

**SECOND AMENDMENT TO  
DISPOSITION AND DEVELOPMENT AGREEMENT**

**by and between**

**FULLERTON REDEVELOPMENT AGENCY,  
a public body, corporate and politic,**

**and**

**FULLERTON HISTORIC THEATRE FOUNDATION,  
a California nonprofit corporation**

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## SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

This SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT ("Second Amendment") is entered into as of this 4th day of August, 2009, by and between the FULLERTON REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and the FULLERTON HISTORIC THEATRE FOUNDATION, a California nonprofit corporation ("Foundation"). Agency and Foundation are hereinafter periodically referred to individually as a "party" and collectively as the "parties."

### RECITALS

A. On or about October 19, 2004, Agency and Foundation entered into that certain Disposition and Development Agreement ("Original DDA"), which provided for Foundation to acquire that certain real property located at the northeast corner of Harbor Boulevard and Chapman Avenue in the City of Fullerton, defined in the Original DDA as the "Site," and to rehabilitate the improvements on the Site. The Site is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference. Pursuant to the Original DDA, Foundation acquired the Site on January 24, 2005. The Original DDA required certain instruments to be recorded against the Site upon acquisition by the Foundation, including the Option Agreement recorded in the Official Records of Orange County, California ("Recorder's Office") on January 24, 2005, as Instrument No. 2005000056615 ("Option Agreement"), the Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions recorded on January 24, 2005, as Instrument No. 2005000056617 ("Regulatory Agreement").

B. The Site is comprised of the "Fox Theatre," "Tea Room Building," and "Firestone Building," all as described in the Scope of Work attached to the Original DDA and defined in this Second Amendment below.

C. On or about September 19, 2006, Agency and Foundation entered into that certain First Amendment to Disposition and Development Agreement ("First Amendment"). The Original DDA and First Amendment are collectively referred to as the "DDA."

D. As explained in the DDA, the Project required seismic retrofitting of the Fox Theatre and Tea Room Building (defined in the First Amendment as the "Seismic Work"). Prior to the First Amendment, the Agency Board of Directors ("Agency Board") approved funding in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) for the Seismic Work, but certain conditions were not met that would have authorized the disbursement of the funds for the Seismic Work. Thereafter, Agency and Foundation entered into the First Amendment, in which the parties modified the Schedule of Performance and Agency loaned to Foundation the "Agency Loan" (as defined therein) in the amount of Two Hundred Fifty-Six Thousand Dollars (\$256,000) (herein, the "Agency Loan Reimbursement Amount") for certain planning expenses associated with the Seismic Work. In accordance with the First Amendment, Foundation executed a promissory note secured by deed of trust (defined therein as the "Agency Note" and "Agency Deed of Trust"). The Agency Deed of Trust was recorded in the Recorder's Office on January 9, 2007, as Instrument No. 2007000013697.

E. To further the Project as required by the DDA, Foundation entered into that certain Standard Form of Agreement Between Owner and Architect (AIA Document B141 – 1997 Part 1) with Westlake Reed Leskosky, LLC, an Ohio limited liability company (“WRL”), dated on or about May 6, 2006 (the “WRL Architectural Design Contract”), which generally requires Foundation to make payments to WRL for completion of the architectural, pre-construction, and construction drawings for the Site that will include, among other specifications, plans for seismic retrofitting of the Fox Theatre and Tea Room Building. WRL has filed that certain Design Professional’s Lien/Claim of Lien Code of Civil Procedure § 3081.1, recorded on June 5, 2009, as Instrument No. 2009000292700 (“WRL Design Professional Lien”). On or about July 8, 2009, WRL filed an action in Orange County Superior Court, titled Westlake Reed Leskosky, LLC v. Fullerton Historic Theatre Foundation, Inc., Case No. 30-2009-00125779 (the “WRL/Foundation Action”), and on July 10, 2009, WRL filed a Notice of Lis Pendens, recorded against the Site as Instrument No. 2009000368082 (the “WRL Lis Pendens”) with respect to the WRL/Foundation Action.

F. Despite its best efforts, Foundation has not raised sufficient funds to pay WRL for the WRL Architectural Design Contract and has asked for Agency’s assistance to further the rehabilitation of the Site, as more specifically set forth in this Second Amendment. In exchange for the financial and rehabilitation assistance provided by Agency to Foundation, as further set forth herein, Agency will cause the creation and record or cause to be recorded a condominium plan that subdivides the Site into the Fox Theatre Condominium Unit, Tea Room Building Condominium Unit, and Firestone Building Condominium Unit, and will create a new East Airspace Condominium Unit on adjacent property currently owned by the City of Fullerton (“City”), all of which shall be separate legal parcels. Additionally, Foundation will convey to Agency fee title to the Tea Room Building Condominium Unit and Firestone Building Condominium Unit, subject to the conditions of holding such title set forth herein, as more specifically set forth in this Second Amendment.

G. Agency and Foundation representatives will consult with each other during the rehabilitation of the Site as more specifically set forth in this Second Amendment. Upon the completion of the rehabilitation work specified herein, Agency or Agency’s designated property management company will lease the Tea Room Building Condominium Unit and Firestone Building Condominium Unit so that revenue may be generated from commercial uses consistent with the DDA and distributed to the parties, as more specifically set forth in this Second Amendment.

H. A portion of the proceeds received from the tenants or from other sources, as more specifically set forth herein, shall be used to repay Agency for rehabilitation costs, the outstanding balance on the Agency Loan, and other costs incurred by Agency in connection with the performance its obligations, as more specifically set forth herein. When Foundation has repaid Agency for all costs incurred by Agency specified herein, Agency will then convey fee title to the Tea Room Building Condominium Unit, Firestone Building Condominium Unit, and East Airspace Condominium Unit to Foundation under the terms and conditions set forth herein.

I. Agency and Foundation desire to amend the Original DDA and First Amendment on the terms and conditions set forth in this Second Amendment.

## A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, Agency and Foundation hereby agree as follows:

### 1. DEFINITIONS.

1.1 Previously Defined Terms. Any capitalized terms contained in this Second Amendment which are not defined herein shall have the meaning given in the Original DDA or First Amendment, unless expressly provided to the contrary.

1.2 Additional Definitions. In addition to capitalized terms defined in the DDA and elsewhere in the text of this Second Amendment, the following terms as used in this Second Amendment shall have the meanings given below unless expressly provided to the contrary:

“Agency Additional CCE Implementation Costs” shall mean the costs and expenses incurred by Agency pursuant to this Second Amendment to prepare documents for and to close the CCE, including those costs and expenses set forth in Sections 3.2, 4.3.4(d), 4.3.4(e), and 4.6.10, all of which shall be subject to reimbursement from Foundation pursuant to Section 7.1 of this Second Amendment.

“Agency Approved Title Exceptions” shall mean the following exceptions set forth in the Updated Preliminary Title Report: (a) the standard printed exceptions and exclusions set forth in a standard subdivision guaranty issued by the title insurance company issuing the Subdivision Guaranty, (b) the standard printed exceptions and exclusions set forth in a CLTA standard owners policy of title insurance for a commercial condominium unit, (c) non-delinquent real property taxes which shall be prorated as of the CCE Closing Date, and (d) the following title exceptions set forth in Schedule B of the Updated Preliminary Title Report: Items 1, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, and 27.

“Agency Board” shall mean the Board of Directors for the Fullerton Redevelopment Agency.

“Agency CCE Conditions Precedent” shall mean the conditions set forth in Section 4.6.5 of this Second Amendment.

“Agency Deed of Trust” shall mean that certain Deed of Trust with Assignment of Rents recorded in the Recorder’s Office on January 9, 2007, as Instrument No. 2007000013697.

“Agency Due Diligence Notice” shall mean the notice described in Section 4.3.3 of this Second Amendment.

“Agency Loan Reimbursement Amount” shall mean the amount set forth in Recital D of this Second Amendment.

“Agency Note” shall mean the promissory note secured by deed of trust referenced in Recital D of this Second Amendment.

“Agency Option Quitclaim Deed” shall mean a quitclaim deed substantially in the form of Exhibit “H” attached hereto, releasing from cloud on title the Agency Option.

“Agency Rehabilitation Work” shall mean collectively the Firestone Building Rehabilitation Work, the Fox Theatre Planning and Pre-Development Work, the Fox Theatre Seismic Bracing Work, and the Tea Room Building Rehabilitation Work described in Section 5.2.1 of this Second Amendment.

“Agency Rehabilitation Work Receipts” shall have the meaning set forth in Section 5.3.4 of this Second Amendment.

“Agency Unapproved Title Exceptions” shall mean all exceptions and exclusions set forth in the Updated Preliminary Title Report except the Agency Approved Title Exceptions. Notwithstanding any provision in this Second Amendment to the contrary, all delinquent real property taxes, assessments, charges, fees, and liens, including the Existing Property Tax Lien, and the WRL Design Professional Lien and WRL Lis Pendens, are Agency Unapproved Title Exceptions.

“Amendment to Jin Ho Choi Lease” shall mean the amendment to the Jin Ho Choi Lease in the form substantially similar to Exhibit “B-2” attached hereto.

“CCE Closing Date” shall mean the date for closing the CCE as set forth in Section 4.6.2 of this Second Amendment.

“CCE Conditions Precedent” shall mean the Agency CCE Conditions Precedent and Foundation CCE Conditions Precedent.

“CCE Escrow Holder” shall mean North American Title Company at its offices located at 3780 Kilroy Airport Way, Suite 130, Long Beach, California 90806, with representative Linda Mansfield, or such other escrow company and representative as Agency may designate.

“Common Area” shall mean the undivided fee interest held by the Condominium Units in the approximately 1,400 square feet of real property that comprises the entry court in front of the Fox Theatre, the approximately 4,600 square feet of real property that comprises the parking lot in front of the Firestone Building, and the approximately 1,600 square feet of real property that comprises the entry court to the Tea Room Building, as more particularly set forth in the Condominium Plan.

“Condominium” shall mean an estate in real property consisting of an undivided interest in the Common Area together with a separate interest in the Condominium Units, as more particularly set forth in the Condominium Plan, which all shall comply with the definition of “condominium” set forth under the definition of “condominium project” in the Davis-Stirling Act.

“Condominium Conveyance Escrow” and “CCE” shall mean the escrow that effectuates the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit from Foundation to Agency, as more specifically set forth in Article 3 of this Second Amendment.

“Condominium Plan” shall mean and refer to that certain plan submitted in accordance with Article 3 of this Second Amendment that would create the East Airspace Condominium Unit on that portion of City-owned property on Orange County Assessor Parcel Numbers 029-033-10 and 029-033-36, would create the Common Area, and would create and subdivide the Site into the Firestone Building Condominium Unit, Fox Theatre Condominium Unit, and the Tea Room Building Condominium Unit on Orange County Assessor Parcel Numbers 029-033-20 and 029-033-21.

“Condominium Plan Approval Date” shall mean the date upon which all necessary City, Agency, Planning Commission, other City commissions’ and review bodies’ approvals have been obtained for the Condominium Plan so that the Condominium Plan is in a form ready to be recorded in the Recorder’s Office.

“Condominium Unit(s)” shall mean the Firestone Building Condominium Unit, Fox Theatre Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit, which all shall comply with the definition of “unit” set forth under the definition of “condominium project” in the Davis-Stirling Act.

“Condominium Unit Title Insurance Policy(ies)” shall mean CLTA standard owners policies of title insurance in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000) for the Firestone Building Condominium Unit and Three Million Four Hundred Ten Thousand Dollars (\$3,410,000) for the Tea Room Building Condominium Unit, issued by the Condominium Unit Title Insurance Company for the benefit of Agency, showing fee title vested in Agency for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit free from all clouds on title, except the Agency Approved Title Exceptions.

“Condominium Unit Title Insurance Company” shall be the same title insurance company servicing as CCE Escrow Holder, or such other escrow company and representative as Agency and Foundation may mutually agree to in writing.

“Davis-Stirling Act” shall mean the Davis-Stirling Common Interest Development Act, Civil Code section 1350 *et seq.*

“DDA” shall have the meaning set forth in Recital C of this Second Amendment.

“Due Diligence Date” shall mean the date specified in Section 4.3.2, and any extension thereof, pursuant to this Second Amendment.

“Due Diligence Materials” shall mean the materials specified in Section 4.3.1 of this Second Amendment.

“Due Diligence Materials Delivery Date” shall mean the date specified in Section 4.3.1 of this Second Amendment by which Foundation must deliver to Agency the Due Diligence Materials.

“Due Diligence Period” shall mean the period during which Agency may enter and inspect and test the Site, commencing on the date specified in Section 4.3.2 herein and ending on the Due Diligence Date.



“East Airspace Condominium Unit” shall mean an undivided interest in the Common Area and separate interest in the air space adjacent to and the length of the east side of the Fox Theatre, which shall be used for permanent seismic retrofitting of the Fox Theatre. Said condominium is currently located on City-owned property, is to be created and subdivided pursuant to Article 3 of this Second Amendment, and, if and when subdivided, would constitute a separate legal parcel under the Condominium Plan.

“Existing Property Tax Lien” shall mean the existing property tax lien amounts for defaulted taxes and assessments, delinquent taxes and assessments, and redemption amounts, as identified in Schedule B of the Updated Preliminary Title Report as the following title exceptions: Items 2, 3, 4, and 5.

“Existing Tenant Leases” shall mean collectively the Jin Ho Choi Lease, and Max Billion and My Bui Lease.

“Firestone Building” shall mean the 7,150 square foot building located immediately south of the Fox Theatre that is comprised of six (6) commercial units.

“Firestone Building Condominium Unit” shall mean an undivided interest in the Common Area and a separate interest in the Firestone Building. Said condominium unit is to be created and subdivided pursuant to Article 3 of this Second Amendment and, if and when subdivided, would constitute a separate legal parcel under the Condominium Plan.

“Firestone Building Rehabilitation Work” shall mean the *planning and rehabilitation* work of the Firestone Building set forth in Phases 2, 3, and 4 of the Revised Scope of Work.

“First Amendment” shall have the meaning set forth in Recital C of this Second Amendment.

“Foundation Advisory Committee” shall mean the advisory committee set forth in Section 5.2.6 of this Second Amendment.

“Foundation Advisory Committee Protocols” shall mean the protocols set forth in Exhibit “N” attached hereto.

“Foundation Annual Budget” shall mean the annual budget, approved by the Agency Board, of anticipated revenue and expenditures of the Foundation for the upcoming calendar year (commencing January 1 and ending December 31), as more specifically described in Sections 6.2-6.2.3 of this Second Amendment.

“Foundation Annual Budget Mandatory Disclosure Item(s)” shall mean, for each calendar year, the (a) itemized anticipated operating costs for the Fox Theatre, (b) anticipated costs and expenses for performance of the *Foundation Rehabilitation Work*, (c) anticipated fundraising costs for the *Foundation Rehabilitation Work* and promotion of the Fox Theatre, (d) anticipated insurance payments for the Fox Theatre, and (e) any other anticipated costs that the Agency Board, in its reasonable discretion, approves as an item which should be annually budgeted. The “operating costs” shall include only the proportionate costs to be paid by Foundation for Common Area maintenance, the costs to be paid by Foundation for utilities

servicing the Fox Theatre, the costs to be paid by Foundation for ordinary and regular maintenance of the Fox Theatre (such as painting costs, regular landscaping costs, and janitorial services), the costs of all insurance carried by and on behalf of the Foundation separate from insurance for the Fox Theatre, such as directors and errors and omissions insurance, and the anticipated costs of compensation or reasonable reimbursement to any of the Foundation's board of directors, officers, or employees, and no other costs (except those costs for a specific budget year which may be approved by the Agency Board pursuant to Sections 6.2-6.2.3 of this Second Amendment).

"Foundation CCE Conditions Precedent" shall mean the conditions set forth in Section 4.6.6 of this Second Amendment.

"Foundation Conveyance Option" shall mean the option substantially in the form of Exhibit "L" attached hereto that sets forth the terms and conditions of the conveyance from Agency to Foundation of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit upon satisfaction of conditions set forth therein and in this Second Amendment.

"Foundation Litigation Documents" shall mean any and all documents and materials that are not protected by any applicable privilege that relate to pending or threatened litigation, or litigation that was pending or threatened within the last eighteen (18) months, involving the Site and/or Foundation's ownership thereof.

"Foundation Monthly Rental Receipt Amount" shall mean the monthly amount that Foundation shall be allocated and Agency shall disburse from the aggregate monthly rental payments from all tenants leasing commercial or retail space in the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit, as more specifically described in Section 6.3.2(b) of this Second Amendment. The Foundation Monthly Rental Receipt Amount shall be calculated as one-twelfth (1/12) of the total amount of the Foundation Annual Budget Mandatory Disclosure Items listed in the Foundation Annual Budget approved by the Agency Board for the applicable calendar year in accordance with Sections 6.2-6.2.3 of this Second Amendment.

"Foundation Proposed Annual Budget" shall mean a proposed annual budget of anticipated revenue and expenditures of the Foundation for the upcoming calendar year (commencing January 1 and ending December 31), as more specifically described in Sections 6.2-6.2.3 of this Second Amendment.

"Foundation Rehabilitation Work" shall mean the rehabilitation of the exterior and interior of the Fox Theatre Building in Phase 5 of the Revised Scope of Work, and any other stabilization or rehabilitation work in, on, around, or for the Fox Theatre (excluding the Fox Theatre Seismic Bracing Work).

"Foundation Repayment Account" shall mean the separate account that has deposits and funds dedicated to the repayment of Agency for the Agency Rehabilitation Work, the Agency Loan Reimbursement Amount, Agency Additional CCE Implementation Costs, the WRL Total

Reimbursable Costs, and the Foundation Vesting and Operations Grant, as more particularly set forth in Article 7 of this Second Amendment.

“Foundation Repayment Account Sufficient Fund Date” shall mean the date that the Foundation Repayment Account has sufficient funds (which may include interest that shall not be necessary for payment of any service fees charged by the bank or other financial institution for the operation and maintenance of the Foundation Repayment Account, as authorized in Section 7.1.1 below) that equates to the collective amount of the Agency Rehabilitation Work Receipts, Agency Loan Reimbursement Amount, the Agency Additional CCE Implementation Costs, the WRL Total Reimbursable Costs, and the Foundation Vesting and Operations Grant.

“Foundation Repayment Account Disbursement Date” shall mean the date on which funds from the Foundation Repayment Account are disbursed to Agency in accordance with Section 7.2.2 of this Second Amendment.

“Foundation Repayment Method(s)” shall mean the methods authorized in Section 7.1.2 of this Second Amendment, by which Foundation shall repay Agency for the costs and expenses identified in Section 7.1 of this Second Amendment.

“Foundation Revised Pre-Construction Plans” shall mean the revised plans set forth in Section 5.2.6(b) of this Second Amendment.

“Foundation Vesting and Operations Account” shall mean the separate simple interest checking account in the name of both Foundation and Agency jointly that has the Foundation Vesting Operations Fund, as more particularly set forth in Article 3 of this Second Amendment.

“Foundation Vesting and Operations Grant” shall mean a grant that is no more than Five Hundred Thousand Dollars (\$500,000) provided by Agency to Foundation for purposes of funding any grants dependent on Foundation matching amounts, and for allowing Foundation to maintain for the Fox Theatre a minimum operational budget for fundraising and insurance during the Agency Rehabilitation Work and Foundation Rehabilitation Work.

“Fox Theatre” shall mean the 21,025 square foot Fox Theatre located on Harbor Boulevard between Chapman Avenue and Ellis Place that is comprised of three levels, including the main auditorium, stagehouse, production support spaces, lobbies, retail space, and basement.

“Fox Theatre Condominium Unit” shall mean an undivided interest in the Common Area and a separate interest in the Fox Theatre. Said condominium unit is to be created and subdivided pursuant to Article 3 of this Second Amendment and, if and when subdivided, would constitute a separate legal parcel under the Condominium Plan.

“Fox Theatre Planning and Pre-Development Work” shall mean the planning and pre-development work in Phase 2 of the Revised Scope of Work, which shall include to the maximum extent feasible the plans prepared by WRL pursuant to the WRL Architectural Design Contract.

“Fox Theatre Seismic Bracing Work” shall mean the basic and temporary seismic bracing of the Fox Theatre to be performed or caused to be performed by Agency, as set forth in Phase 4 of the Revised Scope of Work.

“Grant Deed(s)” shall mean the grant deeds conveying from Foundation to Agency the Firestone Building Condominium Unit and Tea Room Building Condominium Unit, substantially in the form of Exhibit “E” attached hereto.

“Jin Ho Choi Lease” shall mean that certain AIR Standard Retail/Multi-Tenant Lease-Net, dated March 26, 2007, by and between Foundation and Jin Ho Choi, an individual d/b/a Daru & G, Inc., and the attachments listed in Section 1.15 of said lease.

“Jin Ho Choi Lease Assignment and Assumption Agreement” shall mean an agreement substantially in the form of Exhibit “D-1” attached hereto that assigns the Jin Ho Choi Lease and the Amendment to the Jin Ho Choi Lease from Foundation to Agency.

“Jupiter Meadows” shall mean Jupiter Meadows Properties, Inc. d/b/a Angelo & Vinci’s Ristorante.

“Jupiter Meadows Parcel” shall mean that certain parcel located immediately adjacent to the north of the Site, owned by Jupiter Meadows and identified as Orange County Assessor Parcel Number 029-033-25.

“Jupiter Meadows Restrictive Covenant” shall mean the reciprocal restrictive covenants of the language that is the same or similar to Exhibit “O” to be recorded against the Jupiter Meadows Parcel and benefitting each of the Condominium Units, as more specifically described in Section 3.5 of this Second Amendment.

“Lessee Estoppel Certificate” shall mean the AIR Standard Estoppel Certificate – By Lessee, Form TSER-3-6-07E, attached as Exhibit “C-1” hereto.

“Lessor Estoppel Certificate” shall mean the AIR Standard Estoppel Certificate – By Lessor, Form TSEE-2-9-07E, attached as Exhibit “C-2” hereto

“Map Act” shall mean the Subdivision Map Act, Government Code section 66410 *et seq.*

“Max Billion and My Bui Lease” shall mean that certain AIR Standard Retail/Multi-Tenant Lease-Net, dated September 13, 2007, by and between Foundation and Max Billion and My Bui, individuals d/b/a Outlaw BBQ & Chili, and the attachments listed in Section 1.15 of said lease.

“Maximum Agency Payment Amount” shall mean the maximum amount set forth in Section 5.2.3 of this Second Amendment that is the maximum amount authorized by the Agency Board to pay for all costs and expenses incurred and paid by Agency under this Second Amendment.

“Memorandum of Second Amendment” shall mean the Memorandum of Second Amendment to Disposition and Development Agreement substantially in the form of Exhibit “M” attached hereto.

“Michael Lutfi Lease” shall mean that certain AIR Standard Retail/Multi Tenant Lease Net, dated May 28, 2008, by and between Foundation and Michael Lutfi, an individual, and the attachments thereto listed in Section 1.15 of said lease.

“Notice of Anticipated Acquisition and Potential Relocation” shall mean the notice in a form substantially similar to Exhibit “B-1” attached hereto.

“Option Agreement” shall mean the agreement referenced in Recital A of this Second Amendment, as same was required to be recorded pursuant to the Original DDA.

“Original DDA” shall have the meaning set forth in Recital A of this Second Amendment.

“Project” shall mean the rehabilitation of the Condominium Units as described more fully in the Revised Scope of Work, with all such improvements to be consistent with the development and building plans and permits to be approved by the Agency and City. In the event of any inconsistency between the description of the Project in this Second Amendment and the approved plans and permits, the approved plans and permits shall govern.

“Public Records Act” shall mean Chapter 3.5, commencing with Section 6250, of Division 7 of Title 1 of the California Government Code (or successor statute).

“Ralph M. Brown Act” shall mean Chapter 9, commencing with Section 54950, of Part 1 of Division 2 of Title 5 of the California Government Code (or successor statute).

“Reciprocal Restrictive Covenants” shall refer to those reciprocal covenants, conditions, and restrictions applicable to the Condominium Units, that benefit and burden each Condominium Unit and run with the land, in a form substantially similar to Exhibit “O” attached hereto.

“Reconveyance of the Agency Deed of Trust” shall mean the instrument of reconveyance, in a form substantially similar to Exhibit “G” attached hereto, of the Agency Deed of Trust referenced in Recital D of this Second Amendment.

“Regulatory Agreement” shall mean the agreement referenced in Recital A of this Second Amendment.

“Revised Schedule of Performance” shall mean the schedule of performance as revised by this Second Amendment, attached as Exhibit “I” hereto.

“Revised Scope of Work” shall mean the revised scope of work of the parties as set forth in Exhibit “J” attached hereto and incorporated by this reference.

“Subdivision Guaranty” shall mean a standard subdivision guaranty issued by the Subdivision Guaranty Company for the benefit of Agency, guarantying the subdivision of the Site is in compliance with law and free from all clouds on title, except the Agency Approved Title Exceptions.

“Subdivision Guaranty Company” shall mean the Condominium Unit Title Insurance Company.

“Tea Room Building” shall mean the 9,700 square foot Tea Room Building that is comprised of three levels, including a partial basement.

“Tea Room Building Condominium Unit” shall mean an undivided interest in the Common Area and a separate interest in the Tea Room Building. Said condominium unit is to be created and subdivided pursuant to Article 3 of this Second Amendment and, if and when subdivided, would constitute a separate legal parcel under the Condominium Plan.

“Tea Room Building Rehabilitation Work” shall mean the planning and rehabilitation work of the Tea Room Building as set forth in Phases 2, 3, and 4 of the Revised Scope of Work.

“Updated Preliminary Title Report” shall mean the preliminary title report for the Site issued by Condominium Unit Title Insurance Company under its Order No. 926692, dated as of July 20, 2009, at 7:30 a.m., attached hereto as Exhibit “K”.

“WRL” shall mean Westlake Reed Leskosky, an Ohio limited liability company.

“WRL Architectural Design Contract” shall mean that certain agreement referenced in Recital E of this Second Amendment.

“WRL Assignment and Assumption Agreement” shall mean an agreement substantially in the form of Exhibit “D-2” attached hereto that assigns the WRL Architectural Design Contract from Foundation to Agency.

“WRL Design Professional Lien” shall mean that certain lien referenced in Recital E of this Second Amendment.

“WRL/Foundation Action” shall mean the legal action referenced in Recital E of this Second Amendment.

“WRL Lis Pendens” shall mean that certain Notice of Lis Pendens referenced in Recital E of this Second Amendment.

“WRL Future Costs” shall mean the costs incurred by WRL for the completion of the construction drawings, as more specifically set forth in Article 5 of this Second Amendment.

“WRL Total Reimbursable Costs” shall mean the costs and expenses equal to the WRL Unpaid Liability and WRL Future Costs.

“WRL Unpaid Liability” shall mean the amount of no more than \$721,573.86 incurred by Foundation pursuant to the WRL Architectural Design Contract that has yet to be paid as of the date of execution of this Second Amendment. The exact amount of the unpaid liability is subject to negotiation by Foundation and Agency with WRL.

1.3 References and Other Terms. Any reference to any document shall include such document both as originally executed and as it may from time to time be amended. References herein to “Article,” “Section,” “Subsection,” “Exhibit,” or “Attachment” shall be construed as references to the DDA and this Second Amendment unless a different document is named or prevalent by context. References to “this Article,” “this Section” or “this Subsection” shall be construed to mean the same Article, Section or Subsection in which the reference appears. The terms “including” and “include” shall mean “including (include) without limitation” unless specifically limited to items or events therein listed.

1.4 Exhibits and Attachments Incorporated Herein. All Exhibits and other documents attached hereto, as now existing and as the same may from time to time be amended, are part of this Second Amendment and incorporated herein by this reference.

## 2. SUMMARY OF DELETIONS AND MODIFICATIONS TO DDA.

2.1 Deletions to Original DDA. The following Articles, Sections, Subsections, Exhibits, and Attachments (or portions thereof) in the Original DDA are hereby deleted:

- (a) The definition of “Project” in Article 1.
- (b) Sections 3.1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.3, 3.4.1, 3.4.3, and the last sentence in Section 3.4.2, in Article 3.
- (c) Section 6.10 in Article 6.
- (d) Attachment No. 2 (Schedule of Performance)
- (e) Attachment No. 3 (Scope of Work)

2.2 Amendments to Original DDA. The following Articles, Sections, Subsections, Exhibits, and Attachments (or portions thereof) in the Original DDA are hereby amended:

2.2.1 Default. Section 5.1 of the Original DDA is deleted and the following language is substituted in its place:

“The occurrence of any of the following, whatever the reason therefor, shall constitute a default of the DDA and this Second Amendment:

- (a) the failure by either party to perform any of its obligations set forth in the DDA (which are not expressly deleted or modified in this Second Amendment) or this Second Amendment or any of the Exhibits or Attachments hereto, if such failure is not cured within thirty (30) days after the nonperforming party’s receipt of written notice from the other party that such obligation was not

performed when due or, if such failure is of a nature that cannot reasonably be cured within thirty (30) days, the party in question fails to commence such cure immediately after receipt of a notice and thereafter diligently prosecute such cure to completion; or

(b) any material representation or warranty by a party set forth in this Second Amendment proves to have been incorrect in any material respect when made.”

Section 5.1 as amended above shall apply when Section 5.1 is referenced in the Original DDA and any attachments and exhibits thereto, including the Option Agreement and Regulatory Agreement, and the First Amendment and any attachments and exhibits thereto, including the Agency Note and the Agency Deed of Trust.

2.2.2 Indemnity. Section 5.7 of the Original DDE is deleted and the following language is substituted in its place:

“Foundation shall defend, indemnify and hold harmless Agency and the City, and their respective officers, officials, members, employees, agents, representatives and volunteers, from all claims, demands, damages, defense costs or liability of any kind or nature where such claims, demands, damages or defense costs arise from the acts or omissions of Foundation or its agents, employees, volunteers, or representatives, whether such damage shall accrue or be discovered before or after termination of the DDA and/or this Second Amendment and whether or not such liability, loss, damage, costs, or expenses are covered by insurance, except to the extent that such matters are caused by the active negligence or willful misconduct of Agency or City. For purposes of this provision, architects, contractors, general contractors, subcontractors, materialmen, and any other agent or employee hired by Agency, City or its agents, employees, officials, or designees, to perform the rehabilitation work contemplated herein, shall not be considered an agent, employee or representative of Foundation, except and unless such architect, contractor, general contractor, subcontractor, materialmen or other agent was acting at the time of the damage or injury at the express direction of Foundation, or its agent, employee or representative. This provision shall not supersede or be considered primary to any indemnity obligation provided to Foundation, Agency, City, or their officers, agents, officials, employees, members, representatives, volunteers, or indemnities by any architect, contractor, general contractor, subcontractor, materialmen or other agent or employee performing the rehabilitation work contemplated herein.”

2.3 Deletions to First Amendment. The following Articles, Sections, Subsections, Exhibits, and Attachments (or portions thereof) in the First Amendment are hereby deleted:

- (a) Sections 2, 3.5, and 3.6, in their entirety.
- (b) Exhibit “A” (Schedule of Performance).



3. ENTITLEMENTS FOR AND SUBDIVISION OF THE SITE; CREATION OF EAST AIRSPACE CONDOMINIUM UNIT; VESTING AND OPERATIONS ACCOUNT

3.1 Foundation Obligation Generally. Foundation shall have the obligation when required by law or by this Second Amendment to secure or cause to be secured all permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the Site and Revised Scope of Work during any period of the Revised Schedule of Performance, and all documentation and information required to comply with the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*). Foundation shall comply with any environmental mitigation measures imposed as conditions of approval of the Project. Foundation shall have the obligation to obtain any and all instruments in recordable form to remove from title the Existing Property Tax Lien and WRL Design Professional Lien.

3.2 Condominium Plan. As of the date of this Second Amendment, the Site is comprised of one legal parcel. In order to protect Agency's interests during and after the Agency Rehabilitation Work, and repayment thereof (as well as repayment of the additional obligations identified in Section 7.1 of this Second Amendment), Agency shall prepare a condominium plan for a condominium project, as those terms are defined in the Davis-Stirling Act, that sufficiently describes the Common Area, Firestone Building Condominium Unit, Fox Theatre Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit as separate legal parcels ("Condominium Plan"). All costs that Agency incurs for the preparation and recording of the Condominium Plan shall be part of the Agency Additional CCE Implementation Costs, and Foundation shall reimburse said costs pursuant to the Section 7.1. When interpreting deeds, leases, subleases, declarations, and plans, the existing physical boundaries of a Condominium Unit or Condominium Unit constructed, or reconstructed, in substantial accordance with the Condominium Plan, shall be conclusively presumed to be the Condominium Unit's boundaries rather than the description expressed in the deed, lease, sublease, declaration, or plan, regardless of settling or lateral movement of any building or structure and regardless of minor variances between boundaries as shown on the Condominium Plan or in the deed, lease, sublease, declaration, or plan, and those of the building or structure as constructed.

3.3 Subdivision of Site. Agency, with Foundation's approval as evidenced by execution of this Second Amendment, shall apply for and process a subdivision of the Site and the portion of the City-owned property on which the East Airspace Condominium Unit will be located by the Condominium Plan in accordance with applicable laws, including the Map Act, the Fullerton Municipal Code, any other state and local implementing rules, regulations, and policies. In the event that all necessary City agencies, commissions, and review bodies approve the Condominium Plan and subdivision according thereto, Agency shall (a) attach to this Second Amendment as Exhibits "A-1" to "A-4" the legal descriptions for the Fox Theatre Condominium Unit, Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit; and (b) record or cause to be recorded in the Recorder's Office the Condominium Plan. Foundation shall consent to the recording of the Condominium Plan as required by the Davis-Stirling Act.

3.4 Reciprocal Restrictive Covenant. Each and every Condominium Unit hereunder, at the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit pursuant to Article 4 below, shall have recorded against its parcel a

Reciprocal Restrictive Covenant benefitting the other Condominium Units, such covenant in the form attached hereto as Exhibit "O".

3.5 Best Efforts for Adjacent Property; Restrictive Covenant. Prior to the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit pursuant to Article 4 below, Agency shall use reasonable efforts to obtain from Jupiter Meadows the Jupiter Meadows Restrictive Covenant that would be recorded against the Jupiter Meadows Parcel for the benefit of each of the Condominium Units. As used in this Section, "reasonable efforts" shall mean at least one communication with Jupiter Meadows. In the event that Jupiter Meadows does agree to execute the Jupiter Meadows Restrictive Covenant, Agency shall co-sign the Jupiter Meadows Restrictive Covenant for the benefit of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit, and Foundation shall co-sign the Jupiter Meadows Restrictive Covenant for the benefit of the Fox Theatre Condominium Unit. Neither party shall be relieved or released from its obligations under this Second Amendment in the event that, after reasonable efforts, Agency is not able to obtain from Jupiter Meadows a restrictive covenant as described in this Section.

3.6 Creation of Foundation Vesting and Operations Account and Deposit of Foundation Vesting and Operations Grant.

3.6.1 Creation of Account; Joint Holders; Withdrawal of Funds. No later than sixty (60) days after the complete execution and approval by Agency Board of this Second Amendment, Agency and Foundation shall open the Foundation Vesting and Operations Account at a bank or other reputable financial institution (in this Section, the "bank") licensed by the State of California to provide such account management services with branch locations in the City of Fullerton. The Foundation Vesting and Operations Account shall require that, prior to the deposit of any funds into the Foundation Vesting and Operations Account, both Agency and Foundation shall be required to deliver to the bank written consent expressly authorizing the source and amount of any deposit into the Foundation Vesting and Operations Account. The Foundation Vesting and Operations Account also shall require that, prior to the withdrawal of any or all funds from the Foundation Vesting and Operations Account, both Agency and Foundation shall be required to deliver to the bank written consent expressly authorizing the amount and use of any withdrawal from the Foundation Vesting and Operations Account. The party seeking to make a deposit or withdrawal from the Foundation Vesting and Operations Account shall deliver to the other party, prior to any deposit or withdrawal, written notice thereof that documents the amount of the anticipated deposit or withdrawal, and for anticipated deposits, the source of the funds, and for anticipated withdrawals, the intended use of the funds. Any deposit that is not expressly authorized in writing by both Agency and Foundation shall be immediately returned to the source of said deposit by the party that made or attempted to make said deposit, and any withdrawal that is not expressly authorized in writing by both Agency and Foundation shall be immediately recovered and re-deposited into the Foundation Vesting and Operations Account by the party that made the improper withdrawal. A party that deposits into or withdrawals from the Foundation Vesting and Operations Account any amount of funds in violation of this Section shall be in default of this Second Amendment. In the event that a party improperly makes a withdrawal of any funds from the Foundation Vesting and Operations Account in violation of this Section, and said party is unable to recover the amount of funds improperly withdrawn, then said party shall have the obligation to re-deposit the amount of funds

improperly withdrawn from another source of funds that receives the prior written consent of the other non-defaulting party.

3.6.2 Deposit of the Foundation Vesting and Operations Grant; Other Deposits. No later than sixty (60) days after the complete execution and approval by Agency Board of this Second Amendment, Agency shall deposit, and Foundation shall consent to said deposit by its execution of this Second Amendment, the Foundation Vesting and Operations Grant. Any future deposits shall be governed by Section 3.6.1 above.

3.6.3 Closing of Account. Upon the complete withdrawal in accordance with this Second Amendment of all funds from the Foundation Vesting and Operations Account, Agency and Foundation shall jointly close or cause the closing of the Foundation Vesting and Operations Account. Any interest accrued from deposits shall be used to cover costs for closing the Foundation Vesting and Operations Account, and if any interest remains, the remaining amount may be disbursed to Foundation upon the closing of the Foundation Vesting and Operations Account.

#### 4. CONVEYANCE OF FIRESTONE BUILDING AND TEA ROOM BUILDING CONDOMINIUM UNITS

4.1 Agreement to Convey Condominium Units. Subject to the terms and conditions of this Second Amendment, Foundation agrees to convey to Agency, and Agency agrees to accept from Foundation, the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. It is expressly understood and agreed by the parties that, if Agency approves the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit pursuant to the terms and conditions of this Second Amendment, the Firestone Building Condominium Unit and Tea Room Building Condominium Unit shall be concurrently conveyed to Agency, and Foundation shall not have the right to withhold the conveyance to Agency of any one of said Condominium Units.

4.1.1 Preservation of Rights under Agency Note, Agency Deed of Trust, Option Agreement, and DDA. Agency hereby reserves any and all rights it has or may have contractually and at law or in equity under the Agency Note and under the Agency Deed of Trust, the Option Agreement, and all other matters of record (including but not limited to rights of priority for its recorded instruments), and Agency's recorded instruments shall remain in force and effect unless and until, pursuant to the terms and conditions of this Second Amendment, said recorded instruments may be modified or removed as a matter of record after the CCE Closing Date. Foundation acknowledges and agrees that nothing in this Second Amendment obligates or shall be deemed to obligate Agency to make any payments to, or having any liability for, the WRL Unpaid Liability, the WRL Design Professional Lien, or the WRL/Foundation Action unless and until, pursuant to the terms and conditions of this Second Amendment, Foundation satisfies all of the Agency CCE Conditions Precedent, the CCE closes in accordance with this Second Amendment, and Agency assumes the WRL Architectural Design Contract in accordance with this Second Amendment. Foundation also acknowledges and agrees that nothing in this Second Amendment obligates or shall be deemed to obligate Agency to make any payments towards, or having any liability for, the Existing Property Tax Lien. This Section shall not be construed to limit any of Agency's rights it has or may have contractually and at law or in

equity under any other document or instrument not specifically listed in this Section to which Agency and Foundation are parties.

4.2 Consideration for Conveyances. Agency shall have no obligation to pay to Foundation any additional consideration or purchase price for the conveyances of the Firestone Building Condominium Unit or Tea Room Building Condominium Unit, it being expressly understood and agreed by the parties that the value provided by Agency to Foundation for the conveyances herein described shall be solely and exclusively based upon Agency's willingness to perform the Agency Rehabilitation Work and to assume the WRL Architectural Design Contract and costs incurred and to be incurred thereto as more specifically set forth in this Second Amendment.

#### 4.3 Inspections and Review.

4.3.1 Delivery of Due Diligence Materials. No later than fifteen (15) days after the complete execution and approval by Agency Board of this Second Amendment (the "Due Diligence Materials Delivery Date"), Foundation shall deliver to Agency all documents, reports, agreements or other items in Foundation's possession or control relating to the environmental condition, authorized uses, and contractual relationships for the Firestone Building and Tea Room Building, including without limitation (a) all licenses and leases and amendments and modifications thereto relating to the Firestone Building and Tea Room Building, or the construction of improvements thereon or therein, (b) copies of the following documents generated or created at the request of Agency with respect to the Site: soils reports, engineering data, environmental reports, and other data or studies pertaining to the Site or any portion thereof, (c) the Lessee Estoppel Certificates and Lessor Estoppel Certificates specified in Section 4.4.2 of this Second Amendment, and (d) the WRL Architectural Design Contract (the "Due Diligence Materials"). To the extent the information is not already known to the public, Agency shall keep confidential the information contained in the Due Diligence Materials, and Agency shall not disclose such information to any third parties except Agency's lenders, consultants and attorneys, or as may be required by law or by a court of law due to a dispute arising under this Second Amendment or the DDA. In the event that the Firestone Building Condominium Unit or Tea Room Building Condominium Unit is not conveyed to Agency by Agency's termination of this Second Amendment for any reason, Agency shall return to Foundation (and instruct its attorneys, consultants and representatives to return to Foundation) all copies of the Due Diligence Materials that Foundation has provided to Agency.

4.3.2 Due Diligence Period and Inspections. Foundation shall permit Agency and Agency's employees, representatives, agents, engineers, consultants, contractors, and designees to enter onto the Site, commencing on either the date of the final approval by City of the Condominium Plan (the "Condominium Plan Approval Date") or the Due Diligence Materials Delivery Date, whichever date is later, and ending on the date that is fifteen (15) days thereafter (the "Due Diligence Date"), for purposes of examining, inspecting and investigating the Site, including the site work, foundations, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, hazardous materials or wastes, if any, and, at Agency's sole and absolute discretion, determining whether the Firestone Building Condominium Unit and Tea Room Building Condominium Unit are acceptable to Agency for conveyance. All of the foregoing inspections shall be performed by

Agency at Agency's sole cost and expense. Agency shall coordinate its entries on the Site with Foundation. Agency shall, in a timely manner, repair any and all damage to the Site caused by such inspections or investigations.

4.3.3 Disapproval/Termination within Due Diligence Period; Litigation Documents; WRL/Foundation Action Dismissal.

(a) Notice. Agency shall notify Foundation in writing ("Agency's Due Diligence Notice") on or before the Due Diligence Date of Agency's approval or disapproval of the Due Diligence Materials, the condition of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and Agency's investigations with respect thereto. Agency's disapproval of the Due Diligence Materials or the condition of the Firestone Building Condominium Unit, and/or Tea Room Building Condominium Unit shall be deemed Agency's election to not accept the conveyance of all of said Condominium Units, in which case Agency shall have no obligation to perform the Agency Rehabilitation Work and shall have the right to terminate this Second Amendment. In the event that Agency terminates this Second Amendment by the Due Diligence Date, Foundation's and Agency's rights and obligations as set forth in the DDA would remain operative and enforceable notwithstanding Article 2 and Section 8.1 of this Second Amendment. Agency's failure to deliver Agency's Due Diligence Notice by the Due Diligence Date (or any extension thereof pursuant to this Second Amendment) shall be deemed Agency's approval to the Due Diligence Materials.

(b) Foundation Litigation Documents. Foundation shall deliver to Agency the Foundation Litigation Documents at the same time that Foundation delivers the Due Diligence Materials pursuant to Section 4.3.1 above. Foundation shall have a continuing obligation to deliver to Agency any newly filed or threatened litigation documents that would fall under the definition of Foundation Litigation Documents until the CCE Closing Date. Agency shall have the right until the CCE Closing Date to review the Foundation Litigation Documents and disapprove the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit based upon the information and risk of litigation disclosed in the Foundation Litigation Documents, in which case Agency shall have no obligation to perform the Agency Rehabilitation Work and shall have the right to terminate this Second Amendment. The CCE shall not close unless and until Agency delivers to Foundation and CCE Escrow Holder written approval of the Foundation Litigation Documents and expressly authorizes the CCE Escrow Holder to proceed to close the CCE. At any time prior to the CCE Closing Date, Foundation may deliver any and all Foundation Litigation Documents directly to Agency's designated legal counsel.

(c) WRL/Foundation Action; Resolution Required for Closing CCE; Status Updates and Delivery of Court Documents. Notwithstanding the provisions in Subsection 4.3.3(b) above or anything in this Second Amendment to the contrary, Agency shall have no obligation to proceed to Close the CCE or

authorize the closing of the CCE unless and until the WRL/Foundation Action has been completely resolved (including any appeals), and final judgment has been entered, whether by stipulated judgment per settlement agreement, dismissal with prejudice (and no right to appeal), or otherwise, and the WRL Lis Pendens has been removed from record title of the Site or is in a condition to be removed from record title immediately prior to the CCE Closing Date. Foundation shall have a continuing obligation to update Agency on the status of the WRL/Foundation Action upon any request by Agency for the same, and Foundation shall deliver to Agency copies of all orders, rulings, motions, briefs, and any other documents filed in the Orange County Superior Court for the WRL/Foundation Action. Nothing in this Second Amendment obligates or shall be deemed to obligate Agency to indemnify or defend Foundation in the WRL/Foundation Action.

4.3.4 Title Review and Exceptions; Condominium Unit Title Insurance and Subdivision Guaranty.

(a) Preliminary Title Report. Prior to the execution of this Second Amendment, Agency received and reviewed the Updated Preliminary Title Report for the Site and the underlying title documents referenced in the Updated Preliminary Title Report.

(b) Removal of Title Exceptions; Notices by Parties. During the Due Diligence Period, Foundation shall remove or cause to be removed all Agency Unapproved Title Exceptions. In the event that Foundation has not removed or caused to be removed from the Updated Preliminary Title Report all of the Agency Unapproved Title Exceptions by the Due Diligence Date, Agency shall deliver to Foundation written notice (the "Agency Removal Notice") to remove the Agency Unapproved Title Exceptions. Upon delivery of the Agency Removal Notice, Foundation shall have twenty (20) days to remove the Agency Unapproved Title Exceptions, and the Due Diligence Period and all Agency obligations to be performed by the Due Diligence Date shall be extended for such time and until Foundation removes or causes to be removed the Agency Unapproved Title Exceptions. In the event that Foundation fails to remove or cause to be removed the Agency Unapproved Title Exceptions by the end of the twenty (20)-day removal period, Agency shall have the right in its sole and absolute discretion to exercise one of the following: (i) Accept in writing any one or all of the Agency Unapproved Title Exceptions, in which case the applicable Agency Unapproved Title Exception(s) shall become an Agency Approved Title Exception(s); or (ii) Terminate this Second Amendment, in which case Foundation's and Agency's rights and obligations as set forth in the DDA would remain operative and enforceable notwithstanding Article 2 and Section 8.1 of this Second Amendment; or (iii) Enter into a written side-letter agreement with Foundation to extend the date, to be chosen at Agency's discretion, by which Foundation shall remove or cause to be removed the Agency Unapproved Title Exceptions, in which case Agency shall have a right upon the expiration of said extension date to thereafter exercise any one of the options set forth in clauses (i)-(iii) in this Subsection 4.3.4(b). In no event shall Agency have an obligation to

fulfill the Foundation CCE Conditions Precedent, nor shall Agency have any obligation to perform the Agency Rehabilitation Work unless and until Foundation removes or causes to be removed the Agency Unapproved Title Exceptions (unless Agency expressly accepts an Agency Unapproved Title Exception pursuant to clause (i) above). Upon the removal of all Agency Unapproved Title Exceptions, Foundation shall deliver or cause CCE Escrow Holder to deliver to Agency written confirmation thereof.

(c) Supplemental Preliminary Title Reports. Upon the issuance of any amendment or supplement to the Updated Preliminary Title Report which adds additional exceptions, or adds any new requirement, the rights of review and approval set forth in this Second Amendment shall also apply to said amendment or supplement.

(d) Subdivision Guaranty. Agency shall obtain and pay for the costs of obtaining the Subdivision Guaranty. Subdivision Guaranty Company shall be irrevocable committed to issue no later than the CCE Closing Date the Subdivision Guaranty in the name of Agency. All costs and expenses incurred by Agency to obtain the Subdivision Guaranty shall be Agency Additional CCE Implementation Costs and subject to reimbursement from Foundation pursuant Section 7.1 of this Second Amendment.

(e) Title Insurance for Certain Condominiums. Agency shall obtain and pay for the costs of obtaining from the Condominium Unit Title Insurance Company the Condominium Unit Title Insurance Policies for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. All costs and expenses incurred by Agency to obtain the Condominium Unit Title Insurance Policies shall be Agency Additional CCE Implementation Costs and subject to reimbursement from Foundation pursuant Section 7.1 of this Second Amendment.

4.3.5 Indemnification of Foundation. During the Due Diligence Period, Agency shall keep the Site free from all liens resulting from Agency's inspection and testing of the Site and shall protect, indemnify, defend (with counsel reasonably acceptable to Foundation) and hold the Site, Foundation and Foundation's officers, directors, shareholders, participants, partners, affiliates, employees, representatives, invitees, agents and contractors free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including attorney's fees and court costs, resulting from Agency's inspection and testing of the Site, including, without limitation, repairing any and all damages to any portion of the Site and any injury to persons caused by Agency, arising out of or related to Agency's conducting such inspections and tests. Each and every provision and condition of this Section shall survive the CCE Closing Date and any termination of this Second Amendment; provided, however, that Agency shall have no obligations under this Section with respect to any existing liens recorded or liens that are threatened to be recorded against the Site that are unrelated to Agency's inspection and testing of the Site, including the Existing Property Tax Lien and WRL Design Professional Lien.

4.3.6 Insurance Requirements. Before Agency commences any physical inspection of the Site or entry thereon during the Due Diligence Period, Agency shall deliver to Foundation, at Agency's expense, certificates of insurance in forms reasonably acceptable to Foundation, which evidence that Agency (or, as appropriate, its consultant(s)), has obtained from financially responsible insurance company(ies) acceptable to Foundation, policies covering the activities of Agency and Agency's employees, agents, consultants and contractors on, upon or about the Site and Agency's indemnity obligation set forth in Section 4.3.5 above: (i) purchaser's general liability insurance policy with a per occurrence limit of at least \$5,000,000.00 and an aggregate limit of at least \$5,000,000.00, listing Foundation as an additional insured; (ii) worker's compensation/employer's liability in the minimum statutory amount(s), listing Foundation as an additional insured; (iii) other parties' general liability policy with a per occurrence limit of at least \$1,000,000.00 and an aggregate limit of at least \$2,000,000.00, listing Foundation as an additional insured; and, as to any environmental investigation of the Site, evidence that Agency and its agents and contractors have the following insurance in full force and effect meeting the requirements below; (iv) professional liability, including pollution coverage, with limits of \$1,000,000.00 per occurrence and an aggregate limit of \$2,000,000.00; (v) contractor's pollution liability policy with limits of \$1,000,000.00 per occurrence and an aggregate limit of \$2,000,000.00 and naming Foundation as an additional insured. Any insurance required herein may be maintained under a blanket policy or an umbrella policy insuring other parties and other locations so long as such policy satisfies the foregoing requirements.

Notwithstanding the foregoing, during the Due Diligence Period Agency may self-insure and shall not be required to provide the insurance policies set forth in the preceding paragraph, provided Agency's self-insurance program operates in the same manner as a typical commercial insurance policy, Foundation has the same rights as additional insured as it would have had if coverage had been provided by a typical commercial insurance company, and Agency's plan of self-insurance is in full compliance with all applicable state and federal rules and regulations. Any consultants entering the Site and performing inspections during the Due Diligence Period shall still be required to provide the insurance policies set forth in the preceding paragraph.

#### 4.4 Existing Tenant Leases.

4.4.1 Existing and Former Tenant Leases; Representations and Warranties; Indemnity. Foundation represents and warrants to Agency that the only existing leases, subleases, licenses, or rights of use or occupancy pertaining to the Site are the Existing Tenant Leases, and that no amendments exist or will be made to said Existing Tenant Leases except as set forth in this Second Amendment. Foundation further represents and warrants to Agency that the Michael Lutfi Lease has been terminated. Foundation shall indemnify, defend (with counsel of Agency's choosing), and hold harmless Agency from and against any and all claims, liabilities, damages or losses made against it by any lessees, tenants, subtenants, or occupants of the Site that claim a default or breach of a right to use or occupy all or any portion of the Site, except for claims made by the lessees in the Existing Tenant Leases unless said claims are otherwise subject to indemnity by Foundation pursuant to this Second Amendment.



#### 4.4.2 Estoppel Certificates.

(a) Execution and Delivery to Agency. No later than the Due Diligence Materials Delivery Date, Foundation shall deliver or cause to be delivered to Agency the following estoppel certificates completely executed by the lessors and lessees thereto:

(i) For the Jin Ho Choi Lease, a Lessee Estoppel Certificate and Lessor Estoppel Certificate;

(ii) For the Max Billion and My Bui Lease, a Lessee Estoppel Certificate and Lessor Estoppel Certificate;

(iii) For the Michael Lutfi Lease, a Lessor Estoppel Certificate, which shall identify the termination date of said lease.

(b) Material Reliance by Agency; Right to Terminate Escrow. The responses in the Lessee Estoppel Certificates and Lessor Estoppel Certificates shall be material and shall be materially relied upon by Agency in authorizing the CCE Escrow Holder to proceed with closing the CCE. Provided Foundation has timely delivered the Lessee Estoppel Certificates and Lessor Estoppel Certificates, Agency shall have the right in its reasonable discretion to terminate the CCE on or before the Due Diligence Date based upon the responses in said Lessee Estoppel Certificates and Lessor Estoppel Certificates. In the event that any responses in said Lessee Estoppel Certificates and Lessor Estoppel Certificates are or with the passage of time will be false or inaccurate (except a response from lessee(s) in the Jin Ho Choi Lease and Foundation regarding amendments to the Jin Ho Choi Lease, which shall be amended after delivery of the Lessee Estoppel Certificate and Lessor Estoppel Certificate pursuant to Section 4.4.3 below), Agency shall have the right to pursue against Foundation any and all rights and remedies at law or in equity for failure to disclose a material term. The provisions in this Section shall survive the close of the CCE.

4.4.3 Notice and Amendment to Existing Tenant Lease. Provided the CCE is not terminated by the Due Diligence Date in accordance with this Second Amendment, then no earlier than one (1) business day after the Due Diligence Date and no later than five (5) days after the Due Diligence Date, Foundation shall deliver to the lessee(s) of the Jin Ho Choi Lease the Notice of Anticipated Acquisition and Potential Relocation in a form substantially similar to Exhibit "B-1" and an execution copy of the Amendment to Jin Ho Choi Lease in a form substantially similar to Exhibit "B-2" attached hereto. No later than five (5) days before the CCE Closing Date, Foundation shall obtain and deliver to CCE Escrow Holder the original of the Amendment to Jin Ho Choi Lease executed between the lessee(s) of the Jin Ho Choi Lease and Foundation, with a copy delivered to Agency for verification of its execution.

4.4.4 Assignment and Assumption of Existing Tenant Lease. Provided the CCE is not terminated by the Due Diligence Date, and provided the lessee(s) in the Jin Ho Choi Lease have executed the Amendment to Jin Ho Choi Lease, in accordance with this Second

Amendment, then Agency shall execute a counterpart and deliver to CCE Escrow Holder an original of the Jin Ho Choi Lease Assignment and Assumption Agreement, and Foundation shall execute a counterpart and deliver to CCE Escrow an original of the Jin Ho Choi Lease Assignment and Assumption Agreement. The Jin Ho Choi Lease Assignment and Assumption Agreement shall expressly provide that its terms and conditions shall become operable only if the CCE closes and the Firestone Building Condominium Unit is conveyed from Foundation to Agency pursuant to this Second Amendment, and that, in the event the CCE does not close, the Jin Ho Choi Lease Assignment and Assumption Agreement shall be null and void without any further action required of Agency and Foundation.

4.4.5 Termination of Month-to-Month Existing Lease. Provided the CCE is not terminated by the Due Diligence Date in accordance with this Second Amendment, then no earlier than one (1) business day after the Due Diligence Date, Foundation shall terminate the Max Billion and My Bui Lease pursuant thereto. Foundation shall provide sufficient notice of termination so that the lessee(s) of the Max Billion and My Bui Lease will have no less than thirty (30) days to vacate the premises. Agency shall have no obligation to authorize the closing of the CCE or to perform any of the Agency Rehabilitation Work unless and until the lessee(s) of the Max Billion and My Bui Lease have vacated the premises on the Site.

4.4.6 Written Confirmation of Termination and Vacating of Premises for Month-to-Month Existing Lease. Upon the vacating of the premises by the lessee(s) of the Max Billion and My Bui Lease, Foundation shall execute and deliver to Agency (with copy to CCE Escrow Holder) a subsequent Lessor Estoppel Certificate that identifies the date of termination of the Max Billion and My Bui Lease and the date that the lessee(s) thereto vacated the premises. Upon delivery to Agency of the subsequent Lessor Estoppel Certificate, Agency shall have the right to materially rely upon said Lessor Estoppel Certificate in accordance with Section 4.4.2(b) above.

4.4.7 Relocation. Foundation, at its sole cost and expense, shall be responsible for providing any relocation assistance and paying all relocation costs to any tenants or occupants who may be displaced from the Firestone Building, Tea Room Building, or other portion of the Site if such benefits or assistance are required to be provided by law. Foundation shall indemnify, defend (with counsel of Agency's choosing), and hold harmless Agency from and against any and all claims, liabilities, damages or losses made against it by lessees, tenants, or occupants of the Site, including without limitation claims for relocation assistance, inverse condemnation, and claims otherwise arising from any act or omission of Foundation pursuant to this Section.

4.4.8 No Condemnation of Leasehold Estates. Foundation understands and agrees that Agency shall have no obligation to use, and Agency hereby covenants not to use, any power of eminent domain or a threat of eminent domain in the acquisition of the Existing Tenant Leases or any other leasehold estate pertaining to the Site.

#### 4.5 Option Agreement, Agency Deed of Trust, and Existing Agency Loan.

4.5.1 Option Agreement; Quitclaim Release. Provided Foundation has fulfilled its obligations set forth in this Second Amendment through the CCE Closing Date and

provided the Firestone Building Condominium Unit and Tea Room Building Condominium Unit are in a condition to be conveyed from Foundation to Agency pursuant to this Second Amendment, then Agency shall execute and deliver to CCE Escrow Holder the Agency Option Quitclaim Deed with instructions to CCE Escrow Holder to record or cause to be recorded the Agency Option Quitclaim Deed against the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. From the date of recording of the Agency Option Quitclaim Deed, Foundation shall no longer be subject to the terms and conditions of the Option Agreement as it pertains to the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. Foundation expressly understands and agrees that the Option Agreement shall remain binding upon the Fox Theatre Condominium Unit.

4.5.2 Repayment of Agency Loan Reimbursement Amount; Agency Note.

Foundation shall repay to Agency the Agency Loan Reimbursement Amount. Provided Foundation has fulfilled its obligations set forth in this Second Amendment through the CCE Closing Date and provided the Firestone Building Condominium Unit and Tea Room Building Condominium Unit are conveyed from Foundation to Agency pursuant to this Second Amendment, then Foundation shall repay the Agency Loan Reimbursement Amount in accordance with Article 7 of this Second Amendment and not in accordance with the Agency Note. In the event Foundation fails to repay when due any portion of the Agency Loan Reimbursement Amount in accordance with the repayment provisions set forth in this Second Amendment, then Agency shall have the right to reinstate the repayment provisions set forth in the Agency Note for the portion of the Agency Loan Reimbursement Amount that has yet to be repaid by Foundation, and Agency shall have the right to demand that Foundation record a new deed of trust in favor of Agency securing the Fox Theatre Condominium Unit (or, in the event the Agency conveys to Foundation the East Airspace Condominium Unit or reconveys the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit to Foundation pursuant to this Second Amendment, record a new deed of trust securing said Condominium Unit(s)) for repayment of the balance of the Agency Loan Reimbursement Amount.

4.5.3 Reconveyance of Deed of Trust.

Provided Foundation has fulfilled its obligations set forth in this Second Amendment through the CCE Closing Date and provided the Firestone Building Condominium Unit and Tea Room Building Condominium Unit are in a condition to be conveyed from Foundation to Agency pursuant to this Second Amendment, then Agency shall execute and deliver to CCE Escrow Holder the Reconveyance of the Agency Deed of Trust with instructions to CCE Escrow Holder to record or cause to be recorded said Reconveyance of the Agency Deed of Trust against the Site (in the event that the Site has not yet been subdivided by the Condominium Plan as of the CCE Closing Date) or against the Fox Theatre Condominium Unit, Firestone Building Condominium Unit, and Tea Room Building Condominium Unit (in the event that the Site has been subdivided by the Condominium Plan prior to the CCE Closing Date). From the date of recording of the Reconveyance of the Agency Deed of Trust, Foundation shall no longer be subject to the terms and conditions of the Agency Deed of Trust.

#### 4.6 Escrow.

4.6.1 Opening of Escrow. No later than five (5) days after the approval and complete execution of this Second Amendment or the Condominium Plan Approval Date, whichever date is later, Agency and Foundation shall open an escrow (“Condominium Conveyance Escrow” or “CCE”) with CCE Escrow Holder by causing an executed copy of this Second Amendment to be deposited with CCE Escrow Holder.

4.6.2 Close of Escrow; Closing Date. The date for closing the CCE for the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit from Foundation to Agency shall occur on the date that is the latest of the following: (a) thirty-five (35) days after the Due Diligence Date, or (b) five (5) days after the date on which the parties have satisfied all CCE Conditions Precedent (or waived those conditions that can be waived) as provided in this Second Amendment, or (c) five (5) days after the lessee(s) of the Max Billion and My Bui Lease have vacated the premises on the Site (the latest date being the “CCE Closing Date”). The parties may extend the CCE Closing Date by mutual agreement in writing deposited with CCE Escrow Holder. Agency shall notify Foundation of the anticipated CCE Closing Date and any extensions thereof, and shall otherwise keep Foundation informed of the status and progress of the closing for the conveyance of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit. Each party shall timely perform all acts required of it pursuant to this Second Amendment, and all other acts reasonably required of it, to enable CCE Escrow Holder to close the CCE. If the CCE is not in a condition to close by the CCE Closing Date, a party not then in default hereunder may elect to terminate the CCE by giving written notice of such termination to the other party and CCE Escrow Holder within ten (10) days of the otherwise anticipated CCE Closing Date. No such termination shall release a party then in default from liability for such default. If neither party elects to terminate the CCE within said ten (10)-day period, then CCE Escrow Holder shall proceed to close CCE as soon as possible. The terms the “Close of CCE,” “Close of Escrow,” and/or the “Closing” are used herein to mean the date the Grant Deeds conveying the Firestone Building Condominium Unit and Tea Room Building Condominium Unit from Foundation to Agency are recorded in the Recorder’s Office.

4.6.3 Escrow Instructions. This Second Amendment, together with any standard instructions of CCE Escrow Holder, shall constitute the joint escrow instructions of Agency and Foundation to CCE Escrow Holder as well as an agreement between Agency and Foundation. In the event of any conflict between the provisions of this Second Amendment and CCE Escrow Holder’s standard instructions, this Second Amendment shall prevail.

4.6.4 Conditions Precedent to Closing. The “CCE Conditions Precedent” shall mean collectively the Agency CCE Conditions Precedent and Foundation CCE Conditions Precedent, defined below.

4.6.5 Agency CCE Conditions Precedent. Agency’s obligation to accept from Foundation the fee title to the Firestone Building Condominium Unit and the Tea Room Building Condominium Unit, and proceed with the Close of the CCE shall be conditioned upon the satisfaction or written waiver (except where a waiver is not permitted) by Agency in its sole and

absolute discretion of each and every one of the conditions listed below (collectively, the "Agency CCE Conditions Precedent"), which are solely for the benefit of Agency:

(a) The Condominium Plan has been approved by all necessary City agencies, commissions, and review bodies. This condition may not be waived.

(b) The Condominium Plan is in a condition to be recorded with the Recorder's Office immediately prior to the recording of the Grant Deeds conveying to Agency the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. This condition may not be waived.

(c) The Existing Property Tax Lien is removed from record title, and Foundation has obtained and delivered to CCE Escrow Holder any and all instruments, in recordable form, which may be necessary to remove from title the Existing Property Tax Lien.

(d) Foundation has obtained and delivered to CCE Escrow Holder any and all instruments in recordable form to remove from title the WRL Design Professional Lien.

(e) Foundation has obtained from Agency approval of the Foundation Litigation Documents pursuant to Section 4.3.3(b) above.

(f) The WRL/Foundation Action has been completely resolved (including any appeals), and final judgment has been entered. If the WRL/Foundation Action has been settled, this Agency CCE Condition Precedent shall not be satisfied unless and until a stipulated judgment and dismissal with prejudice, with no right of appeal, for the WRL/Foundation Action has been filed and judgment entered in the Orange County Superior Court.

(g) Foundation has obtained and delivered to CCE Escrow Holder any and all instruments in recordable form to remove from title the WRL Lis Pendens.

(h) Foundation has performed the following in connection with the Existing Tenant Leases:

(i) Foundation has executed and caused to be executed by lessee(s) of the Jin Ho Choi Lease the Amendment to Jin Ho Choi Lease.

(ii) Foundation has delivered to CCE Escrow Holder the original, fully executed Amendment to Jin Ho Choi Lease.

(iii) Foundation has executed and delivered to CCE Escrow Holder the original Jin Ho Choi Lease Assignment and Assumption Agreement (which may be in counterpart).

(iv) Foundation has executed the subsequent Lessor Estoppel Certificate and delivered the same to Agency (and copy thereof to CCE Escrow Holder) in accordance with Section 4.4.6 of this Second Amendment.

(i) Subdivision Guaranty Company shall be irrevocably committed to issue to Agency, at Agency's initial expense (and subject to later reimbursement by Foundation pursuant to Section 7.1 of this Second Amendment), the Subdivision Guaranty subject only to Agency Approved Title Exceptions.

(j) Condominium Unit Title Insurance Company shall be irrevocably committed to issue to Agency, at Agency's initial expense (and subject to later reimbursement by Foundation pursuant to Section 7.1 of this Second Amendment), for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit, the Condominium Unit Title Insurance Policies subject only to Agency Approved Title Exceptions.

(k) Foundation has executed and notarized the Memorandum of Second Amendment for each Condominium Unit (each of which may be in counterpart).

(l) Foundation has executed and delivered to CCE Escrow Holder the original WRL Assignment and Assumption Agreement (which may be in counterpart).

(m) Foundation is not in material default of any term or condition of this Second Amendment, and all representations and warranties made by Foundation herein are true and correct as of the CCE Closing Date as though made at that time (or have been waived in writing by Agency).

4.6.6 Foundation CCE Conditions Precedent. Foundation's obligation to convey to Agency the fee title to the Firestone Building Condominium Unit and Tea Room Building Condominium Unit, and proceed with the Close of the CCE shall be conditioned upon the satisfaction or written waiver (except where a waiver is not permitted) by Foundation in its sole and absolute discretion of each and every one of the conditions listed below (collectively, the "Foundation CCE Conditions Precedent"), which are solely for the benefit of Foundation:

(a) The Condominium Plan has been approved by all necessary City agencies, commissions, and review bodies. This condition may not be waived.

(b) The Condominium Plan is in a condition to be recorded with the Recorder's Office immediately prior to the recording of the Grant Deeds conveying to Agency the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. This condition may not be waived.

(c) Agency has executed and delivered to CCE Escrow Holder an original of the Agency Option Quitclaim Deed to be recorded against the

Firestone Building Condominium Unit and Tea Room Building Condominium Unit.

(d) Agency has executed and delivered to CCE Escrow Holder the original Reconveyance of the Agency Deed of Trust to be recorded against the Site.

(e) Agency has executed and notarized the Memorandum of Second Amendment for each Condominium Unit (each of which may be in counterpart).

(f) Proof that Agency has deposited the Foundation Vesting and Operations Grant into the Foundation Vesting and Operations Account.

(g) Agency has executed and delivered to CCE Escrow Holder the original WRL Assignment and Assumption Agreement (which may be in counterpart).

(h) Agency has executed and delivered to CCE Escrow Holder the original Jin Ho Choi Lease Assignment and Assumption Agreement (which may be in counterpart).

(i) Agency is not in material default of any term or condition of this Second Amendment, and all representations and warranties made by Agency herein are true and correct as of the CCE Closing Date as though made at that time (or have been waived in writing by Foundation).

4.6.7 Deliveries to Escrow by Agency. No later than 1:00 p.m. on the day before the CCE Closing Date, Agency shall deliver to CCE Escrow Holder the following:

(a) The Condominium Plan in recordable form, if not previously delivered to CCE Escrow Holder.

(b) Two originals of the Agency Option Quitclaim Deed executed by Agency and notarized, to be recorded against the Firestone Building Condominium Unit and Tea Room Building Condominium Unit.

(c) The original Reconveyance of the Agency Deed of Trust executed by Agency and notarized, to be recorded against the Site.

(d) Four counterpart originals of the Memorandum of Second Amendment executed by Agency and notarized, one for each Condominium Unit.

(e) A counterpart original of the WRL Assignment and Assumption Agreement executed by Agency.

(f) A counterpart original of the Jin Ho Choi Lease Assignment and Assumption Agreement executed by Agency.

(g) Two original certificates of acceptance, substantially in the form attached to the Grant Deeds, one for the Grant Deed conveying the Firestone Building Condominium Unit and one for the Grant Deed conveying the Tea Room Building Condominium Unit.

(h) Four counterpart originals of the Reciprocal Restrictive Covenants executed by Agency and notarized, one for each Condominium Unit.

(i) If obtained pursuant to Section 3.5 of this Second Amendment, originals of the Jupiter Meadows Restrictive Covenant executed and notarized; provided, however, that Agency's inability or failure to deliver the Jupiter Meadows Restrictive Covenant shall not prevent the Closing of the CCE.

(j) Any other documents that Foundation or CCE Escrow Holder may require to Close the CCE.

4.6.8 Deliveries to Escrow by Foundation. No later than 1:00 p.m. on the day before the CCE Closing Date, Foundation shall deliver to CCE Escrow Holder the following:

(a) Funds (if necessary) sufficient to remove the Existing Property Tax Lien from record title, and (if necessary) any and all instruments, in recordable form, to remove from title the Existing Property Tax Lien.

(b) The originals and completely executed and notarized instrument(s), in recordable form, to remove from title the WRL Design Professional Lien.

(c) The originals and completely executed and notarized instrument(s), in recordable form, to remove from title the WRL Lis Pendens.

(d) The original Grant Deed (in a form substantially similar to Exhibit "E" attached hereto) executed by Foundation and notarized, conveying fee title of the Firestone Building Condominium Unit to Agency.

(e) The original Grant Deed (in a form substantially similar to Exhibit "E" attached hereto) executed by Foundation and notarized, conveying fee title of the Tea Room Building Condominium Unit to Agency.

(f) Four counterpart originals of the Memorandum of Second Amendment executed by Foundation and notarized, one for each Condominium Unit.

(g) A counterpart original of the WRL Assignment and Assumption Agreement executed by Foundation.

(h) The original of the Amendment to Jin Ho Choi Lease, executed by lessee(s) of the Jin Ho Choi Lease and Foundation.



(i) A counterpart original of the Jin Ho Choi Lease Assignment and Assumption Agreement executed by Foundation.

(j) An executed affidavit of non-foreign status in a form substantially similar to Exhibit "F" attached hereto, and executed California Franchise Tax Board Form 593-C.

(k) Four counterpart originals of the Reciprocal Restrictive Covenants executed by Foundation and notarized, one for each Condominium Unit.

(l) Any other documents that Agency or CCE Escrow Holder may require to Close the CCE.

4.6.9 Closing, Recording, and Deliveries by Escrow. On the CCE Closing Date, and only after all of the CCE Conditions Precedent have been satisfied or waived in writing (for those conditions that can be waived), CCE Escrow Holder shall take the actions set forth below:

(a) Recording of Documents. CCE Escrow Holder shall record or cause to be recorded in the Recorder's Office the documents delivered by the parties in the following order:

(i) The completely executed and notarized instrument(s) (if necessary) to remove from title the Existing Property Tax Lien, recorded against the Site.

(ii) The completely executed and notarized instrument(s) to remove from title the WRL Design Professional Lien, recorded against the Site.

(iii) The completely executed and notarized instrument(s) to remove from title the WRL Lis Pendens, recorded against the Site.

(iv) Any other completely executed and notarized instrument(s) to remove from title any other Agency Unapproved Title Exceptions.

(v) The Reconveyance of the Agency Deed of Trust, recorded against the Site.

(vi) The Condominium Plan subdividing the Site into the Fox Theatre Condominium Unit, Firestone Building Condominium Unit, and Tea Room Building Condominium Unit, and creating on the adjacent City-owned parcel the East Airspace Condominium Unit.

(vii) The Grant Deed (with the certificate of acceptance) conveying fee title of the Firestone Building Condominium Unit to Agency.

(viii) The Grant Deed (with the certificate of acceptance) conveying fee title of the Tea Room Building Condominium Unit to Agency.

(ix) The Memorandum of Second Amendment recorded against the Fox Theatre Condominium Unit.

(x) The Memorandum of Second Amendment recorded against the Firestone Building Condominium Unit.

(xi) The Memorandum of Second Amendment recorded against the Tea Room Building Condominium Unit.

(xii) The Memorandum of Second Amendment recorded against the East Airspace Condominium Unit.

(xiii) The Reciprocal Restrictive Covenants recorded against the Fox Theatre Condominium Unit.

(xiv) The Reciprocal Restrictive Covenants recorded against the Firestone Building Condominium Unit.

(xv) The Reciprocal Restrictive Covenants recorded against the Tea Room Building Condominium Unit.

(xvi) The Reciprocal Restrictive Covenants recorded against the East Airspace Condominium Unit.

(xvii) The Agency Option Quitclaim Deed recorded against the Firestone Building Condominium Unit.

(xviii) The Agency Option Quitclaim Deed recorded against the Tea Room Building Condominium Unit.

(b) Subdivision Guaranty. CCE Escrow Holder shall deliver to Agency the Subdivision Guaranty.

(c) Condominium Unit Title Insurance Policies. CCE Escrow Holder shall deliver to Agency the Condominium Unit Title Insurance Policies for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit.

(d) Delivery of Documents to Agency. After recording, CCE Escrow Holder shall deliver to Agency the following:

(i) A conformed copy, recorded against the Site, of the instrument(s) (if any) to remove from title the Existing Property Tax Lien.

(ii) A conformed copy, recorded against the Site, of the instrument(s) to remove from title the WRL Design Professional Lien.

(iii) A conformed copy, recorded against the Site, of the instrument(s) to remove from title the WRL Lis Pendens.

(iv) Conformed copies, recorded against the Site, of any other instrument(s) to remove from title any other Agency Unapproved Title Exceptions.

(v) A conformed copy, recorded against the Site, of the Reconveyance of the Agency Deed of Trust.

(vi) A conformed copy of the recorded Condominium Plan.

(vii) The original and conformed copy of the original recorded Grant Deed (with the certificate of acceptance) for the Firestone Building Condominium Unit.

(viii) The original and conformed copy of the original recorded Grant Deed (with the certificate of acceptance) for the Tea Room Building Condominium Unit.

(ix) The original, completely executed and conformed copy of the original Memorandum of Second Amendment recorded against the Fox Theatre Condominium Unit.

(x) The original, completely executed and conformed copy of the original Memorandum of Second Amendment recorded against the Firestone Building Condominium Unit.

(xi) The original, completely executed and conformed copy of the original Memorandum of Second Amendment recorded against the Tea Room Building Condominium Unit.

(xii) The original, completely executed and conformed copy of the original Memorandum of Second Amendment recorded against the East Airspace Condominium Unit.

(xiii) The original, completely executed and conformed copy of the original Reciprocal Restrictive Covenants recorded against the Fox Theatre Condominium Unit.

(xiv) The original, completely executed and conformed copy of the original Reciprocal Restrictive Covenants recorded against the Firestone Building Condominium Unit.

(xv) The original, completely executed and conformed copy of the original Reciprocal Restrictive Covenants recorded against the Tea Room Building Condominium Unit.

(xvi) The original, completely executed and conformed copy of the original Reciprocal Restrictive Covenants recorded against the East Airspace Condominium Unit.

(xvii) A conformed copy of the original Agency Option Quitclaim Deed recorded against the Firestone Building Condominium Unit.

(xviii) A conformed copy of the original Agency Option Quitclaim Deed recorded against the Tea Room Building Condominium Unit.

(xix) The original, completely executed WRL Assignment and Assumption Agreement.

(xx) The original, completely executed Amendment to Jin Ho Choi Lease.

(xxi) The original, completely executed Jin Ho Choi Lease Assignment and Assumption Agreement.

(xxii) If obtained pursuant to Section 3.5 and delivered to CCE Escrow Holder pursuant to Section 4.6.7 of this Second Amendment, the original and conformed copy of the Jupiter Meadows Restrictive Covenant recorded against the Jupiter Meadows Parcel.

(e) Delivery of Documents to Foundation. After recording, CCE Escrow Holder shall deliver to Foundation the following:

(i) The original and conformed copy, recorded against the Site, of the original instrument(s) (if any) to remove from title the Existing Property Tax Lien.

(ii) The original and conformed copy, recorded against the Site, of the original instrument(s) to remove from title the WRL Design Professional Lien.

(iii) The original and conformed copy, recorded against the Site, of the original instrument(s) to remove from title the WRL Lis Pendens.

(iv) The original and conformed copy, recorded against the Site, of the original instrument(s) to remove from title any other Agency Unapproved Title Exceptions.

(v) The original and conformed copy, recorded against the Site, of the original Reconveyance of the Agency Deed of Trust.

(vi) The original and conformed copy of the Condominium Plan.

(vii) A conformed copy of the recorded Grant Deed (with the certificate of acceptance) for the Firestone Building Condominium Unit.

(viii) A conformed copy of the recorded Grant Deed (with the certificate of acceptance) for the Tea Room Building Condominium Unit.

(ix) A conformed copy of the Memorandum of Second Amendment recorded against the Fox Theatre Condominium Unit.

(x) A conformed copy of the Memorandum of Second Amendment recorded against the Firestone Building Condominium Unit.

(xi) A conformed copy of the Memorandum of Second Amendment recorded against the Tea Room Building Condominium Unit.

(xii) A conformed copy of the Memorandum of Second Amendment recorded against the East Airspace Condominium Unit.

(xiii) A conformed copy of the Reciprocal Restrictive Covenants recorded against the Fox Theatre Condominium Unit.

(xiv) A conformed copy of the Reciprocal Restrictive Covenants recorded against the Firestone Building Condominium Unit.

(xv) A conformed copy of the Reciprocal Restrictive Covenants recorded against the Tea Room Building Condominium Unit.

(xvi) A conformed copy of the Reciprocal Restrictive Covenants recorded against the East Airspace Condominium Unit.

(xvii) The original and conformed copy of the original Agency Option Quitclaim Deed, recorded against the Firestone Building Condominium Unit.

(xviii) The original and conformed copy of the original Agency Option Quitclaim Deed, recorded against the Tea Room Building Condominium Unit.

(xix) A copy of the completely executed (in counterparts) WRL Assignment and Assumption Agreement.

(xx) A copy of the completely executed (in counterparts) of the Jin Ho Choi Lease Assignment and Assumption Agreement.

(xxi) If obtained pursuant to Section 3.5 and delivered to CCE Escrow Holder pursuant to Section 4.6.7 of this Second Amendment, a conformed copy of the Jupiter Meadows Restrictive Covenant recorded against the Jupiter Meadows Parcel.

4.6.10 Payment of Escrow Costs; Agency Additional CCE Implementation Costs. On the CCE Closing Date, Agency shall pay for the following costs and expenses, all of which shall be Agency Additional CCE Implementation Costs subject to reimbursement by Foundation pursuant to Section 7.1 of this Second Amendment:

(a) All costs and expenses incurred for the Subdivision Guaranty.

(b) All costs and expenses incurred for the Condominium Unit Title Insurance Policies, and if Agency elects, the premium costs for an ALTA extended coverage owner's policy of title insurance.

(c) All customary and usual escrow fees charged by CCE Escrow Holder in connection with the CCE and recording the instruments to be recorded pursuant to this Second Amendment.

(d) All costs and expenses incurred (if any) for recording fees, notary fees, and any state, county, or local documentary transfer fee. CCE Escrow Holder shall prepare a settlement statement for the CCE

4.6.11 Settlement Statement. CCE Escrow Holder shall prepare and deliver to Agency and Foundation a settlement statement for the CCE, which shall be conclusive evidence of those costs and expenses referenced therein.

4.6.12 Attorney's Fees for CCE. Notwithstanding any provisions in this Second Amendment to the contrary, Agency and Foundation shall each be responsible for their respective attorneys' fees for time spent on and costs incurred for the preparation of this Second Amendment and the preparation of all instruments and documents necessary and proper to close the CCE.

4.6.13 Taxes and Assessments. All non-delinquent property taxes and assessments, if any, for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit shall be prorated as of the CCE Closing Date, with Foundation responsible for the portion of taxes and assessments (if any) allocated to the period prior to the CCE Closing Date and Agency responsible for the portion of taxes and assessments (if any) allocated to the period after the CCE Closing Date.

4.7 Representations and Warranties.

4.7.1 Foundation's Representations and Warranties. Foundation hereby makes the following representations and warranties to Agency, each of which is material and relied upon by Agency in making its determination to enter into this Second Amendment, is true in all respects as of the date hereof and shall be true in all respect on the CCE Closing Date, and shall survive the CCE Closing Date:

(a) Except those disclosed in the Foundation Litigation Documents, there are no pending or threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against or affecting the Site, or relating to ownership, maintenance, use, or operation of the Site.

(b) Foundation has not received any notices and has no knowledge of any violation of any laws, ordinances, rules, regulations or requirements of any governmental agency, body or subdivision affecting the Site.

(c) Except for the Existing Tenant Leases, there are no leases, subleases, or other agreements relating to the right of possession or occupancy of the Site, and there are no defaults under the Jin Ho Choi Lease, and the term of each Existing Tenant Lease is as set forth in the Existing Tenant Leases and confirmed by the Lessor and Lessee Estoppel Certificates.

(d) Except for the WRL Architectural Design Contract, Agency shall have no obligation to pay, and Foundation shall not seek from Agency payment for (i) any outstanding third party contracts for contractor or subcontractor work, (ii) compensation for any current or former board member, officer, employee, or other agent of Foundation, and (iii) any other debts or obligations payable by Foundation to any other person or entity at or before the CCE Closing Date.

(e) Foundation has full right, power, and authority to enter into this Second Amendment and to perform Foundation's obligations hereunder. Foundation has obtained any and all corporate authorizations, and this Second Amendment and all other documents delivered by Foundation to Agency now or at the CCE Closing have been, or will be duly executed and delivered by Foundation and are legal, valid, and binding obligations of Foundation, sufficient to convey to Agency good and marketable title to the Firestone Building Condominium Unit and Tea Room Building Condominium Unit, are enforceable in accordance with their respective terms, and do not violate any provision of any agreement to which Foundation is a party.

(f) There is no third party entitled to a broker's commission and/or finder's fee with respect to the transactions contemplated by this Second Amendment. In addition to any other indemnity set forth herein, Foundation shall indemnify, defend (with counsel of Agency's choosing), and hold harmless Agency from and against all liabilities, costs, damages, and expenses, including without limitation attorney's fees and costs, resulting from any claims or fees or

commissions, based upon agreements by Foundation to pay a broker's commission and/or finder's fee.

4.7.2 Agency's Representations and Warranties. Agency hereby makes the following representations and warranties to Foundation, each of which is material and relied upon by Foundation in making its determination to enter into this Second Amendment, is true in all respects as of the date hereof and shall be true in all respect on the CCE Closing Date, and shall survive the CCE Closing Date:

(a) Agency has full right, power, and authority to enter into this Second Amendment and to perform Agency's obligations hereunder. Agency has obtained authorization from the Agency Board, and this Second Amendment and all other documents delivered by Agency to Foundation now or at the CCE Closing have been or will be duly executed and delivered by Agency and are legal, valid, and binding obligations of Agency, are enforceable in accordance with their respective terms, and do not violate any provision of any agreement to which Agency is a party.

(b) There is no third party entitled to a broker's commission and/or finder's fee with respect to the transactions contemplated by this Second Amendment. In addition to any other indemnity set forth herein, Agency shall indemnify, defend (with counsel of Foundation's choosing), and hold harmless Foundation from and against all liabilities, costs, damages, and expenses, including without limitation attorney's fees and costs, resulting from any claims or fees or commissions, based upon agreements by Agency to pay a broker's commission and/or finder's fee.

4.8 Possession. Possession of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit shall be delivered to Agency by Foundation upon the CCE Closing Date, at which time Foundation shall assign to Agency any assignable warranty rights for items included in the conveyance of the Firestone Building Condominium Unit and Tea Room Building Condominium Unit, and Foundation shall provide any available copies of such warranties. Foundation shall deliver or cause to be made available to Agency on the CCE Closing Date the keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit.

4.9 Damage or Destruction of Site Prior to CCE Closing. In the event that the existing improvements on the Site are damaged or destroyed prior to the CCE Closing Date, either party shall have the right to cancel the CCE and terminate this Second Amendment, in which case the provisions in Section 4.10 shall govern the obligations of the parties after the termination of this Second Amendment. For purposes of this Section 4.9 and the right of either party to terminate, the existing improvements on the Site shall be deemed "damaged or destroyed" if Foundation's insurance carrier(s) for the Site fails to provide sufficient coverage, or fails or refuses for any reason, to pay for an amount equal to one hundred percent (100%) of the replacement costs for the damaged or destroyed improvements on the Site.



4.10 Termination of Second Amendment Prior to CCE Closing. Prior to the CCE Closing, in the event that (a) each of the CCE Conditions Precedent is not satisfied (or waived for those CCE Conditions Precedent that can be waived) within the time periods set forth above, or (b) Agency disapproves the Due Diligence Materials or the condition of the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit as set forth above, or (c) Agency is in default of any obligation it has to perform prior to the CCE Closing Date and fails to cure within the applicable cure period, or (d) Foundation is in default of any obligation it has to perform prior to the CCE Closing Date and fails to cure within the applicable cure period, or (e) Foundation secures a source of funds other than from Agency sufficient to pay for the Agency Loan Reimbursement Amount, the Agency Rehabilitation Work, the Foundation Rehabilitation Work, the WRL Unpaid Liability, the Agency Additional CCE Implementation Costs, the Foundation Vesting and Operations Grant, and other remaining rehabilitation work set forth in the Revised Scope of Work pursuant to the Revised Schedule of Performance (with said alternative source of funds approved by Agency in its reasonable discretion based upon evidence of financial capability, an independent financial pro forma and analysis, and project budget (all prepared at Foundation's sole expense) and said alternative source of funds committed to immediately pay the Agency Loan Reimbursement Amount and the WRL Unpaid Liability, and thereafter committed to pay for all of the rehabilitation work set forth in the Revised Scope of Work pursuant to the Revised Schedule of Performance), then this Second Amendment shall terminate upon written notice being provided by the terminating party. In the event that this Second Amendment is terminated, all documents and funds delivered by the parties and to CCE Escrow Holder shall be returned immediately to the party that originally provided said documents or funds, and Foundation's and Agency's rights and obligations as set forth in the DDA would remain operative and enforceable notwithstanding Article 2 and Section 8.1 of this Second Amendment. Nothing in this Section 4.10 shall be construed as releasing either party from liability for any default of its obligations in this Second Amendment or breach of its representations and warranties herein.

## 5. REHABILITATION WORK FOR CONDOMINIUM UNITS.

5.1 General Obligation of Foundation. Except for the Agency Rehabilitation Work, Foundation shall have the obligation to plan for and develop the Project in accordance with the DDA and this Second Amendment.

5.1.1 Foundation Rehabilitation Work. Foundation shall perform or cause to be performed the Foundation Rehabilitation Work in accordance with the Revised Schedule of Performance.

5.1.2 Scope of Foundation Rehabilitation Work. Foundation shall be responsible for the construction, installation, and obtaining of necessary permits for the Foundation Rehabilitation Work. Foundation shall perform or cause to be performed the Foundation Rehabilitation Work in a manner consistent with the Revised Scope of Work and in strict accordance with the plans and drawings approved by Agency and City, including plans and pre-development materials prepared in accordance with Phase 2 of the Revised Scope of Work for the Fox Theatre. Foundation acknowledges that the design and quality of the Foundation Rehabilitation Work are of particular concern to Agency. Foundation further acknowledges that Agency desires to eliminate the conditions of blight within the Project Area and enhance the

attractiveness and desirability of the Condominium Units and that the Project shall be subject to the design and construction standards imposed by Agency designed to achieve that objective. Foundation further acknowledges that to the extent the buildings on the Condominium Units are City designated "Local Landmarks" or "Significant Properties," the Project shall be subject to all of the requirements, regulations, guidelines, and procedures applicable to Local Landmarks and Significant Properties.

5.1.3 Standards of Construction for Foundation Rehabilitation Work. Except for documents that are protected from disclosure pursuant to any applicable privilege under law, Agency shall be entitled to access to records, plans, shop drawings, diagrams, construction schedules, sequencing schedules, memoranda and other documents utilized by Foundation with developers, general contractors, subcontractors, materialmen, architects, and any other agent of Foundation hired by them or their agents to plan or perform the Foundation Rehabilitation Work. Foundation warrants to Agency that all Foundation Rehabilitation Work shall be done in a manner consistent with the U.S. Secretary of the Interior's Standards for rehabilitation of structures eligible for or on the National Register of Historic Places, and shall be done in a manner so as not to cause any building on the Site that is already on the National Register of Historic Places at the time that this Second Amendment is approved by Agency to be removed from the National Register of Historic Places. Foundation shall be required to consult with the Agency on any issue during the course of the Foundation Rehabilitation Work where such issue materially affects the aesthetic or structural characteristics of building on the Site that is not consistent with the U.S. Secretary of the Interior's Standards for rehabilitation of structures eligible for or on the National Register of Historic Places.

5.1.4 Quarterly Reports. In the event that any contractor or subcontractor performing the Foundation Rehabilitation Work produces a quarterly report similar to that described below, Agency shall be entitled to a copy of any such quarterly report that is not protected from disclosure pursuant to any applicable privilege under law and is not subject to nondisclosure under the Public Records Act. A "quarterly report" means a report produced on the first day of February, May, August, and December, or first business day occurring thereafter if the first day of the month falls on a weekend or government holiday, which specifies: Construction progress to date compared with a construction schedule and sequencing; costs incurred to date including outstanding costs payable; costs incurred to date including outstanding costs payable compared with budgeted costs for such work; and any changes or modifications to the originally approved Revised Scope of Work. Agency may, at its sole discretion, call a meeting to discuss said reports that will be attended by Foundation and the general contractor to address any issue related to the Foundation Rehabilitation Work. Agency will be allowed to submit a list of anticipated questions to be covered at the meeting fourteen (14) days prior to any given meeting. Foundation shall have no obligation to produce such a quarterly report.

5.1.5 Foundation Rehabilitation Work Project Review. Agency shall cooperate with Foundation to obtain "Development Project" approval pursuant to Chapter 15.46 of the Fullerton Municipal Code as part of Agency's obligation to complete the Fox Theatre Planning and Pre-Development Work. To the extent Chapter 15.46 applies and/or to the extent Agency has not obtained on behalf of Foundation "Development Project" approval pursuant to Chapter 15.46 for any part of the Foundation Rehabilitation Work prior to the commencement date for the Foundation Rehabilitation Work as set forth in the Revised Schedule of

Performance, Foundation shall prepare and submit to Agency and City for review and approval by the appropriate governing bodies, including the Redevelopment Design Review Committee and the Landmarks Commission, the plans and related documents required to obtain Development Project approval. In the event Foundation receives disapproval for any Development Project that requires approval pursuant to Chapter 15.46, Foundation shall act promptly to revise or correct the plans and related documents as necessary to conform to Agency and City requirements. Nothing in this Second Amendment shall be deemed to limit the discretionary land use authority of the Redevelopment Design Review Committee, Landmarks Commission, or City Council to approve, approve with conditions, or deny any Development Project requiring approval under Chapter 15.46 of the Fullerton Municipal Code.

5.1.6 Indemnity By Third Parties During Foundation Rehabilitation Work. Prior to commencing any Foundation Rehabilitation Work, Foundation shall cause any third party with which it enters into contracts to perform Foundation Rehabilitation Work, as a term and provision of that contract, to: (a) Name City and Agency as additional insureds on any and all policies for general liability, workman's compensation, automobile insurance, and any other policy under which Foundation is required to be named as an additional insured, and (b) identify in any third party contract that City and Agency are indemnitees of a third party under terms consistent with a "Type I" indemnity provision, if available by third party's insurer, or a "Type II" indemnity provision if "Type I" is not available. Foundation shall cause the third party to deliver a Certificate of Insurance to Agency evidencing City's and Agency's status as additional insureds on such policy(ies).

5.2 Agency Rehabilitation Obligations. After the CCE Closing Date and provided Agency obtains fee title to the Firestone Building Condominium Unit and the Tea Room Building Condominium Unit, Agency shall cause to be performed the Agency Rehabilitation Work by entering into a separate agreement(s) with a construction manager, who shall in turn oversee contractors and subcontractors to perform and complete the Agency Rehabilitation Work in accordance with this Second Amendment. Agency shall consult or attempt to consult in good faith with the Foundation Advisory Committee at least once regarding the use of a proposed construction manager. Agency, after attempting to engage in good faith consultation with the Foundation Advisory Committee, shall have final authority, in its reasonable discretion, to enter into a separate agreement(s) with a construction manager for the Agency Rehabilitation Work.

5.2.1 Agency Rehabilitation Work. The "Agency Rehabilitation Work" shall mean the following: (a) the Firestone Building Rehabilitation Work, (b) the Fox Theatre Planning and Pre-Development Work, (c) the Fox Theatre Seismic Bracing Work, and (d) the Tea Room Building Rehabilitation Work. The Agency Rehabilitation Work shall be commenced and completed pursuant to the Revised Schedule of Performance as set forth in this Second Amendment.

5.2.2 Revised Schedule of Performance. Agency and Foundation have agreed to modify the dates for the performance and satisfaction of certain obligations and conditions. In order to effectuate this modification, the Schedule of Performance attached to the First Amendment as Exhibit "A" is hereby replaced with Revised Schedule of Performance attached hereto.

5.2.3 Maximum Agency Contribution for Agency Rehabilitation Work and Other Costs and Expenses under This Second Amendment. Notwithstanding any provision in this Second Amendment or the DDA to the contrary, Agency shall not incur, and shall have no obligation to pay for, costs and expenses that total an excess of Six Million Dollars (\$6,000,000) (the "Maximum Agency Payment Amount") towards the Project. The Maximum Agency Payment Amount includes the Agency Loan Reimbursement Amount, and also includes, but is not limited to, the costs and expenses for the Agency Rehabilitation Work, the Agency Additional CCE Implementation Costs, the payment for the WRL Unpaid Liability and WRL Future Costs, and the payment of the Foundation Vesting and Operations Grant.

5.2.4 Agency Rehabilitation Work Project Review. Agency shall use its best efforts to obtain "Development Project" approval pursuant to Chapter 15.46 of the Fullerton Municipal Code prior to the commencement date for the Agency Rehabilitation Work as set forth in the Revised Schedule of Performance. To the extent Chapter 15.46 applies and/or to the extent Agency has not obtained "Development Project" approval prior to the commencement date for the Agency Rehabilitation Work as set forth in the Revised Schedule of Performance, Agency shall prepare and submit to Agency and City for review and approval by the appropriate governing bodies, including the Redevelopment Design Review Committee and the Landmarks Commission, the plans and related documents required to obtain Development Project approval. In the event that Agency receives disapproval for any Development Project that requires approval pursuant to Chapter 15.46, Agency shall act promptly to revise or correct the plans and related documents as necessary to conform to Agency and City requirements. Nothing in this Second Amendment shall be deemed to limit the discretionary land use authority of the Redevelopment Design Review Committee, Landmarks Commission, or City Council to approve, approve with conditions, or deny any Development Project requiring approval under Chapter 15.46 of the Fullerton Municipal Code.

5.2.5 Indemnity By Third Parties During Agency Rehabilitation Work. Prior to commencing any Agency Rehabilitation Work, Agency shall cause any third party with which it enters into contracts to perform Agency Rehabilitation Work, as a term and provision of that contract, to: (a) Name Foundation as an additional insured on any and all policies for general liability, workman's compensation, automobile insurance, and any other policy under which Agency is required to be named as an additional insured, and (b) identify in any third party contract that Foundation is an indemnitee of a third party under terms consistent with a "Type I" indemnity provision, if available by a third party's insurer, or a "Type II" indemnity provision if "Type I" is not available. Agency shall cause the third party to deliver a Certificate of Insurance to Foundation evidencing Foundation's status as an additional insured on such policy(ies).

5.2.6 Foundation Advisory Committee. No later than ten (10) days after the CCE Closing Date, Foundation shall appoint three (3) members of Foundation's board of directors to a committee (the "Foundation Advisory Committee"), which shall serve as the Foundation representative during the period of Agency Rehabilitation Work. Foundation shall approve the members of the committee (and any replacements caused by a vacancy) by resolution of the board of directors to be entered in the corporate minutes. No later than ten (10) days after the adoption of such a resolution, Foundation shall deliver to Agency a copy of the names of the three (3) members (or any replacements caused by a vacancy) serving on the committee, and the name of the one member of the committee who shall serve as the Foundation

Advisory Committee contact person for notices and communications between Agency and Foundation.

(a) Advisory Committee Role. The Foundation Advisory Committee role shall be to advise and provide comments to Agency at all stages of the Agency Rehabilitation Work and at other times specified in this Second Amendment. Pursuant to the Foundation Advisory Committee Protocols, Foundation Advisory Committee members shall be given access to all meetings (except meetings held in closed session pursuant to the Ralph M. Brown Act) by Agency with developers, general contractors, subcontractors, materialmen, architects, and any other agent of Agency hired by them or their agents to plan or perform the Agency Rehabilitation Work. Agency shall provide notice to the Foundation Advisory Committee contact member by e-mail notification no less than three (3) days prior to any such meeting, unless such meeting is called by Agency because of an emergency that prevents Agency from delivering at least three (3)-days' prior notice, in which case Agency shall deliver e-mail notice at the earliest reasonable time to the Foundation Advisory Committee contact member of the emergency meeting. Except for documents that either are protected from disclosure pursuant to any applicable privilege under law or are not subject to disclosure under the Public Records Act, Foundation Advisory Committee members shall be entitled to access to records, plans, shop drawings, diagrams, construction schedules, sequencing schedules, memoranda and other documents utilized by Agency with developers, general contractors, subcontractors, materialmen, architects, and any other agent of Agency hired by them or their agents to plan or perform the Agency Rehabilitation Work. Agency warrants to Foundation that all Agency Rehabilitation Work shall be done in a manner consistent with the U.S. Secretary of the Interior's Standards for rehabilitation of structures eligible for or on the National Register of Historic Places, and shall be done in a manner so as not to cause any building on the Site that is already on the National Register of Historic Places at the time that this Second Amendment is approved by Agency to be removed from the National Register of Historic Places. Agency shall be required to consult with the Foundation Advisory Committee on any issue during the course of the Agency Rehabilitation Work where such issue materially affects the aesthetic or structural characteristics of any building on the Site that is not consistent with the U.S. Secretary of the Interior's Standards for rehabilitation of structures eligible for or on the National Register of Historic Places.

(b) WRL Architectural Design Plans; Duty to Consult; Payment of Outstanding WRL Balance.

(i) Completion of Drawings under WRL Architectural Design Contract. In the event that the WRL Assignment and Assumption Agreement has been executed by the parties in accordance with Article 4 above, Agency shall coordinate with WRL to complete the architectural, pre-construction, and construction drawings for those

portions of the Project that have not yet been completed under the WRL Architectural Design Contract.

(ii) Foundation Revised Pre-Construction Plans. The parties understand that Foundation desires to modify certain provisions and plans of the existing WRL Architectural Design Contract. Foundation Advisory Committee shall be entitled to submit to Agency, no later than ninety (90) days after the CCE Closing Date, revised pre-construction plan changes for the WRL Architectural Design Contract (the "Foundation Revised Pre-Construction Plans"), and no construction for Phase 3 of the Revised Scope of Work shall commence until the Foundation Advisory Committee and Agency have consulted and considered in good faith the Foundation Revised Pre-Construction Plans.

(iii) Material Changes to Foundation Revised Pre-Construction Plans During Performance of Agency Rehabilitation Work; Change Orders; Consultation Obligation. To the extent that during the Agency Rehabilitation Work a request for information or other circumstance prompts a material change in the Foundation Revised Pre-Construction Plans that may have been agreed upon between the parties, no work or change order may be generated without the prior review of said work or change order by the Foundation Advisory Committee and Agency's consideration in good faith of the Foundation Advisory Committee's comments relating thereto. For purposes of this Section, a material change in the Foundation Revised Pre-Construction Plans includes, but is not limited to, reconfiguring access in any manner to rooms, stairways, doorways, portals, anterooms, water closets, bathrooms, basements, or other chambers, adding, reducing or eliminating plumbing lines, sewer lines, water meters, electrical conduits, electrical access, plugs, switches, service boards, electrical meters, sewer access, and reconfiguring floor space in any room where such reconfiguration adds or eliminates more than five percent (5%) of the plan floor space.

(iv) Quarterly Reports. In the event that the construction manager selected pursuant to Section 5.2 above or any contractor or subcontractor performing the Agency Rehabilitation Work produces a quarterly report as described in Section 5.1.4 above, Foundation Advisory Committee members shall be entitled to a copy of any such quarterly report that is not protected from disclosure pursuant to any applicable privilege under law and is not subject to nondisclosure under the Public Records Act. The Foundation Advisory Committee may, at its sole discretion, call a meeting to discuss said reports that will be attended by Agency staff and the general contractor to address any issue related to the Agency Rehabilitation Work. Foundation will be allowed to submit a list of anticipated questions to be covered at the meeting

fourteen (14) days prior to any given meeting. Agency shall have no obligation to produce a quarterly report described in Section 5.1.4 above.

5.2.7 Agency Approval Authority. Notwithstanding any provision in this Second Amendment (including the Foundation Advisory Committee Protocols) to the contrary, Agency, after attempting to engage in good faith consultation with the Foundation Advisory Committee, shall have final authority, in its reasonable discretion, to make any and all decisions concerning the Agency Rehabilitation Work.

5.2.8 Right of Entry to Fox Theatre Condominium Unit; Use of Property for Fund Raising Events; Sequencing of Construction.

(a) Upon the CCE Closing Date, Foundation shall grant and hereby grants to Agency and its officers, officials, employees, volunteers, agents, representatives, contract manager, contractors, subcontractors, and assignees (collectively in this Section "Agency Representatives") a right of entry onto, in, and about the Fox Theatre Condominium Unit during the Agency Rehabilitation Work period for the purpose of commencing and completing the Fox Theatre Planning and Pre-Development Work and the Fox Theatre Seismic Bracing Work. Agency (or its contract manager or other duly authorized representative) shall notify Foundation no less than three (3) days prior to entry onto the Fox Theatre Condominium Unit. The right of entry authorized by this Section shall expire upon the completion by Agency Representatives of the Fox Theatre Planning and Pre-Development Work and the Fox Theatre Seismic Bracing Work.

(b) Occupancy Prohibitions; Limited Use of Fox Theatre for Fundraising Purposes. Unless and until the Fox Theatre has been rehabilitated pursuant to this Second Amendment and the City of Fullerton Municipal Code and has received a certificate of occupancy from the City, occupancy of the Fox Theatre is and shall be strictly prohibited, except for the following: (i) To grant access to the Agency Representatives identified in Section 5.2.8(a) above to perform the Agency Rehabilitation Work; (ii) To grant access to Foundation's board of directors, officers, employees, contractors, and subcontractors to perform the Foundation Rehabilitation Work; and (iii) To grant limited access or occupancy for fund raising purposes, volunteer activities, and any other purposes or activities not enumerated in clauses (i) and (ii) above, *if, and only if*, Foundation has obtained approval and/or necessary permits from City for such limited access or occupancy (including limited entry required to facilitate work parties, donor tours, "Movies on the Fox," and participation at the "Fullerton Marketplace"), *and* Foundation complies with any and all conditions of approval and/or permits issued by City for such limited access or occupancy. Nothing in the preceding clause (iii) obligates or shall be deemed to obligate City or Agency to issue any approval or permit for temporary occupancy of the Fox Theatre. In the event that Foundation fails to obtain approval and necessary permits from City and/or fails to comply with the conditions of approval and permits for limited occupancy during fund raising purposes pursuant to the preceding clause (iii),

then Foundation shall be in default of this Second Amendment and Agency shall have the right to prohibit any occupancy of the Fox Theatre for any purpose other than for the completion of the Agency Rehabilitation Work and Foundation Rehabilitation Work. Once the Fox Theatre has received a certificate of occupancy from the City, Agency shall sequence the performance of any remaining Agency Rehabilitation Work in such a manner so as to minimize interference with access to the Fox Theatre for fundraising purposes that may be scheduled by the Foundation.

5.2.9 Use of City Property During Agency Rehabilitation Work. Agency warrants that at all times prior to the completion of Agency Rehabilitation Work, Agency shall use its best efforts not use any portion of the City-owned parking lot north of the northerly boundary line for Orange County Assessor Parcel Number 029-033-35, commonly referred to as "the McDonald's property," including any portion of the City-owned parking lot from a point north of an imaginary line extending westerly from the north boundary line of the McDonald's property to the east boundary line of the Site, for any Agency Rehabilitation Work staging, storage, contractor parking, or other use not currently typical for said City-owned parking lot. Agency further warrants that it will use its best efforts to maintain the City-owned parking lot in its current use as a general parking lot, will use best efforts to not erect any fences around the identified parking lot, or otherwise impede the use and access of said parking lot, and will use best efforts to allow public use of the portion of the City-owned parking lot identified herein in a manner consistent with its current use by Jupiter Meadows Properties, Inc. and Foundation, including, but not limited to, the regular operation of the "Movies on the Fox" fundraising event. Agency further warrants that it will use its best efforts to disallow any other party retained by City, Agency or their agents to utilize the identified portion of the City-owned parking lot for any staging, storage, contractor parking, or other use not currently typical for said City-owned parking lot, including any use in conjunction with rehabilitation, demolition or construction work for those certain projects commonly known as "the McDonald's restaurant relocation" and "the Fox Block development." Nothing in this Section shall be used by Foundation or deemed to prevent performance by Agency of the Agency Rehabilitation Work. Nothing in this Section is designed to create rights to access of the City-owned parking lot by Foundation or any third party greater than the rights of the public to access that exist by operation of law and this Second Amendment. No easement, implied or express, is given by operation of this Section.

### 5.3 Funding and Costs Incurred for Agency Rehabilitation Work.

5.3.1 Costs of Agency Rehabilitation Work. Subject to Foundation's repayment obligations set forth in Article 7 below, Agency shall be responsible for payment when due of costs and expenses incurred by the contract manager, contractors, subcontractors, and other third parties for the Agency Rehabilitation Work.

5.3.2 Costs of WRL Architectural Design Contract. Upon the CCE Closing Date and the execution and delivery of the WRL Assignment and Assumption Agreement in accordance with Article 4 above, Agency shall have the obligation to pay WRL the WRL Unpaid Liability. Foundation shall cooperate with Agency during any negotiation with WRL to reduce and/or negotiate a payment schedule for the WRL Unpaid Liability. Agency shall be responsible for payment when due to WRL of the additional costs incurred by WRL to complete the



architectural, pre-construction, and construction drawings referenced in Section 5.2.6(b) above ("WRL Future Costs").

5.3.3 Source of Funds. The source of funds for Agency payments as authorized in this Second Amendment shall be from tax increment revenue received by Agency pursuant to the Community Redevelopment Law, Health and Safety Code section 33000 *et seq.* (excluding revenue that must be deposited into Agency's low and moderate income housing fund pursuant to Health and Safety Code section 33334.2), and any other lawful source of funds available to the Agency to further the purposes of redevelopment in the Project Area.

5.3.4 Records Kept by Agency. Agency shall retain a copy of each and every invoice, bill, installment payment, receipt, or any other document evidencing a payment by Agency to a third party for costs and expenses incurred for the Agency Rehabilitation Work (collectively, "Agency Rehabilitation Work Receipts"). Agency shall retain all Agency Rehabilitation Work Receipts until the earlier of either (a) the expiration of the term of the Second Amendment (as set forth in the Revised Schedule of Performance), or (b) conveyance of fee title from Agency to Foundation of the last of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit pursuant to Article 7 below and the Foundation Conveyance Option. Upon Foundation's written request, Agency shall deliver copies to Foundation of any and all Agency Rehabilitation Work Receipts. Agency shall use the Agency Rehabilitation Work Receipts as evidence to support the amount of the reimbursement that Foundation must pay to Agency for the Agency Rehabilitation Work and for the conveyance of fee title to the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit, pursuant to Article 7 below. So long as Agency can deliver to Foundation the Agency Rehabilitation Work Receipts to support the amount of said reimbursement, Foundation hereby acknowledges and agrees that the amounts reflected in the Agency Rehabilitation Work Receipts shall be conclusive of the amounts owing to Agency for the Agency Rehabilitation Work and for the conveyance of fee title from Agency to Foundation of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit, pursuant to Article 7 below.

5.4 Discrimination Prohibited. Pursuant to Health and Safety Code Section 33050, there shall be no discrimination by Agency or Foundation in undertaking the Project, the Agency Rehabilitation Work, the Foundation Rehabilitation Work, or in the performance under this Second Amendment or the DDA in general, because of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

5.5 Release of Construction Covenants at Condominium Level. Notwithstanding Section 3.10 of the Original DDA, upon the satisfactory completion of the Firestone Building Rehabilitation Work or the Tea Room Building Rehabilitation Work, or both, in conformity with this Second Amendment, or the completion of the Foundation Rehabilitation Work for the Fox Theatre Condominium Unit, in conformity with the DDA and this Second Amendment, Agency shall furnish Foundation with a Release of Construction Covenants upon written request therefor by Foundation for the specific Condominium Unit on which construction has been satisfactorily completed. Agency shall not unreasonably withhold such Release of Construction Covenants.

Such Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Firestone Building Rehabilitation Work and/or Tea Room Building Rehabilitation Work (as the case may be) as required by this Second Amendment, or the completion of the Foundation Rehabilitation Work for the Fox Theatre Condominium Unit in conformity with the DDA and this Second Amendment, and the Release of Construction Covenants shall so state. The Release of Construction Covenants shall be substantially in the form attached to the Original DDA as Attachment No. 6 or such other similar form as to permit it to be recorded in the Recorder's Office. If Agency refuses or fails to furnish a Release of Construction Covenants for a specific Condominium Unit after written request from Foundation, Agency shall, within ten (10) days of written request therefor, provide Foundation with a written statement of the reasons Agency refused or failed to furnish the requested Release of Construction Covenants. The statement shall also contain Agency's opinion of the actions that either remain for Agency to complete or Foundation must complete to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate unavailability of specific items of materials for landscaping or other minor "punch list" items, Agency shall issue a Release of Construction Covenants for the specific Condominium Unit upon the posting of cash, a bond, or other security acceptable to Agency in Agency's sole discretion by Foundation with Agency in an amount representing the fair value of the work not yet completed, and Foundation shall thereafter complete the "punch list" work within sixty (60) days of issuance of the Release of Construction Covenants. A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Foundation to any holder of any mortgage or any insurer of a mortgage securing money loaned to finance the improvements, or any part of this Agreement, or a release of any obligations under this Agreement or any other agreement which survive issuance of a Release of Construction Covenants for a specific Condominium Unit. A Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code Section 3093.

## 6. USES AND LEASES OF CONDOMINIUM UNITS.

6.1 Use, Operation, and Maintenance of the Condominium Units. Upon completion of the Foundation Rehabilitation Work for the Fox Theatre as evidenced by a Release of Construction Covenants, Foundation and its successors and assigns shall use, operate, and maintain the Fox Theatre Condominium Unit in accordance with the provisions of this Second Amendment and the Regulatory Agreement. Upon the completion of the Agency Rehabilitation Work for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit as evidenced by Releases of Construction Covenants, Agency and its successors and assigns shall use, operate, and maintain the Firestone Building Condominium Unit and Tea Room Building Condominium Unit in accordance with the provisions of this Second Amendment and the Regulatory Agreement. Agency and its successors and assigns shall use, operate, and maintain the East Airspace Condominium Unit to maintain the seismic stabilization required to be performed by Agency as part of the Agency Rehabilitation Work and by Foundation as part of the Foundation Rehabilitation Work, and to provide for ancillary uses of the Fox Theatre that are in accordance with the provisions of the Regulatory Agreement.

6.2 Fox Theatre Annual Budget for Operating Costs; Review and Approval by Agency Board; Disbursements by Agency Executive Director; Basis for Proportionate Payment of Rents to Foundation. Commencing in the calendar year in which the CCE Closing Date

occurs and ending in the calendar year after which the Foundation Repayment Account Disbursement Date occurs, Foundation shall prepare for Agency Board review and approval an annual budget of anticipated revenues and expenses of the Foundation for the upcoming calendar year pursuant to the following:

6.2.1 Proposed Annual Budget; Mandatory Content and Evidentiary Support. Foundation shall deliver to Agency's Executive Director, no later than October 31 of each calendar year in which Foundation must have an annual budget pursuant to this Second Amendment, a proposed budget of anticipated revenue and expenditures for the upcoming calendar year (commencing January 1 and ending December 31) (the "Foundation Proposed Annual Budget"). The Foundation Proposed Annual Budget shall disclose at a minimum the Foundation Annual Budget Mandatory Disclosure Items. Foundation shall deliver to Agency's Executive Director with the Foundation Proposed Annual Budget all invoices, bills, documents, and receipts from the current calendar year that support the amounts listed for the Foundation Annual Budget Mandatory Disclosure Items, and Foundation shall deliver to Agency any additional documentary evidence that Agency may request, in its reasonable discretion, to verify the anticipated costs of the Foundation Annual Budget Mandatory Disclosure Items for the upcoming calendar year.

6.2.2 Agency Board Review and Approval. Within thirty (30) days after receipt by Agency's Executive Director of the Foundation Proposed Annual Budget, Agency (pursuant to the Ralph M. Brown Act and any other applicable law) shall schedule and place on a public agenda the consideration of the Foundation Proposed Annual Budget at a public meeting before the Agency Board. The Agency Board shall have the right to review and approve or deny the Foundation Proposed Annual Budget. Agency shall have the obligation to disburse (pursuant to Section 6.2.3 below) the amounts listed for the Foundation Annual Budget Mandatory Disclosure Items only if the Agency Board approves those amounts in the Foundation Proposed Annual Budget. In the event that the Agency Board disapproves the Foundation Proposed Annual Budget, then Foundation shall have fifteen (15) days to resubmit to the Agency's Executive Director a revised Foundation Proposed Annual Budget with corrections that may be required pursuant to Agency Board direction. In the event that Foundation timely resubmits a revised Foundation Proposed Annual Budget, then Agency (pursuant to the Ralph M. Brown Act and any other applicable law) shall reschedule and place on a public agenda the consideration of the revised Foundation Proposed Annual Budget at a public meeting before the Agency Board. Agency shall have the obligation to disburse (pursuant to Section 6.2.3 below) the amounts listed for the Foundation Annual Budget Mandatory Disclosure Items only if the Agency Board approves those amounts in the revised Foundation Proposed Annual Budget. A "Foundation Proposed Annual Budget" that is approved by the Agency Board shall be the "Foundation Annual Budget" for the applicable calendar year.

6.2.3 Disbursements for Approved Budget. For the applicable calendar year, the Agency's Executive Director (or duly authorized designee) shall use the amounts listed for the Foundation Annual Budget Mandatory Disclosure Items in the Foundation Annual Budget approved by the Agency Board to calculate the Foundation Monthly Rental Receipt Amount, and the Agency's Executive Director (or duly authorized designee) shall disburse to Foundation said calculated Foundation Monthly Rental Receipt Amount for the applicable year pursuant to Section 6.3.2 below. In the event that Foundation does not timely submit a Foundation Proposed

Annual Budget or revised Foundation Proposed Annual Budget pursuant to Section 6.2.2 above, or in the event that the Agency Board does not approve a Foundation Proposed Annual Budget for an applicable calendar year, then the Agency Executive Director may use its reasonable discretion to determine the Foundation Monthly Rental Receipt Amount for the upcoming calendar year or may deny disbursement of any amount until such time as the Agency Board approves a Foundation Proposed Annual Budget.

### 6.3 Leases of Firestone Building and Tea Room Building Condominium Units.

6.3.1 Agency Obligation to Lease Upon Completion of Rehabilitation Work for Firestone Building and Tea Room Building Condominium Units. Upon the completion of the Agency Rehabilitation Work for the Firestone Building, Agency shall lease or shall contract with a reputable property management company to lease the commercial and retail spaces (each periodically referred to as the “premises” in a lease) in the Firestone Building Condominium Unit. Upon the completion of the Agency Rehabilitation Work for the Tea Room Building, Agency shall lease or shall contract with a reputable property management company to lease the commercial and retail spaces (each periodically referred to as the “premises” in a lease) in the Tea Room Building Condominium Unit. Agency or Agency’s property management company may use a standard form commercial real estate lease, such as the A.I.R. Standard Retail/Multi-Tenant Lease (Net) with any necessary addenda. Every lease entered into with any tenant for commercial and retail spaces in the Firestone Building Condominium Unit and the Tea Room Building Condominium Unit shall first be reviewed and approved by Agency and Agency’s legal counsel (after consultation with the Foundation Advisory Committee pursuant to Section 6.4 below), shall attempt to maximize monthly rental payments from tenants, and shall provide at a minimum the following:

(a) Rent shall be payable in United States dollars and collected on the first day of each month by Agency or Agency’s designated property management company.

(b) The tenant shall be responsible for payment of any possessory use and property taxes apportioned to the premises rented by the tenant.

(c) The tenant shall be responsible for maintenance and repair of the premises and trade fixtures.

(d) Every tenant shall acknowledge and agree that the tenant is a “post acquisition” tenant as defined in Title 25 of the California Code of Regulations, Sections 6008 and 6034, and thus not eligible for any relocation benefits or assistance when tenant vacates the premises; the tenant shall provide full releases and waivers, in language approved by Agency’s legal counsel, of any claims for relocation benefits or assistance under any federal, state, or local relocation law.

6.3.2 Allocation and Distribution of Aggregate Rental Payments from Tenants at Firestone Building and Tea Room Building Condominium Units. No later than one (1) month after the monthly collection of rental payments from all tenants leasing premises at the Firestone Building Condominium Unit and/or the Tea Room Building Condominium Unit, Agency or

Agency's designated property management company shall allocate and distribute the aggregate monthly rental payments from all tenants in the following order:

(a) Payment to Agency or Its Property Management Company. Agency or Agency's designated property management company shall retain an allocation of the aggregate monthly rental payments to pay for the actual monthly overhead costs and expenses (if any) to manage the leased premises in the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit; provided, however, that said allocated amount shall not exceed twenty-five percent (25%) of aggregate monthly rental payments collected for any given month (with the percentage allocation subject to review and revision based upon performance of lessees, rental receipts, and industry standards for property management). In the event that, for any given month, Agency's or Agency's property management company's actual monthly overhead costs and expenses (if any) to manage the leased premises in the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit is less than twenty-five percent (25%) of aggregate monthly rental payments collected for that given month, then the fifty percent (50%)-cap set forth in Subsection 6.3.2(b) below shall not apply, and the Foundation may receive (subject to the twenty-five percent (25%) minimum requirement for deposits into the Foundation Repayment Account in Subsection 6.3.2(c) below) as part of its monthly disbursement the difference between Agency's or Agency's property management company's actual monthly overhead costs and expenses, and the amount that is twenty-five percent (25%) of the aggregate monthly rental payments collected for that given month. In the event that there is a dispute between Foundation and Agency or Agency's property management company regarding the amount that Foundation may receive pursuant to the immediately preceding sentence, the disputed amount shall be subject to the reconciliation provisions set forth in Subsection 6.3.2(d) below.

(b) Payment of Foundation Monthly Rental Receipt Amount. Agency or Agency's designated property management company shall allocate and distribute to Foundation the Foundation Monthly Rental Receipt Amount; provided, however, that said allocated amount shall not exceed fifty percent (50%) of aggregate monthly rental payments collected for any given month (with the percentage allocation subject to review and revision based upon performance of lessees, rental receipts, and industry standards for property management) unless the fifty percent (50%)-cap does not apply pursuant to Subsection 6.3.2(a) above. All disbursements of the Foundation Monthly Rental Receipt Amount shall be used by Foundation to pay the costs listed as the Foundation Annual Budget Mandatory Disclosure Items in the most recently approved Foundation Annual Budget, or, if Agency has not approved a Foundation Proposed Annual Budget, shall be used by Foundation to pay the costs attributable to the Foundation Annual Budget Mandatory Disclosure Items as defined in this Second Amendment. In the event that, for any given month, the actual costs listed as the Foundation Annual Budget Mandatory Disclosure Items in the most recently approved Foundation Annual Budget are less than fifty

percent (50%) of aggregate monthly rental payments collected for that given month, then Agency or Agency's property management company may either (i) deposit as part of the monthly deposit pursuant to Subsection 6.3.2(c) below the difference between the actual costs listed as the Foundation Annual Budget Mandatory Disclosure Items in the most recently approved Foundation Annual Budget and the amount that is fifty percent (50%) of aggregate monthly rental payments collected for that given month; or (ii) allocate pursuant to the reconciliation provisions set forth in Subsection 6.3.2(d) below the difference between the actual costs listed as the Foundation Annual Budget Mandatory Disclosure Items in the most recently approved Foundation Annual Budget and the amount that is fifty percent (50%) of aggregate monthly rental payments collected for that given month.

(c) Deposit into Foundation Payment Account. Agency or Agency's designated property management company shall allocate and deposit into the Foundation Repayment Account the amount that is remaining after the amounts allocated pursuant to Subsections (a) and (b) above have been subtracted from the aggregate monthly rental payments collected for the applicable month; provided, however, that the deposit into the Foundation Repayment Account shall not be less than twenty-five percent (25%) of aggregate monthly rental payments collected for any given month (with the percentage allocation subject to review and revision based upon performance of lessees, rental receipts, and industry standards for property management).

(d) Annual Reconciliation; Adjustments to Percentage Allocations; Final Disbursements. If requested by either Foundation or Agency by January 15 for each calendar year, Foundation, Agency (and, if applicable, Agency's property management company) shall review the aggregate rental payments received for the immediately prior calendar year and shall reconcile any disputed or deferred disbursements that were not made for any given month pursuant to Subsections 6.3.2(a)-(c) above. The review and reconciliation shall be commenced no later than January 31 and shall be completed no later than February 28 of the calendar year immediately after the calendar year under review and reconciliation. Upon completion of the review and reconciliation, an undisputed or deferred monthly disbursement from the prior calendar year shall be disbursed to the party entitled to such undisputed or deferred monthly payment, and a disputed monthly disbursement for the prior calendar year shall be allocated and distributed to Foundation and Agency (or, at Agency's discretion, Agency's property management company) equally fifty-fifty (50/50) to further their respective lawfully authorized purposes.

6.4 Foundation Advisory Committee Consultation for Property Management and Potential Lessees. Prior to entering into any contract with a property management company for the management of the tenants and the leasing of the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit, Agency shall consult with the Foundation Advisory Committee and solicit comments concerning the qualifications to manage said Condominium Units. Further, at least fifteen (15) days prior to entering into any lease for

commercial or retail space in the Firestone Building Condominium Unit or Tea Room Building Condominium Unit, Agency or Agency's designated property management company shall deliver to the Foundation Advisory Committee contact person the name of the proposed tenant and a copy of the proposed lease with the proposed tenant for Foundation Advisory Committee review. In the event that the Foundation Advisory Committee has a concern with the proposed tenant or proposed lease, the Foundation Advisory Committee contact person shall deliver written notice to Agency (and if applicable Agency's designated property management company) within seven (7) days after delivery of the proposed tenant and proposed lease. Prior to entering into the proposed lease with the proposed tenant, the Foundation Advisory Committee, Agency, and if applicable Agency's designated property management company shall meet and consult in good faith to address the concerns raised by the Foundation Advisory Committee. Notwithstanding any provision in this Second Amendment (including the Foundation Advisory Committee Protocols) to the contrary, Agency, after attempting to engage in good faith consultation with the Foundation Advisory Committee, shall have final authority, in its reasonable discretion, to make any and all decisions concerning the approval of any proposed tenant or proposed lease, unless the Agency Board approves the alternative master lease and subleasing approach set forth in Section 6.5 below.

6.5 Alternative Property Management Structure; Master Lease of Firestone Building and Tea Room Building Condominium Units and Subleases for Commercial and Retail Vendors; Agency Board Approval Required. After three (3) consecutive years of Agency-approved Foundation Annual Budgets and three (3) consecutive years of leasing the commercial and retail space in Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit in accordance with Sections 6.2-6.4 above, Foundation may submit to the Agency's Executive Director a request to revise the leasing arrangement for the Firestone Building Condominium Unit and Tea Room Building Condominium Unit, in which case Foundation shall propose that the Foundation become a master lessee of any unoccupied premises and future vacated premises in the Firestone Building Condominium Unit and Tea Room Building Condominium Unit. Foundation shall provide all proposed documents, including a proposed master lease agreement between Agency (as master lessor) and Foundation (as master lessee) for unoccupied premises and future vacated premises, and a proposed form for a sublease agreement between Foundation (as sublessor) and potential commercial and retail vendors (as sublessees). The proposed master lease agreement shall provide that Foundation has the obligation, until the Foundation Repayment Account Sufficient Fund Date, to allocate and deposit into the Foundation Repayment Account a percentage (between sixteen percent (16%) and forty percent (40%)) of monthly rental payments from sublessees, and the proposed master lease agreement shall provide that Foundation may not modify an Agency-approved form for a sublease agreement without prior Agency review and approval. The proposed master lease agreement and form sublease agreement shall be subject to review, comment, and approval by Agency's Executive Director and Agency's legal counsel. Foundation's request to revise the leasing arrangement and the proposed documents implementing the same shall be subject to Agency Board review and approval, and in the event that the Agency Board does not approve the revised leasing arrangement, then the terms and conditions in Sections 6.2-6.4 above shall remain operative for any future leasing arrangement with a potential tenant. Nothing in this Section shall be deemed as authorization for Foundation to interfere with, terminate, or modify an existing lease or existing lease term between Agency and any existing tenant for occupied premises in the Firestone Building Condominium Unit or Tea Room Building Condominium Unit.

6.6 Nondiscrimination Covenants in Real Property Documents. All such deeds, leases or contracts pertaining to the Condominium Units and the Project shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

6.6.1 Deeds. In deeds, language shall appear in substantially the following form:

“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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee 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, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

6.6.2 Leases. In leases, language shall appear in substantially the following form:

“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: There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, 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.”

6.6.3 Contracts. In contracts pertaining to the realty, language shall appear in substantially the following form:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer,



use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself 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, subtenants, sublessees or vendees of the premises.”

7. REPAYMENT BY FOUNDATION TO AGENCY AND FUTURE CONVEYANCES OF AGENCY-OWNED CONDOMINIUM UNITS.

7.1 Foundation Repayment Obligation. Pursuant to one of the Foundation Repayment Methods, Foundation shall repay Agency for the Agency Rehabilitation Work, the Agency Additional CCE Implementation Costs, the Agency Loan Reimbursement Amount, the WRL Total Reimbursable Costs, and the Foundation Vesting and Operations Grant. Foundation shall have no obligation to repay Agency for any amount that Foundation receives from a California Cultural and Historic Endowment grant.

7.1.1 Foundation Repayment Account. After the CCE Closing Date, Agency shall establish the Foundation Repayment Account at a reputable third-party bank or other financial institution licensed in the State of California to provide such account management services with branch locations in the City of Fullerton. The Foundation Repayment Account shall be a separate interest bearing account in the name of Agency that has funds dedicated to the repayment of Agency for the Agency Rehabilitation Work, the Agency Additional CCE Implementation Costs, the Agency Loan Reimbursement Amount, the WRL Total Reimbursable Costs, and the Foundation Vesting and Operations Grant, and for no other purpose (except as authorized in Section 7.2.1 below). The Foundation Repayment Account shall bear interest at the prevailing market rate for similar types of accounts, and interest accrued (but not deposits) may be applied toward the payment of any service fees charged by the bank or other financial institution for the operation and maintenance of the Foundation Repayment Account.

7.1.2 Foundation Repayment Methods. Deposits shall be made into the Foundation Repayment Account until the Foundation Repayment Account Sufficient Fund Date. Foundation shall deposit or consent to the deposit of funds into the Foundation Repayment Account pursuant to one of the following methods (each, a “Foundation Repayment Method”):

(a) The allocation and deposit from the aggregate monthly rental payments from all tenants in the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit pursuant to Section 6.3.2(c) above.

(b) The allocation and deposit from any sublessee rental payments pursuant to any master lease agreement and form sublease agreement approved in accordance with Section 6.5 above.

(c) Following the completion of the Agency Rehabilitation Work and Foundation Rehabilitation Work for the Fox Theatre and receipt of a certificate of occupancy from the City for the Fox Theatre, the collection of a two dollar (\$2.00) surcharge per ticket sold to patrons of revenue-generating events at the Fox Theatre, with the two dollar (\$2.00) per ticket surcharge deposited into

the Foundation Repayment Account no later than one (1) month after the event for which the surcharge was collected. In the event that Foundation, by collecting the two dollar (\$2.00) surcharge per ticket sold to patrons for revenue-generating events pursuant to this Subsection 7.1.2(c), collects for twelve (12) consecutive months amounts that are equal to or greater than the monthly amounts deposited into the Foundation Repayment Account by the allocation from the aggregate monthly rental payments from all tenants in the Firestone Building Condominium Unit and/or Tea Room Building Condominium Unit pursuant to Section 6.3.2(c) above, then Foundation shall have the right to use the two dollar (\$2.00) surcharge method as the exclusive means to fund the Foundation Repayment Account until the Foundation Repayment Account Sufficient Fund Date; provided, however, that Agency shall have the right to reinstate the allocation and deposit method in Section 6.3.2(c) above if, for a consecutive three (3) month period, the total amount of revenue deposited into the Foundation Repayment Account by the two dollar (\$2.00) surcharge method declines by twenty percent (20%) or more when compared to the prior consecutive three (3) month period.

7.1.3 Other Sources of Deposits. In addition to the Foundation Repayment Methods set forth in Section 7.1.2 above, deposits into the Foundation Repayment Account may be from any other lawful funding source, including charitable grants and donations; provided, however, that Foundation has no obligation to deposit into the Foundation Repayment Account charitable grants and donations.

7.1.4 Right to Review Deposit Amounts. Agency shall have the right to review any and all books, accounting, and records of Foundation to verify that deposits are made into the Foundation Repayment Account in accordance with this Second Amendment, and upon any such request from Agency to Foundation for said review, Foundation shall cooperate with Agency and shall deliver to any bank or other financial institution holding any funds or accounts for Foundation any authorizations and consents as may be required to enable Agency to conduct said review. Agency shall have the right, until the Foundation Repayment Account Disbursement Date, to conduct and audit or cause the conducting of an audit of Foundation and any funds or accounts of Foundation if, in its reasonable discretion, Agency suspects that funds are not being properly provided by Foundation for deposit into the Foundation Repayment Account. If requested by Agency, Foundation shall deliver an executed copy of this Second Amendment with reference to this Section that authorizes the review and audit by Agency as described herein.

## 7.2 Disbursement to Agency of Funds; Closing of Repayment Account.

7.2.1 Monitoring of Account; Withdraw of Funds; Extraordinary Circumstances. Agency shall monitor the funds in the Foundation Repayment Account. No funds shall be withdrawn from the Foundation Repayment Account until the Foundation Repayment Account Sufficient Fund Date except in extraordinary circumstances in which all of the following conditions are met: (a) Foundation has an immediate need for cash, (b) Foundation has no other source of funds available to pay for the extraordinary circumstance requiring an immediate need for cash, and (c) Agency provides its prior written consent (in its reasonable

discretion) to the use of funds from the Foundation Repayment Account for the extraordinary circumstance requiring an immediate need for cash.

7.2.2 Repayment to Agency. Upon the Foundation Repayment Account Sufficient Fund Date, Agency shall have the right to withdraw from the Foundation Repayment Account the amount that is equal to the Agency Rehabilitation Work Receipts, the Agency Loan Reimbursement Amount, the Agency Additional CCE Implementation Costs, the WRL Total Reimbursable Costs, and the Foundation Vesting and Operations Grant. Agency shall deliver to Foundation no less than ten (10) days' prior written notice of Agency's intent to withdraw said amount. The date on which the bank or other financial institution holding the Foundation Repayment Account disburses said amount to Agency shall be the "Foundation Repayment Account Disbursement Date."

7.2.3 Closing of Account. Agency shall close or cause the closing of the Foundation Repayment Account upon (a) Agency's receipt of the amount of funds sufficient to cover the amount of the Agency Rehabilitation Work Receipts, the Agency Loan Reimbursement Amount, the Agency Additional CCE Implementation Costs, the WRL Total Reimbursable Costs, and the Foundation Vesting and Operations Grant, and (b) payment to the bank or other financial institution of any fees for closing the Foundation Repayment Account (which fees shall be paid from interest made on deposits into said account). No later than ten (10) days after the closing of the Foundation Repayment Account, Agency shall deliver to Foundation written confirmation thereof and the Foundation Repayment Account Disbursement Date.

7.3 Conveyance of Agency-Owned Condominium Units. Upon the Foundation Repayment Account Disbursement Date, Foundation shall have the right to a conveyance of the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit, pursuant to the terms and conditions of this Second Amendment.

7.3.1 Option to Convey Title; Option Period; Recording. No later than thirty (30) days after the completion of the Foundation Rehabilitation Work for the Fox Theatre evidenced by the Release of Construction Covenants recorded against the Fox Theatre Condominium Unit, Agency shall record or cause to be recorded in the Recorder's Office the Foundation Conveyance Option against the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit. The rights and obligations of the parties set forth in the Foundation Conveyance Option shall become effective upon its recording.

7.3.2 Foundation Conveyance Option; Exercise of Right. Foundation shall have the right to the conveyance of fee title to the Firestone Building Condominium Unit, Tea Room Building Condominium Unit, and East Airspace Condominium Unit pursuant to the Foundation Conveyance Option, which shall provide that Foundation's right to exercise the conveyance of said Condominium Units shall arise upon the Foundation Repayment Account Disbursement Date, and shall provide that the conveyance of said Condominium Units shall be serviced through an escrow that is mutually acceptable to the parties.

8. MISCELLANEOUS.

8.1 Force and Effect; Conflicts. Except as expressly set forth in this Second Amendment, all terms, conditions, and provisions of the Original DDA and First Amendment shall remain in full force and effect. If there is a conflict between the provisions of this Second Amendment and the provisions of the Original DDA or First Amendment, or both, the provisions in this Second Amendment shall control.

8.2 Assignments and Transfers. In addition to the terms and conditions set forth in Section 6.8 of the Original DDA, and except as expressly authorized in this Second Amendment, Agency and Foundation shall not, whether voluntarily, involuntarily, or by operation of law, undergo any significant change in ownership or assign, transfer or convey all or any part of this Second Amendment or any rights in this Second Amendment or in the Condominium Units without the other party's prior written approval. Prior to the date the entire Project is completed as evidenced by the Releases of Construction Covenants, Agency's approval of an assignment, transfer, or conveyance of any interest in a Condominium Unit may be granted or withheld in Agency's sole and absolute discretion. After the date the entire Project is completed, Agency shall not unreasonably withhold its approval of an assignment, transfer, or conveyance of a Condominium Unit for which Foundation is the fee owner provided (a) the assignee is a nonprofit corporation whose primary purpose is similar to Foundation, with such purpose to be described in the nonprofit corporation's Articles of Incorporation as the support and operation of the Fox Theatre, (b) the assignee acquires fee title to the Condominium Unit(s), and (c) Agency reasonably determines that the assignee is capable of performing the obligations set forth in the Regulatory Agreement, including the operation of the Fox Theatre and the maintenance of the Condominium Units in first class condition. Notwithstanding anything in this Section to the contrary, Agency shall have the right to transfer a leasehold interest in a Condominium Unit or any portion thereof (including commercial and retail spaces), and Foundation shall have a right to transfer a subleasehold interest in a Condominium Unit if approved in accordance with Section 6.5 of this Second Amendment. Agency may assign without prior Foundation approval any interest in this Second Amendment or a Condominium Unit to City and in order to fulfill Agency's obligations to assign as prescribed in this Second Amendment.

8.3 Agency Approvals and Actions. Agency shall maintain authority of this Second Amendment and the authority to implement this Second Amendment through the Executive Director (or his or her duly authorized representative) except when the Agency Board's review and approval is expressly required herein. The Executive Director shall have the authority, except when expressly reserved by the Agency Board herein, to make approvals, issue interpretations, execute documents, waive provisions, and/or enter into certain amendments of this Second Amendment on behalf of Agency so long as such actions do not materially or substantially change the uses or development permitted on the Site or the Condominium Units or add to the costs incurred or to be incurred by Agency as specified herein. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

8.4 Execution in Counterparts. This Second Amendment 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.

8.5 Attachments. This Second Amendment contains the following Exhibits and Attachments, each incorporated herein and made a part hereof by this reference:

Exhibit "A"	Legal Description of the Site
Exhibits "A-1" to "A-4"	Legal Descriptions of the Condominium Units
Exhibit "B-1"	Notice of Anticipated Acquisition and Potential Relocation
Exhibit "B-2"	Amendment to Jin Ho Choi Lease
Exhibits "C-1" & "C-2"	Lessee and Lessor Estoppel Certificates
Exhibit "D-1"	Jin Ho Choi Lease Assignment and Assumption Agreement
Exhibit "D-2"	WRL Assignment and Assumption Agreement
Exhibit "E"	Grant Deed Form for Condominium Units
Exhibit "F"	Affidavit of Non-Foreign Status
Exhibit "G"	Reconveyance of Agency Deed of Trust
Exhibit "H"	Agency Option Quitclaim Deed
Exhibit "I"	Revised Schedule of Performance
Exhibit "J"	Revised Scope of Work
Exhibit "K"	Updated Preliminary Title Report
Exhibit "L"	Foundation Conveyance Option
Exhibit "M"	Memorandum of Second Amendment Form
Exhibit "N"	Foundation Advisory Committee Protocols
Exhibit "O"	Reciprocal Restrictive Covenants

[signatures on next page]

IN WITNESS WHEREOF, Agency and Foundation have entered into this Agreement as of the Effective Date.

“AGENCY”

FULLERTON REDEVELOPMENT AGENCY, a public body, corporate and politic

By: *Ray M. Ziegler*

Its: EXECUTIVE DIRECTOR

ATTEST:

*[Signature]*  
Secretary

APPROVED AS TO FORM  
RUTAN & TUCKER, LLP

*[Signature]*  
Attorneys for the Fullerton  
Redevelopment Agency

“FOUNDATION”

FULLERTON HISTORIC THEATRE FOUNDATION, a California nonprofit public benefit corporation

By: *Thomas N. Tall*

Its: *President*

By: *[Signature]*

Its: SECRETARY