

NO FEE DOCUMENT
RECORDING REQUESTED BY:

The Redevelopment Agency of
the City of Oakland

WHEN RECORDED, MAIL TO:

The Redevelopment Agency of the City of Oakland
c/o Oakland City Attorney's Office
Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612

Attn.: Dianne M. Millner, Esq.

**LEASE DISPOSITION AND DEVELOPMENT
AGREEMENT**

FOR THE SEARS AUTO CENTER

**(2000-2016 TELEGRAPH AVENUE. AND 490 THOMAS
L. BERKELEY WAY, OAKLAND)**

BY AND BETWEEN

**THE REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND**

AND

SEARS, DEVELOPMENT CO.,

October 18, 2005

**LEASE DISPOSITION AND DEVELOPMENT AGREEMENT
FOR THE SEARS TIRE AND AUTO CENTER
(2000-2016 TELEGRAPH AVE. AND 490 THOMAS L. BERKELEY WAY, OAKLAND)**

THIS LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (the "LDDA") is entered into this 18 day of October, 2005, by and between THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body, corporate and politic ("Agency") and SEARS DEVELOPMENT CO., a Delaware corporation ("Developer"), individually referred to as the "Party" and collectively as the "Parties."

RECITALS

A. The City of Oakland (the "City") activated Agency, pursuant to the provisions of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.) for the purpose of encouraging and facilitating redevelopment, removal of blight, reuse of blighted and unproductive property, and economic growth in the City.

B. On June 12, 1969, Agency adopted and subsequently amended a Redevelopment Plan for the Central District Urban Renewal Area of Oakland (the "Redevelopment Plan"). On February 18, 1997, Agency established the Retail Center and Rehabilitation Area (Uptown Activity Area) (the "Uptown Area").

C. The Agency has executed a Lease Disposition and Development Agreement with FC Oakland, Inc., to develop in the Uptown Area a mixed use primarily housing and retail project (the "Uptown Project") to help eliminate blight and unproductive property uses in the Uptown Area.

D. The real property located at 2000-2016 Telegraph Avenue, and 490 Thomas L. Berkeley Way, Oakland, and more particularly described in Exhibit "A" attached hereto (the "Site"), is adjacent to the proposed Uptown Project, and is needed for the relocation of Developer's existing Auto Center ("Existing Auto Center") currently located at 1911 Telegraph Avenue, Oakland, California (the "Existing Auto Center Site"), and is located upon property on which the Uptown Project will be built.

E. In order to meet the goals of the Redevelopment Plan of preserving housing and retail uses in the Uptown area, the Agency will purchase the Existing Auto Center Site and an adjacent parking structure from Developer pursuant to a Purchase and Sale Agreement with Joint Escrow Instructions ("Sale Agreement"), and simultaneously execute this LDDA to ground lease the Site to Developer (and grant Developer the option to purchase the Site for One and no/100 Dollar (\$1.00) to relocate its Existing Auto Center upon satisfaction of conditions specified in the LDDA.

F. Developer desires to acquire the Site for the purpose of building a new relocated retail Sears Auto Center and building of other lawful uses, in addition to a new retail Sears Auto Center, including retail and residential uses (the "Project").

G. As part of the transaction contemplated herein, the parties or their permitted affiliates will enter into a Lease Agreement for the Existing Auto Center Site whereby after the sale of the Existing Auto Center Site to the Agency by Developer, Agency will lease the Existing Auto Center Site to Developer for the sum of One and no/100 Dollar (\$1.00) per year commencing on the Close of Escrow, as that term is hereinafter defined, and ending on the earlier to occur of twenty (20) months after the Close of Escrow or the opening for business of a Sears auto center on the Site.

H. As part of the transaction contemplated herein, to compensate Developer for the loss of parking spaces due to sale of the parking center referred to in the Sale Agreement, the City of Oakland and Developer will enter into a Parking License Agreement granting Developer use of 50 parking spaces for the earlier of 25 years or until Developer or its permitted assignee under the Parking License Agreement no longer operates a department store in downtown Oakland.

I. Agency determined it was in the public interest to lease and subsequently sell the Site to Developer. The purposes of redevelopment will be furthered by the (1) relocation of the Existing Auto Center so that the Uptown Project can proceed; and (2) construction of a new Auto Center on the Site in order to preserve this component of Developer's retail operations in the Uptown Area.

J. The Parties agree that the newly constructed building on the Site shall be of such design and quality to enhance the immediate area surrounding the Site and within the Central Redevelopment District to encourage further economic development and maintain high quality aesthetic standards.

K. In December of 2004, the Agency commenced that certain condemnation litigation captioned Redevelopment Agency of the City of Oakland, a public body, corporate and politic, Plaintiff v. Alex K. Hahn; Sang E. Hahn; United Commercial Bank; Allright Cal, Inc.; Gannett Outdoor Advertising; City of Oakland; Berkeley Free Market; Alex K. Hahn and Jae H. Hahn, Trustees of the Hahn Family Trust Dated April 10, 2002; Sang E. Hahn and Haitan Hahn, as Trustees of the Hahn 2002 Family Trust under Agreement dated February 8, 2002; United Commercial Bank; Alameda County – Tax Collector; United States of America; Sutter-Poulsen – The Point; Creditors Trade Associations, Inc.; dba Great Western Collection Bureau; Chicago Title Company; DOES 1 through 50 inclusive; all persons unknown who may claim an interest in the Property, Defendants, Santa Clara County Superior Court, Case No. 1-05-CV-038886, as subsequently moved to Santa County Superior Court, Case No. 1-05-CV-038886 (the "Condemnation Litigation") against Alex K. Hahn and Jae H. Hahn, Trustees of the April 10, 2002 Hahn Family Trust, and Sang E. Hahn and Haitan Hahn, Trustees of the February 8, 2002 Hahn Family Trust (collectively, the "Hahn Property Owners") and other third party defendants.

L. On January 24, 2005, an Order for Possession of the Hahn Property was issued to Agency by the court in the Condemnation Litigation, which Order became effective on April 26, 2005, and granted to Agency the right of immediate possession and use of the Hahn Property, including the right to remove all improvements and

structures situated thereon.

M. The California Health and Safety Code authorizes a redevelopment agency to dispose of real property possessed by it pursuant to an order for possession for purposes of redevelopment, and requires that any disposition of real property by a redevelopment agency in a project area must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan.

N. The disposition of property acquired by a redevelopment agency with tax increment funds must be approved by the legislative body after a noticed public hearing. A joint public hearing considering the execution of this Agreement, the Sale Agreement, the Ground Lease, the Lease and the License Agreement was held by the Agency and the Oakland City Council on June 21, 2005, at which meeting the execution of this Agreement, the Sale Agreement, the Ground Lease, the Lease and the License Agreement was authorized by Council Resolution No. 79314 C.M.S. and Redevelopment Agency Resolution No. 2005-0038 C.M.S. The execution of this Agreement, the Sale Agreement, the Ground Lease, the Lease and the License Agreement is being made in conformance with and pursuant to the authority given to the Agency in said resolutions and the California Health and Safety Code.

O. An Environmental Impact Report ("EIR") was approved for the Project by the City Planning Commission on February 18, 2004,; and the EIR and this LDDA was reviewed and approved by the City Council and Agency on June 21, 2005, pursuant to the California Environmental Quality Act ("CEQA").

P. This LDDA sets forth the terms and conditions under which Agency shall Ground Lease and sell the Site to Developer so that Developer can build the Project in accordance with this LDDA and the Redevelopment Plan.

Q. In order to encourage development of the Site in a timely manner, this LDDA provides rights for Agency to repurchase Agency's Interest, as defined herein, or terminate the Ground Lease should Developer not meet timetables for construction of the Project.

R. Based upon the Agency's covenant to diligently pursue the Condemnation Litigation as set forth in Section 17.1(a) hereof, Developer is willing to take a significant business risk and relinquish the Existing Auto Center Site and take the time, make the effort and incur the expense to develop the Project.

NOW, THEREFORE, in consideration of the preceding Recitals of fact and the mutual covenants and obligations of the Parties set forth herein, Agency and Developer agree as follows:

AGREEMENT

1. PURPOSE

1.1 Purpose. This LDDA sets forth the terms and conditions pursuant to which Agency shall Ground Lease and sell the Site to Developer and pursuant to which Developer shall redevelop the Site by constructing the Project thereon. The redevelopment of the Site as set forth herein could not occur without the Parties' efforts and cooperation. Agency acknowledges that Developer needs to retain control of the Project costs, construction feasibility, construction schedule, and the ability to obtain financing. Developer acknowledges that Agency shall have the right to review and approve certain aspects of the Project as set forth in this LDDA and in furtherance of the purposes of redevelopment and the Redevelopment Plan.

1.2 Redevelopment Plan. The Parties agree that this LDDA shall be subject to the provisions of the Redevelopment Plan which is incorporated by reference into this LDDA, and shall be subject to the Redevelopment Plan while it remains in effect.

2. SCHEDULE OF DEVELOPER'S OBLIGATIONS PRIOR TO COMMENCEMENT OF GROUND LEASE

2.1 Pre-development Activities. Developer or its Agent(s), at its or their sole cost and expense, agree(s) to obtain any Government Approvals to construct the Project.

2.2 INTENTIONALLY OMITTED.

2.3 Development Strategy

(a) Developer Documents for Agency Review. Within ninety (90) calendar days before the issuance of any building permit for the Project, Developer shall submit to Agency the following documents and information for Agency's review, comment and approval (collectively, the "Development Strategy"):

(i) A written statement stating that there is no pending or threatened litigation, arbitration, claims, administrative or other proceedings (this does not include the Condemnation Litigation) in which Developer is or may become a party that relates to the Site, that may have any impact on this LDDA, the Project, or the ability of Developer to meet any of its obligations under this LDDA (collectively, "Developer Litigation"). If there is Developer Litigation, Developer shall provide a statement describing such litigation and, within five (5) business days of Agency's request and provide copies of any public litigation documents or filings in connection with such litigation;

(ii) A description of the estimated development costs of the Project and the proposed financing therefor, in a form reasonably acceptable to Agency; and

(iii) Schematic Drawings for the Project. "Schematic Drawings", shall mean a site plan, all elevations, two or more sections, an outline specification for materials and finishes, exterior signage plans, site and exterior lighting plans, and illustrative renderings or drawings needed to adequately present the Project.

(b) **Responses to Submittals.** Agency shall promptly and diligently review and approve or disapprove the Development Strategy, in whole or in part, within fifteen (15) business days of receipt from Developer. Any disapproval by Agency must state with specificity the reason for such disapproval. If Agency disapproves the Development Strategy, Developer shall have fifteen (15) business days to submit revisions. Agency shall review and approve or disapprove the revisions with written comments to Developer within fifteen (15) business days from receiving the revisions.

(c) **Good Faith Efforts.** Developer shall act reasonably and in good faith in submitting all information required for the Development Strategy. Agency shall act reasonably and in good faith in reviewing and rendering decisions on all the information required for the Development Strategy.

(d) **Extension of Time.** The submittal, response and approval dates specified in this Section 2.3 may be mutually extended by the Parties.

(e) **Material Change.** If the information contained in the Development Strategy changes in a way that materially and adversely affects the ability of Developer to implement the Development Strategy after the Agency has approved it, Developer shall submit the information related to such change to Agency for approval in accordance with the time periods identified in Section 2.3(b).

(f) **No Approval.** If the Schematic Drawings are not approved as contemplated in Section 2.3(a)(iii), either Party may submit the issue whether the Agency's disapproval is reasonable to arbitration under the same terms and conditions as set forth in Section 9.2(d) hereof.

3. DEVELOPMENT OF SITE: GOVERNMENT APPROVALS

Developer shall cause to be secured any and all land use and other entitlements, permits, and approvals which may be required by Agency, City or any other Government Agency affected by or having jurisdiction over the Project ("Government Approvals"). It is understood that Developer's obligation is to timely pay all necessary fees, and to timely submit requests and applications for all applicable Government Approvals. To the extent reasonably possible, Agency agrees to cooperate with Developer in attempting to secure Governmental Approvals, provided that Agency shall have no responsibility for incurring any expense other than reasonable amounts of staff time.

4. STATUS OF EXISTING TITLE

Fee simple title in the Site is currently vested in the Hahn Property Owners. An Order for Possession was issued to Agency by the Alameda County Superior Court in the Condemnation Litigation, which Order became effective on April 25, 2005, and granted to Agency the right of immediate possession and use of the Site. A judgment in the Condemnation Litigation has not yet been entered.

5. DEVELOPER'S ACCESS TO SITE

Prior to the Ground Lease Closing Date, Developer may have access to the Site if Developer executes Agency's form of access agreement.

6. GROUND LEASE

6.1 Term of Ground Lease. The Parties shall enter into a Ground Lease which shall contain an option to purchase Agency's interest in the Site and incorporating the purchase option terms set forth in Section 6.4. The Ground Lease shall be in substantially the same form set out in Exhibit "B". The Ground Lease shall be for an initial fifty (50) year term with an option to extend this initial term for an additional maximum term (or any portions thereof) for up to forty-nine (49) years as more particularly set forth in the Ground Lease.

6.2 Commencement and Termination Date of Ground Lease. Escrow for the Ground Lease shall close upon satisfaction of all conditions to close of escrow as set forth in Section 7.4, or such later date mutually agreed upon by the Parties ("Ground Lease Commencement Date"). The Ground Lease shall terminate on the earlier of:

- (a) The Purchase Closing Date, if Developer exercises the Purchase Option;
- (b) The expiration date of the term of the Ground Lease;
- (c) Any earlier termination of the Ground Lease as a result of a default as set forth herein or under the Sale Agreement; or
- (d) A termination by mutual agreement of the Parties.

6.3 Rent. The Ground Lease annual rent shall be One Dollar (\$1) (the "Rent Payment"). The Ground Lease shall constitute a "triple net lease," so that the Rent shall provide Agency with "net" return for the term of the Ground Lease, free of any expenses or charges with respect to the Site, except if expressly provided otherwise in the Ground Lease.

6.4 Option to Purchase. The Ground Lease shall grant Developer an option to purchase Agency's Interest as more particularly set forth in the Ground Lease ("Purchase Option").

6.5 Delivery of Title. In the event that Developer has exercised the Purchase Option prior to Agency's receipt of fee title, Agency agrees that it shall notify Developer in writing within thirty (30) business days after the issuance of the Final Order of Judgment and Condemnation. Agency agrees to promptly record said Final Order of Judgment and Condemnation. Agency agrees to then promptly record a grant deed to Developer which shall include, without limitation, customary grant deed provisions required by Agency in redevelopment transactions. All transfer taxes, escrow and recording fees and title insurance premiums shall be paid as customary in Alameda County. Accordingly, Agency shall pay the County of Alameda transfer tax and one-half (1/2) of the City of Oakland transfer tax, and Developer shall pay one-half (1/2) of the City of Oakland transfer tax, and pay all title and escrow fees associated with the close of escrow.

6.6 Conveyance of Agency's Interest in the Site.

Upon exercise of the Purchase Option, Agency will convey Agency's Interest in the Site to Developer pursuant to the provisions in the Ground Lease.

7. GROUND LEASE ESCROW

7.1 Opening of Escrow. The parties shall jointly open a Ground Lease escrow ("Ground Lease Escrow") with Escrow Agent (as defined in the Sale Agreement). The Ground Lease Escrow shall close on the Ground Lease Commencement Date.

7.2 Escrow Instructions. The Ground Lease Escrow shall be subject to the terms and conditions of this LDDA. The Parties may issue joint supplemental instructions as needed or as requested by the Escrow Agent.

7.3 Prorations and Closing Costs

(a) **Prorations.** Real property taxes, general and special taxes, and installments of assessments with respect to the Site shall be prorated between the Parties.

(b) **Closing Costs.** Agency and Developer shall each pay closing costs and transfer taxes as customary in Alameda County. Accordingly, Agency shall pay the County of Alameda transfer tax and one-half (1/2) of the City of Oakland transfer tax, and Developer shall pay one-half (1/2) of the City of Oakland transfer tax, and pay all title and escrow fees associated with the close of escrow. .

7.4 Conditions to Close of Escrow on the Ground Lease.

(a) **Conditions to Developer's Obligations.** Developer's obligation to close escrow on the Ground Lease is conditioned upon and subject to the satisfaction, or written waiver by Developer, of all the conditions set forth below in this Section 7.4(a), which are exclusively for the benefit of Developer, within the time periods specified elsewhere in this LDDA, or if no time period is so specified, by the

Ground Lease Commencement Date. Should any such condition not be so satisfied or waived by Developer, then Developer may elect to terminate this LDDA.

(i) Title Company shall be unconditionally committed, upon the sole condition of the payment of its regularly scheduled premiums, to issue a leasehold policy of title insurance (the "Leasehold Title Policy") in such amount as reasonably requested by Developer and acceptable to Title Company, subject only to those items identified as exceptions nos. 1,4,5 and 6 in that certain Preliminary Report issued by the Title Company dated as of August 1, 2005, attached to this Agreement as Exhibit D, or otherwise approved in writing by Developer ("Permitted Exceptions") and containing such additional or special endorsements as reasonably required by Developer.

If at the time scheduled for closing on the Ground Lease Escrow, any (i) possession by or rights of possession, or (ii) lien, encumbrance, covenant, assessment, agreement, easement, lease or other matter which is not a Permitted Exception encumbers the Site ("Title Defect"), Agency will have up to twenty (20) days after the date scheduled for close of escrow to remove all such Title Defects. The close of escrow shall be extended to the earlier of seven (7) business days after all such Title Defects are removed or the expiration of the twenty (20) day period (the "Extended Close of Escrow"). If the Title Defect can be removed by bonding or the payment of a liquidated sum of money and Agency has not so bonded or made such payment within the twenty (20) day period, the Agency shall have the right but not the obligation to cause a bond to be issued. Agency shall not intentionally materially alter the condition of title to the Site existing as of the date of this LDDA except for the documents and transactions contemplated hereunder.

If at the date specified for the Extended Close of Escrow, unless the Parties mutually agree to extend such date, a Title Defect still exists, Developer may by written notice to Agency as its sole remedy hereunder either (i) terminate this LDDA or (ii) accept possession of the Site under this LDDA and the Ground Lease. If the Developer accepts delivery of possession, the Title Defect will be deemed waived.;

(ii) Agency shall have deposited into escrow all documents and funds required to be so deposited by Agency pursuant to this LDDA in order to close escrow;

(iii) Agency shall not be in material default in the performance of any of its covenants or other obligations under this LDDA or the Sale Agreement;

(iv) Agency shall deliver to Escrow Agent a certification of non-foreign status in the form required of a transferor pursuant to Internal Revenue Code ("IRC") Section 1445, and the Regulations thereunder, and a California Withholding Exemption Certificate (Form 590);

(v) All of Agency's representations and warranties set forth in this LDDA shall be true as of the Ground Lease Commencement Date;

(vii) No litigation exists challenging any CEQA matters with respect to the Site and/or this LDDA;

(viii) Agency has provided and executed any and all documents that may be reasonably required by Developer or Escrow Agent to close escrow; and

(ix) Agency has approved the Development Strategy.

(b) Conditions to Agency's Obligations. Agency's obligations to close escrow on the Ground Lease are conditioned upon and subject to the satisfaction, or written waiver by Agency, of all the conditions set forth below in this Section 7.4(b), which are exclusively for the benefit of Agency, within the time periods specified elsewhere in this LDDA, or if no time period is so specified, by the Ground Lease Commencement Date. Should any such condition not be so satisfied or waived by Agency, then Agency may elect to terminate this LDDA.

(i) Developer shall have deposited all documents and funds required to be so deposited into escrow by Developer pursuant to this LDDA in order to close escrow;

(ii) No litigation exists challenging any CEQA matters with respect to the Site and/or this LDDA;

(iii) Developer shall not be in material default in the performance of any of its covenants or other obligations under this LDDA or Sale Agreement;

(iv) All of Developer's representations and warranties set forth in this LDDA shall be true as of the Ground Lease Commencement Date;

(v) Agency has approved the Development Strategy; and

(vi) Developer has provided and executed any and all documents that may be reasonably required by Agency or Escrow Agent to close escrow.

7.5 Title to Improvements. Title to any existing improvements and improvements constructed or installed by Developer and located on the Site or in easements appurtenant to the Site shall be vested in Developer upon the Ground Lease Commencement Date.

8. INTENTIONALLY DELETED

9. DEVELOPER'S PROJECT REQUIREMENTS

9.1 Complete Construction. Developer shall make all reasonable efforts to Complete Construction within sixty (60) months after the Effective Date.

(a) Extension of Date to Complete Construction. The date for Complete Construction shall be extended to correspond to the number of days delayed consistent with Section 18.7.

(b) Progress Reports. From and following the Effective Date and until Complete Construction occurs, Developer shall provide reports to Agency on a semi-annual basis, in such detail as may be reasonably required by Agency, as to the actual progress of development of the Project. Each such report shall include, at a minimum, updates on Developer's performance of each obligation under this LDDA, and Developer's compliance with all timing requirements under this LDDA, including without limitation, updates on Developer's actions to:

(i) obtain financing for the Project; and

(ii) obtain Government Approvals.

9.2 Review and Approval of Design Plans

(a) Draft Design Plans. Developer may elect to submit draft design plans to Agency for review and comment to assist in the preparation and processing of the Final Design Plans.

(b) Final Design Plans

(i) Agency shall approve in writing the Final Design Plans for the Project within fifteen (15) business days from the date they are delivered by Developer to Agency, which approval may not be unreasonably withheld or conditioned. No further filings by Developer or approvals by Agency thereof shall be required for the Final Design Plans, except with respect to any subsequent Material Change in the contents of the Final Design Plans. Agency shall approve those portions of the Final Design Plans that conform to the provisions of this LDDA and are substantially consistent with the Project. Agency may only reject those portions of the Final Design Plans that are not substantially consistent with the Project.

(ii) If the Final Design Plans are rejected by Agency in whole or in part, Agency must notify Developer in writing of the reasons for rejection within fifteen (15) calendar days from the date the Final Design Plans were delivered to Agency. Developer shall submit new or revised Final Design Plans within thirty (30) calendar days of written notification of Agency's rejection or approval and the reasons therefor.

(c) **Material Changes to the Final Design Plans.** Any Material Changes to the approved Final Design Plans for the Project ("Subsequent Final Design Plans") shall be approved by Agency, which approval shall not be unreasonably withheld or conditioned. Agency shall within fifteen (15) calendar days after receiving the Subsequent Final Design Plans, approve or disapprove the Plans. If Agency approves such Subsequent Final Design Plans, no further filings by Developer shall be required, except with respect to any subsequent Material Change to the contents of such Subsequent Final Design Plans. If Agency disapproves the Subsequent Final Design Plans, Agency shall explain in writing to Developer its reasons for the disapproval within such fifteen (15) day period, and Developer shall use its best efforts to address any Agency concerns raised by such comments.

(d) **Failure to Approve.** If Agency fails to approve the Final Design Plans or any Subsequent Final Design Plans after Developer attempted diligently and in good faith on two (2) occasions to obtain approval, an architect mutually selected by the Parties shall resolve the dispute. The architect shall be experienced in arbitrating or mediating construction design matters similar to the Project in the San Francisco/Oakland, California metropolitan area. In reaching a decision, the architect shall be guided by this Agreement and the application of California law to the dispute and the relevant facts, and the fact that the plans must, at a minimum, include a new retail Sears Auto Center. Each party shall bear its own costs and expenses and shall divide equally the architect's fees and other related charges..

(e) **Exterior Design and Materials.** Developer understands that Agency is concerned about the visual aesthetics, quality, and materials of the exterior of the new building on the Site, and Developer's agreement to a minimum standard of exterior aesthetics, quality, and materials is a material factor in Agency's decision to enter into this LDDA with Developer. Agency and Developer understand and agree that the Project design for the Sears Auto Center shall be similar to other Sears' Auto Center facilities in urban settings. Developer shall also submit a landscaping plan for the Site. Any significant deviation from this exterior building standard shall be approved by Agency, which approval shall not be unreasonably withheld, conditioned or delayed.

(f) **Standard of Review.** Agency shall promptly and diligently commence and complete review as required in this Section 9.2 and Agency shall act reasonably in reviewing and making decisions in its review of the Final and Subsequent Design Plans. Agency may only reject Final Design Plans and Subsequent Final Design Plans if they are not substantially consistent with the Project and/or not previously reviewed and approved by Agency.

9.3 Construction Financing. Subject to Section 15, during the term of the Ground Lease, Developer may mortgage or otherwise encumber its leasehold interest with construction financing, and Agency shall not be required to subordinate its possessory interest to any financing Developer obtains unless otherwise required in this LDDA or agreed by the Parties.

9.4 Construction Contracts. Not less than thirty (30) calendar days prior to Commencement of Construction, Developer shall enter into one or more construction contracts (individually and collectively, the "Prime Construction Contract") with its general contractor ("Contractor") and shall provide Agency with written notice of the identity of Contractor along with a copy of the Prime Construction Contract. The Prime Construction Contract shall provide for the Project to be constructed pursuant to the approved Final Design Plans and require that Contractor furnish payment and performance bonds as specified in Section 10. Not less than twenty (20) calendar days prior to Commencement of Construction, copies of the Prime Construction Contract and any and all other contracts proposed to be executed by Developer for construction of the Project, and the Bonds shall be submitted by Developer to Agency. The Prime Construction Contract and any other construction contracts to be executed by Developer for the Project, and any and all related documents, including but not limited to the plans and specifications and the required Bonds are collectively referred to in this LDDA as the "Construction Contracts." The Construction Contracts shall be executed by Developer and Contractor and any other contractors and complete copies of the executed Construction Contracts shall be provided by Developer to Agency not later than five (5) business days prior to Commencement of Construction. Neither Agency nor City makes any warranties or representations whatsoever regarding whether the Project is a "public work" under California law. Developer shall indemnify, defend and hold harmless Agency and City from and against any and all claims, damages, wages, interest, penalties, or other costs or expenses arising from any determination that Developer or Contractor failed to pay prevailing wages under the California Labor Code including, without limitation, any determination by the California Department of Industrial Relations that the Project is a "public work" or that prevailing wages should be or should have been paid in connection with the Project; this obligation to indemnify, defend and hold harmless shall survive the Sale Agreement close of escrow, the Ground Lease Commencement Date, or any termination of the Sale Agreement, this LDDA, or the Ground Lease.

10. CONSTRUCTION BONDS

10.1 Not less than five (5) Business Days prior to the date for Commencement of Construction, Developer shall submit or cause Contractor to submit to Agency for its review and approval the following bonds (collectively, the "Bonds"), to be issued by one or more sureties admitted in California, and reasonably acceptable to Agency, and naming Agency as obligee and beneficiary for the construction of the Project, as provided below:

(a) If, and only if required by a lender, performance bond in an amount not less than one hundred percent (100%) of the cost to Complete Construction, based upon the total contract price for the Project specified in the Prime Construction Contract as approved by Agency, as security for the faithful performance of such construction and all other obligations of Contractor under the Prime Construction Contract (the "Performance Bond"); and

(b) If, and only if required by a lender, a labor and materials payment bond in an amount not less than one hundred percent (100%) of the cost to Complete Construction, based upon the total contract price for the Project specified in the Prime Construction Contract as approved by Agency, as security for payment to persons performing labor or furnishing materials in connection with construction of the Project (the "Payment Bond").

10.2 If, and only if required by a lender, Developer shall cause the amount of the Performance Bond and the Payment Bond each to be increased from time to time by the total amount of any change order under the Prime Construction Contract within five (5) Business Days following written execution of such change order by Contractor and Developer and, if such change order constitutes a Material Change, approval by Agency.

11. RESTRICTIONS ON TRANSFERS OF THE SITE AND/OR DEVELOPER'S RIGHTS

11.1 Purpose of Transfer Restrictions. Developer represents and warrants that its execution of this LDDA and its undertakings pursuant to this LDDA, are for the purpose of timely redevelopment of the Site. Developer acknowledges that Agency is relying on Developer's expertise and that of its affiliates as a developer and operator of retail Sears auto centers. Developer further recognizes that it is because of such qualifications and identity that Agency is entering into this LDDA with Developer. No voluntary or involuntary successor in interest to Developer shall acquire any rights or powers under this LDDA except as expressly set forth herein. Developer further recognizes that, in view of the following factors, the qualifications of Developer are of particular concern to the community and Agency:

(a) The importance of redevelopment of the Site to Agency's interest in the surrounding properties to be developed as part of the Redevelopment Plan, and to the general welfare of the community, with particular reference to the community's objectives of the elimination of structural and environmental blight and the establishment of an appropriate level of economic development, property utilization, and visual appearance for the surrounding land uses;

(b) The reliance by Agency upon the qualifications and ability of Developer to serve as the catalyst for development of the Project and upon the continuing interest which Developer shall have in the Project to assure the quality of the use, operation and maintenance deemed critical by Agency in the development of the Site;

(c) The fact that a change in ownership or control of Developer or any other act or transaction resulting in a change in ownership or the identity of the parties in control of Developer is for practical purposes a transfer or disposition of the Site; and

(d) The fact that the Site is not to be acquired or used for speculation, but only for development of the Project as a new retail Sears Auto Center, and any other lawful use, in addition to construction of a new retail Sears Auto Center, related surface parking and other facilities, in accordance with this LDDA.

11.2 Definition of Transfer. As used in this LDDA, the term "Transfer" means and includes any and all of the following:

(a) Any total or partial sale, assignment, ground lease, ground sublease or conveyance, or creation of any trust or power by deed of trust or otherwise, or any transfer in any other mode or form of or with respect to the Site or the Project or any interest therein, or any contract or agreement to do any of the same, prior to Complete Construction;

(b) Any transfer of any stock, membership interest, partnership interest, or other form of ownership interest comprising more than fifty percent (50%) of Developer;

(c) Any assignment or sublease by Developer of all or any part of this LDDA or all or part of any other agreement executed in connection with this LDDA (collectively referred to herein as "Related LDDAs");

(d) Any change in the identity of the managing member or manager of Developer; or

(e) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.

11.3 Prohibited Transfers. Except as expressly permitted in Section 11.4, Developer represents and agrees that it has not made, and shall not make or permit any Transfer, either voluntary or by operation of law, without the prior written consent of Agency, which shall not be unreasonably withheld, conditioned or delayed. Any Transfer in contravention of this section shall be null and void and shall be deemed to be a default under this LDDA whether or not Developer knew of or participated in such Transfer. Agency's basis for approving a Transfer is related to whether or not the Transfer is being made to an entity or individual that has the expertise and financial capability to develop the Site for the Project.

11.4 Permitted Transfers. Notwithstanding any other provision of this LDDA to the contrary, Agency approval of a Transfer shall not be required in connection with the following. Developer shall immediately notify Agency of any permitted Transfer and Agency may request Developer to provide information to demonstrate that the Transfer is a Permitted Transfer.

(a) A Transfer that is undertaken by a member of Developer for estate planning purposes;

(b) A Transfer to a limited liability company, partnership, corporation, or other entity or entities or individuals in which Developer retains a majority of the ownership or beneficial interest and retains management and control of the transferee entity;

(c) The conveyance or dedication of any portion of the Site to a Government Agency, or granting of easements to facilitate construction of the Project;

(d) Any requested assignment for financing purposes including the grant of a deed of trust to secure the funds necessary for land acquisition, construction, and permanent financing of the Project; or

(e) A transfer by Developer to Sears Holdings Corporation ("Sears"), or any affiliate thereof. For purposes hereof, affiliate is defined as any entity in which Sears has a controlling interest.

12. ADDITIONAL DEVELOPER OBLIGATIONS

In addition to Developer's other obligations under this LDDA, Developer has the following obligations.

12.1 Intentionally Deleted.

12.2 Nondiscrimination. Developer covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through them and this LDDA, that Developer shall not discriminate against or segregate of any person or group of persons on account of age, race, color, religion, creed, sex, sexual preference, marital status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project nor shall Developer or any person claiming under or through developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Developers, lessees, tenants, or vendees in the Project. Developer shall ensure that language substantially similar to the above is incorporated into any leases, subleases or assignments.

12.3 Sustainable Project. Developer shall consult with Agency to prepare a "Development Project Sustainable Profile" and incorporate as many characteristics as reasonably practical and financially feasible.:

(a) [INTENTIONALLY OMITTED]

(b) **Economic Sustainability.** Developer shall inform and invite general contractor of the availability of "Hire Oakland" local employee recruitment, and/or other related local employment training and placement services, as appropriate for construction, facility operation, and tenants' employee hiring.

(c) [INTENTIONALLY OMITTED]

12.4 Compliance with Laws. Developer shall comply with all applicable federal, state, and local laws and regulations applicable in the furtherance of this LDDA and its purposes.

12.5 Intentionally Deleted.

12.6 Due Diligence. Developer shall perform its own review of the condition of the Site and the feasibility of the Project, including, but not limited to preparing preliminary site plans and elevations, reviewing the documents listed in Exhibit C, performing preliminary soils testing, engineering studies and environmental site assessments, assuring adequate parking for tenants, and developing Project cost estimates.

(a) **AS-IS Condition of the Site and Structures.** Subject to Section 17.1(b), Agency makes no representation or warranty whatsoever, express or implied, as to the physical condition of the Site or in connection with any matter relating to its value, use, zoning or other land use, fitness for a particular purpose, the presence or absence of Hazardous Materials or the ability of Developer to obtain Government Approvals. Developer acknowledges and agrees that Developer is relying upon its own inspections, investigations and review of available information to determine the value, use, zoning or other land use, fitness for a particular purpose, the presence or absence of Hazardous Materials or the ability of Developer to obtain Government Approvals. Developer further acknowledges and agrees that Developer is accepting the Site in its "AS-IS" condition and "WITH ALL FAULTS," and is not relying on any warranties, promises, understandings or representations, express or implied, of Agency or any Agent or representative of Agency relating to the Site except as may be set forth in Section 17.1(b). Agency does not represent or warrant the accuracy, completeness, or adequacy of any matters disclosed by Agency or its Agents. No inference may be drawn that all matters affecting the Site have been disclosed by this LDDA or in the materials delivered by Agency or its Agents, including, without limitation, the documents listed in Exhibit C, to Developer. The disclosure of any matter by Agency or its Agents shall not be deemed to be a representation or warranty that all issues regarding the Site have been discovered, included or properly quantified at all or to any degree. Developer acknowledges that the foregoing disclosure of matters and the matters disclosed in or pursuant to this LDDA are not a comprehensive disclosure, that Developer is a sophisticated and experienced owner and developer of properties similar to the Site, and that Developer, in determining whether to develop the Site pursuant to this LDDA, shall undertake and rely upon its own inspections, analyses and evaluations of the Site and its suitability for Developer's intended use.

(b) **Inspection; Environmental Condition of Site.** Developer shall conduct and complete any additional studies and tests, including soils analysis and Hazardous Materials investigation, which Developer deems appropriate in connection with the Project. Developer has received and reviewed copies of the reports or documents listed on Exhibit "C" (collectively, the "Existing Environmental Reports").

Developer shall promptly provide to Agency copies of all tests, studies, reports and investigations prepared by or on behalf of Developer with respect to the environmental or other physical condition of the Site.

12.7 Agency's Providing Reports. Agency shall use its best efforts to provide or make available to Developer all the reports, documents and other materials in Agency's possession or control pertaining to Hazardous Materials, contamination, environmental conditions, valuations, costs estimates, or other conditions or assessments of the Site and the structures or other improvements thereon. Such reports are provided solely as a courtesy to assist Developer in its own evaluation of the conditions at the Site and Agency does not warrant the accuracy of such reports, documents, and other materials. Developer acknowledges that neither Agency, City, or its Agents or employees shall have any liability for the accuracy or completeness of the contents of any such reports, documents or other materials delivered to Developer, and Developer may not bring any claim against Agency or the City, or its Agents and employees based on such reports, documents, or other materials.

12.8 Responsibility for Hazardous Materials

(a) No Agency Obligation to Remediate. Agency has no obligation to conduct any environmental remediation or cleanup on the Site.

(b) Developer Responsibility Post-closing.

Developer shall be solely responsible for any contamination or other environmental condition, and for the Remediation (if required by a Government Agency with jurisdiction over Hazardous Materials) of the Site occurring at any time after Ground Lease Commencement Date and continuing after Developer exercises the Purchase Option. City and Agency shall have no direct or third party liability.

12.9 Taxes and Assessments. Subject to Section 12.10, after the Ground Lease Commencement Date, Developer shall pay all ad valorem real and personal property taxes, general and special assessments, transient occupancy taxes, and other governmental charges of every description levied on or assessed against the Site and personal property located thereon, the leasehold estate, and any subleasehold estate, to the full extent of installments due during the term of this LDDA, whether belonging to or chargeable against Agency or Developer. Developer shall make all such payments directly to the taxing authority prior to delinquency and before any fine, interest or penalty shall become due, or be imposed by operation of law for their non-payment. If the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Developer may, at Developer's election, utilize the permitted installment method, but shall pay each installment with any interest due thereon before delinquency. If Developer fails to make any payments when due, then Agency shall have the right to make such payments on

behalf of Developer, if Developer has failed to do so within thirty (30) calendar days after written notice from Agency to do so. Any such amounts paid by Agency shall be due and payable immediately by Developer and shall bear interest at the rate of the Bank of America reference rate plus two percent (2%). Developer acknowledges that Agency is a public agency and therefore is exempt from taxation of its real and personal property. A possessory interest tax may be levied and assessed directly against Developer with respect to the Site, and Developer shall be directly responsible for payment thereof.

12.10 Developer's Right to Contest Taxes. Developer may contest the legal validity or amount of any taxes, assessments or charges for which Developer is responsible under this LDDA, and may institute such legal, administrative or other proceedings as Developer deems necessary. In the event Developer contests any such tax, assessment or charge, Developer may withhold or defer payment thereof or pay under protest, but shall protect Agency and the Site from any lien by adequate surety bond or other appropriate security. Agency hereby appoints Developer as Agency's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting taxes, assessments or charges for which Developer is responsible under this LDDA.

12.11 Tax Records. Upon request by Agency, Developer shall furnish to Agency, within thirty (30) calendar days after the date when any tax, assessment or charge payable by Developer under this LDDA would become delinquent, payment receipts or other appropriate evidence establishing payment of such obligations by Developer. Developer may at its election comply with the requirement of this Section 12.11 by retaining a tax service to notify Agency with respect to such payments.

12.12 Utilities. Developer shall pay prior to delinquency all charges for water, electricity, gas, telephone and communication service, sewers, heat and all other utility services furnished to the Site during the term of the Ground Lease.

13. INDEMNITY

13.1 Developer's Indemnity to Agency. Developer shall defend, indemnify, assume all responsibility for and hold Agency, the City and its officers, employees, Agents, representatives and volunteers harmless from all claims or suits for and damages to property and injuries to any persons, including accidental death, (including reasonable Attorneys' Fees and Costs) which may be caused by any of Developer's acts or omissions under, related to, or in any respect connected to this LDDA and/or the development, ownership, or operation of the Project, whether such acts or omissions or performance thereof be by Developer or anyone directly or indirectly employed or contracted with by Developer, and whether such damage or claim therefor shall accrue or be discovered before or after termination or expiration of this LDDA, except to the extent such claims or suits arise out of the negligence, misconduct, or breach or representations or warranties contained herein of Agency or the City.

13.2 Agency's Indemnity to Developer. Agency shall defend, indemnify, assume all responsibility for and hold Developer and its officers, employees, Agents, representatives and volunteers harmless from all claims or suits for and damages to property and injuries to any persons, including accidental death, (including reasonable Attorneys' Fees and Costs) which may be caused by any of Agency's acts or omissions under, related to, or in any respect connected to this LDDA, whether such acts or omissions or performance thereof be by Agency or anyone directly or indirectly employed or contracted with by Agency, and whether such damage or claim therefor shall accrue or be discovered before or after termination or expiration of this LDDA, except to the extent such claims or suits arise out of the negligence, misconduct, or breach or representations or warranties contained herein of Developer.

14. INSURANCE

14.1 Builder's Risk Insurance. Before Commencement of Construction of the Project, subject to Section 14.2(h) below, Developer at its sole cost and expense shall procure and thereafter maintain in force Builders' Risk/Course of Construction Insurance covering all risks of loss in an amount equal to the completed value of the Project with no coinsurance penalty provisions. The Agency shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the Agency. Policy shall be, written on an occurrence basis, insuring against special risk of physical loss, including without limitation the perils of collapse, transit, offsite storage, demolition and debris removal, and damage to existing facilities. Developer may require that Contractor provide insurance for rigging and lifting in the amounts set forth in this Section 14.1 and in compliance with the provisions of this Section 14.1 in lieu of Developer providing such insurance.

14.2 Other Insurance. From and following the Effective Date, Developer at its sole cost and expense shall procure and maintain in force the following insurance. Agency shall only be involved in, named and/or covered in the following insurance until the Purchase Closing Date, as defined in the Ground Lease.

(a) Commercial General Liability Insurance. Tenant shall carry Commercial General Liability insurance at least as broad as ISO Form CG0001 (Commercial General Liability) or its equivalent, with the extensions noted below, covering claims against property damage and bodily injury, to include death, occurring in or about the Site or arising from Developer's obligations under this LDDA, in minimum limits of not less than Five Million Dollars (\$5,000,000) per occurrence. Such policy or policies shall name Agency and City and their representatives, as additional insureds..

(b) Workers' Compensation Insurance. Developer shall maintain, and ensure that its contractors maintain, in accordance with Section 3700 et seq. of the California Labor Code workers compensation insurance (or provide proof of self-insurance in accordance with the provisions of the Labor Code), covering all persons employed in connection with the Site or with development, construction, alteration, repair or operation of the Project, for injury, illness, or death, in statutory

amounts for compensation, with not less than \$1,000,000 for employer's liability for bodily injury by accident and occupational disease.

(c) **Property Insurance.** Developer shall carry "All Risk" insurance coverage in an amount equal to 100% of the full replacement cost of the Project, excluding excavation, foundations and other items not generally covered by such standard forms of insurance providing coverage for all risks of direct physical loss; provided, however, that coverage for the peril of earthquake shall be obtained in Developer's sole and absolute discretion. Agency and Developer agree that the proceeds from any such policy or policies shall be used solely for reconstruction by Developer as required under this LDDA.

(d) Automobile Liability insurance, including all owned, leased, hired or borrowed by or on behalf of the Developer, its contractor or its agents in the performance of this LDDA shall have the following minimum limits for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.

(e) Professional Liability/errors and omissions insurance in the amount of \$2,000,000 shall be provided for all engineering and design professionals.

(f) A Pollution Legal Liability policy in the amount of not less than \$5,000,000.00.

(g) Other. All insurance required by any Leasehold Mortgage, and such other insurance as Developer determines appropriate in the exercise of Developer's reasonable business judgment.

(h) Notwithstanding the above provisions, Developer may self-insure any of its insurance obligations under this Section 14. Any insurance required hereunder may be carried under a blanket policy or policies maintained by Developer with respect to other premises or property owned or operated by it, its subsidiaries or affiliates, and with a deductible provision acceptable to Developer (it being understood that Developer shall contribute the amount of such deductible towards the costs of restoration in the event of an insured casualty.).

(i) Additional Insured: Developer shall name the Agency, the City of Oakland, their Councilmembers, directors, officers, agents, employees and volunteers as additional insureds in its Comprehensive Commercial General Liability and Pollution Legal Liability policies and as Loss Payee on its Builders' Risk and All Risk Property Insurance policies. If Developer submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 form (or its equivalent). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

14.3 Policy Form, Content and Insurer. All insurance required to be carried by Developer shall be in a form reasonably satisfactory to Agency and written by one or more insurance companies reasonably approved by Agency and which are licensed or approved to do business in the State of California. Insurance companies must be rated at least A-VII in Best's Insurance Guide, or equivalent rating. All such insurance may be carried under a blanket or umbrella policy covering the Site and other locations, provided that the coverage afforded the insuring party by such blanket policy shall not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Section 14.3 are otherwise satisfied. All such insurance shall contain endorsements that (a) such insurance shall not be canceled or amended except upon thirty (30) calendar days' prior notice to the other party by the insurance company, (b) the insuring party shall be solely responsible for payment of premiums, and (c) the insuring party's insurance is primary in the event of overlapping coverage which may be carried by the other party. The minimum limits of the commercial general liability insurance policy required by Section 14.2(a) shall in no way limit or diminish the insuring party's liability under this LDDA. Developer shall deliver to the Agency at least thirty (30) calendar days prior to the time such insurance is first required to be carried, except that any insurance required to be first carried at the execution of this LDDA shall be provided to the other party within twenty-one (21) calendar days following the Effective Date, and thereafter at least thirty (30) calendar days prior to the expiration of such policy, either a duplicate original or a certificate clearly showing compliance by the Developer with its obligations under this LDDA, together with evidence satisfactory to the Agency of the payment of the premiums therefor.

14.4 Waiver of Subrogation. The Parties release each other, and their respective Agents, from any claims for damage and/or injury to any part of the Site or Project, Developer's trade fixtures, personal property, and Developer's improvements, in or on the Site that are caused by or result from risks insured against under any insurance policies (but not workers' compensation) carried by the Parties and in force at the time of any such damage to the extent of the available insurance proceeds. Each Party shall cause each casualty or property damage insurance (but not workers' compensation) policy carried by it to be written to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

14.5 Failure to Maintain Insurance. In the event Developer fails or refuses to procure or to maintain insurance as required by this LDDA, or fails or refuses to furnish Agency with the required proof that such insurance has been procured and is in force and paid for, Agency shall have the right but not the obligation to procure and maintain such insurance following five (5) Business Days' notice to Developer. Agency may recover from Developer the full amount of such premiums plus interest thereon accruing at the Bank of America reference rate plus two percent (2%) from the date when the premium is paid to the date of recovery by Agency.

14.6 Developer Obligations. The insurance requirements set forth in this Section 14 are independent of, and in addition to, Developer's indemnity obligations

set forth in Section 13 of this LDDA and shall not be construed or interpreted in any way to restrict, limit or modify Developer's liability or indemnity obligations.

14.7 Periodic Increase in Policy Limits. Agency shall have the right from time to time to review with Developer the policy limits set forth in this Agreement and at that time shall cause such coverage and limits to be adjusted as reasonably agreed by Agency and Developer in order to bring such policy limits into conformity with the limits customarily maintained for similar commercial properties located in Alameda County, California.

15. NON-SUBORDINATION OF AGENCY'S RIGHT TO REPURCHASE AND DEVELOPER FINANCING

(a) Agency shall not be required to subordinate its Repurchase Rights in the event of a Developer default to any lien or encumbrance secured by the Site. Upon Complete Construction, Agency's Repurchase Rights shall automatically terminate. Agency agrees to execute, deliver and record evidence of such automatic termination.

(b) Except as expressly authorized under terms of the Ground Lease, prior to Commencement of Construction, Developer may not place any lien, encumbrance, or financing of any kind against the Site without Agency's prior written approval.

(c) Should any non-approved lien or encumbrance be placed against the Site, Developer shall remove such lien or encumbrance within thirty (30) calendar days after notice by Agency. If such lien or encumbrance cannot be removed within thirty (30) calendar days, Developer may provide Agency with bond or other security sufficient to cover the cost of the lien or encumbrance and any costs or expenses reasonably necessary to remove the lien or encumbrance. Such bond or security must be approved by Agency in writing.

16. DEFAULT AND TERMINATION

16.1 Notice. As set forth below, failure or delay by either Party to perform any term or provision in this LDDA constitutes a default under this LDDA, unless the time for performance was extended by the Parties. A Party shall not be considered to be in default under this LDDA unless the injured Party has given notice specifying the default and the Party in default failed for thirty (30) calendar days to cure the default, if it is curable within such period, or to institute and diligently pursue reasonable corrective or ameliorative acts for any default which cannot be cured within thirty (30) calendar days. This notice requirement is not applicable to specific Developer defaults set forth in Section 16.4(a) and to specific Agency defaults set forth in Section 16.5(a).

16.2 Final Determination of Default. If the Party allegedly in default challenges the injured Party's alleged default, the default shall not be deemed to have

occurred until a final judgment has been rendered by a court of law or otherwise agreed to by the Parties.

16.3 Acts Out of Control of the Parties. A default will not occur if either Party cannot carry out any obligation on time in this LDDA which would otherwise constitute a default due to Force Majeure. In this instance, performance of the obligation would be delayed pursuant to Section 18.7.

16.4 Developer Default

(a) Specific Defaults and Remedies

(i) Intentionally Omitted.

(ii) Default Under Sale Agreement. If Developer defaults under any provision of the Sale Agreement and fails to cure such default within any applicable cure period, the Agency may terminate this LDDA and the Ground Lease.

(iii) Default and Remedies Based on Failure to Complete Construction. Subject to Section 18.7, in the event that Developer fails to Complete Construction as set forth in Section 9.1, and such failure continues for a period of one hundred and twenty (120) days after written notice from Agency, then Agency shall have the right to exercise its Repurchase Rights by delivering payment to Developer in the amount of One Million Six Hundred Thousand Dollars (\$1,600,000). Within one hundred and eighty (180) days of Developer's uncured default, Agency shall deliver to Developer official notice from Agency, declaring its intent to exercise its Repurchase Rights and designating the Repurchase Rights Date, which shall be within sixty (60) days thereafter.

(b) Other Developer Defaults. The occurrence of any of the following shall also constitute a Developer default under this LDDA.

(i) Developer's interest in this LDDA or in all or a part of the Project is taken by process of law directed against Developer, or becomes subject to any attachment at the instance of any creditor of or claimant against Developer, and such attachment is not discharged within one hundred and twenty (120) calendar days or such additional time as necessary if Developer is proceeding diligently and in good faith to have the attachment discharged;

(ii) A general assignment by Developer, or any guarantor of this LDDA, for the benefit of creditors without consent of Agency;

(iii) The filing by or against Developer, or any guarantor, of any proceeding under any bankruptcy or insolvency law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within one hundred and twenty (120) calendar days or such additional time as necessary if Developer is proceeding diligently and in good faith to have the involuntary action dismissed;

(iv) The appointment of a trustee or receiver to take possession of all or substantially all the assets of Developer, or any guarantor, unless possession is unconditionally restored to Developer, or such guarantor, within one hundred and twenty (120) calendar days and the trusteeship or receivership is dissolved, or within such additional time as necessary if Developer is diligently and in good faith proceeding to have the action dismissed; or

(v) Any execution or other judicially authorized seizure of all or substantially all the assets of Developer, or any guarantor, or of Developer's interest in this LDDA, unless that seizure is discharged within one hundred and twenty (120) calendar days or such additional time as necessary if Developer is proceeding diligently and in good faith to have the seizure discharged.

16.5 Agency Default

(a) Specific Defaults and Remedies

(i) Default and Remedies if Agency Abandons the Condemnation Litigation or Fails to Obtain Fee Simple Title.

(A) If Agency abandons the Condemnation Litigation, this LDDA and the Ground Lease shall automatically terminate upon the date Agency provides notice to Developer that the Condemnation Litigation has been abandoned. Agency shall provide notice to Developer within thirty (30) calendar days from the date Agency abandons the Condemnation Litigation. In this event, the Agency shall pay Developer the sum of One Million Six Hundred Thousand Dollars (\$1,600,000) plus its Development Costs incurred to the date of termination.

(B) If Agency fails to obtain fee simple title to the Site within sixty (60) months from the date hereof, upon written notice from Developer to Agency, this DDA and Ground Lease shall terminate. Developer shall provide its notice of termination to Agency within ninety days after the sixty (60) month period. In such an event, Developer will be entitled to payment of One Million Six Hundred Thousand Dollars (\$1,600,000) plus its Development Costs incurred to the date of termination.

(ii) **Reconveyance on Payment.** In the event of (A) or (B) above, upon receipt of the payment set forth in (A) or (B) above (subject to Section 16.9(d)), Developer shall simultaneously reconvey all of Developer's right, title and interest in its leasehold estate or Site, as the case may be, including Developer's interest in any improvements and the Purchase Option (if not previously exercised) to Agency on the terms set forth in Section 16.9 hereof.

(iii) **Exclusive Remedies.** The Parties' remedies under this Section 16.5 for the Agency's abandonment of the Condemnation Litigation or failure to obtain fee title to the Site within 60 months shall be exclusive, and the Parties shall have no further rights or remedies against the other under this LDDA or the Ground Lease.

(b) **Other Agency Defaults.** Remedies for any other default by Agency are provided for in Section 16.6.

16.6 Remedy for Developer or Agency Default Not Otherwise Identified. For any other default that is not identified as a specific default in Sections 16.4(a) and 16.5(a), the injured Party may institute legal and/or equitable action to cure, correct or remedy the default or to recover damages for the default; provided, however, nothing contained in this Section 16.6 shall be construed to allow termination of the Ground Lease unless specifically allowed in this LDDA or the Ground Lease. It is the specific intent of the parties that in the event of a default by Developer hereunder not identified in Sections 16.4(a) and 16.5(b), that in the event that Developer fails to cure such default within 120 days after written notice from Agency, then (i) Agency may exercise its Repurchase Rights and (ii) in such an event, simultaneously upon conveyance of Developer's interest in the Site to the Agency, Developer will be entitled to payment of the sum of \$1,600,000 less any damages suffered by Agency as awarded by a court pursuant to any legal or equitable action brought by Agency to recover damages for the default."

16.7 Termination of LDDA, AND Remedies. In the event of a specific Developer default as set forth in Section 16.4(a), Agency shall have all the rights specified as remedies related to the specific default described therein. In the event of a specific Agency default as set forth in Section 16.5(a), Developer shall have all the rights specified as remedies related to that specific default as set forth therein.

16.8. Termination of LDDA after Developer Due Diligence.

Developer shall provide written notice to Agency within one year from the execution hereof whether Developer, in its reasonable discretion, has decided not to acquire any interest in the Site or develop the Site under this LDDA. In such an event, Developer will be entitled to payment of One Million Six Hundred Thousand Dollars (\$1,600,000) from Agency. Upon receipt of the payment set forth herein, Developer shall execute any documents reasonably required by the Agency or the Title Company to evidence termination of Developer's rights under this LDDA.

16.9 Escrow on Agency's Repurchase Rights. In the event Agency exercises its Repurchase Rights or if Developer reconveys under Section 16.5, the Parties agree to the following:

(a) Developer shall by a deed mutually acceptable to the Parties, convey all of Developer's right, title and interest in its leasehold estate or Site, as the case may be, including Developer's interest in any improvements and the Purchase Option (if not previously exercised) to Agency;

(b) The Parties shall agree to a procedure for the transfer of title, money and other consideration as required by this LDDA;

(c) The defaulting Party shall pay all escrow and closing costs, transfer taxes and fees County, except that Developer shall be responsible for paying all property tax accrued after the Ground Lease Commencement Date through the Repurchase Right Date; and

(d) The Parties agree that title to be conveyed to Agency shall contain only those liens and encumbrances listed in the Leasehold Title Policy issued pursuant to the Ground Lease, plus any additional liens and encumbrances approved in writing by Agency; provided, however, that any monetary liens or encumbrances (including, without limitation, any liens arising from mechanics liens, construction loans, or other loans against the Site) shall be paid from the amount due Developer and removed as a lien or encumbrance against the Site.

17. REPRESENTATIONS AND WARRANTIES

17.1. Agency Representations and Warranties. Agency represents, warrants and covenants to Developer as of the Effective Date of this LDDA the following.

(a) **Status of Title; Agency Obligation.** An Order for Possession was issued in the Condemnation Litigation with an effective date of April 25, 2005. The present status of title allows Agency to assign Agency's Interest to Developer in the Site (by either a Ground Lease or Purchase) as contemplated in this LDDA.

It is expressly understood by the Parties that as of the date of this LDDA, the Agency does not hold legal or equitable title to the Site. The Agency shall, at its sole cost and expense, diligently prosecute the Condemnation Litigation to completion. Notwithstanding anything to the contrary in this LDDA, except as expressly provided for in Section 16.5(a)(i)(B), the Agency shall not be responsible to Developer for any damages or other remedies for failure to acquire fee simple title to the Site in the Condemnation Litigation.

(b) **Hazardous Materials.** Agency did not use, store, spill, generate, treat, dispose, transport or handle any Hazardous Materials on the Site while the Site was in its possession. Except as disclosed in Section 4.3.1 of the Sale Agreement, Agency has not received any notice of any civil, criminal or administrative suit, claim, hearing, violation, investigation, proceeding or demand against Agency or the Site relating in any way to a Release, the use of Hazardous Materials, or

compliance with Environmental Laws. Subject to the environmental reports set forth in Exhibit C and the disclosures in Section 4 of the Sale Agreement, to the best of Agency's actual, present knowledge, without being obligated to investigate or inquire, there are no Hazardous Materials on, in or under the Site; for purposes of this Section 17.1(b), the term "to the best of Agency's actual knowledge" shall be limited solely to the actual, present knowledge, without being required to investigate or inquire, of Mark Gomez, Jens Hillmer and Daniel Vanderpreim. The term "**Release**" shall mean the discharge, disposal, deposit, injection, dumping, spilling, leaking, leaching, placing, presence, pumping, pouring, emitting, emptying, escaping, or other release of any Hazardous Material.

(c) **Authority.** Agency is a public body, corporate and politic, existing pursuant to the Community Redevelopment Law, which has been authorized to transact business pursuant to action by the State of California. Agency has the power, right and authority to transfer, grant, lease, sell and convey the Site as provided herein and to carry out and bind it to all the obligations set forth herein. The execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(d) **FIRPTA.** Agency is not a "foreign person" within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that Agency has complied and will comply with all the requirements under FIRPTA or any similar state statute.

(e) **Representations.** Except for the representation in Section 17.1(b), and subject to Sections 12.6 or 12.7, or with respect to Exhibit C or the environmental condition of the Site, to the best of Agency's knowledge, no representation, warranty or statement of Agency in this LDDA or any statement in any document, certificate, report, or schedule furnished or to be furnished to Developer pursuant hereto contains or shall contain any untrue statement of a material fact or omits or shall omit a material fact necessary to make the statements or facts contained therein not materially misleading.

(f) **LDDA Binding.** This LDDA constitutes a legal, valid and binding obligation of Agency and is enforceable against Agency in accordance with its terms.

(g) **No Contrary Agreements.** The execution, delivery and performance of Agency's obligations under this LDDA will not constitute a default or a breach under any contract, agreement, or order to which Agency is a party or by which it is bound.

(h) **Litigation.** Other than the Condemnation Litigation, there is no litigation pending or, to the best of Agency's actual knowledge, threatened, against Agency or the Site that could reasonably be deemed likely to materially and adversely affect the ability of agency to consummate the transactions contemplated hereunder, construct and operate the Project or perform its obligations under this LDDA.

(i) **Intentionally Omitted.**

17.2 Developer's Representations and Warranties. Developer represents, warrants and covenants to Agency as of the Effective Date of this LDDA as follows:

(a) **Authority.** Developer has the legal power, right and authority to enter into this LDDA and the agreements and instruments to be executed by Developer pursuant to this LDDA, and to consummate the transactions contemplated hereby. All requisite action (corporate, trust, partnership or otherwise) has been taken in connection with Developer's execution of this LDDA, the agreements and instruments to be executed by Developer pursuant to this LDDA and the consummation of the transactions contemplated hereby. The individuals executing this LDDA and the instruments to be executed by Developer pursuant to this LDDA on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions of this LDDA and such instruments.

(b) **No Contrary Agreements.** The execution, delivery and performance of Developer's obligations under this LDDA will not constitute a default or a breach under any contract, agreement, or order to which Developer is a party or by which it is bound.

(c) **Litigation.** Other than the Condemnation Litigation, there is no litigation pending or, to the best of Developer's actual knowledge, threatened, against Developer or the Site that could reasonably be deemed likely to materially and adversely affect the ability of Developer to consummate the transactions contemplated hereunder, construct and operate the Project or perform its obligations under this LDDA.

(d) **Authorization by Other Entities.** Except as expressly set forth in this LDDA, no approval, consent, withholding of objection or other authorization is required from any court, administrative agency, governmental body or any other third party in connection with the execution, or delivery by Developer of this LDDA or any of the other documents described herein, is required.

(e) **Representations.** To the best of Developer's knowledge, no representation, warranty or statement of Developer in this LDDA or any statement in any document, certificate, report, or schedule furnished or to be furnished to Agency pursuant hereto contains or shall contain any untrue statement of a material fact or omits or shall omit a material fact necessary to make the statements or facts contained therein not materially misleading.

(f) **LDDA Binding.** This LDDA constitutes a legal, valid and binding obligation of Developer and is enforceable against Developer in accordance with its terms.

18. MISCELLANEOUS

18.1 Inspection of Site. After providing five (5) Business Days written notice to Developer, Agency and its Agents may enter the Site, accompanied by a representative of Developer, provided such entry does not unreasonably or unnecessarily interfere with the activities of Developer, for the purpose of inspecting the same or the performance by Developer of the terms and conditions hereof, and for such purposes as may be necessary or proper for the reasonable protection of Agency's interest.

18.2 Notice. All notices to be given under this LDDA shall be in writing and sent by:

(1) Certified mail, return receipt requested, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or

(2) A nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, provided delivery is confirmed by the delivery service, or

(3) Hand delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery, or

(4) Telecopy during normal business hours, in which case notice shall be deemed delivered on transmittal by telecopier, provided that a transmission report is generated by reflecting the accurate transmission of the notices and such transmission report and a copy of such notice is sent to the noticed party by a means set forth in clauses (1), (2) or (3) above, as follows:

Notice to Agency:

Redevelopment Agency of the City of Oakland
One Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Att'n: Agency Administrator
Tel. No.: 510-238-3302
Fax No.: 510-238-2223

and Community and Economic Development Agency
City of Oakland
250 Frank H. Ogawa Plaza, 5th Floor
Oakland, CA 94612
Att'n: Director of Redevelopment
Tel. No.: 510-637-0241
Fax No.: 510-238-3691

and Oakland City Attorney's Office
City of Oakland
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612
Att'n: Dianne M. Millner
Tel. No.: 510-238-6839
Fax No.: 510-238-6500

Notice to Developer:

Sears Development Co.
c/o Sears Roebuck and Co.
3333 Beverly Road
Dept. 824RE/AC-363A
Hoffman Estates, IL 60179
Att'n: James B. Terrell
Director - Asset Utilization
Tel. No.: 847-286-3918
Fax: 847-286-7976

With a copy to:

Sears, Roebuck & Co.
3333 Beverly Road
Hoffman Estates, IL 60179
Attn: Associate General Counsel-Real Estate
Dept 766X

The addresses set out above may be changed from time to time by written notice in compliance with this section.

18.3 Attorneys' Fees and Costs. The prevailing Party in any action or proceeding to enforce or interpret this LDDA or otherwise arising out of or in connection with the subject matter hereof (including, but not limited to, any suit, arbitration, entry of judgment, post-judgment motion or enforcement, appeal, bankruptcy litigation, attachment or levy) shall be entitled to recover its costs and expenses, including, but not limited to, attorneys', experts' and consultants' fees and costs.

18.4 Lawful Money and Interest. All amounts payable hereunder shall be paid in lawful money of the United States of America. Any amount of interest required to be paid to Agency not otherwise expressly provided for herein shall be at a fixed rate of interest, established as of the date any amount owed commences to bear interest, which cities in California with the same credit rating as Agency pay for borrowed funds, which are a general obligation of the City, for a term of one (1) year where the interest is not subject to federal income tax.

18.5 Conflict of Interest. Developer shall ensure that no member, officer, employee, or consultant of Agency who participates in any way in this Project or

the making of this LDDA, or a member of such person's immediate family, shall have a financial interest in the Project or this LDDA. Developer warrants that it has not paid or given, and shall not pay or give, to any third person any money or other consideration in exchange for obtaining this LDDA that is not otherwise allowed herein.

18.6 Non-Liability of Agency Officials, Employees and Agents. No member, official, employee, or agent of Agency or City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or successor under the terms of this LDDA.

18.7 Force Majeure.

(a) Subject to Section 18.7(b) below, except as otherwise expressly provided elsewhere in this LDDA, performance by either Party under this LDDA shall not be deemed to be in default where delays or default are due to Force Majeure. An extension of time for any such cause shall be for the period of the delay due to an event of force majeure and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within fifteen (15) calendar days of the commencement of the cause. Times of performance under this LDDA may also be extended by mutual consent in writing by Agency and Developer.

(b) Performance by either Party under this LDDA shall not be deemed to be in default where delays or default are due to "Litigation Force Majeure." Litigation Force Majeure means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by the Hahn Property Owners to challenge the Condemnation Litigation. Any Litigation Force Majeure shall remain in effect until a judgment, order or other decision resolving such matter in favor of the Party whose performance is delayed has become final and non-appealable. Litigation Force Majeure will be limited to an aggregate of 36 months.

18.8 Good Faith Efforts. The Parties shall act reasonably and in good faith in performing any and all obligations, requirements and duties required by this LDDA.

18.9 Relationship of Parties. The relationship of Developer and Agency for this Project is and shall remain solely that of an Agency and Developer of real property, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Agency neither undertakes nor assumes any responsibility or duty to Developer (except as provided for herein) or any third party with respect to the Project or the Site. Developer shall have no authority to act as an agent of Agency or to bind Agency to any obligation. Developer shall be solely responsible for all aspects of its conduct in connection with the Project, including, but not limited to, the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers,

contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by Agency for the Project should not be relied upon by Developer or by any third parties as a warranty or representation by Agency as to the quality of the design or construction of the Project or its compliance with the provisions of this LDDA.

18.10 Counting Days. Any act required under this LDDA to be performed within ten (10) or more days shall refer to calendar days and acts required to be performed in less than ten (10) days shall refer to Business Days unless otherwise expressly specified.

18.11 Entire LDDA. This LDDA including all Recitals and Exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises and agreements, oral or written, by or between the parties, with respect to the subject matter hereof. No representations, inducements, promises, or agreements have been made in connection with this LDDA by any party, or anyone acting on behalf of any party, other than those expressly set forth herein.

18.12 Amendment. This LDDA may be amended, modified or supplemented only by a writing signed by all Parties.

18.13 Waiver. No waiver of any provision of this LDDA shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this LDDA shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

18.14 Counterparts. This LDDA may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

18.15 Governing Law. This LDDA is entered into in and shall be governed by and construed in accordance with the internal laws of the State of California.

18.16 Jurisdiction and Venue. Each Party hereby irrevocably submits to the jurisdiction and venue of any State or Federal court in Alameda County, California, in any action or proceeding brought to enforce or otherwise arising out of or related to this LDDA and irrevocably waives to the fullest extent permitted by law any objection which such party may now or hereafter have to the resting of such jurisdiction and venue in such forum, and hereby further irrevocably waives any claim that such forum is an inconvenient forum.

18.17 Severability. If any term or provision of this LDDA is ever determined to be invalid or unenforceable for any reason, such term or provision shall be severed from this LDDA without affecting the validity or enforceability of the remainder of this LDDA.

18.18 Interpretation. Section headings in this LDDA are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this LDDA. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this LDDA in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to"; and (d) "shall" is mandatory and "may" is permissive. The Parties have jointly participated in the negotiation and drafting of this LDDA, and this LDDA shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this LDDA.

18.19 Further Actions. Each of the Parties agrees to execute and deliver all further documents and to take all further actions reasonably necessary or appropriate to effectuate the purposes of this LDDA.

18.20 Expenses. Except as otherwise provided herein, the Parties shall bear their respective expenses incurred in connection with the preparation, execution and performance of this LDDA, including all fees and expenses of agents, representatives, attorneys and accountants.

18.21 No Third Party Beneficiary. This LDDA is made solely for the benefit of the Parties to this LDDA and their respective successors and permitted assigns, and no other person or entity shall have or acquire any rights or remedies under this LDDA.

18.22 Time of the Essence. Time is of the essence in this LDDA.

18.23 Termination of This LDDA. This LDDA shall automatically terminate upon Complete Construction or the date Agency exercises its Repurchase Rights as set forth in this LDDA, whichever occurs first. Notwithstanding the foregoing, Sections 12.2, 12.3, 12.4, 12.8, and 13 will stay in effect after this LDDA is terminated.

18.24 Mediation. If a dispute arises out of or relates to this LDDA, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to submit the dispute to mediation before resorting to litigation. The Parties shall agree upon a mediator and shall each pay one-half (½) the cost of such mediator.

19. DEFINITIONS

19.1 Specific Terms. The following capitalized terms used in this LDDA shall have the meanings set forth below.

(a) **"Agency"** means the Redevelopment Agency of the City of Oakland, a public body, corporate and politic, exercising governmental functions and powers under the Community Redevelopment Law of the State of California. Agency's principal office is One Frank H. Ogawa Plaza, 5th Floor, Oakland, California 94612.

When Agency is required to review, comment on, reject or approve any documents or plans in this LDDA, Agency shall constitute the Redevelopment Director of Agency.

(b) **"Agency's Interest"** means all of Agency's right, title and interest in and to the Site pursuant to the Order for Possession and such other right, title, and interest in and to the Site subsequently acquired by Agency including fee title obtained pursuant to a Final Order of Judgment and Condemnation.

(c) **"Agents"** means, with respect to a party to this LDDA, such party's officers, directors, members, partners, employees, agents, representatives, architects, engineers, consultants and contractors.

(d) **"Attorneys' Fees and Costs"** means the fees of legal counsel retained by the parties to this LDDA and the other documents, and the costs and expenses they incur, which may include printing, photostatting, duplicating, messengering, filing fees and fees incurred for legal support staff (persons not admitted to the bar but performing services under the supervision and direction of an attorney). Attorneys' Fees and Costs shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations, bankruptcy proceedings, and any post-judgment proceedings to collect any judgment. All such Attorneys' Fees and Costs shall be reasonable, and shall be charged for services which are appropriate to address the specific issue or problem.

(e) **"Bonds"** means the Performance Bond and Payment Bond described in Section 10.

(f) **"Business Day(s)"** means any weekday other than a day that is a Federal, State or City holiday.

(g) **"CEDA"** means the Community and Economic Development Agency of City or any successor agency thereto.

(h) **"CEQA"** means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq., and the regulations promulgated thereunder, as amended from time to time.

(i) **"City"** means the City of Oakland, a municipal corporation.

(j) **"Commencement of Construction"** means commencement of construction activities as defined in the Construction Contract, excluding demolition, Remediation, inspection or testing occupancy activities.

(k) **"Intentionally Omitted"**

(l) **"Complete Construction, Completes Construction or Completion of Construction"** means the issuance of a temporary certificate of occupancy (TCO) for the building core and shell. If the TCO is not issued by the date Complete Construction is required by this LDDA, then Developer must have requested

an inspection to receive the TCO by this date and a TCO was subsequently issued based on that inspection request.

(m) Intentionally Omitted

(n) "Condemnation Litigation" means that certain lawsuit titled *Redevelopment City of the City of Oakland v. Hahn, et al.*, Santa Clara County Superior Court, No. 1-05-CV-038886 (formerly Alameda County Superior Court No. RG04-189680) originally filed December 15, 2004.

(o) "Construction Contract(s)" means the Prime Construction Contract and any other construction contracts to be executed by Developer for the Project, and any and all related documents, including but not limited to the plans and specifications and the required Bonds, as set forth in Section 9.4.

(p) Intentionally Omitted

(q) Intentionally Omitted

(r) "Contractor" means the general contractor identified in the Prime Construction Contract.

(s) "LDDA" means this Lease Disposition and Development Agreement, together with all Exhibits, supplements, amendments, and modifications hereto, and all extensions and renewals hereof. All Exhibits to this LDDA are incorporated into this LDDA by reference.

(t) Intentionally Omitted

(u) "Developer" means Sears Development Co., an Illinois corporation.

(v) "Developer Litigation" means any pending or threatened litigation, arbitration, claims, administrative or other proceeding (not including the condemnation litigation) in which Developer is or may become a party, or which relates to the Site, that may have an impact on this LDDA, the Project, or the ability of Developer to meet any of the obligations under this LDDA as described in Section 2.3(a)(ii).

(w) "Development Costs" means the actual reasonable costs incurred by Developer for the planning, designing, financing, constructing, developing, marketing, leasing and selling of the Project (or any portion thereof), including, without limitation, the following: (i) the cost of preparing the Site for construction including the cost of demolition, paving, grading, and Remediation, (ii) the actual amount necessary to payoff and discharge any construction loan that was part of the Development Strategy; (iii) any Rent Payment, and any other actual expenditures of Developer's equity, plus an allowance for interest on any amounts so expended in a percentage rate equal to that earned on funds retained in the escrow account; (iv) fees to professionals

such as architects, brokers, engineers, accountants, and attorneys, (v) the costs of preparing any and all reports, investigations and other plans and documents for the Project, (vi) marketing costs, (vii) development and permit fees, (viii) any amounts due as payables for work performed in accordance with Construction Contracts; (ix) any amounts reasonably necessary to close out or wind down construction; (x) all costs for improvements erected or constructed on the Site.

(x) **"Development Strategy"** means the documents and information prepared by Developer for the Project as more particularly described in Section 2.3.

(y) **"Effective Date"** means the date that the Parties execute this LDDA.

(z) **"Environmental Laws"** In addition to the laws referred to in the definition of Hazardous Materials below, the term "Environmental Laws" shall be deemed to include, without limitation, 33 U.S.C. Section 1251 et seq., 42 U.S.C. Section 6901 et seq., 42 U.S.C. Section 7401 et seq., 42 U.S.C. Section 9601 et seq., and California Health and Safety Code Sections 25100 et seq., and 25300 et seq., California Water Code Section 13020 et seq., or any successor(s) thereto, all local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions, guidelines and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind.

(aa) **"Escrow Agent"** as defined in the Sale Agreement.

(bb) **"Redevelopment"** means the Director of Redevelopment, Economic Development, Housing and Community Development, or the Director's designee.

(cc) **"Existing Environmental Reports"** means those environmental reports listed in Exhibit "C".

(dd) **Intentionally Omitted**

(ee) **"Final Design Plans"** means, but is not to be limited to, all design documentation upon which Developer and City shall rely in the approval of the design of the Project for the issuance of building permits on the Project. The Final Design Plans shall include, but not necessarily be limited to, architectural plans, elevations and specifications, site plans, and landscaping plans.

(ff) **"Force Majeure"** means war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, unusually severe weather, inability to obtain energy or power to construct the Project, litigation, third party challenges (administrative or otherwise), initiatives or referenda that may

preclude activities contemplated under this LDDA, or if a Government Agency fails to issue approvals as discussed in Section 3 of this LDDA.

(gg) "Government Agency". The term "Government Agency" means any federal, state, county, municipal and local governmental and quasi-governmental bodies and authorities and any political subdivision, public corporation, district or other political or public entity or departments thereof having or exercising jurisdiction over the parties, the Site, or such portions thereof as the context indicates.

(hh) "Government Approvals" means any and all governmental and quasi-governmental permits, approvals, inspections and reviews necessary for development and construction of the Project in accordance with this LDDA, including, but not necessarily limited to, conditional use permit(s), building permit(s), grading, demolition and other "pre-development permits" including shoring, seismic, obstruction, foundation and structural steel permits, engineering review, plan checks, and environmental review and mitigation measures pursuant to CEQA.

(ii) "Ground Lease" means the Ground Lease between Agency and Developer in form and content substantially similar to the ground lease attached hereto as Exhibit "B", together with Exhibits attached thereto and all supplements, amendments, restatements and modifications thereto.

(jj) "Ground Lease Commencement Date" means the date escrow closes on the Ground Lease as set forth in Section 6.2.

(kk) "Hazardous Materials" means: (a) any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "infectious waste," "biohazardous waste," "toxic substance," "pollutant," "toxic pollutant," "contaminant" as well as any formulation not mentioned herein intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "REP toxicity," or "GULP toxicity"; (b) petroleum, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures or natural gas and such synthetic gas) and ash produced by a resource recovery facility utilizing a municipal solid waste stream, and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources; (c) "hazardous substance" as defined in Section 25281(f) of the California Health and Safety Code; (d) "waste" as defined in Section 13050(d) of the California Water Code; (e) asbestos in any form; (f) urea formaldehyde foam insulation; (g) polychlorinated biphenyls (PCBs); (h) radon; and (i) any other chemical, material, or substance exposure to which is limited or regulated by any Governmental Agency because of its quantity, concentration, or physical or chemical characteristics, or which poses a significant present or potential hazard to human health or safety or to the environment if released into the workplace or the environment. "Hazardous Substances" shall not include ordinary office supplies and repair, maintenance and

cleaning supplies maintained in reasonable and necessary quantities and used in accordance with all Environmental Laws. Hazardous Materials shall only be Remediated if required to be Remediated by governing authorities with jurisdiction of Hazardous Materials.

(ll) Intentionally Omitted

(mm) "Landowners" mean the persons as set forth in Section 4.

(nn) "Law(s)" means all applicable laws, ordinances, orders, judgments, rules, regulations, requirements, mandatory guidelines or directives of any applicable Government Agency affecting the development, improvement, alterations, use, maintenance, operation or occupancy of the Site.

(oo) "Material Change" means any substantial change, modification, revision, alteration or amendment of the Final Design Plans or Bonds. A substantial change with respect to the design of the Project shall be limited to changes that materially alter the design of or material used for the Project exterior.

(pp) Intentionally Omitted

(qq) "Order for Immediate Possession" means that certain judicial Order Fixing Security and for Immediate Possession issued by the Alameda Superior Court on January 24, 2005 in the Condemnation Litigation giving possession to the Site to Agency pursuant to Cal. Code Civ. Pro. 1255.410, et seq.

(rr) "Prime Construction Contract" means that contract or contracts described in Section 9.4.

(ss) "Project" means the development and construction of a new retail Sears Auto Center building, and building of other lawful uses, in addition to a new retail Sears Auto Center building, including retail and residential uses with parking, landscaping, and accessory uses on the Site.

(tt) "Purchase Option" means the ability of Developer to purchase Agency's Interest or fee title when acquired by Agency as set forth in Section 6.4.

(uu) "Redevelopment Plan" means the Redevelopment Plan adopted on June 12, 1969, as amended from time to time.

(vv) "Related LDDAs" means any assignment or sublease by Developer of all or any part of this LDDA or all or part of any other agreement executed in connection with this LDDA as described in Section 11.2(c).

(ww) "Remediation or Remediate or Remediating" means any of those actions with respect to Hazardous Materials constituting a response or

remedial action as required to be performed by a Government Agency with jurisdiction over such matters.

(xx) **"Rent Payment"** as defined in Section 6.3.

(yy) **"Repurchase Rights"** means the right to terminate the Ground Lease, repurchase Agency's Interest, or repurchase the Site, as the case may be as described in Section 16.4.

(zz) **"Repurchase Rights Date"** means the date Agency exercises its Repurchase Rights.

(aaa) **"Site"** means those certain real properties, including any and all rights, privileges and easements appurtenant thereto, located at 2000-2016 Telegraph Avenue. and 490 Thomas L. Berkeley Way, in Oakland, California, and more particularly described on Exhibit "A" attached to this LDDA.

(bbb) **"Subsequent Final Design Plans"** means Design Plans that reflect any Material Changes to the approved Final Design Plans.

(ccc) **"Title Company"** means First American Title Insurance Guaranty Company.

(ddd) **"Sale Agreement"** as defined in Recital E.

(eee) **"Purchase Closing Date"**, as defined in the Ground Lease.

(fff) **"Leasehold Title Policy"** as defined in Section 7.4(a)(i).

19.2 Other Terms. Other capitalized terms used in this LDDA shall have the meanings specified elsewhere in this LDDA.

AGENCY:

REDEVELOPMENT AGENCY OF
THE CITY OF OAKLAND,
a public body, corporate and politic

By: _____

Charles P. Hong
Agency Administrator

Approved as to form and legality:

Robert M. Allen

Agency Counsel

DEVELOPER:

Sears Development Co.,
A Delaware corporation

By: _____

Its: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

SS.

On October 14, 2005 before me, Lenora R. Royal, Notary Public

Date

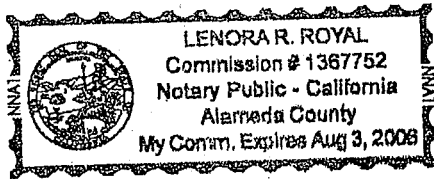
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Cheryl A.P. Thompson

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Lenora R. Royal
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LPDA

Document Date: 10-14-05

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

AGENCY:

REDEVELOPMENT AGENCY OF
THE CITY OF OAKLAND,
a public body, corporate and politic

By: _____
Agency Administrator

Approved as to form and legality:

Agency Counsel

DEVELOPER:

Sears Development Co.,
A Delaware corporation

By: J.B.R.

Its: _____
JAMES B. TERRELL, DIRECTOR
REAL ESTATE OPERATIONS



STATE OF ILLINOIS)

McHenry) SS:
COUNTY OF COOK ()

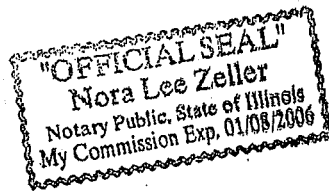
THE undersigned, a Notary Public, in and for the County and State aforesaid, does hereby certify, that James Terrell personally known to me to be the Director of Real Estate Operations of **Sears Development Co.**, a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that as such Director of Real Estate Operations that he signed and delivered the said instrument pursuant to authority duly given to him by said corporation.

Given under my hand and seal this 18th day of October, 2005.

Notary Public

My Commission Expires:

January 7, 2000



LIST OF EXHIBITS

Exhibit "A"	Legal Description
-------------	-------------------

Exhibit "B"	Ground Lease
-------------	--------------

Exhibit "C"	List of Existing Environmental Reports
-------------	----------------------------------------

Exhibit "D"	Preliminary Report
-------------	--------------------

EXHIBIT A

Legal Description

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT ON THE NORTHEASTERN LINE OF 20TH STREET, DISTANT THEREON SOUTH 63° 45' EAST 100 FEET FROM THE POINT OF INTERSECTION THEREOF WITH THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE EXISTED JUNE 28, 1907; RUNNING THENCE 63° 45' EAST ALONG SAID LINE OF 20TH STREET, 86.58 FEET TO A POINT DISTANT THEREON NORTH 63° 45' WEST, 165.50 FEET FROM THE POINT OF INTERSECTION THEREOF WITH NORTHWESTERN LINE OF BROADWAY; THENCE NORTH 26° 15' EAST 100 FEET; THENCE NORTH 63° 45' WEST 105.81 FEET TO A LINE DRAWN PARALLEL WITH SAID EASTERN LINE OF TELEGRAPH AVENUE AND DISTANT 104 FEET EASTERLY THEREFROM, MEASURED ALONG A LINE DRAWN PARALLEL WITH THE SOUTHERN LINE OF HOBART STREET; THENCE SOUTH 11° 13' WEST PARALLEL WITH SAID LINE OF TELEGRAPH AVENUE 74 FEET; MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN NORTH 26° 15' EAST FROM THE POINT OF BEGINNING; THENCE SOUTH 26° 15' WEST 28 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERN LINE OF 20TH STREET, FORMERLY DELGER STREET, WITH THE EASTERN LINE OF TELEGRAPH AVENUE, AS SAID TELEGRAPH AVENUE EXISTED JUNE 28, 1907, RUNNING THENCE NORTH 11° 13' EAST ALONG SAID LINE TELEGRAPH AVENUE 90.91 FEET; THENCE SOUTH 78° 27' 20" EAST 104 FEET; THENCE SOUTH 11° 13' WEST 90 FEET, MORE OR LESS, TO THE POINT OF INTERSECTION WITH A LINE DRAWN NORTH 26° 15' EAST FROM A POINT ON SAID NORTHERN LINE OF 20TH STREET, DISTANT THEREON 100 FEET EASTERLY, FROM THE INTERSECTION THEREOF WITH SAID EASTERN LINE OF TELEGRAPH AVENUE; THENCE SOUTH 26° 15' WEST 28 FEET, MORE OR LESS, TO SAID NORTHEASTERN LINE OF 20TH STREET; AND THENCE NORTH 63° 45' WEST 100 FEET TO THE POINT OF BEGINNING.

APN: 008-0649-009 (Affects: Parcel One) and 008-0649-010 (Affects: Parcel Two)