitments whatsoever towards funding, financial assistance, physical alterations to land, changes to zoning or land use designations, Entitlements or Permits, monetary or non-monetary resources, concessions, incentives or benefits (whether public or private) as may be specifically related to the potential Project. While future Entitlement and Permit applications and CEQA analyses for the Project may be forthcoming, the parties understand that City is reserving the right to exercise its full discretion as to all matters with respect to the Project, CEQA, Entitlements, and Permits, which City is, by law, entitled or required to exercise; nothing in this Agreement shall be construed as having the effect of waiving or limiting City's police powers and exercise of discretion.

Should, within the timeframes set forth in this Agreement, PBDV secure environmental/CEQA, Entitlement, and Permit approvals following the City's full and free exercise of its discretion that by law it is entitled or required to exercise, then PBDV shall be granted an Option to Purchase the Premises and proceed with Project implementation in accordance with the terms of this Agreement.

## **2. DEFINITIONS.**

**2.1** The term "**Agreement**" shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference. The Exhibits included with this Agreement include the following:

Exhibit A	Legal Description of Premises
	A-1 Legal Description of Premises
	A-2 Depiction of Premises
Exhibit B	Proposed Project Concept Plan
Exhibit C	Map and Depictions of Parkland Uses and Amenities
Exhibit D	Location of PBDV Office Trailer
Exhibit E	Form of Grant Deed
Exhibit F	Certificate of Completion

**2.2** The term “**Applicable Laws**” shall mean all applicable Federal, State, and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees, directives, covenants, easements and restrictions of record, and license or permit requirements.

**2.3** The term “**City**” shall mean the City of Lompoc, California, a municipal corporation.

**2.4** The term “**Certificate of Completion**” shall mean the document prepared in accordance with Section 12.12 of this Agreement, in the form attached as **Exhibit F**, which shall confirm that the construction and development of the improvements described in this Agreement have been satisfactorily completed and which shall be recorded in the Official Records of Santa Barbara County. The Certificate of Completion shall only be issued upon completion of the Project and issuance of all final Certificates of Occupancy for the Project, except as otherwise provided in Section 12.12.

**2.5** The term “**CEQA Consultant**” shall mean MERIDIAN CONSULTANTS, LLC, a California limited liability company, or GEI CONSULTANTS, INC., a Massachusetts corporation, as may be selected by City to analyze the potential environmental impacts once a meaningful description of the Project pursuant to CEQA is available. If needed in the City’s sole discretion, the City may hire or direct its own chosen qualified CEQA consultant, at PBDV’s expense, to perform a peer review of Meridian or GEI’s work. Meridian or GEI, as the case may be, shall report to Thomas Figg (described herein below) on matters related to the Project. City’s City Manager shall have final editing and content approval on staff reports to the Planning Commission and/or City Council related to the Project, including decisions on recommendations to be made the Planning Commission and/or City Council, but City staff must allow the plans and proposals proposed by PBDV to be presented to Planning Commission and City Council.

**2.6** The term “**Closing**”, “**Closing Date**” “**Close**” or “**Close of Escrow**” shall mean the Closing of Escrow for PBDV’s fee purchase of the Premises’ by the Escrow agent distributing the funds and documents received through Escrow to the party entitled thereto as provided herein, which Closing shall occur on or before the expiration of the Term of this Agreement.

**2.7** The term “**Covenant Agreement**” shall mean any Agreement Containing Covenants Affecting Real Property and Declaration of Covenants Running with Land as may be required as a condition of approval of any Entitlements or Permits. Such Covenant Agreement may include, without limitation, terms requiring PBDV to maintain the Project uses as a space-themed recreational and educational attraction, administrative and use requirements relating to overnight transient lodging components and amenities, and imposing other standard covenants running with the Premises, which must be recorded prior to the earlier date of either (i) commencement of Project construction, or (ii) Closing. Should a Covenant Agreement be required as a condition of Entitlements, in no event shall Project construction commence until the Covenant Agreement has been recorded. City shall be a third-party beneficiary of the Covenant Agreement with the right, but not the duty, to enforce.

**2.8** The term “**CPI**” shall mean the Consumer Price Index – All Items for All Urban Customers, Western Region area published by the United States Department of Labor, Bureau of Labor Statistics (or a reasonably equivalent index if such index is discontinued).

**2.9** The term “**days**” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

**2.10** The term “**Effective Date**” shall mean the date that this Agreement is approved by the City Council at a public hearing, executed by both parties, and recorded with the County of Santa Barbara.

**2.11** The term “**Enforced Delay**” shall mean any delay described in Section 16.3 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 16.3.

**2.12** The term “**Entitlements**” shall mean any and all final, non-appealable approvals, authorizations and entitlements relating to land use from governmental authorities with jurisdiction that City or such governmental authority deems necessary or appropriate in order to develop and improve the Premises with the Project. Entitlements include all Project-related approvals needed pursuant to the Lompoc Municipal Code prior to commencement of Project pre-construction and construction activities.

**2.13** The term “**Escrow**” shall mean the escrow established pursuant to this Agreement, and following from the Option to Purchase, for the fee title conveyance of the Premises from City to PBDV.

**2.14** The term “**Grant Deed**” shall mean that Grant Deed following PBD’s exercise of the Option to Purchase in substantially the form attached hereto as **Exhibit E** by which City as grantor will convey fee title to the Premises to PBD as grantee (which PBD shall execute the Certificate of Acceptance to be attached to the deed prior to recordation), and which Grant Deed shall impose deed restrictions for the use of the Premises for: timely completion of the Project, coordination of hotel/lodging uses with Project space-themed education and recreation components, and such other use restrictions as may be required by Entitlements.

**2.15** The term “**Gross Revenue(s)**” shall mean the total of all revenue, income, compensation, sales proceeds or other monies of whatever kind or nature received by the Project without deduction or offset of any kind.

a. For any amounts calculated based upon Gross Revenues under this Agreement, the City shall have the power to, or have done, audit and examine all books and records of Project operations as well as persons engaged in the conducting of Project operations, including both State and Federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the proceeds of the operation, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of Gross Revenues. Refusal or unreasonable failure by PBDV to make available for audit, examination or verification such books, records, or equipment as the City requests shall constitute a default of this Agreement subject to the default provisions and cure periods herein.

**2.16** The term "**Hazardous Substances**" shall have the meaning ascribed in Section 10.11.

**2.17** The terms "**Lease**" and "**Leasehold**" shall mean that ground lease or tenancy granted to PBDV by which it shall occupy the Premises for purposes of facilitating environmental and other preliminary Project investigations unless and until the termination or expiration of the Term hereof or PBDV's exercise of the Option to Purchase and Closing, whichever is earlier.

**2.18** The term "**Leasehold Continuation Conditions**" shall mean the prerequisite events relating to Entitlements and Permits that must be satisfied within set timeframes in order for PBDV to continue leasing the Premises, exercising the Option to Purchase, or making any physical alterations or Project development upon the Premises, as further described in Section 4.1.

**2.19** The term "**Option to Purchase**" shall mean that right of PBDV to purchase fee title to the Premises following satisfaction of all Leasehold Continuation Conditions, as further described in Section 9.

**2.20** The term "**Parkland Uses**" shall mean those uses, amenities, improvements, landscaping, programs, services and conditions attendant to Ken Adam Park as of the Effective Date and further described in **Exhibit C**, which Parkland Uses shall remain under the City's operational and maintenance responsibility.

**2.21** The term "**PBD**" or "**PBDV**" shall mean PALE BLUE DOT VENTURES, INC, a Delaware corporation duly and lawfully authorized to do business in the State of California.

**2.22** The term "**Permits**" shall mean any and all permissions, permits, licenses and other indicia of governmental approvals from City and other governmental authorities relating to the Project.

**2.23** The term "**Project**" shall mean the planning, design, Premises preparation for, and construction of space and aerospace themed educational, recreational, open space and related guest-serving amenities, with overnight hotel/lodging/camping or dormitory components and related amenities, including without limitation an "Earth Base Lodging" park/dormitory/space-camp bundle, as further detailed in the Proposed Concept Plan at **Exhibit B**. A primary function of the Project is the provision of space-themed educational amenities. For purposes of this Agreement the "Project" anticipated to be fully constructed to the point of receiving a Certificate of Completion shall only include those components identified as "Proposed Construction" as listed and identified in **Exhibit B**; the Project for purposes of this Agreement does not include those "Future Phases" identified in **Exhibit B** (specifically Site Plan Items Nos. 129A through 129Q in **Exhibit B**), as such items are buildable at PBDV's option and, if pursued by PBDV, will be subject to separate entitlement/permit processing in the future pursuant to Applicable Law rather than the Entitlements/Permits anticipated for the Project in this Agreement.

**2.24** The term "**Purchase Price**" shall mean the price of PBD's potential purchase of the Premises by PBDV as mutually agreed-to by the parties and further specified in Section 9.2 hereof. The parties acknowledge and agree that the Purchase Price meets or



exceeds that appraised value for the Premises as determined in that appraisal dated November 27, 2023, and other materially relevant considerations, and which shall be the price set forth in the Option to Purchase. Alternatively, if the Option to Purchase is not exercised within the time periods set forth in Section 9.2, rather than being a pre-set Purchase Price, the Purchase Price will be determined at a new “Appraised Value,” as that term is defined in Section 9.2.

**2.25** The term “**Rent**” shall mean those payments made by PBD on an annual basis as consideration for PBD’s holding of a Leasehold on the Premises and described in Section 5 hereof. “Rent” includes “No-Project Rent” (amount payable up-to such time that PBD has satisfied all Leasehold Continuation Conditions) and “Post-Occupancy Rent” (upon satisfaction of all Leasehold Continuation Conditions).

**2.26** The term “**Ride and Show**” shall mean technology systems or the collection of mechanical systems and conveyances, media displays, show sets and props, show-action, content management, lighting, sound and show control technology employed in delivering themed educational/recreational attractions and experiences. Successful immersive experience design programs are developed with the Ride and Show systems in tandem with base-building and facility infrastructures.

**2.27** The term “**Term**” means the period for which this Agreement is effective, starting from the Effective Date and ending upon the earlier of (i) fifty-five (55) years, or (ii) until such time that PBDV is issued a Certificate of Completion for the Project and PBD’s exercise of the Option to Purchase and Closing; excepting that the Term is conditioned upon satisfaction of the Leasehold Continuation Conditions. At any point in time prior to the commencement of physical Project construction (including demolition, grading, soil/ground clearing, or other site preparation), PBDV may terminate its Leasehold and this Agreement upon ninety (90) days’ prior written notice to City provided the Option to Purchase has not been exercised. To illustrate: PBDV may no longer terminate this Agreement without cause if either the Option to Purchase has been exercised or Project construction has commenced.

**2.28** The term “**Title Company**” shall mean that company assigned to administer Escrow towards Closing on the Premises pursuant to the terms of this Agreement. As of the Effective Date, Fidelity National Title Insurance Company has been processing title documents for the Premises, including a preliminary title report, and shall presumptively be deemed the Title Company for purposes of this Agreement unless the Parties agree in writing to another such company.

**2.29** The terms “**TOT**” and “**TOT Obligations**” shall mean the obligation of PBD to pay the City’s transient occupancy tax upon operation of any Project hotel/lodging components in accordance with the City’s applicable Transient Occupancy Tax (“TOT”) Ordinance and regulations, subject to certain terms of TOT abatement provided under this Agreement.

3. **LEASE OF PREMISES; EFFECTIVE DATE, AS-IS CONDITION; RESERVATION OF CITY USES.**

**3.1 Lease of Premises.** Subject to the terms and conditions of this Agreement, from the Effective Date hereof City hereby agrees to lease to PBDV and PBDV agrees to lease from City the Premises. PBDV covenants, as a material part of the consideration for this Agreement, to keep and perform each and every term, covenant and condition of the Leasehold hereby granted.

a. **Prohibition Against Assignment or Subletting.** PBDV shall not assign or transfer its Leasehold interests held hereunder to any other party or parties, nor shall PBDV sublet all or any portion of the Premises without first obtaining the prior written consent of City, which City may withhold in its sole discretion, but which consent will not be unreasonably withheld. Any transfer, assignment or subletting by PBDV of its Leasehold of the Premises without such prior written consent shall be void *ab initio* for all purposes. Nothing in this Article 3 is intended to prevent or limit PBDV's ability to license Project Premises to program, food & beverage, hospitality, museum, or exhibit vendors (e.g., NASA or aerospace industry exhibitors) consistent with the Project's space-themed educational uses and Entitlements following satisfaction of the Leasehold Continuation Conditions and issuance of the Project's first or temporary Certificate of Occupancy.

**3.2 Leasehold Condition of Premises Taken AS-IS.** The Premises are being leased in their "AS-IS" condition. City shall have no obligation to make, construct or install any improvements on or about the Premises whatsoever, unless specifically stated otherwise in this Agreement. Without in any way limiting the generality of the foregoing, City makes no representation or warranty respecting the Premises or any portion thereof including, but not limited to, no representation or warranty regarding the operating condition of any existing plumbing, condition or lack of fire sprinkler system(s), gas, electrical, lighting, air conditioning and heating, if any, in the Premises and no representation or warranty that the existing improvements on the Premises comply with applicable covenants or restrictions of record (including without limitation the Federal Use Restrictions) and applicable building codes, regulations and ordinances in effect on the Effective Date. **Effective Date; Recording.** This Agreement shall be effective upon execution by both the parties, as the Effective Date, as noted above. An executed copy of this Agreement shall be recorded by City in the Official Records of Santa Barbara County. **Reservations.** So long as PBDV's interest in the Premises consists of the Leasehold, City reserves to itself the right, from time to time, to grant, without the consent or joinder of PBDV, such easements, rights and dedications that City deems necessary and to cause the recordation of parcel maps and restrictions with respect to the Premises, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the operation or any development of the Premises by PBDV. PBDV agrees to sign any documents reasonably requested by City to effectuate any such easements, rights, dedications, maps or restrictions.

a. **City Continued Operation of Parkland Uses During Leasehold; Term of City's Parkland Uses.** So long as PBDV's interest in the Premises consists of the Leasehold and/or prior to completion of the Leasehold Continuation Conditions and commencement of Project construction, PBDV's rights of possession are not

exclusive of the City's rights of possession and City operations and maintenance of the continued Parkland Uses. City, its employees, consultants, contractors, representatives, and agents, may, at any time during regular City business or park program hours and without notice to PBDV, enter the Premises and any necessary portion of the surrounding area to undertake activities for:

(i) Parkland Use operations by City consistent with the *status quo* operations of Ken Adam Park as of the Effective Date, including routine park maintenance, minor park improvements and other recreational improvements consistent with the Parkland Uses;

(ii) Inspection of the Premises' condition and maintenance thereof;

(iii) City activities consistent with City's historical uses of the Premises for Parkland Uses;

(iv) Performance of any work therein that may be necessary by reason of PBDV's default under the terms of its Leasehold provided that entry may be permitted without prior notice where necessitated by an immediate threat to the public health, safety, and welfare;

(v) Excepting, however, that no City entry to the Premises shall unreasonably or materially interfere with PBDV's operation and quiet enjoyment of the Premises consistent with PBDV's use of the Premises permitted hereunder, or permitted PBDV Project construction activities if any. For any activities undertaken by the City on or about the Premises for purposes of Parkland Use operations, City shall bear all costs and responsibility for the Premises' clean-up and restoration to a condition reasonably equivalent to the Premises' condition as it existed prior to such City entry and use.

(vi) City's rights of entry for Park Uses operations shall cease following Closing upon PBDV's exercise of the Option to Purchase. Alternatively, and following satisfaction of all Leasehold Continuation Conditions, should PBDV determine to commence construction and/or operation of the Project prior to exercising the Option to Purchase, then the City's operation of the Park shall cease.

**4. TERM; LEASEHOLD CONTINUATION CONDITIONS; FULL CITY DISCRETION ON ALL LEASEHOLD CONTINUATION CONDITIONS.**

**4.1 Term; Leasehold Continuation Conditions.** The Term of this Agreement is the earlier of (i) fifty-five (55) years from the Effective Date, or (ii) until such time that PBDV secures a Certificate of Completion for the Project *and* PBD's exercise of the Option to Purchase and Closing. However, subject to an Enforced Delay, the City, by the City Manager or his/her designee, may terminate this Agreement and PBDV's Leasehold

immediately upon written notice if PBDV fails to meet the Entitlement processing deadlines set forth below:

Leasehold Continuation Conditions

<u>EVENT</u>	<u>REQUIRED ACTIONS</u>	<u>DEADLINE (All To Be "No Later Than")</u>
1.	<p>Completion of Project description sufficient for environmental review pursuant to CEQA. The sufficiency of such Project Description pursuant to CEQA shall be determined in the reasonable discretion of the City and/or retained CEQA Consultant.</p> <p>Complete and submit to City draft applications(s) for any General Plan amendment(s) needed for Project.</p> <p>Complete and submit to City draft application(s) for any needed zone change applications needed for Project.</p>	One (1) year from Effective Date.
2.	PBDV provides City with an initial financing plan (including financing sources and methods), financial statements, pro-forma, and/or other information, documenting to City's reasonable satisfaction, PBDV's financial capacity to proceed with the contemplated transaction.	Two (2) years from Effective Date.
3.	Completion of Draft Environmental Impact Report ("DEIR") for proposed Project, completion of all City staff comments thereon, and circulation of DEIR for public review.	Two (2) years from Effective Date.
4.	Response to DEIR public comments prepared, Final Environmental Impact Report (" <b>FEIR</b> ") prepared and presented for final public hearing approval by City.	One (1) year from Event 3.
5.	Approved discontinuance of the Premises as to any public Park use	Same as Event 4.

<u>EVENT</u>	<u>REQUIRED ACTIONS</u>	<u>DEADLINE (All To Be "No Later Than")</u>
	pursuant applicable State laws, including without limitation Government Code § 38440 et seq.	
6.	Amendment, release, discharge, or other resolution of Federal Use Restrictions as needed for proposed Project uses on Premises. Alternatively, the City may determine, in the reasonable exercise of its discretion, once further Project information, designs, scope and plans are available, that no amendments, release or discharge of the Federal Use Restrictions are needed should the Project concept be consistent with such Restrictions.	Same as Event 4.
7.	Completion of all pre-construction application submittals by PBDV for all Entitlements and Permits to (i) the City as required pursuant to the Lompoc Municipal Code, and (ii) any other governmental entity requiring Entitlements or Permits applicable to the Project. Applications for all phases of the Project must be complete by this time.	Same as Event 4, or in no event more than two (2) years following Event 4.
8.	Final approval of Project Entitlements and Permits by City and any other applicable governmental agency.	One (1) year following Event 7.
9.	PBDV provides written commitments for all construction financing sufficient for Project construction and completion and applies for, or provides evidence of complete preparation to obtain Project building permits. Sufficiency of such commitments to financing and building permits shall be determined in the reasonable exercise of City's discretion.	One (1) year following Event 8.

a. **Interpretation of Timeframes.** All the above deadlines are to be interpreted as outside (i.e., “no later than”) timeframes. Each event may be completed earlier than the deadline set for such event, in which case the deadlines that follow shall run from the precipitating event’s actual completion rather than its outside deadline. It is understood that the foregoing schedule is subject to all of the terms and conditions set forth in the text of this Agreement. The summary of the items of performance in this schedule is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between the schedule in this Section and the text of this Agreement, the text shall govern.

b. **Minor Adjustments.** The time periods set forth in this Section schedule may be altered or amended only by written agreement signed by both PBDV and City. However, minor adjustments may be implemented by the City Manager as needed to conform the above schedule with the parties’ actual performance of Agreement and/or undertaking of Project Entitlement or Permit processing. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of the City shall have the authority to approve extensions of time without City Council action, respectively, not to exceed a cumulative total of 180 days (not including Enforced Delays).

c. **Terminable At Will by PBDV.** At any point in time prior to the commencement of physical Project construction (including demolition, grading, soil/ground clearing, or other site preparation), PBDV may terminate its Leasehold and this Agreement upon ninety (90) days’ prior written notice to City provided the Option to Purchase has not been exercised.

**4.2 LEGAL NOTICE PURSUANT TO CALIFORNIA LAW: No City Commitment; City Retains Full Discretion to Disapprove, Condition, or Approve Any and All Aspects of Project Entitlements, Including CEQA Review and Mitigation.** No Entitlement or Permit applications have been submitted for the proposed Project as of the Effective Date. As of the Effective Date, the City has undertaken *no commitments* whatsoever towards funding, financial assistance, physical alterations to land, changes to zoning or land use designations, Entitlements or Permits, or benefits (whether public or private) as may be specifically related to the potential Project; nor shall the City consider any such commitment until the approval of meaningful environmental analyses pursuant to CEQA. The parties understand that City is reserving the right to exercise its discretion as to all matters with respect to the Project, CEQA, Entitlements, and Permits, which City is, by law, entitled or required to exercise, at its discretion; nothing in this Agreement shall be construed as having the effect of waiving or limiting City’s police powers and exercise of discretion. **To this end, the parties acknowledge, agree to, and publicly state the following legally-required disclosures:**

a. The parties understand that City has the complete and unfettered discretion to reject or condition the Project, CEQA analyses (including the DEIR, FEIR and any attendant mitigation measures), Entitlements, Permits, and any of them, as provided for under Applicable Laws and regulations. The risk of loss of any actions taken or investments made by PBDV in connection with the Premises, this Agreement

and/or the potential Project prior to all approvals therefor shall be absorbed entirely by PBDV.

b. City approval or conditional approval of any Entitlements or Permits relating to the Project shall be strictly conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council is required to make, including all necessary findings and determinations required under CEQA as applicable under relevant State and local land use provisions. As to any matter which City may be required to exercise its unfettered discretion in advancing the Project, nothing herein shall obligate City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of City's duties under this Agreement.

c. By its execution of this Agreement, City is not committing itself to any particular course of action with respect to the Project or agreeing to undertake any activity requiring the subsequent exercise of discretion by City, or any department thereof including, but not limited to, the approval of any development proposal or land use regulation governing the Premises or the Project, the provision of financial assistance for the development of any public or private interest in real property, or any other such act or approval.

## 5. **RENT; NO SECURITY DEPOSIT.**

**5.1 Rent.** On or before the Effective Date and on the same day of each year thereafter during PBDV's Leasehold interest, PBDV shall pay: Rent of Twenty-Thousand Dollars annually (\$20,000/yr.) to City for PBDV's Leasehold interest during and up-to such time that PBDV has satisfied all Leasehold Continuation Conditions and received a first or temporary Certificate of Occupancy (the "**No-Project Rent**").

b. Upon satisfaction of all Leasehold Continuation Conditions and issuance of the first or temporary Certificate of Occupancy for any first operational component of the Project (assuming the Option to Purchase has *not* been exercised), PBDV shall pay the City annual rent in an amount equal to 1.25% of Gross Revenues or Twenty-Thousand Dollars annually (\$20,000/yr.), whichever is greater (the "**Post-Occupancy Rent**"). If, as a result of being the greater amount, the annual Post-Occupancy Rent is set at the base amount of \$20,000, then for all such annual periods that the Post-Occupancy Rent remains at a base of \$20,000, it shall be adjusted annually by the averaged CPI from the anniversary date of issuance of the Project's first-issued Certificate of Occupancy.

c. The No-Project Rent and Post-Occupancy Rent shall be collectively referred to as "**Rent**".

**5.2 General Rent Payment Terms.** All Rent shall be paid in advance, on or before the first day of each year during the Leasehold's Term. Rent for partial years shall be prorated to each month or partial month. Rent shall be paid in advance to City, without notice (excepting that City will provide PBDV thirty-days' notice of the calculated annual CPI adjustments in Rent), demand, deduction or offset, in lawful money of the United States

of America, at 100 Civic Center Plaza, Lompoc, California 93436, or at such other place as City may designate in writing.

a. **Late Fee.** If any Rent that is not received by City by the due date, PBDV shall pay to City an additional sum of ten percent (10%) of the overdue amount as a late charge, which is agreed to represent a reasonable estimate of the costs incurred by City on account of such delinquency. Acceptance of a late charge shall not constitute a waiver of PBDV's failure to pay the overdue amount or prevent City from exercising any of the other rights and remedies available to City.

**5.3 No Security Deposit.** City does not require the holding of a security deposit hereunder.

**6. PBDV's PERMITTED USES DURING PBDV's LEASEHOLD INTEREST.**

**6.1 Public Park Operations by City; Term Thereof.** As outlined in Section 3, City shall continue to operate the Premises for its Parkland Uses during PBDV's Leasehold without causing any unreasonable or material interference with PBDV's Leasehold uses or quiet enjoyment thereunder as permitted by this Agreement. City's Park Use operations shall cease following Closing upon PBDV's exercise of the Option to Purchase. Alternatively, and following satisfaction of all Leasehold Continuation Conditions, should PBDV determine to commence construction and/or operation of the Project prior to exercising the Option to Purchase, then the parties shall meet and confer to negotiate in good faith to develop a phase-out plan of Parkland Uses as the Project is developed, or such phase-out of Parkland Uses shall be included within Entitlement terms.

a. City and its officers, employees, agents and/or consultants shall have the right to enter the Premises at any time during PBDV's Leasehold in the case of an emergency and otherwise at reasonable times for the purposes of inspecting the Premises and the condition and operation of Parkland Uses, and for verifying compliance by PBDV with this Agreement and all Applicable Laws. The costs and expenses of any such entry and inspection shall be borne by the City unless the entry or inspection is requested by PBDV or is requested or ordered by a governmental authority as the result of any PBDV-caused existing or imminent violation of Applicable Law or environmental contamination, in which case PBDV shall, upon request from City, reimburse City for the costs and expenses of such entry and/or inspection.

**6.2 PBDV's Uses of Premises During Leasehold Prior to Project Work Commencement.**

a. **No Physical Alterations or Environmental Impacts; Minor Exceptions.** Except as otherwise specifically stated herein, PBDV shall hold the Premises AS-IS, to the extent reasonably possible with no permanent, substantial, or physical alterations, structures, construction, demolition, or other actions to be taken by PBDV unless or until PBDV has satisfied all Leasehold Continuation Conditions and commenced Project work (with Project work including demolition, grading, soil/ground clearing, or other site preparation). During this AS-IS period, PBDV shall



not construct any permanent alterations to, or permanent structures on, the Premises, excepting the location of one non-fixed and transitory structure (e.g. office trailer) that is easily removable such that the Premises can be promptly restored to a condition substantially original to the Premises' current condition as of the Effective Date. The approximate dimensions and location of PBD's office trailer for PBDV pre-Project investigations and work (such work specified further in Subparagraph (b) below) is shown in **Exhibit D** hereto. The PBD office trailer shall be primarily used as a point of operations for PBD's environmental investigations, management and staff for same, and otherwise preparing preliminary designs/applications for the Project. The parties acknowledge that it is the intent of this Section 6.2 that PBDV's occupation and operation of the Premises during the Leasehold period shall not entail any activities, actions, uses or undertakings whatsoever that may result in potential significant environmental impacts or foreclose alternatives or mitigation measures for any other future use of the Premises before satisfaction of all Leasehold Continuation Conditions. To this end, for example:

(i) PBDV shall be prohibited from erecting any signage on the Premises, excepting such safety-related signage either required by law or as needed to duly demarcate areas of PBD's investigation of the Premises. In addition, signage identifying PBDV's office trailer (e.g., "Office - Pale Blue Dot Ventures") shall be allowed. Until satisfaction of the Leasehold Continuation Conditions, in no event shall PBD signage refer to the potential Project, proposed Project uses, or any commitment by the City towards the Project.

(ii) PBDV's investigations, defined further below, shall be undertaken in a manner with minimal impact or disturbance to wildlife and existing flora and fauna in and around the Premises. This includes undertaking investigation activities during seasons, times of day and in a manner with minimal disturbance to flora and fauna.

(iii) PBDV shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other parties or injure or annoy them or use or allow or permit the Premises to be used for any improper, immoral, unlawful or objectionable purpose. PBDV shall not cause, maintain or permit any nuisance in or about the Premises, or commit or suffer to be committed any waste in or upon the Premises. Under no circumstances shall PBDV use or allow anyone else to use any portion of the Premises for any other purpose.

(iv) PBDV shall not conduct its investigations or other work permitted during the Leasehold period in a manner that unreasonably or materially interferes with the City's Parkland Uses.

**b. PBDV Permitted Investigations of Premises; Preliminary Exploration to Develop Environmental Information.** There are many unknowns concerning the potential Project at this time, and during the term of its Leasehold up-to any commencement of Project work, PBDV intends to undertake studies, investigations, reports and analyses to allow it to develop a Project concept, designs,

environmental impact analysis (including a traffic analysis as well as other technical studies, as appropriate) and financing plans necessary to determine whether to undertake the Project or not, all as needed to provide meaningful information for environmental assessment. Environmental analysis will occur when the Project's plans are sufficiently defined for purposes of CEQA and as otherwise required under Applicable Laws and regulations.

PBDV may conduct reasonable environmental investigations (e.g., Phase I and/or Phase II studies), inspections and testing upon the whole of the Premises in order to gather topographic, geologic, soils testing, and other environmental and planning information as needed to develop such Project plans, specifications, designs and other analyses needed to prepare meaningful financial, environmental and planning applications for Entitlements, Permits and CEQA. Such investigations shall be undertaken in such a manner that the Premises can be promptly restored to a condition substantially original to the Premises' current condition as of the Effective Date.

(i) City shall have the right to have an employee and/or representative present at all times of PBDV's investigations or inspections. In conducting its inspections, investigations and other land use due diligence at the Premises as provided for hereunder, PBDV and its agents, representatives, consultants, employees or contractors shall: (a) not permanently damage any part of the Premises or any personal property owned or held by the City or any third party; (b) promptly repair any damage to the Premises resulting directly from the entry by PBDV or their agents, consultants, employees, contractors and representatives or from any such inspections or other land use due diligence conducted pursuant to this Agreement; (c) comply with all Applicable Laws; and (d) promptly return the Premises to substantially its original condition as soon as reasonably practicable upon completion of the investigations, inspections and other land use due diligence conducted on the Premises. PBDV further acknowledges and agrees that it shall be solely responsible for all costs associated with its entry onto the Premises and any and all investigations, inspections and other land use due diligence conducted pursuant to this Agreement.

(ii) PBDV may gather feedback from the public regarding the proposed Project and its attendant entitlements for full City Council review. However, such public information surveys shall not entail any signs, kiosks, or other affixed structures at the Premises, and shall consist entirely of public information gathering.

c. **Compliance With Laws, Permits, Licenses.** In conducting pre-Project investigations, inspections, other land use due diligence, and all Leasehold occupational uses of the Premises, PBDV shall, at its sole cost and expense, fully, diligently and in a timely manner comply with all Applicable Laws, including the requirements of any applicable insurance. PBDV shall obtain any and all approvals, permits, and other licenses required by Applicable Laws that are or may become

necessary to investigate and occupy the Premises in accordance with the terms of this Agreement.

d. **Maintenance and Repairs.** PBDV shall, in keeping the Premises in good order, condition and repair, exercise and perform good and workmanlike repair and maintenance practices in the course of performing those activities permitted during the Leasehold.

e. **Free of Liens.** At all times during the Leasehold Interest, PBDV shall keep the Premises free and clear of all materialmen's liens, lis pendens and other liens or encumbrances arising out of the entry and work performed during the Leasehold Interest.

**6.3 Personnel, Equipment, Permits and Licenses.** PBDV will be responsible for all costs, equipment, and personnel associated with, or used for, its Project investigations, inspections, other land use due diligence, and all Leasehold occupational uses of the Premises permitted hereunder. To that end:

a. **Prevailing Wages.** PBDV is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. PBDV agrees to comply with all Prevailing Wage Laws and other contracting requirements to the extent necessary. PBDV shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure of PBDV or alleged failure of PBDV or its Sub licensees (defined below) to comply with this Section.

b. **No Discrimination.** PBDV shall not discriminate, harass, or allow harassment on the basis of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability (including HIV and AIDS), mental disability, medical condition (including pregnancy and cancer), family care leave, age, gender identification, political affiliation or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all laws, rules and regulations relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, promotion, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and treatment of members of the public using the Premises.

c. **Relationship of the Parties.** The relationship between City and PBDV during the Leasehold period shall be and at all times remains that of landlord and tenant, respectively. Neither City nor PBDV shall be construed or held to be a partner, limited partner, associate or agent of the other, or be joint ventures with one another. Neither City nor PBDV shall be authorized by the other to contract any debt, liability or obligation for or on behalf of the other.

**6.4 Hazardous Materials Conditions.** At any time during the Term (including after satisfaction of the Leasehold Continuation Conditions), PBDV shall not cause or permit any Hazardous Materials (as defined in Section 10.11 hereof) to be spilled or released in, on, under or about the Premises including, but not limited to, through the plumbing or sanitary disposal system, and shall promptly, at its sole cost and expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises, the elements surrounding same, or neighboring properties, that was caused or materially contributed to by PBDV, or pertaining to or involving any Hazardous Materials condition(s). If PBDV knows or has reasonable cause to believe that any condition of Hazardous Materials has been discovered or has come to be located in, on, under or about the Premises, PBDV shall immediately give written notice of such fact to City. PBDV shall also immediately give City a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action or proceeding given to, or received from any governmental authority or private party or persons entering or occupying the Premises concerning the presence, spill, release, discharge of or exposure to any Hazardous Materials or concerning contamination in, on, under or about the Premises.

**6.5 Utilities; Utility Installations; Alterations.** Prior to delinquency, PBDV shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises that are in service to PBDV's Leasehold uses or Project operations, together with any taxes thereon. PBDV shall not install any utilities nor make any alterations in, on, under or to the Premises or any portions thereof without the prior written consent of City, which consent City shall not unreasonably withhold. All utility installations and alterations permitted hereunder shall be made pursuant to all applicable governmental permits, shall conform to all Applicable Laws, and shall be at PBDV's sole cost and expense.

**6.6 Assessments.** Any and all assessments on or to the Premises for purposes of sewer hook-ups shall be the sole obligation and responsibility of PBDV to the extent such hook-ups are in service to PBDV's Leasehold uses or Project operations.

**6.7 Real Estate and Personal Property Taxes.** Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6 the interest of PBDV created in the Premises pursuant to PBDV's Leasehold may be subject to real property taxation and accordingly PBDV may be subject to the payment of real property taxes levied on said possessory interest. To the extent that there is a possessory interest tax applicable to PBDV by virtue of its Leasehold of the Premises, payment of that tax shall be the sole obligation, responsibility and liability of PBDV. PBDV shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed and which become payable during any point of the Term hereof upon all of PBDV's possessory interest in and to the Premises. PBDV specifically acknowledges that the Leasehold interest granted may be subject to possessory interest taxes. PBDV agrees that, without prior demand or notice by City, PBDV

shall, not less than fifteen (15) days prior to the day upon which any such possessory interest or other such tax is due, provide City with proof of payment of such tax.

## **6.8 Ownership; Abandonment; Surrender and Restoration.**

a. **Ownership.** All improvements presently existing in the Premises and any improvements provided by PBDV in, on or to the Premises during the period of PBDV's Leasehold (regardless of status of Leasehold Continuation Conditions) shall become the property of the City (if not already so) upon the expiration or prior termination of the Leasehold.

b. **Abandonment.** If at any time during PBDV's holding of a Leasehold interest in the Premises PBDV abandons the Premises, Leasehold or Leasehold uses granted hereunder, timely evolution towards Project, or any part thereof, the City shall immediately notify PBDV of such abandonment in writing and PBDV shall have thirty (30) days to cure such abandonment. If, after such thirty (30) day period the condition of abandonment remains uncured, City may, at City's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to PBDV for damages or for any payment of any kind whatever.

c. **Surrender and Restoration.** In the event of any termination or expiration of this Agreement while PBDV is still holding a Leasehold interest (whether by reasons of default, failure to timely satisfy Leasehold Continuation Conditions, termination by PBDV, or Term expiration), then PBDV shall surrender the Premises with all of the improvements, parts and surfaces thereon (including Project improvements or partial Project improvements implemented as of such date, if any) clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by PBDV performing all of its obligations under its Leasehold. The obligation of PBDV under this Section shall include the repair of any damage occasioned by the installation, maintenance or removal of PBDV's fixtures, furnishings and equipment. Upon termination or expiration of the Leasehold, should PBDV fail to vacate the Premises in a clean and undamaged condition, City may arrange for the cleaning and/or repair of the Premises, the cost of which must be promptly reimbursed by PBDV.

d. **No Right to Holdover.** In the event of any termination or expiration of this Agreement while PBDV is still holding a Leasehold interest (whether by reasons of default, failure to timely satisfy Leasehold Continuation Conditions, termination by PBDV, or Term expiration), PBDV has no right to retain possession of the Premises or any part thereof beyond the expiration or prior termination of this Lease. However, if PBDV remains in possession of the Premises, or any part thereof, after the expiration of the Term, such occupancy shall be a tenancy from month-to-month, cancelable upon thirty (30) days written notice upon the terms and conditions that existed during the last year of the Term.

**6.9 Damage or Destruction.** In the event of any damage or destruction to the Premises or any portion thereof while PBDV is holding a Leasehold interest, City and PBDV shall cooperate with each other and negotiate in good faith with respect to whether any and, if so, what modifications to the terms, covenants and conditions pertaining to PBDV's Leasehold interest are required to govern the remainder of PBDV's period of tenancy. In the event of destruction of the Premises, City shall have no obligation to rebuild the destroyed premises except to the extent of available insurance proceeds.

**6.10 Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under threat of the exercise of said power while PBDV is still holding a Leasehold interest, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If more than ten percent (10%) of the floor area of the Premises or more than twenty-five (25%) of the land area of the Premises not occupied by any building is taken by condemnation, PBDV may, at PBDV's option, which can only be exercised in writing within ten (10) days after the earlier of the City having given PBDV written notice of such taking or the condemning authority having taken possession, terminate the Lease and this Agreement as of the date the condemning authority takes such possession. If PBDV does not terminate this Agreement in accordance with the foregoing, this Agreement and the Lease hereunder shall remain in full force and effect as to the portion of the Premises remaining, and City and PBDV shall cooperate with each other and negotiate in good faith regarding the allocation of the payment of amounts needed, if any, to repair any damage to the Premises caused by the condemnation. Any award for the taking of the Premises or any portion thereof under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of City, whether such award shall be made as compensation for diminution in value of the Leasehold or for the taking of the fee, or as severance damages; provided, however, that PBDV shall be entitled to any compensation separately awarded to PBDV for PBDV's relocation expenses and/or loss of fixtures.

**6.11 Insurance During Leasehold Until Leasehold Continuation Conditions Satisfied.** So long as PBDV occupies the Premises under a Leasehold interest up to the point the Leasehold Continuation Conditions are fulfilled, PBDV shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City during the Term, the policies of insurance identified in this Section: PBD shall maintain in full force, at its or their own expense, (i) evidence of workers' compensation insurance (or state approved self-insurance) in the amounts required by the State of California when required; and (ii) a certificate of insurance from a reputable insurer licensed to do business in the State of California evidencing that Licensee and/or its contractors entering the Premises has or have procured and paid premiums for a commercial general liability insurance policy written on a per occurrence and not claims made basis in an amount of ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate, which commercial general liability insurance names the City as an additional insured.

**7. EVOLUTION OF ENTITLEMENTS AND ENVIRONMENTAL REVIEW PENDING LEASEHOLD CONTINUATION CONDITIONS.**

*During PBDV's Lease of the Premises, as PBDV undertakes implementation of the Leasehold Continuation Conditions by timely undertaking Project designs, plans,*

environmental review, and complete applications for Project Entitlements, and Permits, the following shall apply:

**7.1 LEGAL NOTICE REGARDING NO PRE-COMMITMENT TO PROJECT: Potential Project's Consistency with Plans and Codes; No Assurances Regarding Entitlements.** PBDV and City shall cooperate to assure that the proposed Project, including development and operation, complies with all applicable governmental requirements and regulations, including but not limited to, standard reviews and approvals, Plan Review, General Plan and any zoning change, if applicable, and review and approval of Entitlements, Permits and CEQA. Notwithstanding the foregoing, PBDV specifically understands that City makes no representations or warranties with respect to approvals required by any governmental entity or with respect to approvals hereinafter required from City, City reserving full police power authority over the Project and CEQA documents preceding Entitlements as required by California law. However, City shall reasonably cooperate with PBDV in procuring its approval of the Entitlements, subject to City's discretion over the final design of the Project under its Development Plan Review authority and its general police power authority to impose reasonable conditions of approval on the Project and CEQA mitigation measures and alternatives to ensure its construction and operation proceed in an appropriate and responsible manner in accordance with all Applicable Laws and policies of the City, State and Federal government, which conditions of approval shall be determined by City in its sole and absolute discretion, subject to all applicable legal limitations. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or Permits will be issued within any particular time or with or without any particular conditions or mitigation measures.

a. **Following Option Exercise.** PBDV is aware that, notwithstanding current zoning for the Premises, zoning and other laws can change in the future following the approval, permitting and construction of the Project. If PBDV exercises its Option to Purchase and Closes upon the Premises, it does so with full knowledge that the Project will be subject to the standard approval process as required at the time of Entitlement application completion by the Lompoc Municipal Code and Applicable Law, and it is PBDV's responsibility to ensure it adheres to the procedural and substantive requirements of said codes and laws in seeking any and all such approvals including, without limitation, the approval of the Entitlements and any Permits. PBDV expressly acknowledges that it understands and, if it elects to purchase the Premises, is knowingly accepting the foregoing risks.

**7.2 Evolution of Development Plan; Studies.** In accordance with the schedule and deadlines for meeting the Leasehold Continuation Conditions (Section 4), PBDV shall submit to the City drawings and specifications for the Project, in sufficient detail for meaningful review and environmental assessment, and all in accordance with the City's requirements for discretionary Entitlement approvals. The term "drawings" shall be deemed to include site plans, building plans and elevations, and if applicable, grading plans, landscaping plans, parking plans, material sheets, and may include a description of anticipated structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Said plans, drawings and specifications shall be consistent with the general concept of a "space-themed" recreational and educational attraction with lodging and retail

amenities (**Exhibit B** hereto), and be consistent with the various Entitlement and Permit approvals referenced hereinabove, except as such items may be amended by City (if applicable) and by mutual written consent of City and PBDV. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. To the general end of evolving plans, studies and permits

a. The parties acknowledge that BROADSPEC INC. a Colorado Corporation, has been agreed-to by the parties to serve as contract Building Official for evolution of the Project, such contractor to be retained by PBDV at its sole cost and expense. In the event Broadspec becomes unavailable for such work, the parties will mutually-agree to an alternate Building Official service or provider. If needed in the City's sole discretion, the City may hire or direct its own chosen qualified building official, at PBDV's expense, to perform a peer review of Broadspec's work. Broadspec shall report to the City's Community Development Director on matters related to the Project. City's City Manager shall have final editing and content approval on staff reports to the Planning Commission and/or City Council related to the Project, including decisions on recommendations to be made the Planning Commission and/or City Council, but City staff must allow the plans and proposals proposed by PBDV to be presented to Planning Commission and City Council.

b. The parties acknowledge that THOMAS E. FIGG CONSULTING SERVICES, a sole proprietor, has been agreed-to by the parties to serve as contract planning services for evolution of the Project, such contractor to be retained by PBDV at its sole cost and expense. In the event Thomas Figg becomes unavailable for such work, the parties will mutually agree to an alternate planning service or provider. If needed in the City's sole discretion, the City may hire or direct its own chosen qualified land use planner or planning consultant, at PBDV's expense, to perform a peer review of Thomas Figg's work. Thomas Figg shall report to the City's Community Development Director on matters related to the Project. City's City Manager shall have final editing and content approval on staff reports to the Planning Commission and/or City Council related to the Project, including decisions on recommendations to be made the Planning Commission and/or City Council, but City staff must allow the plans and proposals proposed by PBDV to be presented to Planning Commission and City Council.

**7.3 Feasibility, Marketing and Outreach Reports as Part of Development Plan.** As part of PBDV's development plan and the financial assurances for Project feasibility and processing of plans, Permits and Entitlements required in the Leasehold Continuation Conditions, the City may reasonably require PBDV to provide:

a. A feasibility study analyzing market conditions, economic and demographic factors, and Premises conditions of establishing the concept Project in the City at the Premises.

b. A report that describes PBDV's anticipated plan and approach on marketing, educating and informing the public about the Project, including details, as appropriate, on specific outreach efforts and methods, including public meetings



and/or individual contacts, to communicate with and receive input from local stakeholders, as well as non-local marketing to maximize Project marketing and tourism.

c. The timeframes, frequency and details of the foregoing studies and reports shall not be unreasonably set by the City, and shall be generally timed and aimed to correspond with, and support, PBDV's applications for plans, Entitlements or Permits as they may be pending before the City. In the case of a material change in conditions and factors supporting any feasibility study or marketing report, PBDV shall provide such updated study/report to the City within sixty (60) days of PBDV's knowledge of such material change.

**7.4 Planning for Development in Phases; Lodging Component Priorities in Project Applications.** PBDV shall be authorized to develop the separate components of the Project (transient lodging, education, recreation, retail, additional parking) in separate phases, provided the overall timing of Project construction meets the deadlines set forth in Section 12. As such, should PBDV's Project/Entitlement applications propose to develop the Project in phases, PBDV shall provide a phasing plan and schedule to the City for its review and approval, which shall not be unreasonably denied, delayed, conditioned or withheld. Notwithstanding the foregoing, and as may be further memorialized in a Covenant Agreement if required by Entitlements, in no event shall any lodging use be issued a Certificate of Occupancy (temporary or otherwise) unless or until all other recreational, educational and/or retail Project components have been developed and issued a Certificate of Occupancy as well. It is the intent of the parties that any transient lodging uses shall not "stand alone" from the other Project components, such that lodgers patronizing transient occupancy facilities in the Project are also patrons of the Project's recreational, educational and retail components.

a. **Certificates of Occupancy.** Should the Project be phased, Project components may be issued temporary Certificates of Occupancy to permit operation and occupancy of individual Project components pending full Project completion toward final Certificate(s) of Occupancy and the Certificate of Completion. BroadSpec, the City's Contract Building & Safety Inspector, may issue a temporary Certificate of Occupancy on a case-by-case basis and in accordance with Applicable Laws. Temporary Certificates of Occupancy must be coordinated with and approved by the contract Building Official (e.g., BroadSpec). Approvals from other City Departments and Divisions may also be required prior to the issuance of any Certificate of Occupancy (temporary or otherwise) including without limitation the City's Public Works Department, Fire Department and Thomas Figg Consulting acting as the City Planning Division.

**7.5 PBDV Efforts to Obtain Approvals.** PBDV shall prepare all applications and submittals for Entitlements, Permits or other approvals needed for Project implementation and processing at its sole cost and expense, and shall reimburse the City for its costs and expenses so incurred pursuant to a separate agreement establishing such reimbursement. PBDV shall exercise its best efforts to timely submit all documents and information necessary to obtain all Entitlements and Permit approvals from the City in a timely manner and meeting the schedule for the Leasehold Continuation Condition deadlines in Article 4,

and City shall reasonably cooperate with PBDV in connection therewith. Not by way of limitation of the foregoing, in submitting Project applications, developing and constructing the Project, PBDV shall comply with all applicable development standards in City's Municipal Code and shall comply with all applicable building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications. PBDV shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City which are standard for and uniformly applied to similar projects in the City. PBDV's timely satisfaction of all Leasehold Continuation Conditions in accordance with Article 4 and obtaining all approvals attendant to such Conditions is a contingency to the Option to Purchase, commencement of construction, and ultimately, Close of Escrow. While remedial needs at the Premises are unknown as of the Effective Date, if applicable, PBDV shall secure approval of a remediation plan from Department of Toxic and Substances Control ("DTSC") and any other applicable government agency with jurisdiction over any remediation, and City will cooperate with such efforts. PBDV shall further secure written approval, and provide a copy of such approval to City and any other governmental agency with jurisdiction over the Premises, approving the plan for remediation of any contamination or other Hazardous Materials on the Premises.

**7.6 City's Reasonable Assistance.** Subject to PBDV's compliance with (i) the applicable City development standards for the Premises, and (ii) all Applicable Laws and regulations governing such matters as public hearings, site plan review and environmental review, City agrees to provide reasonable assistance to PBDV, at no cost to City, which may require PBDV to deposit with City sufficient fees to cover City's costs, in the expeditious processing of PBDV's submittals required under this Section 7 in order that PBDV can obtain a final City action on such matters within the time set forth in Section 4 (as to the Leasehold Continuation Conditions) and elsewhere in this Agreement.

**7.7 CEQA Submittals.** The City, through its planning consultant Thomas Figg Consulting, will prepare all the City documents required pursuant to CEQA and as needed to fulfill City's obligations as lead agency. This work will begin as soon as this document is executed. City is "lead agency" responsible for obtaining approvals of the Project, if pursued by PBDV, as required by CEQA. PBDV agrees to supply information and otherwise assist City, upon City's request, to determine the environmental impact of the proposed development and to allow City to prepare and process such environmental documents, if any, as may need to be completed prior to making any commitment to, or approval of, any component, portion or aspect of the Project pursuant to the requirements of CEQA. City and PBDV analysis and review of, comments upon, and revisions to CEQA submittals shall be performed in a reasonable time commensurate with the size, complexity, and technicality of such documentation. CEQA documentation will be reviewed and administered by the CEQA Consultant solely at PBDV's cost and expense, or City costs for such administration and work are, and shall, be reimbursed to City by PBDV pursuant to a separate reimbursement or trust/deposit agreement. City will undertake reasonably diligent efforts to assist planning consultants retained for processing the Project (as of the Effective Date, Thomas Figg Consulting) and the CEQA Consultant in performing CEQA review, analyses, and documentation in a reasonably timely manner consistent with the standards applicable to such professional services.

**8. INDEMNITY AND DEFENSE OBLIGATIONS OF PBDV COMMENCING EFFECTIVE DATE; CONTINUING EFFECT OF SAME.**

**8.1 Indemnity and Defense Obligations.** PBDV agrees to indemnify, defend and hold City free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which City may suffer or incur as a consequence of, or arising from, PBDV's occupancy of the Premises pursuant to this Agreement, performance of any terms of this Agreement, or any act or omission by PBDV, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under PBDV (except City) with respect to the Premises, Leasehold Interest therein, Option to Purchase and Closing, and/or implementation and performance of the Project. This indemnity obligation shall apply regardless of whether or not such claims or demands arise under or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction.

a. **Third Party Claims.** PBDV agrees to indemnify City with respect to all challenges by any third party (i) arising from or related to the legality, validity or adequacy of the General Plan, Specific Plan or equivalent, development or zoning approvals including, without limitation, the Entitlements, Permits, this Agreement, actions or approvals pursuant to CEQA, or other actions of City pertaining to the Project, (ii) seeking damages against City as a consequence of the foregoing actions or for the taking or diminution in value of their property, or in any other manner, or (iii) for any tort claim or action against City arising in connection with PBDV's implementation, design, or development of the Project. This indemnity obligation shall apply regardless of whether or not such claims or demands arise under or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction.

b. **Exceptions.** PBDV's obligations under this Section shall not apply to liability arising out of the mere discovery of a pre-existing environmental or physical condition at the Premises or arising out of the gross negligence or willful misconduct of City.

**8.2 Defense Procedures.** The above indemnity and defense obligations herein shall be in accordance with the following indemnification and defense procedures: (a) City shall promptly notify PBDV in writing of any claim or threatened claim and cooperate with PBDV; (b) PBDV shall immediately take control of the defense and investigation of such claim and shall employ counsel reasonably satisfactory to City to handle and defend the same at PBDV's sole cost and expense; provided, that City shall have the right to participate in such proceedings. In the event of a conflict of interest between PBDV and City, City shall be also be entitled to retain, at PBDV's expense, separate counsel as required by the applicable rules of professional conduct with respect to such matter; (c) PBDV shall not settle any claim in a manner that adversely affects the rights of City without City's prior written consent, which shall not be unreasonably withheld or delayed; (d) in circumstances in which PBDV fails to perform the obligations in this Section or the indemnity agreements provided for in this Section are unavailable or insufficient, for any reason, to hold harmless

City in respect to any losses arising thereunder, PBDV, in order to provide for just and equitable contribution, shall pay to the City the amount paid or payable by City as a result of such losses in proportion to the relative fault of the parties, taking into consideration the parties' relative intents, knowledge, access to information and opportunity to correct or prevent such losses, and any other equitable considerations appropriate in the circumstances; and (e) notwithstanding anything to the contrary in this Agreement, PBDV is not obligated to indemnify or defend City against any claim (whether direct or indirect) if such claim or corresponding losses directly result from the gross negligence or willful misconduct of City or its Representative.

**8.3 Not Exclusive of Other Indemnity Obligations.** The indemnity and defense obligations in this Section 8 are in addition to, and not a limitation or waiver of such obligations elsewhere in this Agreement, including without limitation Sections 10.11, 12.8, 12.9 and 6.3(a)(i).

**8.4 Continuing Effect of Indemnities.** The provisions of this Section 8 shall commence upon the Effective Date and survive in perpetuity; such survival includes (a) any termination or expiration of this Agreement, (b) Closing if achieved, and (d) any development and operation of the Project by PBDV.

**9. PBDV'S RIGHT TO EXERCISE OPTION TO PURCHASE FOLLOWING SATISFACTION OF LEASEHOLD CONTINUATION CONDITIONS.**

**9.1 Option Rights Upon Timely Fulfillment of Leasehold Continuations Rights.** If and only upon full, timely satisfaction of all Leasehold Continuation Conditions set forth in Section 4, City grants PBDV the exclusive right to an Option to Purchase the Premises in fee at the Purchase Price (defined below) beginning with the date the Leasehold Continuation Conditions are satisfied up to and through the expiration of the Term or any earlier termination (for default or otherwise) of this Agreement.

a. **Deadline to Exercise.** Assuming there is no earlier termination of this Agreement (for default or otherwise), in no event shall PBDV fail to exercise the Option to Purchase later than two (2) years prior to the end of the Term of this Agreement.

b. **Procedures.** To exercise the Option to Purchase, PBDV shall deliver to the City:

(i) Written notice that PBDV intends to, and shall, purchase fee title to the Premises;

(ii) Written notice of initiation of the Purchase Price appraisal process described in Section 9.2 below;

(iii) Written evidence of PBDV's obtained financing or financial means of paying the Purchase Price

(iv) Written confirmation that no defaults exist under this Agreement or any Entitlements/Permits; and

- (v) Complete application(s) for building permits attendant to the Project, or first phase thereof.

Until the written exercise of the Option to Purchase and up to Closing, the relationship between the Parties shall be solely that of landlord and tenant (i.e., the Leasehold).

**9.2 Purchase Price; Determination Methodology.** Upon PBDV's notice of exercising the Option to Purchase and satisfaction of all conditions thereto, PBDV's purchase of the Premises shall proceed to Escrow. A copy of this Agreement shall be submitted into Escrow to serve as the purchase and Escrow instructions. Full deposit of the Purchase Price shall be a condition to Closing. From and after the date of PBDV's notice of exercising the Option to Purchase, and as a condition to Closing, the Purchase Price shall be determined as follows:

a. **First Five Years:** If the Option to Purchase is exercised within five (5) years from the Effective Date, the Purchase Price shall be One Million, One Hundred and Fifty Thousand Even Dollars (\$1,150,000.00).

b. **Five to Ten Years:** If the Option to Purchase is exercised between five (5) years and ten (10) years from the Effective Date, the Purchase Price shall be Three Million Even Dollars (\$3,000,000.00).

c. **After Ten Years:** If the Option to Purchase is exercised more than ten (10) years from the Effective Date, the Purchase Price shall be determined by appraisal ("**Appraised Value**") by an appraiser selected jointly by the parties; provided, however, that if the Appraised Value is determined to be less than Three Million Dollars (\$3,000,000.00) then the Purchase Price shall be Three Million Dollars (\$3,000,000.00). If the parties are unable to agree on the selection of an appraiser, each shall select an appraiser and the two (2) appraisers so selected shall each independently appraise the fair market value of the Premises as such Premises have been entitled for Project use. If the two (2) appraisers so appointed are unable to agree on the value of the Premises within sixty (60) days, they shall appoint a third (3rd) appraiser who shall also appraise the Premises. The decision in writing of the three (3) appraisers so appointed shall be averaged and the resulting figure shall constitute the Premises' Purchase Price and be binding and conclusive on the parties hereto. The appraisers, in determining the Appraised Value, shall not consider the economic terms of PBDV's Leasehold interest. The appraisal or appraisals provided for herein shall be placed on file at City's office and available for review.

(i) If the Purchase Price is determined by appraisal, it shall deduct the value of Project improvements actually constructed by PBDV and reflect the restrictive deed restrictions imposed by the federal government. An appraised Purchase Price shall be valid for five (5) years from the date of such appraisal, after which a new appraisal would be required, which would also deduct the value of any improvements as well as the restrictive deed requirements imposed by the federal government.

d. **No Subsidy or Waiver of Public Funds via Purchase Price.** The Purchase Price(s) agreed upon by the City and PBDV meet or exceed the fair market value of the Premises as determined by that appraisal dated November 27, 2023, which appraisal determined a fair market value of Three-Hundred Thousand Dollars (\$300,000.00). In exceeding the Premises' fair market value, the Purchase Price determinations present no subsidy, gift of public funds, nor expenditure or waiver of public funds by the City.

## **10. ACQUISITION AND DISPOSITION OF THE PREMISES.**

**10.1 Approval of Premises Condition.** Prior to and up to PBDV's satisfaction of all Leasehold Continuation Conditions through Closing, and based on the knowledge of current City staff involved with the Premises and based on a diligent search, the City will provide PBDV with all documents related to the Premises that it has in its actual possession and control, which includes, without limitation, all documents relating to, regarding or addressing existing subsurface hazardous material contamination at the Premises ("**Due Diligence Documents**"). PBDV will have an opportunity to review the Due Diligence Documents, inspect the physical condition of the Premises for the Project and conduct and review such surveys, engineering, feasibility studies, soils tests, environmental studies, geologic, soils tests and other investigations and studies of the Premises as PBDV, in its sole discretion, desired to permit PBDV to determine the suitability of the Premises for potential Project uses. PBDV further has the opportunity to make an examination of all Entitlements, Permits, authorizations, approvals and governmental regulations which affect the Premises, including zoning and land use issues and conditions imposed upon the Premises by governmental agencies. By entering into this Agreement, PBDV confirms that it has, or had the opportunity to, undertake the studies, reports and analyses as determined appropriate by PBDV (as permitted by the terms of this Agreement) to allow it to develop the Project concept/site plan, Project designs and financing plans necessary to undertake the Project, conduct meaningful environmental review, and other secure all Permits and Entitlements as required to satisfy the Leasehold Continuation Conditions. PBDV represents that it accepts the condition of the Premises and approves the results of its investigations. City has disclosed and PBDV is aware that the Premises are constrained by easements, as more thoroughly described in the August 5, 2019, Preliminary Title Report from Fidelity National Title Company, a copy of which was provided to PBDV, that easements and various covenants exist on the Premises, for various utilities and pipelines. PBDV acknowledges and understands that the existing covenants and easements on the Premises could impact or impair access to the Premises or Project design/configuration.

### **10.2 Conveyance Generally; Covenant Agreement.**

a. **Conveyance AS-IS.** In accordance with and subject to all the terms, covenants and conditions of this Agreement, following PBDV duly-exercised Option to Purchase, City shall convey the Premises to PBDV subject to the terms of the Grant Deed (**Exhibit E**), and PBDV specifically agrees to accept the Premises in an **AS-IS** condition and subject to the obligation to develop the Premises for the uses consistent with the Project scope as approved by all Permits and Entitlements therefor as issued in the course of completing the Leasehold Continuation Conditions,

and the and the permissible uses as further described in this Agreement and in the Grant Deed.

b. **Covenant Agreement.** Any Covenant Agreement required as a condition of Entitlements, if at all, shall be recorded against the Premises prior to the (i) commencement of Project construction, or (ii) Closing, whichever is earlier.

c. **Utilities Infrastructure.** The parties acknowledge that the City owns, maintains and operates certain utility infrastructure on the Premises that is critical to serving various City-owned properties. Prior to Closing, the parties shall negotiate in good faith an easement to permit and reserve the City's continued and ongoing operation and maintenance of such essential utility infrastructure located on the Premises, the City's operation of which shall not unreasonably interfere with or interrupt PBDV's quiet use and enjoyment of the Premises or Project operations (the "**Utility Easement**"). The Utility Easement shall be recorded against the Premises prior to Closing.

**10.3 Escrow Generally.** Escrow shall be opened for the Premises within sixty (60) days of PBDV duly exercising its Option to Purchase. This Agreement shall constitute the joint Escrow instructions of City and PBDV to Escrow Agent, and a duplicate original of this Agreement shall be delivered to Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under the instructions in this Agreement. City and PBDV shall promptly prepare, execute, and deliver to Escrow Agent such additional Escrow instructions (including Escrow's standard general provisions) consistent with the terms herein as shall be reasonably required by Escrow Agent. No provision of any additional Escrow instructions shall be deemed to modify this Agreement without specific written approval of the modification(s) by both PBDV and City.

#### **10.4 Conditions to Close of Escrow.**

a. **PBDV's Conditions to Closing.** PBDV's obligation to acquire the Premises and to Close Escrow, shall, in addition to any other conditions set forth herein in favor of PBDV, be conditioned and contingent upon the satisfaction or written waiver by PBDV, of each and all of the following conditions (collectively the "**PBDV's Conditions to Closing**") within ninety (90) days of opening Escrow:

(i) Title Company is committed to issue to PBDV a policy of title insurance insuring title to the Premises is vested in PBDV subject to conditions and exceptions specified in Section 10.7.

(ii) City shall have deposited into Escrow a certificate ("**FIRPTA Certificate**") in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

(iii) City shall have deposited the executed Grant Deed into Escrow.

(iv) City shall have deposited the executed Utility Easement into Escrow.

(v) The Premises will be delivered at Closing free and clear of any tenants or rights of possession of any other persons or entities (except entities subject to, or excepted from, an approved Transfer).

(vi) City shall have deposited or caused to be deposited into Escrow all the documents required under Section 10.6(c).

(vii) City is not in breach or default of this Agreement.

Any waiver of the foregoing conditions must be express and in writing pursuant to this Agreement.

b. **City's Conditions to Closing.** City's obligation to deliver the Premises and to Close Escrow, shall, in addition to any other conditions set forth herein in favor of City, be conditioned and contingent upon the satisfaction or written waiver by City, of each and all of the following conditions (collectively the "**City's Conditions to Closing**") within ninety (90) days of opening Escrow:

(i) Title Company is committed to issue to PBDV a policy of title insurance insuring title to the Premises is vested in PBDV subject to conditions and exceptions specified in Section 10.7.

(ii) PBDV shall have deposited into Escrow the Purchase Price and all other funds required under this Agreement.

(iii) PBDV has deposited an "acceptance of" the Grant Deed into Escrow to be attached to such Grant Deed prior to recordation.

(iv) PBDV shall have deposited or caused to be deposited into Escrow all the documents required under Section 10.6(d).

(v) City shall have deposited into Escrow any fully executed Covenant Agreement required by Entitlements.

(vi) PBDV is not in breach or default of this Agreement.

Any waiver of the foregoing conditions must be express and in writing pursuant to this Agreement by PBDV and the City.

#### **10.5 Both Parties' Conditions to Closing.**

a. Prior to the Closing date, PBDV and City shall execute and deliver a certificate ("**Taxpayer ID Certificate**") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenues Code or the regulations issued pursuant thereto, certifying to the Premises, date of Closing, the Purchase Price and taxpayer identification numbers as required by law.

b. Prior to the Closing, PBDV and City shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall



take such further actions, as may be necessary or desirable in order to complete the Closing.

#### **10.6 Conveyance of the Premises.**

a. **Deadlines for Closing.** Escrow shall Close after satisfaction (or waiver by the benefited party) of the conditions to Close of Escrow, but not later than ninety (90) days after Escrow has opened, unless extended by the mutual agreement of the Parties, any Enforced Delay or pursuant to any provisions specifying procedures that extend Escrow in this Agreement. In no event shall Escrow Close after the expiration of the 55-year Term hereof absent a written amendment hereof extending such Term. Possession of the Premises shall be delivered to PBDV concurrently with the conveyance of fee title free of all tenancies and occupants.

b. **Costs of Escrow.** On or before the date set for Closing, Escrow Agent shall advise City and PBDV in writing of the fees, charges, and costs necessary to clear title and Close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

(i) *Allocation:* Escrow Agent is directed to allocate costs as follows: City shall pay the cost of an ALTA non-extended owner's title policy while PBDV shall pay premiums for any endorsements or extended coverage. PBDV shall pay the cost of all applicable recording fees for the Grant Deed, any Covenant Agreement, or such other instruments as requiring recordation to fulfill all Project Permits, Entitlements and the Option to Purchase. City shall pay any documentary transfer taxes. PBDV and City shall each pay one-half (1/2) of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges as well as any title cancellation fees.

(ii) *Prorations/Adjustments:* Ad valorem taxes and assessments on the Premises and insurance for the current year, if any, shall be prorated by Escrow Agent as of the date of Closing with PBDV responsible only for those assessed after Closing. Should actual taxes, if any, not be known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, PBDV and City shall, within thirty (30) days thereafter, re-prorate the taxes which shall be promptly paid to the appropriate Party.

(iii) *Extraordinary Services of Escrow Agent:* Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of Escrow Agent as listed in this Agreement. In the event that Escrow Agent renders any service not provided for in this Agreement, or that Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

(iv) *Escrow Agent's Right to Retain Documents.* Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses are paid. The Parties jointly and severally promise to pay such sums upon demand.

c. **City Deposits Prior to Closing.** On or before, but not later than two (2) days prior to the date set for the Closing, City shall deposit into Escrow the fully executed (i) Grant Deed executed and acknowledged by City; (ii) an estoppel certificate certifying that PBDV has completed all acts, other than as specified, necessary for conveyance; (iii) any required Covenant Agreement (completed with all terms as described in Section 14.2) and Utility Easement; (iv) the Taxpayer ID Certificate; and (v) payment of 's share of City's share of costs as set forth in Section 10.6(b).

d. **PBDV Deposits Prior to Closing.** On or before, but not later than two (2) business days prior to the date set for the Closing, PBDV shall deposit into Escrow (i) an estoppel certificate certifying that City has completed all acts, other than as specified, necessary to conveyance; (ii) the Taxpayer ID Certificate; (iv) any required Covenant Agreement executed by PBDV; and (v) payment to Escrow Agent of PBDV's share of costs in accordance with Section 10.6(b).

e. **Recordation and Disbursement of Funds.** Upon the completion by City and PBDV of the required deliveries and actions prior to Closing, Escrow Agent is authorized to pay any transfer taxes and recording fees under Applicable Law, and thereafter cause to be recorded in the appropriate official records of Santa Barbara County, California, in the following order: (i) the Grant Deed with a Certificate of Acceptance attached; (ii) any required Covenant Agreement; and (iii) any other appropriate instruments delivered through this Escrow, if necessary or proper to vest title of the Premises in PBDV in accordance with the terms of this Agreement.

Immediately following Closing, Escrow Agent shall deliver the title insurance policy to PBDV (with a copy to City) insuring title and conforming to the requirements of Section 10.7(d). Following recordation, Escrow Agent shall deliver conformed copies of all recorded documents to both PBDV and City. In addition, after deducting any sums specified in this Agreement, Escrow Agent shall disburse funds to the Party entitled thereto.

## **10.7 Title Matters.**

a. **Condition of Title.** City shall convey to PBDV fee title of the Premises subject only to: (i) this Agreement as referenced in the Grant Deed; (ii) current taxes, a lien not yet payable; (iii) utility, pipeline and public easements of record approved by PBDV, which approval shall not be unreasonably withheld; (iv) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by PBDV; and (v) any matters caused or created by PBDV. City shall convey title to PBDV pursuant to the Grant Deed.

b. **City Not to Encumber Premises.** City hereby warrants to PBDV that it has not and will not, from the Effective Date of this Agreement through Close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Premises, unless such encumbrances are necessary to respond to an emergency, threat of public health, safety or welfare, or interruptions to utilities or similar essential infrastructure, without express written permission of PBDV, which PBDV consent shall not be unreasonably conditioned, withheld or delayed. Prior to or at Close of Escrow, City shall be required to satisfy and cause the release of any mortgage, deed of trust, tax, or mechanic's lien placed on or encumbering the Premises (or any portion thereof) (collectively, "**Monetary Encumbrances**").

c. **Approval of Title Exceptions.** On or before the date of opening Escrow, City shall have delivered a preliminary report for the Premises to PBDV including copies of all documents referenced therein ("**Title Report**"). At least sixty (60) days prior to the deadline for Closing ("**Title Approval Date**"), PBDV shall deliver to City written notice, with a copy to Escrow Agent, specifying in detail any exception disapproved and the reason therefor. Within thirty (30) days following the Title Approval Date, City shall deliver written notice to PBDV as to whether City will or will not cure the disapproved exceptions. If City elects not to cure the disapproved exceptions, PBDV may terminate this Agreement without any liability of City to PBDV, or PBDV may withdraw its earlier disapproval. If City elects to cure the disapproved exceptions, City shall do so on or before the Close of Escrow. If, after the Title Approval Date, PBDV receives a supplement to the Title Report from the Title Company setting forth any new matter of record encumbering the Premises which was not set forth on the original Title Report (or any previous supplement thereto) and of which PBDV was not otherwise aware as of the Title Approval Date ("**New Title Matter**"), PBDV may, on or prior to 5:00 p.m. P.S.T. on the tenth (10th) business day following PBDV's receipt of notice of such New Title Matter ("**New Matter Approval Date**"), object to such New Title Matter by sending written notice thereof to City and Escrow Holder; provided, however, City shall remove all Monetary Encumbrances which constitute New Title Matters regardless of whether PBDV timely objects to such Monetary Encumbrances. PBDV's failure to object in writing to any New Title Matter on or prior to the New Matter Approval Date shall be automatically deemed to be PBDV's approval of such New Title Matter and such New Title Matter shall thereafter be deemed to be a permitted encumbrance. If PBDV delivers written objection to any New Title Matter on or prior to the New Matter Approval Date applicable thereto, and City does not deliver as of 5:00 p.m. P.S.T. on the fifth (5<sup>th</sup>) business day following the New Matter Approval Date ("**City Response Date**") written notice that City covenants and agrees to remove prior to the Closing such New Title Matter objected to by PBDV, then PBDV may terminate this Agreement by delivery of written notice thereof to City and Escrow Holder on or before 5:00 p.m. P.S.T. on the fifth (5<sup>th</sup>) business day following the City Response Date ("**New Matter Termination Date**") and have the Purchase Price returned to PBDV and any unused balances due to PBDV. PBDV's failure to terminate this Agreement in writing as a result of any New Title Matter on or prior to the New Matter Termination Date shall constitute PBDV's waiver of its right to terminate this Agreement as a result of such New Title Matter.

d. **Title Policy.** At the Closing, Title Company shall issue to PBDV an ALTA non-extended owner's policy of title insurance ("**PBDV's Title Policy**") with title to the Premises vested in PBDV with an insured amount equal to the Purchase Price, containing (i) only those exceptions approved by PBDV pursuant to the foregoing Section; (ii) the Grant Deed; (iii) any Covenant Agreement; and (iv) any exceptions caused or created by PBDV (including any approved Transfers). PBDV's Title Policy shall include any available additional title insurance, extended coverage or endorsements that PBDV may reasonably request. City shall pay only for that portion of PBDV's Title Policy insurance premium attributable to the ALTA non-extended coverage policy in the amount of the Purchase Price. PBDV shall pay for the premium for any extended owner's policy and special endorsements to PBDV's Title Policy.

### **10.8 Termination of Escrow and Agreement.**

a. **Termination.** Escrow (and this Agreement) may be cancelled or terminated by demand of a Party which shall have performed its obligations hereunder if:

(i) The conditions to Closing for the benefit of a Party have not occurred or have not been approved, disapproved, or waived as the case may be, by the benefitted party by the date established herein for the occurrence of such condition, including any grace period pursuant to this Section; or

(ii) The other Party is in breach of the terms and conditions of this Agreement.

b. **In Event of Cancellation/Termination.** In the event of the foregoing, the terminating Party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating Party. No demand shall be recognized by the Escrow Agent until thirty (30) days after the Escrow Agent has mailed copies of such demand to the non-terminating Party, and if no objections are raised in writing to the terminating Party and the Escrow Agent by the non-terminating Party within the thirty (30) day period; provided however that such timeline may be shortened as necessary to assure Escrow may Close by either ninety (90) days from the opening of Escrow or such time as agreed to by the Parties in writing and submitted to Escrow Agent. In the event of such objections, the opportunity to cure shall be provided as stated below in Subsection (b) of this Section. In addition, the Escrow Agent is authorized to hold all money, papers, and documents until instructed in writing by both PBDV and City or, upon failure thereof, by a court of competent jurisdiction; provided that after expiration of the cure period provided in Subsection (b) of this Section, and if said condition has not been cured, then 10% of the Purchase Price shall be retained by City as liquidated damages if the City was the terminating party and otherwise fully performed its obligations under this Agreement. If no such demands are made, the Escrow shall be Closed as soon as possible and neither Party shall have any further liability to the other.

c. **Opportunity to Cure.** Prior to Closing, in the event any of the conditions to Closing are not satisfied or waived by the Party with the power to approve said conditions (the "approving Party"), then such Party shall explain in writing to the other Party (the "non-approving Party") the reason for the disapproval. Thereafter, the non-approving Party shall have an additional thirty (30) days to satisfy any such condition to Closing, and only if such conditions still cannot be satisfied may the approving Party terminate the Escrow. In the event Escrow is not in a condition to Close because of a default by any Party, and the performing Party has made demand as stated in Subsection (a) of this Section, then upon the non-performing Party's delivering its objection to Escrow Agent and the performing Party within the above thirty (30) day period (or such other period set pursuant to Subsection (a) above), the non-performing Party shall have the right to cure the default in accordance with and in the time provided in Section 15.1.

d. **Immediate Termination for Failure to Close by Term.** In no event shall Escrow Close after the expiration of the Term hereof absent a written amendment by the Parties extending such Term. To this end, should Escrow have failed to Close by the Term, Escrow and this Agreement shall immediately terminate, with none of the notices or opportunities to cure set forth in Subsections (a) and (b) of this Section. In such event, the Premises shall be relinquished to City pursuant to the terms of Section 6.10(c).

#### **10.9 Responsibilities of Escrow Agent.**

a. **Deposit of Funds.** All funds received in Escrow shall be deposited by Escrow Agent in a special Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

b. **Notices.** All communications from Escrow Agent shall be directed to the addresses and in the manner provided in Section 15.1 of this Agreement for notices, demands and communications between City and PBDV.

c. **Sufficiency of Documents.** Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of Escrow Agent is to accept such documents and follow PBDV's and City's instructions pursuant to this Agreement.

d. **Exculpation of Escrow Agent.** Escrow Agent shall not be liable for the failure of any of the conditions to Closing of this Escrow, forgeries or false personation, unless such liability or damage is the result of negligence or willful misconduct by Escrow Agent.

e. **Responsibilities in the Event of Controversies.** If any controversy documented in writing arises between PBDV and City or with any third party with respect to the subject matter of this Escrow or its terms or conditions, Escrow Agent shall not be required to determine the same, to return any money, papers or

documents, or take any action regarding the Premises prior to settlement of the controversy by a final decision by an arbitrator, by a court of competent jurisdiction, or by written agreement of the Parties to the controversy, as the case may be. Escrow Agent shall be responsible for timely notifying PBDV and City of the controversy. In the event of such a controversy, Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely Close Escrow or take any other action unless such controversy has been caused by the failure of Escrow Agent to perform its responsibilities hereunder.

#### **10.10 Condition of Premises; AS-IS Acquisition.**

a. **AS-IS Acquisition.** PBDV acknowledges and agrees that City will only convey the premises to PBDV upon closing in an “as-is” condition without representation or warranty of any kind except those specifically enumerated herein and shall not be responsible for any hazardous materials or conditions on the premises. City confirms that it has valid title to the premises and can freely transfer it, subject to satisfaction of all leasehold continuation conditions prior to any exercise of the option to purchase.

b. **Premises Assessment and Remediation** PBDV shall be responsible for conducting assessments of the Premises and for any required remediation if the PBDV accepts the Premises pursuant to the terms of this Agreement. City shall be entitled to review but shall have no approval rights regarding any remedial workplan prepared for the Premises. City is conveying the Premises in an “AS-IS” condition and shall not be responsible for any Hazardous Materials or hazardous conditions on the Premises. PBDV acknowledges that the provisions of this Section are material to City’s entering into this Agreement.

c. **Disclaimer of Warranties.** Upon the Close of Escrow, PBDV shall acquire the Premises, in its “AS-IS” condition and shall be responsible for any defects in the Premises, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Premises, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, abandoned wells or other structures located on, under or about the Premises. City makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Premises, the suitability of the Premises for the Project, or the present use of the Premises, and specifically disclaims all representations or warranties of any nature concerning the Premises made by them, the City and their employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate air, utilities, present zoning soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Premises is suited, or drainage. City makes no representation or warranty concerning the compaction of soil upon the Premises, nor of the suitability of the soil for construction.

**10.11 Hazardous Materials; Release of City.** PBDV understands and agrees that in the event PBDV incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then PBDV may look to any

prior owners of the Premises, but under no circumstances shall City be liable directly or indirectly regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. (In the event that City has indemnified any prior Premises owner, PBDV may not recover any such amounts from that owner to the extent that such owner will seek recovery from City; City shall provide reasonable notice of any such indemnity agreements with prior Premises owners.) PBDV, and each of the entities constituting PBDV, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges City, its directors, officers, share-holders, employees, and agents, and their respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, all as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, losses, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Premises, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the Parties pursuant to this release that any and all responsibilities and obligations of City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of PBDV, its successors, assigns or any affiliated entity of PBDV, against City arising by virtue of the physical or environmental condition of the Premises, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this release provision declared null and void and of no present or future force and effect as to the Parties; provided, however, that no parties shall be deemed third party beneficiaries of such release. In connection therewith, PBDV and each of the entities constituting PBDV, expressly agree to waive any and all rights which said Party may have under Section 1542 of the California Civil Code which provides as follows:

**“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**

**PBDV’S INITIALS: \_\_\_\_\_**

PBDV further agrees that in the event PBDV obtains, from former or present owners of the Premises or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, PBDV shall use its diligent efforts to obtain for City the same releases, indemnities and other comparable provisions. Without limiting the foregoing, PBDV agrees not to initiate any legal process against the City, and hereby fully releases the City, in connection with any Environmental Claims, Environmental Cleanup Liability or Environmental Compliance Costs.

For purposes of this Section 10.11, the following terms shall have the following meanings:

- a. **“Environmental Claim”** means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third

party, including, without limitation, any governmental entity, relating to the Premises or its operations and arising or alleged to arise under any Environmental Law.

b. **“Environmental Cleanup Liability”** means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Premises, including the ground water thereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Premises or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. **“Environmental Compliance Cost”** means any cost or expense of any nature whatsoever necessary to enable the Premises to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the Premises are capable of such compliance.

d. **“Environmental Law”** means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. **“Hazardous Material”** is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) 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, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) “used oil” as defined under Section 25250.1 of the California Health and Safety Code; (vi) asbestos; (vii) listed under Chapter 11 of Division 4.5 of Title



22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (viii) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (ix) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (x) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (xi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (xii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; or (xiii) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, PBDV's release and indemnification as set forth in the provisions of this Section 10.11, as well as all provisions of this Section, shall continue in perpetuity, in accordance with all provisions for the defense procedures and survival set forth in Section 8 hereof.

## **11. RESTRICTIONS ON TRANSFER PRIOR TO CLOSING OR PROJECT COMPLETION.**

**11.1 Qualifications; Financial Capability.** The qualifications and identity of PBDV are of particular concern to City and it is because of such qualifications and identity that City has entered into this Agreement with PBDV. City has will undertake an appropriate marketing program to identify appropriate users/operators for the Premises. City has considered the experience, financial capability, and product being marketed by PBDV and its affiliates, the Premises location and characteristics, and the product mix necessary to produce a successful tourism base and public recreational/educational area. Based upon these considerations, City has imposed the restrictions on transfer set forth in this Agreement.

Pursuant to the Leasehold Continuation Conditions or earlier, PBDV has provided, or will provide, City with a financing plan (including financing sources and methods), financial statements, pro-forma, and/or other information, documenting to City's satisfaction (which shall be determined in City's sole and unfettered discretion), PBDV's financial capacity to proceed with the transactions contemplated hereunder. PBDV represents that it shall not take actions or engage that would negatively affect such financial capability prior to its receipt of the final Certificate of Completion for the Project. No later than the date set forth in the Leasehold Continuation Conditions, PBDV shall submit updated financing information to the City, which shall include a copy of commitment or commitments obtained by PBDV for the lines of credits, loans, grants, or other financial assistance from equity and debt financing sources to assist in financing the construction of the proposed Project. Said financial information shall be subject to the confidentiality provisions of Section 16.4(d) herein.

**11.2 Transfer Defined.** As used in this Section 11, the term “**Transfer**” shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Premises, or the improvements thereon, and conveyance of the Premises from City to PBDV or a limited partnership in which PBDV (or its affiliate) is the administrative general partner, provided for in this Agreement. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of PBDV in the aggregate, taking all transfers into account on a cumulative basis. In the event PBDV or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of PBDV, or of beneficial interests of such trust, of more than of more than forty-nine percent (49%). In the event that PBDV is a limited or general partnership, such Transfer shall refer to the Transfer of more than forty-nine percent (49%) of the limited or general partnership interest. In the event that PBDV is a joint venture, such Transfer shall refer to the Transfer of more than forty-nine percent (49%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

**11.3 Restrictions Prior to Completion of Project.** Prior to the later of either (i) issuance of the Certificate of Completion, or (ii) Closing, PBDV shall not Transfer this Agreement or any of PBDV’s rights hereunder, or any interest in the Premises or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which shall not be unreasonably withheld, and if so purported to be Transferred, the same shall be null and void. In considering whether it will grant approval to any Transfer by PBDV of its interest in the Premises before the issuance of the Certificate of Completion, which Transfer requires City approval, City shall consider factors such as (i) whether the completion or implementation of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform PBDV’s obligations hereunder; and (iii) the proposed assignee’s experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of a specific written agreement by City, prior to the issuance of a Certificate of Completion, no Transfer by PBDV of all or any portion of its interest in the Premises or this Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Premises which is so transferred. In addition, no attempted assignment of any of PBDV’s obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement, in a form approved by the City, assuming such obligations of this Agreement.

a. **Exceptions.** The foregoing prohibition shall not apply to any of the following, all of which shall constitute “**Permitted Transfers**” and shall not require the prior consent of the City:

b. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 13, but PBDV shall notify City in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Premises.

c. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the acquisition of and improvements on the Premises, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors.

d. The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation of the Premises.

e. A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

f. A sale or Transfer to any limited liability company, partnership or corporation in which PBDV, or an Affiliate of PBDV, is a general partner. The term "**Affiliate**" shall mean (i) any entity in which PBDV directly or indirectly owns or controls fifty percent (50%) or more of the voting and/or membership interests or (ii) any entity in which the owner(s) of PBDV directly or indirectly own or control fifty percent (50%) or more of the voting or membership interest.

g. Transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family, or transfers between or among Affiliates.

**11.4 Term of Restrictions on Transfer.** The Transfer restrictions of this Article 11 shall terminate at the later of the date of (i) issuance of the final Certificate of Completion for the Project, or (ii) Closing.

**11.5 Restrictions After Completion.** After period set by Section 11.3, and except as set forth in Section 11.2 above, PBDV may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Premises without complying with any Transfer restrictions contained within the Grant Deed and/or the Covenant Agreement, as may be applicable.

## **12. DEVELOPMENT OF THE PREMISES.**

**12.1 Scope of Development.** The Premises shall be developed by PBDV as provided in the Project Entitlements and all Permits and approvals as secured in the course of satisfying the Leasehold Continuation Conditions, and the plans approved by City pursuant to Section 7. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including the Scope of Development) and the approved plans, Entitlements

and Permits, the approved plans, Entitlements and Permits shall govern. PBDV shall carry out the construction of the improvements to be constructed by PBDV in conformity with all Applicable Laws, including but not limited to labor laws in place at time of Agreement execution and thereafter.

**12.2 Commencement of Construction.** PBDV to Pursue Project Diligently. PBDV shall commence construction of the Project upon receipt of a “notice to proceed” with construction from the City and no later than one year following satisfaction of all Leasehold Continuation Conditions, or such shorter time period as specified in any approved plans, Entitlements and Permits. Once Project construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days except when due to an Enforced Delay. PBDV shall keep City informed of the progress of construction and submit to City written reports of the progress of the construction when and in the form requested by City. PBDV shall promptly inform City in writing when the progress of construction has or will be abandoned or reasonably delayed and the reason for such Enforced Delay when such delay may materially impact the deadline for construction completion stated in Section 12.10.

**12.3 Bonding.** Prior to commencing construction of the Project and as a condition to receiving a “notice to proceed” with such construction, PBDV or its general/prime contractor for the Project shall provide City with a payment bond in the amount of One Hundred Percent (100%) of the estimated cost of the Project improvements and a completion bond, both from a reputable surety licensed in the State of California for the projected cost of the Project improvements and in a form reasonably acceptable to City.

**12.4 Construction Costs.** The cost of developing the Premises and rehabilitating the on-site and off-site improvements, if applicable, at or about the Premises required to be constructed for the Project shall be borne solely by PBDV. PBDV shall comply with all Applicable Laws including prevailing wages (if applicable) and shall defend and hold City harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of any action or determination that PBDV was subject to prevailing wages in connection with the construction of the Project.

**12.5 Construction Sales and Use Tax Allocation to City; Business Licenses.** PBDV shall register with the California Department of Tax and Fee Administration to allocate all applicable construction sales and use taxes to the City so that City receives the benefit of any sales and use taxes paid for construction activities and purchases of related equipment and materials. PBDV shall ensure that any and all entities performing work within the Project or Premises shall obtain and maintain valid business licenses.

**12.6 Taxes, Assessments, Encumbrances and Liens.** PBDV shall pay, when due, all real estate taxes and assessments assessed or levied subsequent to conveyance of the Premises to PBDV, if any. Except as provided in Section 13.2 for a conveyance for Project financing, PBDV shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic’s liens prior to suit to foreclose the same being filed) prohibited by this Agreement. PBDV shall remove or have removed any levy or attachment made on the Premises, or assure the satisfaction thereof, within a reasonable

time, but in any event prior to a sale to any third party, subject to the terms of this Agreement. Nothing herein contained shall be deemed to prohibit PBDV from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to PBDV in respect thereto.

**12.7 Prior to Construction Commencement: Bodily Injury, Property Damage and Workers' Compensation Insurance.**

a. **Types of Insurance.** Prior to the commencement of any Project construction by or on behalf of PBDV or its affiliates (including without limitation any site preparation work for the Project such as grading), PBDV or its Contractors shall procure and maintain (or cause to be procured and maintained), at its sole cost and expense, in a form and content reasonably satisfactory to City, during the entire term of such construction, the following policies of insurance:

(i) *Garage Liability or Commercial General Liability Insurance (collectively "CGL").* PBDV shall keep or cause to be kept in force for the mutual benefit of City and Developer CGL insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Premises, improvements or adjoining areas or ways, affected by such use of the Premises or for property damage, providing protection of at least Four Million Dollars (\$4,000,000) for bodily injury or death in the aggregate, at least Two Million Dollars (\$2,000,000) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000) for property damage.

(ii) *Builder's Risk Insurance.* PBDV shall procure and shall maintain (or cause to be procured and maintained) in force "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (a)(i) above.

(iii) *Workers' Compensation.* PBDV shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom PBDV has contracted for the performance of any work for which PBDV is responsible hereunder carries workers' compensation and employer's liability insurance as required by law, but not less than \$1,000,000.

(iv) *Automobile Insurance.* PBDV shall also furnish automobile liability insurance, including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. PBDV shall further require its construction contractors and subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

(v) *Property Insurance.* PBDV shall maintain property insurance covering all risks of loss including earthquake (if required), fire (if reasonably

available following due diligence by PBD to secure), and flood (if required pursuant to Project construction or structures located in ravine or flood-susceptible areas) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee as its interests may appear.

(vi) *Contractors and Subcontractors Insurance.* PBDV shall ensure that its contractors, subcontractors, and any other party involved with the project who is brought onto or involved in the Project by PBDV, maintains insurance coverage and endorsements required of PBDV that are appropriate for the risks involved with their services. PBDV shall monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of the insurance section outlined in the agreement between PBDV and its contractors and/or subcontractors.

(vii) *Other Insurance.* PBDV shall also procure and maintain any insurance reasonably required by City after notice to PBDV.

b. **Policy Form, Content and Insurer.** All insurance required by express provisions hereof shall be carried only by insurance companies authorized to do business by California, rated "A-VIII" or better in the most recent edition of Best Rating Guide, and only if they are of a financial category Class VIII or better. All such property policies shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City, or PBDV that might otherwise result in the forfeiture of the insurance, (ii) PBDV waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representatives. PBDV shall furnish City with certificates evidencing the insurance as well as full copies of the policies, and PBDV shall continue to submit renewal policies no less than thirty (30) days prior to expiration of any existing policies. City shall be named as additional insureds on all policies of insurance required to be procured by the terms of this Agreement other than workers' compensation insurance.

c. **Failure to Maintain Insurance and Proof of Compliance.** PBDV shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies together with a copy of the policies required hereunder within the following time limits:

(i) For insurance required above, prior to the commencement of any Project construction by or on behalf of PBDV.

(ii) For any renewal or replacement of a policy already in existence, simultaneously with the expiration or termination of the existing policy.

(iii) Excepting, however, satisfaction of the insurance requirements of this Section 12.7 shall replace those insurance requirements stated in Section 6.13.

If PBDV fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force, such failure shall be a default hereunder, subject to the applicable cure period.

**12.8 Indemnification During Construction.** During construction on the Premises and until such time as City has issued a Certificate of Completion, PBDV agrees to and shall indemnify, defend and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Premises and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of PBDV or its agents, servants, employees, or contractors. PBDV shall not be responsible for (and such indemnity shall not apply to) any acts errors or omissions of City or its respective agents, servants, employees or contractors. City shall not be responsible for any acts, errors or omissions of any person or entity except its own agents, servants, employees or contractors subject to any and all statutory and other immunities. PBDV's indemnification and defense as set forth in the provisions of this Section, as well as all provisions of this Section, shall continue in perpetuity, in accordance with all provisions for the defense procedures and survival set forth in Section 8 hereof.

**12.9 Rights of Access by City During Construction.** Representatives of City shall have the reasonable right of access to the Premises at any time during normal construction hours during the period of construction with reasonable advance written notice, for the purpose of assuring compliance with this Agreement, Permits and Entitlements, including, but not limited to, the inspection of the construction work being performed by or on behalf of PBDV. Such representatives of City shall be those who are so identified in writing by the City Manager. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Premises, and shall provide PBDV, or the construction superintendent or similar person in charge on the Premises, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall indemnify, defend, and hold PBDV harmless from any injury or property damage caused or liability arising out of City's exercise of this right of access pursuant to this Section. Nothing in this Agreement shall restrict or prohibit access by the City or its representatives to enforce any other authority under Applicable Law, including without limitation code enforcement response to possible violations, law enforcement access in exigent circumstances, etc.

**12.10 Anti-Discrimination During Construction.** PBDV, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by PBDV, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry, national origin, or any other protected class as defined by Applicable Law.

**12.11 Deadlines for Project Construction Completion.** Project construction shall be completed as demonstrated by issuance of a Certificate of Completion (pursuant to

Section 12.12 below) no later than five (5) years following PBDV's commencement of construction pursuant to Section 12.2.

**12.12 Certificate of Completion.** Upon the completion of all construction required to be completed by PBDV on the Premises pursuant to the terms of this Agreement, issuance of all final Certificates of Occupancy, and the opening of Project business, City shall furnish PBDV with the Certificate of Completion for the Premises in the form of **Exhibit F** upon written request therefor by PBDV. The Certificate of Completion shall be executed and notarized and recorded in the Office of the Recorder of Santa Barbara County.

After the issuance of a Certificate of Completion, any Party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Premises shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such Party shall be bound by the covenants, encumbrances, and easements contained in the Grant Deed and the Covenant Agreement.

Upon request of PBDV, the City shall not unreasonably withhold a Certificate of Completion. If City refuses or fails to furnish a Certificate of Completion within fifteen (15) days after written request from PBDV or any entity entitled thereto, City shall provide a written statement of the reasons City refused or failed to furnish a Certificate of Completion. The statement shall also contain City's opinion of the action PBDV must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, City will not reasonably withhold issuing its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to City by PBDV with City in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other such assurance reasonably satisfactory to City.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of PBDV to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect PBDV's right to obtain a Certificate of Occupancy (temporary or final) from the City before the Certificate of Completion is issued.

**12.13 Estoppels and SNDA's.** At the request of PBDV or any holder of a mortgage or deed of trust, but after Close of Escrow, City shall, from time to time and upon the request of such holder, timely execute and deliver to PBDV or such holder a written statement of City that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by PBDV under this Agreement, if such be the fact, and certifying as to whether or not PBDV has at the date of such certification complied with any obligation of PBDV hereunder as to which PBDV or such holder may inquire. At the request of PBDV or any holder of a mortgage or deed of trust, City shall, from time to time and upon the request of such holder, but after Close of Escrow, timely execute and deliver to PBDV or such holder a written statement of subordination, attornment and non-disturbance ("**SNDA**"). The form of any estoppel letter or SNDA shall be prepared by the holder or PBDV and shall be at no cost to City, including any reasonable cost for the City to provide



review by competent legal counsel. The City Manager shall be expressly authorized to execute any such SNDA or estoppel document. Such written statements requested by PBDV and issued by City shall not waive City's obligation to consider in future requests any such prior default or prior breach for which could not have been known to City at the time any such written statement of no default or breach was previously issued by City.

**12.14 Partial Releases.** City agrees to remove this Agreement and the applicable covenants in the Grant Deed from a legal parcel (or parcels) comprising the Premises provided all the following requirements are satisfied:

- a. PBDV provides a written notice lodging such request to City under this provision;
- b. PBDV is not in breach of this Agreement;
- c. Closing is complete and the Covenant Agreement has been recorded against the Premises;
- d. Certificate of Completion has been issued for Project completion; and
- e. All, final Certificates of Occupancy, as issued under then-current Applicable Law have been issued; and
- f. PBDV has completed all off-site improvements required by any approved subdivision map or subdivision improvement agreement if any, Plans or Entitlements, as applicable.

**13. RIGHTS OF HOLDERS OF APPROVED SECURITY INTERESTS IN THE PREMISES.**

**13.1 Definitions.** As used in this Section 13, the term "**mortgage**" shall mean a leasehold mortgage and include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "**holder**" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

**13.2 No Encumbrances Except Mortgages to Finance the Project.** Notwithstanding the restrictions on transfer in Section 11, mortgages required for any reasonable method of financing the construction of the improvements are permitted before issuance of a Certificate of Completion, but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Premises, for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Project under this Agreement, or for restructuring or refinancing any of same, and PBDV shall demonstrate in its written notice evidence that the City can confirm that such financing institution consists of commercially acceptable institutional quality credit and/or rating, and not subject to federal or state sanction and/or prohibition. PBDV (or any entity permitted to acquire title under this Section) shall notify City in advance of any mortgage if PBDV or such entity proposes to enter into the same. PBDV or such entity shall not enter into any such conveyance for financing without the prior written approval of

City, which approval shall not be unreasonably withheld or delayed. City shall respond within fifteen (15) business days of receiving notification of any such lender proposed, City's failure to respond within such time period shall result in such lender being deemed approved, and City shall bear its own costs associated with its review of proposed lenders. Any lender approved by City, or deemed approved, shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, PBDV shall promptly notify City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion or Closing (whichever is later), whether by voluntary act of PBDV or otherwise. Other than the notification requirement herein, PBDV shall have the same right to encumber its right, title and interest under this Agreement and the Premises that PBDV would have after Closing that it would absent this Agreement, pursuant to one or more mortgages, provided that any such mortgage adheres to the requirements of this provision and the Covenant Agreement, and that such mortgage be only for financing the acquisition, construction and other expenditures reasonably necessary for the development of the Project.

**13.3 Construction Loan Terms.** Project construction loan terms must comply with all of the following:

- a. The construction loan shall require that all the proceeds to be used solely for construction of the Project with no land draw permitted. The loan agreement shall mandate a construction disbursement control system providing for period disbursements based upon submission of mechanic lien releases and inspection reports confirming the completion of the work. The loan budget shall be subject to the reasonable review and approval of City.
- b. Interest rate and other terms shall be commercially reasonable for similar projects in the State of California.
- c. The construction lender shall agree to provide City with any notice of default which is provided by the construction lender to PBDV and provide City with the right (but not the obligation) to cure any default and extend the time for such cure provided City is diligently processing the cure of such default.
- d. City shall be provided directly from the construction lender copies of all construction loan documents prior to execution and upon closing, complete executed copies of all construction loan documents.
- e. PBDV is not in default under any obligations to the City including, but not limited to, Leasehold Continuation Conditions or timeframes therefore, Escrow provisions, Project construction deadlines, terms of Permits or Entitlements, restrictions on Premises or Project uses and operations, or any other term or obligation of this Agreement.
- f. City will execute a subordination agreement for recordation as reasonably required by a title company to provide title insurance for the senior loan.

g. A request for special notice shall be recorded concurrently with any subordination agreement.

h. The construction lender shall agree to provide City with any notice of default which is provided by the senior lender to PBDV and provide City with the right (but not the obligation) to cure any default and extend the time for such cure provided City is diligently processing the cure of such default.

**13.4 Ride and Show equipment.** Certain Ride and Show equipment may be either leased or implemented through joint ventures with Ride and Show vendors. Ride and Show equipment may result in liens upon personal property during the Leasehold period, but shall not result in liens upon the Premises unless and until after Closing.

**13.5 PBDV's Breach Shall Not Defeat Mortgage Lien.** PBDV's breach of any of the covenants or restrictions contained in this Agreement or the Covenant Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Premises, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement and the Covenant Agreement shall be binding and effective against the holder of any such mortgage of the Premises whose interest is acquired by foreclosure, trustee's sale or otherwise.

**13.6 Holder Not Obligated to Construct or Complete Improvements.** The holder of any mortgage shall in no way be obligated by the provisions of this Agreement or the Covenant Agreement to construct or complete the Project improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Premises or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the Covenant Agreement. Should the holder who has obtained the Premises by way of foreclosure elect to complete the construction of the Project, the period of foreclosure shall stay the deadlines set forth in this Agreement for the completion of the Project.

**13.7 Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders.** Whenever City shall deliver any notice or demand to PBDV with respect to any breach or default by PBDV hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

**13.8 Modification of Article; Conflicts.** City hereby agrees to cooperate in including in this Agreement or the Covenant Agreement by suitable amendment from time to time any provision which may reasonably be requested by any proposed holder for the purpose of allowing such holder reasonable means to protect or preserve the lien and security interest of the mortgage hereunder as well as such other documents containing terms and provisions customarily required by holders (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection

with any such financing; provided that no changes shall be required that eliminate the benefits to City provided in this Agreement or Covenant Agreement. With the exception of minor non-substantive amendments (as defined below) PBDV further acknowledges that any such changes would require City Council approval. City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment shall not in any way materially adversely affect any rights of either Party under this Agreement. If there is any conflict between this Section 13 and any other provision contained in this Agreement, this Section 13 shall control.

**13.9 Entitlement to Written Notice of Default.** The holder of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by PBDV of the performance of PBDV's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Notwithstanding the foregoing, City's failure to comply with this section shall not constitute a default, or grounds for termination. PBDV shall reimburse City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

**13.10 Right to Cure.** Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

- a. Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and
- b. Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of PBDV under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of PBDV under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed PBDV's obligations to City by written agreement satisfactory to City with respect to the Premises or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

**13.11 City's Rights Upon Failure of Holder to Complete Improvements.** In any case where ninety (90) days after default by PBDV in completion of construction of Project

improvements under this Agreement or the Covenant Agreement, the holder of any mortgage creating a lien or encumbrance upon the Premises or improvements thereon has not exercised the option to construct afforded in this Section, or if it has exercised such option and has not proceeded diligently with construction, City may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- b. All expenses, incurred by the holder with respect to foreclosure, if any;
- c. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Premises, such as insurance premiums or real estate taxes, if any;
- d. The costs of any improvements made by such holder, if any; 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 debt and such debt had continued in existence to the date of payment by City.

In the event that the holder does not exercise its option to construct afforded in this Section, and City elects not to purchase the mortgage of holder, upon written request by the holder to City, City agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by PBDV, or such other improvements in their stead as shall be satisfactory to City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (a) through (d) hereinabove, and any balance remaining thereafter shall be applied as follows:

- a. First, to reimburse City, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by City, including but not limited to payroll expenses, management expenses, legal expenses, and others.
- b. Second, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City to discharge any other encumbrances or liens on the Premises or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of PBDV, its successors or transferees.
- c. Third, to reimburse City, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by City, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

d. Fourth, any outstanding balance of fees, charges, taxes, and assessments owed to the City, and/or other governmental agency.

e. Fifth, any balance remaining thereafter shall be paid to PBDV.

**13.12 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest; Default.** In the event of a default or breach by PBDV (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by City of a Certificate of Completion for the Premises or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from PBDV or other entity of all costs and expenses incurred by City in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Premises to the extent of such costs and disbursements. Any such lien shall be subject to:

a. Any mortgage for financing permitted by this Agreement; and

b. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Premises in the event of its enforcement of its lien.

**13.13 Right of City to Satisfy Other Liens on the Premises After Conveyance of Title.** In the event the Closing and conveyance of title occurs prior to the recordation of a Certificate of Completion for construction and development, and after PBDV has had reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Premises or any portion thereof, City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require PBDV to pay or make provision for the payment of any tax, assessment, lien or charge so long as PBDV in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Premises or any portion thereof to forfeiture or sale.

**13.14 Minor Amendments.** City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement or the Covenant Agreement as may be requested by PBDV's lender in relation to the protection of such lender's security interest in the Premises, or to execute a separate exhibit or agreement related to the same, without requiring formal approval of City Council; provided that any such revisions shall not diminish or remove any City benefits provided in this Agreement or the Covenant Agreement. "Minor non-substantive amendments" shall mean changes to the Project that are otherwise substantially consistent with the Project as described herein and approved as part of the Entitlements, and which do not result in a change in the type of use, an increase in density or intensity of use, increased height or reduced setbacks of buildings, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect at the time of the proposed change

Nothing in this section shall restrict the City Manager from seeking City Council approval if, in the City Manager's determination, requested amendments are not minor.

**14. USE OF THE PREMISES FOLLOWING COMPLETION OF CONSTRUCTION.**

**14.1 Uses Generally; Evolution of Uses Pursuant to Plans and Entitlements.**

Regardless of whether the Project is constructed during the Leasehold period or following Closing, PBDV covenants to devote the Premises to the uses specified in this Agreement, the Grant Deed, any applicable Covenant Agreement, and all Entitlements and Permits, unless City otherwise agrees in writing. PBDV further agrees to commence business operations of the Project as a space and aerospace themed educational, recreational and related guest-serving amenities (including transient occupancy establishments serving the Project) within ninety (90) days of the Certificate of Completion and, thereafter, to use, devote, and maintain the Premises and each part thereof only for such space and aerospace themed educational, recreational and related guest-serving amenities and attendant uses, subject to the restrictions contained in the Grant Deed and any applicable Covenant Agreement. Without limiting the generality of the foregoing, PBDV acknowledges and agrees it may only use the Premises for the Project uses consistent with the terms, covenants and conditions as to be set forth in Project Entitlements and Plans, as such Entitlements and Plans may evolve through the development process and Project evolution and fulfillment of the Leasehold Continuation Conditions.

**14.2 Restricted Deed; Evolution Pursuant to Plans and Entitlements.** The Parties agree that the form of Grant Deed at **Exhibit E** hereto represents a substantial concept and form, which may be further developed through the Entitlement process, with a primary purpose of covenanting and restricting use of the Premises to those uses specified in Section 14.1 and those use restrictions stated in Section 14.3. However, the specific Project improvements and use restrictions to be governed by the Grant Deed and any potential Covenant Agreement are not known, as of the Effective Date of this Agreement, with sufficient specificity to present **Exhibit E** or any Covenant Agreement in its complete form given that such Project parameters will evolve through the processing of all permits, Plans, Entitlements and satisfaction of Leasehold Continuation Conditions. To this end, and without limiting the terms of Premises uses specified in this Agreement, the Parties agree that the specific terms of the Covenant Agreement will be subject to additions and modifications to be consistent with the issuance of Project development permits, Plans, Entitlements and Leasehold Continuation Conditions.

a. Project use restrictions shall be in perpetuity following recordation, unless earlier terminated (for default or otherwise). In no event shall Project construction commence until this Agreement and any required Covenant Agreement has been recorded.

**14.3 Special Use Restrictions Relating to Transient Occupancy (Lodging) Amenities.** The Project and Premises uses are to entail certain transient occupancy or "lodging" components (e.g., hotel, camp/dormitory or "Earth Base Lodging" park/dormitory/space-camp bundle, or other such overnight accommodations for short-term occupancy). As shall be specified in the Covenant Agreement (if any) and/or Grant Deed, such transient occupancy Project components shall be restricted to use by patrons of the

space/aerospace-themed educational and recreational park facilities. To this end, in order to occupy overnight accommodations developed in conjunction with the Project, such rental of the lodging accommodations shall be limited to theme park patrons or those who purchase entry to the park; this shall be accomplished by requiring that overnight accommodation rates shall be bundled with customer purchase of theme park entry. PBD's TOT Obligations for lodging facilities shall generally consist of the following:

a. *Application and Theme-Park Bundling of TOT Obligations:* TOT Obligations for lodging accommodations (hotel, camp/dormitory or other overnight accommodations), shall be based only upon actual room/dorm/lodgment costs, deducting the price of the entertainment bundle and park entry tickets (as such tickets are priced to the non-lodging public), dining services, other separately-invoiced services in the same manner as generally applicable to hotel/motel lodgings, the City's TOT Ordinance, and Applicable Law.

b. *Temporary Abatement of TOT Obligations:* In consideration for the substantial improvements to be implemented by PBDV, the above-market Purchase Price agreed-to by PBDV, and the recognized need for PBDV to ramp-up Project operations, the City agrees that PBDV's TOT Obligations shall be temporarily abated as related to the Project's transient occupancy and "lodging" components (e.g., hotel, camp/dormitory or "Earth Base Lodging" park/dormitory/space-camp bundle, or other such overnight accommodations for short-term occupancy). This abatement shall be based on the time period in which Closing occurs. To this end, an abatement of PBDV's TOT Obligations on Project transient lodging components shall be administered pursuant to *one* of the following scenarios:

(i) Should Closing occur within the first five (5) years following the Effective Date, then PBDV's TOT Obligation shall be abated/reduced by twenty percent (20%) of the total TOT amount that would otherwise be due for a period of five (5) years following issuance of a first Certificate of Occupancy on the Project or Closing, whichever is later; excepting however that the TOT amounts abated during the five-year period shall not exceed an aggregate of Five Hundred Thousand Dollars (\$500,000.00).

(ii) Should Closing occur after the first five (5) years following the Effective Date, then PBDV's TOT Obligation shall be abated/reduced by twenty percent (20%) of the total TOT amount that would otherwise be due for a period of ten (10) years following issuance of a first Certificate of Occupancy on the Project or Closing, whichever is later; excepting however that the TOT amounts abated during the ten-year period shall not exceed an aggregate of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

(iii) Following either period for TOT abatement, PBDV shall be required to pay the full (100%) TOT Obligation on the Project's transient lodging components pursuant to the Lompoc Municipal Code.

**14.4 Obligations to Refrain from Discrimination.** There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of



race, color, creed, religion, sex, marital status, national origin or ancestry, or any other protected class as defined by federal, state and/or local law in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Premises, or any portion thereof, nor shall PBDV, or any person claiming under or through PBDV, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Premises or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

a. **Form of Nondiscrimination and Non-Segregation Clauses.** PBDV shall refrain from restricting the rental, sale, or lease of any portion of the Premises on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin or any other protected class as defined by federal, state and/or local law of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(i) *Deeds.* In deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or any other protected class as defined by federal, state and/or local law in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through him or her, establish or permit any such 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 land herein conveyed. The foregoing covenants shall run with the land."

(ii) *Leases.* In leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or any other protected class as defined by federal, state and/or local law in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices, of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

(iii) *Contracts.* Any contracts which PBDV or, PBDV's heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the Premises shall contain a nondiscrimination and non-

segregation clause substantially as set forth in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

**14.5 Maintenance of Improvements After Project Completion.** PBDV covenants and agrees for itself, its successors and assigns, and every successor in interest to the Premises or any part thereof, that, after City's issuance of its Certificate of Completion, PBDV shall be responsible for maintenance of all improvements on the Premises from time to time (including without limitation buildings, landscaping, parking lots, lighting, signs, and walls) as well as any on- or off-site improvements as may be specified in Project Plans and Entitlements, in first class condition and repair of comparable properties to the extent practical considering the age of the building, and shall keep the Premises free from any accumulation of debris or waste materials. PBDV shall also maintain all landscaping required pursuant to PBDV's approved landscaping plan in a healthy condition, including prompt replacement of any dead or diseased plants or trees. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Premises or any portion thereof. PBDV's further obligations to maintain the Premises and City's remedies in the event of PBDV's default in performing such obligations are set forth in the Grant Deed and the Covenant Agreement. PBDV (for itself and its successor and assigns) waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply. **Funds Retained by PBDV for Project Upkeep/Upgrades.** Upon issuance of a Certificate of Completion, PBDV shall retain funds to be deposited and held by the City in order to safeguard the availability of monies for maintenance or upgrades needed for Project operations. These funds shall be held specially by the City for the use and benefit of PBDV for Project maintenance and upgrade needs. To wit:

a. **Reserve Fund for Maintenance.** City will establish a special maintenance reserve fund to set-aside funding for future regular Project maintenance (the "**Maintenance Reserve Fund**"), which Reserve Fund will be funded by PBDV from the date of the Certificate of Completion issuance in a set-aside amount sufficient to cover the reasonably foreseeable costs of one (1) to two (2) years of routine Project maintenance costs. In no event shall the Maintenance Reserve Fund fall below Five Hundred Thousand Dollars Even (\$500,000.00) in any one year (the "Reserve Minimum"), which minimum balance shall be annually escalated by CPI. The Maintenance Reserve Fund may be comingled with other funds of the City so long as the City keeps a thorough accounting of the moneys in the Reserve Fund.

b. **Sinking Fund for Project Upgrades.** City will establish a special sinking funds account to set-aside funding for future, non-regular upgrades to Project amenities and attractions (e.g., upgrades to Ride and Show technology, software and installations) following completion of the Project (the "**Upgrade Sinking Fund**"), which Sinking Fund will be funded annually by PBD from Project Gross Revenues in a set-aside amount equal to:

(i) In the first year following issuance of the Certificate of Completion: No Upgrade Sinking Fund contribution required.

(ii) In the second year following issuance of the Certificate of Completion: One percent (1%) of Project Gross Revenues.

(iii) In the third year following issuance of the Certificate of Completion: Two percent (2%) of Project Gross Revenues.

(iv) In the fourth year following issuance of the Certificate of Completion and each year thereafter: Three percent (3%) of Project Gross Revenues.

The Upgrade Sinking Fund may be comingled with other funds of the City so long as the City keeps a thorough accounting of the moneys in the Upgrade Sinking Fund.

c. **Deposits, Withdrawals.** PBDV shall by the first of the month following anniversary date of the Certificate of Completion for the Project (the "Initial Payment Date"), and the first of each such month thereafter (each a "**Payment Date**") pay to the City its contributions to the Maintenance Reserve Fund and the Upgrade Sinking Fund. In the case of the Maintenance Reserve Fund, an annual payment shall not be required in a year where the minimum balance of such Maintenance Reserve Fund remains at the Reserve Fund Minimum. PBDV may, in its discretion, transfer to the City for deposit any additional funds over the Reserve Fund Minimum. Upon receipt of the funds from PBDV on the Initial Payment Date and each Payment Date thereafter, the City shall promptly deposit such funds in the Maintenance Reserve Fund and the Upgrade Sinking fund. Should additional funds be received, the City shall deposit such funds as directed by PBDV and, if no direction is given, in the Maintenance Reserve Fund. The City may transfer funds between the Maintenance Reserve Fund and the Upgrade Sinking Fund consistent with the terms of this Section. Should PBDV require a disbursement from either the Maintenance Reserve Fund or Upgrade Sinking Fund for allocation towards costs related to the functions for which such monies have been set-aside, PBDV shall request such disbursement pursuant to a written request to the City that details (i) the infrastructure, maintenance or upgrade needs attributable to such request, (ii) an itemized cost-estimate for the work needed, (iii) any contractor or subcontractor estimates for performance of the work to be performed and rates therefor to the extent such work will not be performed under PBDV's own forces, (iv) to the extent work is to be performed using PBDV's own forces, the estimated hours and cost of such work, (v) total estimated time for work completion and a schedule of compensation over such time, and (vi) such other supporting information for the relevant work as may be reasonably requested by the City. Upon the City's reasonable satisfaction on all information required from PBDV for a fund disbursement, City shall approve and remit the necessary funds to PBDV within thirty (30) days, which approval and remittance shall not be unreasonably denied, conditioned or delayed.

d. **Application upon Default.** Upon the occurrence and continuance of an event of default under the Agreement, following any cure period, funds in the Accounts may be used by the City, at the discretion of the City without notice or consent of PBDV (i) to cure the default, (ii) to cover the City's costs in connection with the default and any remedial action, (iii) to maintain the Project improvements and/or

(iv) to upgrade the Project improvements. The use of such funds by the City shall not obviate the need for PBDV to cure the default or for any other actions permitted under the Agreement by City due to the default.

e. **Standards of Investment for Reserve and Sinking Funds.** The City shall hold monies in the Maintenance Reserve Fund and Upgrade Sinking Fund in specially-held accounts. The City may invest the funds in any investments the City is authorized to invest in pursuant to the Applicable Laws of the State. The City may also hold the funds uninvested.

f. **Cost of Accounts.** The City shall pay any account fees or administrative costs related to the accounts from the respective account. No City funds are required to be deposited or used for the purposes of the Accounts.

g. **Indemnification.** The City shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Section. To the extent provided by Applicable Law, PBVD hereby assumes liability for, and hereby agrees to defend, indemnify, protect, save and hold harmless City and its respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the City (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Section of the Agreement, the establishment of the funds here, the retention of the moneys therein and any payment, transfer or other application of moneys by the City in accordance with the provisions of this Section, or as may arise by reason of any act, omission or error of the City.

**14.7 Beneficiary and Third-Party Beneficiary.** City is a beneficiary of the terms and provisions of this Agreement and of the restrictions and those covenants running with the land provided in the Grant Deed and Covenant Agreement for and in its own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of City under this Agreement shall run without regard to whether City has been, remains or is an owner of any land or interest therein in the Premises. City shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of City, which is a third-party beneficiary of this Agreement and the covenants in the Grant Deed and Covenant Agreement, no other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise. Although City is a third-party beneficiary, City has no personal

liability for any of its obligations to PBDV. The covenants running with the land and their duration are set forth in the Grant Deed and Covenant Agreement.

**15. DEFAULTS, REMEDIES, TERMINATION, AND LITIGATION.**

**15.1 Defaults, Right to Cure and Waivers.** Subject to any Enforced Delay, failure or delay by either Party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the Party who so fails or delays does not commence to cure, correct or remedy such failure or delay within sixty (60) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

**15.2 Legal Actions.**

a. **Institution of Legal Actions.** In addition to any other rights or remedies, and subject to the requirements of Section 16.1, either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, including those obligations subject to any Covenant Agreement and Grant Deed, or to obtain any other remedy consistent with the terms of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Santa Barbara, State of California, in any other appropriate court in that county, or in the Federal District Court in the Western Division of the Central District of California.

b. **Applicable Law and Forum.** The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

c. **Acceptance of Service of Process.** In the event that any legal action is commenced by PBDV against City, service of process on City shall be made by personal service upon the City Manager or City Clerk, or in such other manner as may be provided by law. In the event that any legal action is commenced by City against PBDV, service of process on PBDV shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

d. **Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and 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 different times, of any other rights or remedies for the same default or any other default by the other Party.

e. **Waiver.** Except as otherwise provided in this Agreement, waiver by either Party of the performance of any covenant, condition, or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either Party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either Party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

f. **Specific Performance.** Before the Closing, PBDV may seek specific performance or other equitable relief to compel City to Close the Escrow or undertake City's other pre-Closing obligations set forth herein. In addition to any other remedies permitted by this Agreement, if subsequent to the Closing either Party defaults hereunder by failing to perform any of its obligations herein, the other Party shall be entitled to seek the judicial remedy of specific performance. In this regard, PBDV specifically acknowledges that City is entering into this Agreement for the purpose of assisting in the potential redevelopment of the Premises (subject to satisfying Leasehold Continuation Conditions) and not for the purpose of enabling PBDV to speculate with land.

g. **Right of Reverter.** Subject to PBDV's right to an extension of time to perform in the event of an Enforced Delay, City shall have the right, at its option, to reenter and take possession of the Premises with all improvements thereon and to terminate and, for the Purchase Price (as reduced by any mortgage, deed of trust, or other security interests permitted by this Agreement; and any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests), revert in the City the estate conveyed to the PBDV, if after Closing and prior to the issuance of the Certificate of Completion, PBDV (or its successors in interest) shall commit a material default (followed by applicable notice and cure period) by:

(i) Failing to timely commence construction of the Project as required by this Agreement after written notice to proceed from the City; or

(ii) Abandoning or substantially suspending construction of the Project in contravention of the deadlines established by this Agreement; or

(iii) Assigning this Agreement, or any rights herein, or transferring, or suffering any involuntary transfer of, the Premises, this Agreement, or any part thereof, in violation of this Agreement.

The foregoing right to re-enter, repossess, terminate, and revert shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit:

a. Any mortgage, deed of trust, or other security interests permitted by this Agreement.

b. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests.

Upon the revesting in City of possession to the Premises, or any part thereof, as provided in this Section, City shall, pursuant to its responsibilities under state law, use its best efforts to reconvey the Premises, or any part thereof, as soon and in such manner as City shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as reasonably determined by City), who will assume the obligation of making or completing the Project, or such other improvements in their stead, as shall be satisfactory to City and in accordance with the uses specified for the Premises, or any part thereof. The rights established in this Section are to be interpreted in light of the fact that City will sell the Premise to PBDV for development and not for speculation in undeveloped land.

**15.3 Attorneys' Fees.** If either Party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the Parties' agreement to, or performance of this Agreement, or is made a Party to any action or proceeding by Escrow Agent or other third party, such that the Parties hereto are adversarial, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "**prevailing party**" shall be the Party determined as such by a court of law pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorney's fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**16. GENERAL PROVISIONS.**

**16.1 Notices, Demands and Communications between the Parties.** Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable Party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt, or by email if agreed to by the Parties and return receipt requested; in any case, delivered to the address, addresses and persons as each Party may from time to time by written notice designate to the other and who initially are:

**To City:** City of Lompoc  
100 Civic Center Plaza  
Lompoc, CA 93436  
Attention: City Manager

**With a Copy to:** Aleshire & Wynder, LLP  
3701 Wilshire Blvd., Suite 725  
Los Angeles, CA 90010  
Attention: Jeff Malawy, City Attorney

**To PBDV:** Pale Blue Dot Ventures, Inc.  
1010 North H Street  
Launch Pad Suite G, Box 35  
Lompoc, CA 93436  
Attention: Steven Franck, CEO

**With a Copies to:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**To Escrow  
Holder:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**16.2 Non-Liability of City Officials and Employees; Conflicts of Interest; Commissions.**

a. **Personal Liability.** No member, official, employee, agent or contractor of City shall be personally liable to PBDV in the event of any default or breach by City or for any amount which may become due to PBDV or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 16.2(a) is intended to limit City's liability. No member, official, employee, agent or contractor of PBDV shall be personally liable to City in the event of any default or breach by PBDV or for any amount which may become due to City or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section is intended to limit PBDV's liability.

b. **Conflict of Interest, Warranty, and Representation of Non-Collusion.** No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation.

c. **Commissions.** City has not retained any broker or finder or paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. City shall not be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Agreement, and PBDV



agrees to hold City harmless from any claim by any broker, agent, or finder retained by PBDV. City agrees to hold PBDV harmless from any claim by any broker, agent, or finder retained by City.

**16.3 Enforced Delays: Extension of Times of Performance.** Time is of the essence in the performance of this Agreement.

Notwithstanding the foregoing, performance by either 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; Statewide or Countywide emergency declarations or shutdowns due to epidemics or pandemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement or suits challenging approvals of the Project); weather or soils conditions which will necessitate delays; delays of any contractor, sub-contractor or supplier; acts of the other party; unreasonable delays due to a lender identified in the Financing Plan not caused by the PBDV, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. The Party claiming such extension shall send written notice of the extension to the other within thirty (30) calendar days from the commencement of the cause. The City and the PBDV may also extend times of performance under this Agreement in writing by mutual agreement of the PBDV and the City Manager unless the City Manager in his/her reasonable discretion, refers the matter of extension to the City Council for its written approval. Any time period provided herein shall be extended by the period of the Enforced Delay.

**16.4 Books and Records.**

a. **Developer to Keep Records.** PBDV shall prepare and maintain all books, records and reports necessary to substantiate PBDV's compliance with the terms of this Agreement or reasonably required by City.

b. **Right to Inspect.** Either Party shall have the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Premises as pertinent to the purposes of this Agreement. The books and records shall be stored in a manner and location to allow the other party to conduct such inspection within a convenient physical distance and in an environment comfortable and commensurate with an office location. Either Party can request duplication and presentation of physical representations of the books and records and the Party in possession of such books and records shall provide them in a reasonable timeframe and at a cost borne by the requestor. Either Party can provide electronic versions of books and records at no cost to the other Party. Nothing in this Section waives the confidentiality of said books and records as specified elsewhere in this Agreement or as allowed by law.

c. **Ownership of Documents.** Copies of all drawings, specifications, reports, records, documents and other materials pertaining to the condition of the Premises prepared by PBDV, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of PBDV and

are not confidential, except as provided in Subsection (d) below, shall be delivered to City upon request in the event of a termination of this Agreement, and PBDV shall have no claim for additional compensation as a result of the exercise by PBDV of its rights hereunder. City shall have no rights of reliance thereon, and (ii) PBDV makes no warranty or representation regarding the completeness, accuracy or sufficiency of such documents, and PBDV shall have no liability therefor or in connection therewith. Notwithstanding the foregoing, City shall not have any right to sell, license, convey or transfer the documents and materials to any third party, or to use the documents and materials for any other site, except in the case of a termination of this Agreement due to default of PBDV, as otherwise specified in this Agreement, or as mutually agreed by the Parties.

d. **Confidentiality.** City agrees, to the maximum extent permitted by the California Public Records Act (Government Code Section 6253 et seq.) or other applicable local, State or Federal disclosure laws (collectively, "Public Disclosure Laws"), to keep confidential all proprietary financial and other information submitted by PBDV to City in connection with PBDV's satisfaction of its obligations under this Agreement (collectively, "Confidential Information"). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only if and to the extent necessary to carry out the purpose for which the Confidential Information was disclosed consistent with the rights and obligations provided for hereunder.

PBDV acknowledges that City has not made any representations or warranties that any Confidential Information City receives from PBDV will be exempt from disclosure under any Public Disclosure Laws. In the event the City Attorney determines that the release of any Confidential Information is required by Public Disclosure Laws, or by order of a court of competent jurisdiction, City shall promptly notify PBDV in writing of City's intention to release the Confidential Information so that PBDV has the opportunity to evaluate whether to object to said disclosure and/or to otherwise take whatever steps it deems necessary or desirable to prevent disclosure, provided that City shall not be liable for any damages, attorneys' fees and costs for any alleged failure to provide said notice. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

**16.5 Assurances to Act in Good Faith.** City and PBDV agree to execute all documents and instruments and to take all action, including deposit of funds in addition to such funds as may be specifically provided for herein, and as may be reasonably required in order to consummate conveyance and development of the Premises as herein contemplated, and shall use their commercially reasonable efforts, to accomplish the Leasehold, potential Closing and subsequent development of the Premises in accordance with the provisions hereof. City and PBDV shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

**16.6 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party

by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all Exhibits attached hereto, which are by this reference incorporated in this Agreement in their entirety. This Agreement also includes the Covenant Agreement, Grant Deed, and any other documents incorporated herein by reference, as though fully set forth herein.

**16.7 Entire Agreement, Waivers and Amendments.** This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or PBDV, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and PBDV.

**16.8 Severability.** In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

**16.9 Time for Acceptance of Agreement by City.** Once all terms of this Agreement have been negotiated in good faith to mutually-agreed, executable form, the Agreement will first be executed by PBDV and delivered to City. After execution and delivery by PBDV, this Agreement shall be considered an irrevocable offer until such time as such offer is accepted by City by its full execution (following City Council approval in a public meeting), which approval shall not be unreasonably delayed, conditioned or withheld), or City provides written notice of its intent to not execute the Agreement, which shall render the Agreement void due to the failure of to authorize and execute.

**16.10 Execution.**

a. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

b. City represents and warrants that: (i) by proper action of City, City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (ii) the entering into this Agreement by City does not violate any provision of any other agreement to which City is a party.

c. PBDV represents and warrants that: (i) it is duly organized and existing under the laws of the State of Delaware; (ii) by proper action of PBDV, PBDV has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by PBDV does not violate any provision of any other agreement to which PBDV is a party.

d. Each Party executing this Agreement warrants that he or she is duly authorized to execute this Agreement on behalf of such Party and that by his or her execution, such Party is formally bound to the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the Effective Date.

**REMINDER:**

**PBDV must initial Sections 10.11, 408(5) & 410(3).**

**City must initial Section 410(3).**

**DEVELOPER:**

PALE BLUE DOT VENTURES, INC., a Delaware corporation

By: \_\_\_\_\_

Name: Steven Franck

Title: CEO

**OWNER:**

CITY OF LOMPOC, a municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_, 2024

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Stacey Haddon, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Jeff Malawy, City Attorney

**ACCEPTED: ADDING WORDING HERE TO THIS EFFECT IS NEEDED.**

**ESCROW HOLDER:**

Accepted and agreed to:

By: \_\_\_\_\_

\_\_\_\_\_, Escrow Officer

Dated: \_\_\_\_\_, 202\_

**EXHIBIT A**  
**PREMISES**

**A-1**

**Legal Description**

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 095-070-008**

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOMPOC, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Portions of Lots 17, 18 and 19 of Rancho Mission De La Purisma and Farm Lot 18 of the Subdivision of the Rancho Lompoc and Mission Vieja as shown on map filed in Book 1, Page 45 of Maps in the City of Lompoc, County of Santa Barbara, State of California, and more particularly described as follows:

Beginning at a one half inch iron pipe with plastic cap marked L.S. 5459 at the Easterly terminus of course shown as "N 84° 55' 48" E, 393.79 feet" as shown on map filed in Book 143, Page 67 of Record of Surveys, in the office of the County Recorder of said County;

thence South 84 degrees 55 minutes 43 seconds West a distance of 628.26 feet to a monument shown on said map;

thence South 45 degrees 11 minutes 33 seconds West a distance of 3718.61 feet to a monument shown on said map, and the true point of beginning;

thence South 50 degrees 49 minutes 48 seconds East a distance of 1750.71 feet;

thence North 70 degrees 25 minutes 12 seconds East a distance of 1510.00 feet;

thence North 37 degrees 25 minutes 12 seconds East a distance of 1151.97 feet;

thence North 68 degrees 11 minutes 48 seconds East a distance of 231.48 feet to the Westerly line of Lompoc Casmalia Road;

thence Southerly along the Westerly line of Lompoc Casmalia Road the Westerly line of State Highway No. 1 the following courses;

South 30 degrees 20 minutes 26 seconds East a distance of 252.62 feet;

thence South 27 degrees 16 minutes 14 seconds East a distance of 186.72 feet;

thence South 30 degrees 15 minutes 41 seconds East a distance of 243.00 feet;

thence South 20 degrees 46 minutes 27 seconds East a distance of 138.63 feet;

thence South 09 degrees 11 minutes 38 seconds East a distance of 217.66 feet;

thence South 01 degrees 51 minutes 35 seconds East a distance of 161.05 feet;

thence South 07 degrees 25 minutes 14 seconds West a distance of 396.84 feet;

thence South 36 degrees 02 minutes 43 seconds West a distance of 170.52 feet;

thence South 04 degrees 04 minutes 26 seconds East a distance of 255.38 feet;

thence South 13 degrees 23 minutes 12 seconds West a distance of 301.55 feet;

thence South 11 degrees 29 minutes 25 seconds West a distance of 300.72 feet;



**EXHIBIT "A"**  
Legal Description  
(continued)

thence South 02 degrees 20 minutes 24 seconds West a distance of 205.32 feet to a monument as shown on said map;

thence leaving said Westerly line of State Highway No. 1 North 82 degrees 09 minutes 41 seconds West a distance of 522.29 feet to a monument shown on said map;

thence South 82 degrees 44 minutes 52 seconds West a distance of 542.88 feet to a monument as shown on said map;

thence North 50 degrees 49 minutes 48 seconds West a distance of 1082.99 feet to a monument as shown on said map;

thence North 80 degrees 23 minutes 07 seconds West a distance of 1980.39 feet to a monument as shown on said map;

thence North a distance of 1260.00 feet to the true point of beginning.

EXCEPTING therefrom the ownership of the mineral rights as reserved by the United States of America in Quitclaim Deeds recorded April 26, 1985 as Instrument No. 85-21446, February 12, 1991 as Instrument No. 91-8158 and August 29, 1993 as Instrument No. 93-76002 of Official Records, records of said County.

**EXCEPTING THEREFROM** a portion of the Rancho Mission De La Purisima, in the City of Lompoc, County of Santa Barbara, State of California, and more particularly described as follows:

Beginning at the Southwesterly corner of the parcel designated as "museum site" on map filed in Book 145, Page 11 of Record of Surveys, records of said county;

Thence South 80° 23' 07" East, 1443.40 feet along the Southerly line of said "museum site" parcel;

Thence leaving said Southerly line, North 47° 19' 49" East, 268.69 feet;

Thence South 87° 50' 55" East, 542.20 feet;

Thence North 39° 51' 30" East, 963.45 feet to an angle point in the Northerly line of said "museum site" parcel;

Thence South 70° 25' 11" West, 1510.00 feet along the Northerly line of said "museum site" parcel to an angle point;

Thence North 50° 49' 48" West, 1750.71 to the Northwesterly corner of said "museum site" parcel;

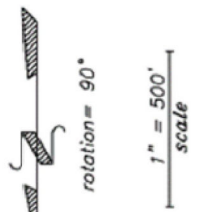
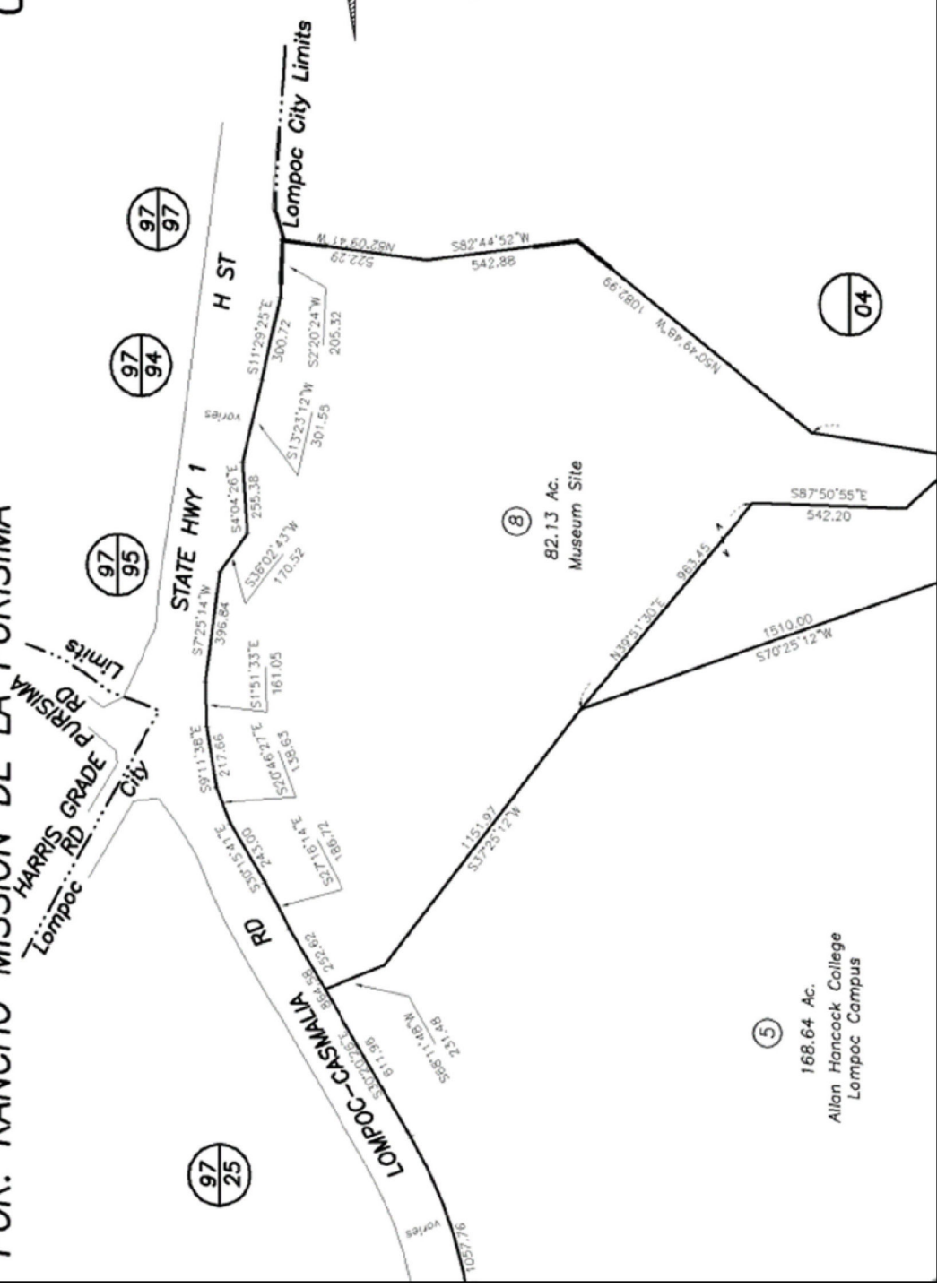
Thence South 0° 00' 00" West, 1260.00 feet to the point of beginning, containing 36.69 acres.

**A-2**

**Depiction of Premises**

095-07

# POR. RANCHO MISSION DE LA PURISIMA



**EXHIBIT B**

**PROPOSED PROJECT CONCEPT PLAN**

# SPACE BASE CALIFORNIA Conceptual Project Description for Lease/DDA

\*\*\*

**Background:** This Conceptual Draft Project Description is for the sole purposes of describing the project's scope adequately for the approval of the Lease/Disposition and Development Agreement and project discussions with the City. It also delineates the Deed restrictions on the property and shows the projects conformance to those Deed restrictions. Pale Blue Dot Ventures owns this project which will be called Space Base California hereafter [Space Base].

**1. The Parcel:** The parcel number is 095-070-008 encompassing about 82.13 acres. It is located on the north side of Lompoc on the south side of the Hancock College campus and includes Ken Adam City Park.

**2. Project Overview:** Space Base California will be an educationally rich, highly entertaining and scientifically valid new destination experience for Lompoc and the Central Coast. To reach its space education goals Space Base will have a main venue with a group of educational adventures that simulate activity in space and astronaut training. The Space Base Lodging will provide accommodations and a more in depth visit to Space Base. The space science camp is a place to learn for school children from 3<sup>rd</sup> grade to high school, for family groups and for adults. The camp focuses on space scenario problem solving for teams and includes space themed dorms. The South Mesa features a launch viewing area with a direct view of south VSBF launches and also provides an outdoor venue for community events. The existing Ken Adam Park will be part of Space Base and will receive various renovation and enhancements. It will also serve as the location of the terrestrial portion of the education program at the space science camp.

In total a visit to Space Base will transport the guest to an older space outpost and show them what life in space will be through both interactive and digitally simulated space adventures. It will be the closest thing to being in space for guests. To accomplish this guests can fly through space in a flying theater, be immersed on a planet with it all around them, drive an off world rover with a mission plan, operate a remote rover, fly a drone in the aviary, feel the G force of a blast off into space and the thrill of a landing with the reality that VR goggles can provide and much more. Guests at the space science camp will also visit the main venue to complete their mission plan.

**3. Project Sections and Construction Phases:** The first phase includes the components necessary to open which includes Complex Alpha, the Education and Recreation Venue, Camp Odyssey, a space based science camp with dorms, the launch viewing plaza, improvements to the existing Ken Adam Park and the new entry road with parking lots.

After completion of Phase 1 additional Phases as listed in Attachment 2 will be constructed to provide new guest experiences with the latest technology or meet increased guest attendance.

**Attachment 1:** This lists all the construction in Phase one of the project, the existing improvements at Ken Adam Park and the improvements in Phase One to Ken Adam Park.

**Attachment 2:** This lists all the future Project Phases that will be included in the project entitlement. These future Phases are not defined by timeline as it is unknown what order the various buildings and improvements will be built to fill future guest service demands.

**4. Draft Site Plan:** The Draft Conceptual Site Plan attached to this document is intended to provide a semi-final design of the project to accompany the Lease/DDA. The four larger sections of the project are

in their final form but changes within the four sections of the project may still occur as a result of new technology or design improvements.

**5. Entry Road and Parking:** The entry road design shown on the site plan is for illustration purposes only. Stantec Engineers, the project engineers, are currently working with Hancock College on some entry road alternatives. Hancock College will select the entry road that best suits their needs. Planned parking will include 316 guest spaces with up to 287 more in the future, 18 Bus and RV spaces and 150 employee spaces with up to 45 more in the future.

**6. Ken Adam Park:** The Park will include the same land that is in the current Park space with the exception of some land at the north side of the property that will be used for the new entry road. New picnic facilities will also be added to the Park and existing facilities improved. An accessible all gender restroom will be added and the existing restroom renewed.

**7. Schematic Design Concept and Implementation:** The baseline design concept is that when Guests and Students arrive at Space Base they will be immersed in the space experience. The guests initial impression upon entering Space Base is that of an older Space Colony that was constructed over the years from materials from other Space Colonies. Multiple project components create the aged image but one unusual one, is the cosmetic ageing of buildings to look old even though they are new. Another example is that water, electrical and HVAC fluids will be piped overhead on posts and with pipes labeled. Signs and message screens in Space Base will add to this immersion along with street actors and pop up activities.

**8. Complex Alpha:** This is the main Education and Recreation venue of Space Base. It continues to evolve as new technology becomes available. A good example is the COSM Theater which is a dome theater with guests seated in the center. This new theater system replaced a different attraction in the early planning stages when it became available. Unlike a conventional amusement park like Disneyland, much of the ride and show at Space Base is digitally generated. That means that a ride and show system does not have to be replaced to completely change the experience. This allows Space Base to be frequently refreshed and offer multiple guest experiences in the same structure during a day. Other ride and show components are scenario driven and can also be easily updated.

The lodging component in Complex Alpha is called Space Base and will feature thematic rooms in two, approximately 40 room, four story modules (e.g. 80 rooms), with room for two more tower modules. Rooms in the Earth Base lodging will be rented only in a bundle that will include park admission and morning/evening activities in Complex Alpha.

**9. Camp Odyssey:** This is the Space Education campus for school groups, youth camps, family camps and adult camps for retail guests. The "Sim" is the main education building and the home of all the varied education programs that will be offered at the campus. The "Habs" are the dormitories that will each accommodate one school class. Five will be constructed in the first Phase of construction with three more pads available for future expansion.

**10 Education Programs:** Students completing the programs below will all be Ambassadors in their communities for Space Base and bring new students and visitors to Space Base.

*"At Space Base California, our mission is to educate, entertain, and inspire the next generation of space explorers. Through our innovative and immersive educational park experience, we aim to inspire students to pursue careers in the space industry, fostering a passion for investigation, discovery, and scientific advancement."*

## EDUCATION PROGRAMS PROPOSED

- A. Teachers participating in the various programs will receive either on site or online training prior to bringing their students to Space Base.
- B. Students from 3<sup>rd</sup> grade through High School will attend all day adventures at Space Base.
- C. Students by grade level will attend a three-day, two-night space science camp that meets the California State requirements.
- D. Youth, Families and Adults will attend a three-day, two-night space science camp during the summer months.
- E. Youth, Families and Adults will attend a two-day, two-night weekend space science camp similar to the three-day camps.
- F. For Lompoc Valley and Central Coast youth there will be a summer day camp with the same content as the overnight camp but at a lower cost.
- G. There will be a joint program with the Lompoc Unified School District High School Students to participate in internships at Space Base that match their Career Track Education programs. The District will provide daily bus transportation to and from Space Base.
- H. With assistance from Space Base the Lompoc Unified School District will provide High School Senior and Adult Education Students with a Aerospace/Aviation certification program. The program will provide students with Industry certificates on graduation
- I. Guests at the Space Base Lodging will have an education program included in their room price bundle including Space Base admission with morning and evening education programs.

**11. Launch Viewing Plaza:** This is located on the South Mesa of the project site and will include permanent restrooms, utility connections for 6 food trucks, a stage and hard surface guest area. In addition to launch viewing this will be a community space for events. The Plaza is separated from the homes to the east by a landscaped berm to block sound and sight lines. The new road connecting the South Mesa to the Parking lot will be wide enough to accommodate two-way traffic, emergency vehicles and pedestrians. Changes to the alignment will provide less than 10% grades.

**12. Drone Aviary and Launch Pads:** The bottom of the ravine south of Complex Alpha has been selected for the location of the Drone Aviary and the Model Rocket launch pads as it is shielded from much of the wind. The Drone aviary will allow guests to pilot drones on specific missions within the enclosure. The model rocket launch area provides space for guests to build and launch their model rocket. Surrounding areas will be landscaped with fire resistant plants and fire suppression equipment will be installed.

**13. Future Phases:** Rather than being pre-scheduled, future phase pads on the site plan will occur as the need arises for additional ride and show locations or other facilities. These are being included in the submission package so they will have had architectural review and are entitled for future construction.

**14. Utilities:** The City of Lompoc will provide connections for Water, Wastewater and Electricity as well as solid waste services. Natural Gas, if any, will be provided by Southern California Gas and Telecommunications will be provided by Frontier Communications. Resource conservation is an integral part of the Space Base sustainability story.

**15. Traffic and CalTrans:** The base data for the traffic calculations is from the Integrated Insights “Space Base California Overview and Marketing Study”. The Marketing study divides the Space Base guests into three groups. The first is Local residents within a 75 mile radius, which is about 95 road miles. The second group is Day trip guests staying in hotels/motels on the Central Coast. The third group, are guests who will travel to Lompoc and stay in local Hotels /Motels and the Earth Base Lodging at the venue. Additionally, the traffic study includes students and retail guests at Camp Odyssey. Also included are the various shuttle bus services that transport guests from the Amtrak station and local Hotels and Motels to the Space Base. Stantec Engineers, the project engineers, are responsible for interacting with CalTrans on the Traffic Study.

**16. Light, Acoustics and Fences:** To provide a good night sky experience in keeping with the old Space Base theme all lighting will be down focused. Sound systems will be focused to the west away from homes to the east. The main venue is buffered on the east by Ken Adam Park and its grove of very large mature oak trees. The Launch Viewing area on the South Mesa will have a 10-foot high and 30-foot-wide landscaped earthen berm on the east and north sides to separate it from the residential area across H Street. Audio systems on the South Mesa will face west.

Various heights and types of fences will be used on the perimeter of the property to prevent trespassing. Along the east property line, next to H Street, the fence will largely be hidden downhill on the terrain in the existing green scape. In any area where the fence is visible it will be incorporated in new landscaping. The security fence around Camp Odyssey will not be screened to provide maximum security for this youth facility.

Outside activities that generate light or sound will be restricted to certain hours based on the day of the week. The exception will be the occasional night launch viewing on the South Mesa.

**17. Emergency Services:** Space Base will have its own Security Department and offer First Aid services.

**18. Bike Path:** The Bike path will be relocated to a new 23-foot-wide easement against the north property line. It will be reconstructed to the same specifications to which it was originally constructed. The existing lighting will be relocated next to the new bike path alignment.

**19. Disclaimer:** This document is prepared to be an Addendum to the Lease/DDA document. It is intended only to give as a conceptual description of the Space Base project including the utilities and Ken Adam Park's continuing amenities and improvements. While the document has been thoughtfully composed to describe the project as currently envisioned there will certainly be changes as the EIR is completed, traffic is fully analyzed and new technologies emerge that can be incorporated into the project.

Version 2.4 5/14/24

**\*\*\*NOTE:** The listed elements herein are approximations and proposals by PBDV and are entirely conceptual designs. They have not undergone City review. Precise or actual unit/square footage counts are unknown as of the Effective Date. Project entitlements have not been submitted or approved, and nothing herein or in this Agreement approves, or commits to, any Project elements or aspects, nor waives City discretion in the exercise of its police powers or utility operational authority, nor waives any City rules or regulations, with respect to any Project elements, entitlements, or approvals. Any Project development will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan and zoning regulations, as may be amended by PBDV's entitlements, any other adopted City rules and regulations, any and all State laws (including without limitation the California Environmental Quality Act ("CEQA") and statutory prerequisites applicable to any discontinuance of the Premises' public park uses), and conformance with, or amendment or repeal of, the Federal Use Restrictions."



## Attachment 1\*\*\*

### Phase 1 Proposed Project Construction by PBDV

- 100: Bus and RV Parking [18spaces] 14 current and 4 future
- 101: Mandated EV Charging spaces 20% of 378= 76 with conduit in place and 19 wired with a panel capable of supplying the 76 spaces at 40 amps 220 Volt 3 phase. Panel supplied by 12,000 primary voltage or 480 volt in a structure with racks and 22 bicycle spaces adjoining
- 102: Guest parking [316 spaces plus [62 Future] with 8 accessible of which 2 are van accessible. Accessible spaces 5 & 1 van at the main entrance and 1 & 1 van at the front of the Sim
- 103: Arrival Plaza
- 104: Astronaut Memorial
- 105: Ticketing and Guest Services
- 106: Themed retail
- 107: Central Concourse
- 108: Hangar 1 – Cosm Domed Theater
- 109A: Hanger 2 – Mission Training Center
- 109B: Hanger 3 – Flying theater
- 110: Hanger 4 – Nutrition Science food and beverage building
- 111: Sim Lab for astronaut training for Camp Odyssey
- 112: Five Hab Lodging Pods for Camp Odyssey [plus 3 future]
- 113: Earth Base Lodging for overnight guests, 75-80 rooms in two wings
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- 116: Explorer Trail and Training Pods
- 117: Mars Surface Rover Challenge [2.5 Acres]
- 118: Remote Rover Corral
- 119: Remote Drone Aviary
- 120: The Range for Model Rocket Launching and wild fire suppression system.
- 121: The Rendezvous
- 122: Astronaut Training Activity Areas [10]
- 123A: East open air stage for community events
- 123B: West open air stage for launch viewing
- 124: Launch observation plaza and community event space
- 125: Public Toilets
- 126: Launch Plaza food truck utility connections [6]
- 127: Space Base California Icon and Flag Plaza with original project Donor plaques
- 128: Not used
- 129: Future Construction Phases **[See list below by Letter]**
- 130: Vehicle and pedestrian access road to Launch Viewing Plaza [30' Wide at 10% grade max.]
- 131: North service road [25' wide]
- 132: Parking lot entry Kiosk for parking fee collection
- 133: Not used
- 134: Saw tooth bus loading and unloading Zone [4 spaces]
- 135: Guest drop off and pick up in the White Zone
- 136: Water Percolation Basin with 10' High Dam and Spillway
- 137: Accessible trail from Central Concourse to Drone Aviary [Less than 5% grade]
- 138: Nature Trail from Drone Aviary to Launch Viewing Plaza road
- 139: Security and First Aid Office Spaces

- 140: Existing Bike Path relocated to a 23' easement along the north property line
- 141: Space Technology Education Lab [1,500 sq. ft.]
- 142: Accessible parking spaces at Main Entrance and Sim
- 143: Berm to block sight and sound, 30' wide and 10' high with landscape on sides and top
- 144: Transformer building and main panels with HVAC central plant adjacent
- 145: Perimeter security fence at its approximate location excluding Ken Adam Park.
- 146: Sim and Hab lodging security fence at its approximate location
- 147: Gray Water Recycling Plant for Earth Base Lodging & Hab showers and sinks
- 148: Not Used
- 149: Valley emergency access road
- 150A: New entry and exit Road
- 150B: New signalized intersection with Hancock way for vehicles exiting Hancock College
- 151: Entrance to Hancock College for special event parking
- 152: Delete unpermitted road [shown as dashed lines]
- 153: Former road location to Launch Viewing Plaza [show as dashed lines]
- 154: Entrance for group tours, lodging guests, Sim/Hab guest and VIPs.
- 155: 150 Staff parking spaces and [45 future] including 2 accessible, 2 van accessible and 8 piped for EV charging locations with 2 powered and completed.
- 156: Fire Truck access lanes
- 157: Solar Panel Canopies
- 158: Emergency Vehicle access lane

## **Phase I Proposed Utility Project Construction by PBDV**

### **300 ELECTRIC**

- 301: Existing 12,000 Volt service to the existing City's transformer connection
- 302: Existing 3-Conduit at 3" for 12,000 Volt service connection point [Only two of three wires installed, this project will install the third wire.
- 303: Existing service panel for Ken Adam Park
- 304: Connection point of bike path underground electric line to pole

### **400 WATER**

- 401: Existing 10" diameter connection point to 14" diameter main line.
- 402: Existing 2" diameter line and empty meter box that will serve the South Mesa
- 403: Existing 1" diameter line and meter that will continue to serve Ken Adam Park.
- 404: Existing agricultural well and pressure tank to be used for Ken Adam Park landscape irrigation
- 405: Location of optional fire hydrant line interconnect with Hancock College.
- 406: Project 3" meter connection to fire hydrant main.
- 407: Fire Sprinkler connections to fire hydrant mains in 7 locations
- 408: Existing agricultural well for landscape irrigation next to City's waste water lift station

### **500 WASTE WATER**

- 501: Existing lift station that will continue to serve Ken Adam Park
- 502: City main lift station that the project wastewater line will connect to
- 503: Location of the wastewater line under the South Mesa to the City lift station
- 504: City wastewater meter location for the project's black water
- 505: State licensed gray water processing plant and tank system with re-cycledwater use for irrigation managed by Stantec Engineers with licensed operators.
- 506: Connection point if Hancock College elects to connect to the new gravity flow waste water line

## **600 SOLID WASTE**

601: Location for solid waste containers on the north side, waste, recycle, green waste and cardboard

602: Location for solid waste containers on the south side, waste, recycle, food waste and cardboard

603: Future Location for solid waste containers, waste, recycle, green waste and cardboard

## **Phase 1 Ken Adam Park Proposed Project Construction by PBDV**

200: Existing Park area

201: Existing parking

202: Existing overflow parking

203: Existing group Bar-B-Que and Picnic Table Area [Rental by reservation]

204: Existing playground structure

205: Existing horseshoe pits, to be converted to Group Picnic Area. [Rental by Reservation]

206: Existing Wedding and Event Gazebo [Rental by reservation]

207: Existing Restroom [To be renovated]

208: New Unisex Accessible Restroom [1]

209: Existing Host Residence. [To be converted to Dressing Rooms]

210: Existing Utility Shed

211: Existing Park Roads

212: Relocate existing individual Picnic table areas [6]

213: Former Office Trailer Site to be Re-used during project development

214: New Accessible Parking Spaces [2 with one van accessible]

215: New nature trail [approximate location]

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## **Attachment 2**

### **Future Phases Project Construction by PBDV**

129A: Four bus and RV spaces

129B: Two Earth Base Lodging wings at about 40 rooms each

129C: Small attraction

129D: Food and Beverage Patio on Astronaut Training Trail

129E: Large attraction

129F: Small attraction

129G: Launch Viewing Plaza hardscape expansion

129H: Small Astronaut Training Trail attraction

129I: Large Astronaut Training Trail attraction

129J: Central warehouse and maintenance building

129K: Additional parking places [64]

129L: Three story 225 space parking structure in the ravine

129M: Three future Hab Pods

129N: Large attraction

129O: Back of house services

129P: Multipurpose building of 4,500 square feet [seats 300 for banquet]

129Q: Employee parking 45 additional spaces

# LEGEND

## PHASE I PROJECT CONSTRUCTION

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- 506: Connection point if Hancock College elects to connect to the new gravity flow waste water line.

## 600: SOLID WASTE

- 601: Location for solid waste containers on north side, waste, recycle, green waste and cardboard.
- 602: Location for solid waste containers on south side, waste, recycle, green waste and cardboard.
- 603: Future location for solid waste containers, waste, recycle, green waste and cardboard.

## FUTURE PHASES - Project Construction by PBDV

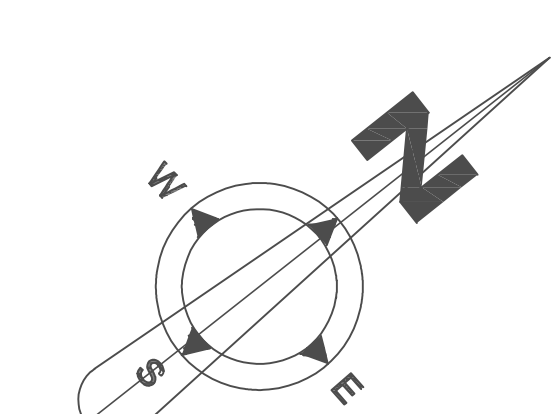
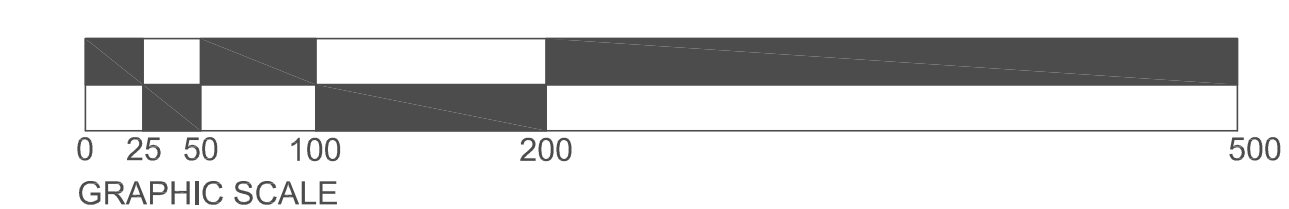
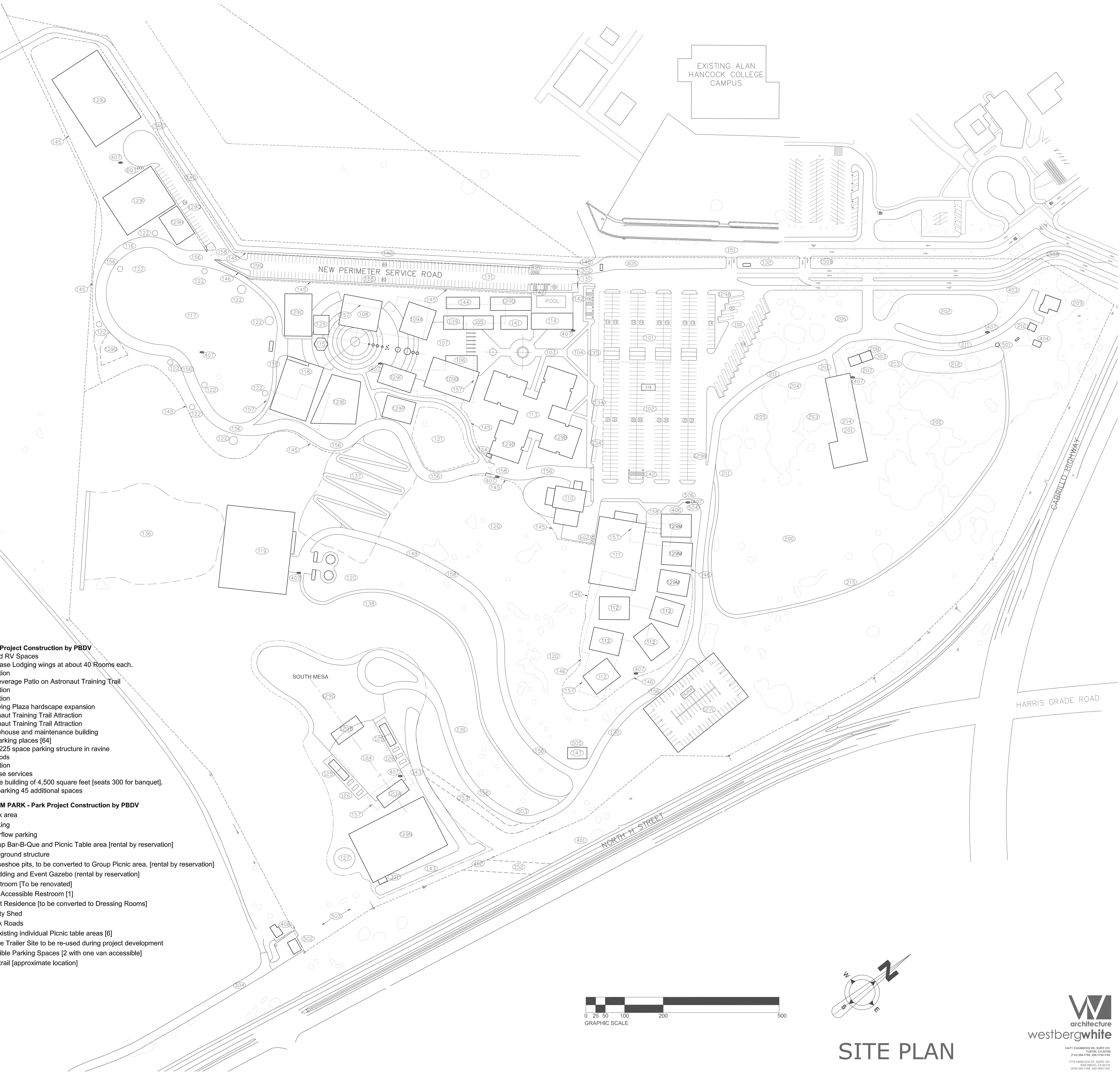
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- 129J: Central warehouse and maintenance building
- 129K: Additional parking places [64]
- 129L: Three story 225 space parking structure in ravine
- 129M: Three Hab Pods
- 129N: Large Attraction
- 129O: Back of house services
- 129P: Multipurpose building of 4,500 square feet [seats 300 for banquet].
- 129Q: Employee parking 45 additional spaces

## PHASE I - KEN ADAM PARK - Park Project Construction by PBDV

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- 203: Existing group Bar-B-Que and Picnic Table area [rental by reservation]
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- 215: New nature trail [approximate location]

# SPACE BASE CALIIFORNIA

LOMPOC, CA 93436



# SITE PLAN

14471 CHAMBERS RD. SUITE 201  
TUSTIN, CA 92780  
(714) 836-7700 FAX (714) 836-7702  
1775 HANCOCK ST. SUITE 100  
SAN FRANCISCO, CA 94103  
(415) 442-1188 FAX (415) 442-1189

**EXHIBIT C**

**MAP AND DESCRIPTIONS OF ONGOING PARKLAND USES AND AMENITIES**

## **Exhibit C.**

### Ken Adam Park Operations and Amenities

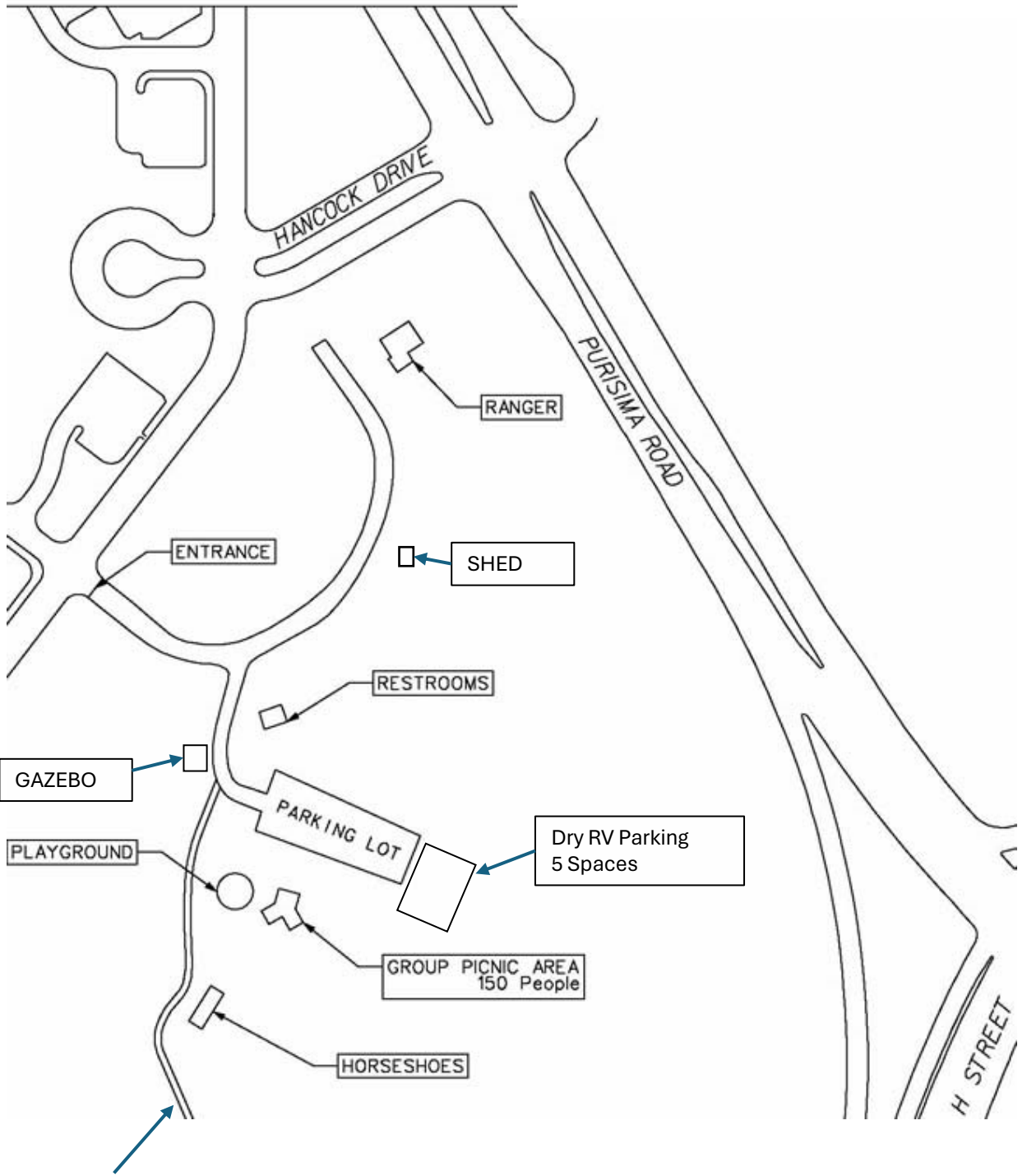
Customary operations include but are not limited to:

A. Opening the Park at 7:00AM, closing the Park at dusk, Cleaning the Restroom daily, emptying trash cans daily, providing water service, providing waste water service, providing solid waste service, providing electric service, periodic ranger patrol and daily grounds patrol by the Park Host.

B. The Customary recurring maintenance includes but is not limited to: Emptying the bar-b-que pit ashes as needed, monthly grounds maintenance including mowing to reduce the fire hazard, repairs to buildings and fixtures as needed and any emergency repairs.

C. The Customary Park guest services provided include but are not limited to, rental of the bar-b-que area, rental of the gazebo area, rental of dry camping RV spaces and rental for other guest uses of the Park. The City will use its existing rental policies, procedures and prices in renting these facilities.

D. The improvements to the Park that are maintained include: The Ranger residence, the maintenance shed, the flagpole, the restroom building, the outside sink at the restroom building, the dry RV parking spaces, the gazebo, the bar-b-que area, the road network, the parking lots, the playground structure/area, the horseshoe pits, the Spaceport Trail, The Astronaut Memorials and the grounds around the flag poles on the south mesa.



SPACEPORT TRAIL TO  
ASTRONAUT  
MEMORIAL  
AND FLAG POLES



**EXHIBIT D**

**DEPICTION OF PBDV TRAILER LOCATION**



**EXHIBIT E**  
**FORM OF GRANT DEED**

**Recording requested by and  
When Recorded Return to:**

Pale Blue Dot Ventures, Inc.  
1010 North H Street  
Launch Pad Suite G, Box 35  
Lompoc, CA 93436  
Attention: Steven Franck, CEO

APN. 095-070-008

(Space Above This Line for Recorder's Office Use Only)

THE UNDERSIGNED GRANTOR DECLARES that the  
documentary transfer tax (computed on full value) is  
\$ \_\_\_\_\_

**GRANT DEED WITH COVENANTS**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged and subject to the covenants set forth below , the CITY OF LOMPOC, a California general law municipal corporation ("**Grantor**") grants to PALE BLUE DOT VENTURES, INC, a Delaware corporation ("**Grantee**"), all of its rights, title, and interest in that certain real property in the City of Lompoc, County of Santa Barbara, State of California, as more particularly described in Exhibit A attached hereto and incorporated by this reference ("**Property**").

As material consideration for this conveyance, Grantee covenants for itself and any successors in interest for the benefit of Grantor as follows:

**1. Governing Documents.** The Property is being conveyed pursuant to that certain "Long Term Ground Lease and Operating Agreement With Conditional Option for Disposition and Development Agreement" dated May \_\_\_\_, 2024 by and between Grantor and Grantee (as amended, restated, and modified from time to time, the "**DDA**") which was recorded on \_\_\_\_\_, 202\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of Santa Barbara County and is incorporated herein by reference. Any initially capitalized terms used in this Grant Deed that are not defined herein shall bear the meaning(s) ascribed in the DDA. Grantee covenants and agrees for itself and its successors and assigns to develop the Property in accordance with the DDA and thereafter to use, operate and maintain the Property in accordance with the DDA and this Deed. The Property is conveyed subject and Grantee shall comply with all easements, covenants, restrictions, rights-of-way and other matters of record.

**2. Uses.** Grantee may only use the Property to construct and operate the Project as defined in the DDA being a space and aerospace themed educational, recreational, open space and related guest-serving amenities, with overnight hotel/lodging/camping or dormitory components and related amenities, including without limitation an "Earth Base Lodging" park/dormitory/space-camp bundle. Grantee shall have no right to subdivide, separate, or partition the Property, except upon prior written consent of Grantor. Breach of the terms, covenants, conditions, and provisions of the DDA shall be a material breach of this Deed and vice versa.

3. **Transfer Restrictions.** Grantee shall not transfer or encumber the Property or any of its interests therein except as provided in DDA Section \_\_\_\_.

4. **Reservation of Existing Streets & Utility Easements.** Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street and any utility easement within the Property which might otherwise pass with a conveyance of the Property.

5. **Continued Maintenance.** Grantee covenants and agrees for itself, its successors and assigns, that, after issuance of the Certificate of Completion pursuant to the DDA, Grantee shall, at its sole cost and expense, be responsible for maintenance of all improvements on the Property from time to time (including without limitation buildings, rides, parking lots, landscaping, lighting, signs, and walls), in good condition and repair at all times, and shall keep the Property free from any accumulation of debris or waste materials and graffiti. The foregoing maintenance obligations shall run with the land and shall continue in perpetuity.

6. **Continued DDA Covenants.** Grantee covenants and agrees for itself, its successors and assigns, that, after issuance of the Certificate of Completion pursuant to the DDA, Grantee shall, at its sole cost and expense, to continue to comply with DDA Sections \_\_, \_\_ and \_\_ which shall continue in full force and effect.

7. **Right of Reverter.** Pursuant to DDA Section \_\_, Grantor has a right of reverter in certain circumstances.

8. **Non-Discrimination.** Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

- (a) **Deeds:** In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee

itself, or any persons claiming under or through it, establish or permit any such 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 land herein conveyed. The foregoing covenants shall run with the land."

- (b) **Leases**: In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

- (c) **Contracts**: In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

**8. Covenants to Run With the Land**. The covenants contained in this Deed shall be construed as covenants running with the land and shall be binding upon Grantee, its heirs, successors and assigns to the Property, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed on its behalf as of the date written below.

**GRANTOR:**

CITY OF LOMPOC, a California general law municipal corporation

By: \_\_\_\_\_  
Dean Albro, City Manager

\_\_\_\_\_, 20\_\_

**ATTEST:**

\_\_\_\_\_  
Stacey Haddon, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Jeff Malawy, City Attorney

## CERTIFICATE OF ACCEPTANCE OF GRANT DEED

By its acceptance of this Grant Deed, PALE BLUE DOT VENTURES, INC, a Delaware corporation ("**Developer**") as Grantee hereby agrees as follows:

1. This is to certify that the interest in the Property conveyed by this Grant Deed dated \_\_\_\_\_, 202\_\_ from the City of Lompoc, a California general law municipal corporation to Developer is hereby accepted by the undersigned officer on behalf of the Developer pursuant to authority conferred by the Board of Directors of Developer.

2. The Developer expressly understands and agrees that the terms of this Grant Deed shall be deemed to be covenants running with the land and shall apply to all of the Developer's successors and assigns.

Date: \_\_\_\_\_, 202\_\_

**"DEVELOPER"**

PALE BLUE DOT VENTURES, INC,  
a Delaware corporation

By: \_\_\_\_\_  
STEVEN GEORGE FRANCK  
Chief Executive Officer & Secretary



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

That certain real property in the City of Lompoc, County of Santa Barbara, State of California legally described as follows:

Grantor reserves all oil, gas, hydrocarbon substances, minerals and water rights of every kind and character lying more than five hundred feet (500') below the surface, together with the right to drill into, through, and to use and occupy all parts of the lying more than five hundred feet (500') below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals, or water, from the Property, but without, however, any right to use either the surface of the Property or any portion thereof within five hundred feet (500') of the surface for any purpose or purposes whatsoever, and provided further that any right shall be exercised so as to not unreasonably interfere with Grantee's development, the Project and/or quiet enjoyment of the Property.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL:

**EXHIBIT F**

**FORM OF CERTIFICATE OF COMPLETION**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Pale Blue Dot Ventures, Inc.  
1010 North H Street  
LaunchPad Suite G, Box 35  
Lompoc, CA 93436  
Attention: Steven Franck, CEO  
APN. 095-070-008

[SPACE ABOVE FOR RECORDER'S USE ONLY]

**CERTIFICATE OF COMPLETION**

Pursuant to that certain Long-Term Ground Lease and Operating Agreement With Conditional Option for Disposition and Development Agreement dated \_\_\_\_\_, 202\_\_ (the "**Lease/DDA**") by and between the CITY OF LOMPOC, a California municipal corporation ("**City**") and PALE BLUE DOT VENTURES, INC, a Delaware corporation ("**Developer**"), Developer has agreed to develop that certain real property situated in the City of Lompoc, California, described on Exhibit "A" attached hereto and made a part hereof (the "**Property**").

**RECITALS:**

- A.** As referenced in the Lease/DDA, City is required to furnish Developer with a Certificate of Completion upon completion of construction and development and the opening of a space/aerospace theme park (the "**Project**") on the Property, which certificate shall be in such form as to permit it to be recorded in the Official Records of Santa Barbara County, California.
- B.** The Lease/DDA provides for certain covenants to run with the land, which covenants were incorporated in the Grant Deed (as defined in the Lease/DDA) or as may be specified in any in Declaration of Covenants, Conditions and Restrictions attendant to Project Permits or Entitlements (as defined in the Lease/DDA). Nothing in this Certificate shall waive or limit those terms of the Lease/DDA that are specified as surviving completion of the Project, including without limitation, Lease/DDA Sections \_\_\_\_\_.
- C.** This Certificate of Completion shall constitute a conclusive determination by City of the satisfactory completion by Developer of the Project construction and development required by the Lease/DDA and of Developer's full compliance with the terms of the Lease/DDA with respect to such Project construction and development, but not of the Grant Deed, surviving use and Project restrictions contained in the Grant Deed, nor any other recorded use restrictions, the provisions of all which shall continue to run with the land pursuant to their terms.
- D.** City has conclusively determined that the construction and development on the real property described in Exhibit "A" required by the Lease/DDA has been satisfactorily

completed by Developer in full compliance with the terms of the Lease/DDA, that all final Certificates of Occupancy have been issued, and that the Project has opened.

**NOW, THEREFORE,**

1. The improvements required to be constructed have been satisfactorily completed and the Project has opened in accordance with the provisions of the Lease/DDA.

2. This Certificate of Completion shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Lease/DDA with respect to the obligations of Developer, and its successors and assigns, to construct the Project improvements and the dates for the beginning and completion thereof; excepting those terms of the Lease/DDA that are specified as surviving completion of the Project, including without limitation, Lease/DDA Sections \_\_\_\_\_, the Grant Deed restrictions/covenants, and any other recorded use or covenant restrictions processed pursuant to the Lease/DDA, the provisions of all which shall continue to run with the land pursuant to their terms. This Certificate of Completion is only applicable to the completion those improvements specified as the "Project" in the Lease/DDA; additional improvements outside the Project definition shall be subject to separate entitlements, permitting and terms of completion.

3. This Certificate of Completion is not intended and shall not constitute evidence of Developer's compliance with the Grant Deed or other surviving use covenants or restrictions under the Lease/DDA or related covenants processed pursuant to the Project, the provisions of which shall continue to run with the land.

4. This Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.

5. This Certificate of Completion is not a Notice of Completion as referred to in California Civil Code Section 3093.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Lease/DDA or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, City has executed this Certificate of Completion this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF LOMPOC, a municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_, Mayor

\_\_\_\_\_, \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM**  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Jeff Malawy, City Attorney

**CONSENT TO RECORDATION**

PALE BLUE DOT VENTURES, INC, a Delaware corporation, as the Developer (defined herein) of the real property legally described herein, hereby consents to the recordation of this Certificate of Completion against the Property (defined herein).

**"DEVELOPER"**

Date: \_\_\_\_\_, \_\_\_\_\_

PALE BLUE DOT VENTURES, INC, a  
Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A" TO CERTIFICATE OF COMPLETION**

**(Lease/DDA Exh. F)**

**PROPERTY LEGAL DESCRIPTION**





A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2024 before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

SEAL: