

ARTICLE 5

PUBLIC BENEFITS

5.1 Performing Arts Center.

5.1.1 Feasibility Study. Commencing within ninety (90) days after the Effective Date of this Agreement, City will commence a feasibility study for an approximately 60,000 square foot performing arts center, including 600 seat main auditorium, 200 seat secondary auditorium, lobby and concession areas, restrooms etc., located in the vicinity of the Town Square ("PAC").

5.1.2 Core and Warm Shell. Based on the feasibility study City may elect either (i) to receive a payment from Developer in the total amount of Twenty Two Million Eight Hundred Thousand Dollars (\$22,800,000) ("PAC In Lieu Payment"), or (ii) for Developer to construct and deliver to City a Warm Shell (defined below) PAC space which City shall be responsible for completing and maintaining. If City elects for Developer to build the PAC, Developer's obligation is for a maximum of a 60,000 square foot Warm Shell space. The space would be intended to optimize ability to accommodate a main theater of approximately 600 seats, a second stage of no more than 200 seats, lobby to host pre-theater events, ticketing space and food preparation and staging area, and appropriate number of finished restrooms in light of the size of the facility, among other things. The "Warm Shell" space scope will include (i) an enclosed box with roof, exterior walls/finishes and floor completed and the exterior envelope to have Project standard glazing, roofing and exterior exiting doors as required by code; (ii) stub out of all required utilities at an agreed upon location within the structure, (iii) its own HVAC units available at plenum for tenant improvement to connect for their distribution; and (iv) a fire sprinkler stand pipe for the tenant work distribution. The specific requirements for the Warm Shell scope will be detailed in the three alternative design options described in Section 5.1.3. Following delivery of the Warm Shell space City shall be responsible for completing all front and back of house tenant improvements, including theatre seating, and lobby and concession area fixturation. In addition to the Warm Shell work, Developer shall provide City, at no charge to City, 150 parking stalls within Retail and Entertainment/Mixed Use District (as defined in the Specific Plan) and within reasonable proximity to the PAC, which will be subject to project-wide shared parking strategies, and reasonable relocation from time to time depending on leasing or operational requirements.

5.1.3 MSDP/Design. The MSDP shall include two scenarios with respect to the PAC, one that includes a PAC generally located in the Retail District/Phase 1 area, and one that does not include a PAC. With the submittal of the MSDP, Developer will also provide up to three (3) alternative design options, including conceptual program lay-outs, for City consideration concurrently with, but separate from, the review of the MSDP. Within six (6) months of Developer submittal of the MSDP application, the City shall elect whether to include the PAC at the location proposed by Developer in the MSDP, or to approve the MSDP without the PAC.

5.1.4 Cash Election. If City approves the MSDP without the inclusion of a PAC, then Developer shall pay to City the PAC In Lieu Payment prior to issuance of the certificate of occupancy for the last office building in the Office/Mixed-Use District which is not Amenity Office Space, as shown on the MSDP.

5.1.5 Construction of PAC. If City approves the MSDP with the PAC, it shall also, at that time, elect one of the design alternatives provided by Developer. Developer shall design and construct the PAC to Warm Shell level of completion together with the associated parking, in the location shown on the approved MSDP, consistent in all material respects with the design selected by the City, provided that Developer shall have no obligation to commence design and construction of the PAC until the Vested Approvals and the approvals for the MSDP and Master Tentative Map are Final. Developer shall provide a one (1) year warranty for the Warm Shell PAC space; warranties and guarantees for other systems and components of the PAC space, including HVAC, will be provided per industry standard.

5.1.6 Delivery. Developer shall deliver to City a completed Warm Shell, PAC and associated parking as described above, provide City with a complete set of as-built plans and drawings, and the warranties and guarantees referenced in Section 5.1.5 above, prior to issuance of a certificate of occupancy for the last building in the Project located west of Wolfe Road. City and Developer shall collaborate on the plans, specifications and drawings for the PAC. City will be solely responsible for all costs, fees and expenses, including permitting, to design and construct the interior tenant improvements for the PAC, and all other associated amenities, facilities and improvements (other than the Warm Shell improvements and PAC parking the costs of which shall be paid by Developer), and thereafter to operate, and following expiration of the warranty period, to maintain and repair the PAC. Developer shall provide City with a 34 year lease for the PAC premises and parking at a rent of \$1 per year on a NNN basis. The Lease term shall commence as of the date Developer delivers a complete (other than minor punch list items) Warm Shell PAC space to City. City, as PAC tenant, will participate in the Project's master property owners' association and pay a proportionate fair share cost contribution for typical common area maintenance in the Retail and Entertainment/Mixed Use District. If the PAC is constructed but ultimately the City fails to accept and operate it, the City PAC lease shall terminate and the PAC may be used as entertainment space, with any of the uses allowed in the Retail Mixed Use District component, including co-working or event space, subject to any further CEQA review.

5.1.7 PAC Agreements. Developer shall prepare a term sheet for the improvement and lease agreements referenced below generally at the same time as its MSDP application, and prior to construction and issuance of PAC building permits, or at such later time as City and Developer may mutually agree each in its discretion, City and Developer shall prepare and execute forms of improvement and lease agreements setting forth in greater detail their respective obligations with respect to design, development, delivery and leasing of the PAC. The PAC improvement agreement shall address among other issues, requirements for collaboration on design, labor and materials and performance bonds, completion guarantee, process for submittal and approval of change orders, and warranty requirements. If the Parties are unable to achieve the schedule dates due to disagreements, the Parties shall meet and confer in good faith to resolve such disagreements and, if necessary, enter into mediation pursuant to Section 12.8 below.