

ATTACHMENT A

OFFICIAL BUSINESS  
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Government Code  
Section 6103

Recording Requested by and  
When Recorded Return to:

THE REDEVELOPMENT AGENCY  
OF THE CITY OF SAN DIEGO  
c/o Centre City Development Corporation  
401 B Street, Suite 400  
San Diego, California 92101  
Attn: David Allsbrook

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Space above this line for Recorder's use only

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT is entered into as of \_\_\_\_\_, 200\_\_\_, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic (herein referred to as "Agency"), and SAN DIEGO HOUSING COMMISSION, a public agency (the "Housing Commission").

A. The Agency entered into that certain Disposition and Development Agreement dated July 31, 2003, as amended by that certain First Implementation Agreement dated August 19, 2004, that certain Second Implementation Agreement dated June 14, 2007 and that certain Third Implementation Agreement dated June 23, 2008 (collectively, the "DDA") with Lankford and Associates, Inc., a Colorado corporation, which DDA was assigned to Smart Corner, LLC, a Delaware Limited Liability Company and then to CJUF Smart Corner LLC, a Delaware Limited Liability Company (the "Developer"), relating to that certain real property located in the City of San Diego, County of San Diego described as set forth in Attachment No. 2 of the DDA incorporated herein by this reference (the "Property"). DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments, or attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

B. Pursuant to the DDA, the Agency conveyed the Property to the Developer by that certain Grant Deed recorded on October 8, 2004, as Document No. 2004-0958513 among the Official Records of the San Diego County Recorder's Office ("Agency Grant Deed").

C. Pursuant to the DDA, Developer executed that certain Instrument Affecting and Imposing a Lien on Real Property (San Diego Housing Commission Office Tower) which contained the written acceptance of Agency, and which was recorded against the Property on October 8, 2004 as Document No. \_\_\_\_\_ among the Official Records of the San Diego County Recorder's Office for the benefit of the Agency (the "Housing Commission Lien Instrument"). After subdivision of the Property (discussed below), the Housing Commission Lien Instrument was partially re-conveyed so that it only remained a lien against the Housing Commission Parcel.

D. Subsequent to the recordation of the Agency Grant Deed, the Property was legally subdivided pursuant to that certain Subdivision Map legally described in Exhibit A, attached hereto and incorporated herein by this reference, into three (3) airspace lots: the Housing Commission Parcel, the Parking Parcel, and the Residential Parcel. The Housing Commission Parcel is legally described in the legal description attached hereto as Exhibit B and incorporated herein by this reference (the "Housing Commission Parcel").

E. Pursuant to the DDA and the Agency Grant Deed, Developer conveyed the Housing Commission Parcel to the Housing Commission, subject to the Agency Grant Deed, by that certain Grant Deed recorded on November 1, 2006 as Document No. 2006-0777950 among the Official Records of the San Diego County Recorder's Office (the "Developer Grant Deed").

F. This Agreement is entered into and recorded in connection with the DDA and the Agency Grant Deed.

NOW, THEREFORE, AGENCY AND HOUSING COMMISSION AGREE AS FOLLOWS:

1. The Housing Commission acknowledges and agrees for itself, its successors, its assigns and every successor in interest to the Housing Commission Parcel or any part thereof, that the Housing Commission acquired fee title to the Housing Commission Parcel from the Developer under the Developer Grant Deed subject to the covenants, conditions and restrictions set forth in the Agency Grant Deed, and acknowledges and agrees to continue to adhere to and abide by such covenants, conditions and restrictions set forth in the Agency Grant Deed as amended by this Agreement.

2. Housing Commission covenants and agrees for itself, its successors, its assigns and every successor in interest to the Housing Commission Parcel or any part thereof, that the Housing Commission, its successors and assignees, in connection with the DDA and the Agency Grant Deed shall comply with all of the following:

a. Housing Commission, its successors and assignees shall use the Housing Commission Parcel only for the uses specified in the Agency Grant Deed and this Agreement, specifically including the following:

(1) Housing Commission, its successors and assignees shall occupy approximately 63,431 rentable square feet (the "Housing Commission

Space”) and lease a minimum of 20,000 rentable square feet on either the first or second floors to non-profit organizations or governmental entities, with ground-floor retail uses, provided, however, nothing contained herein, shall preclude the Housing Commission from utilizing the balance or a portion of the balance of the space within the building itself on the first and second floors. Further, nothing contained herein shall require that retail space on the ground floor be leased to non-profits and/or government entities; and

- (2) The Housing Commission, its successors and assignees, shall not be required to lease more than 20,000 rentable square feet, on the first and/or second floors (which does not include the Housing Commission Space), to non-profit organizations and/or governmental entities. For the purposes of this section, the occupation and utilization of space by the Housing Commission, a public agency, on the first and/or second floor, in addition to the top three floors, shall be counted toward this requirement.

3. Housing Commission herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Agreement is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Housing Commission Parcel, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Housing Commission Parcel.

4. Housing Commission hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Housing Commission Parcel or any portion thereof that Housing Commission, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Housing Commission Parcel or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Housing Commission Parcel, or any portion thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any

practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

b. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

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

5. Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

6. Every term, covenant, condition and restriction contained in this Agreement shall remain in full force and effect in perpetuity.

7. Prior to exercising any remedies hereunder, Agency shall give the Housing Commission notice of such default. Unless a different period is provided herein, if the default is reasonably capable of being cured within ninety (90) days, Housing Commission shall have such period to effect a cure prior to exercise of remedies by Agency. Unless a different period is provided herein, if the default is such that it is not reasonably capable of being cured within ninety (90) days, and Housing Commission (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Housing Commission shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Agency; provided, however that in no event shall Agency be precluded from exercising remedies if the Housing Commission Parcel becomes or is about to

become materially jeopardized by any failure to cure a default or the default is not cured within one hundred and eighty (180) days after the first notice of default is given.

8. If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth in this Agreement, Agency and its respective successors and assigns, without regard to whether Agency is an owner of any land or interest therein to which these covenants relate, may each institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Housing Commission of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

9. This Agreement and the covenants, conditions and restrictions contained herein shall be superior and of higher priority than the lien of any deed of trust, mortgage or similar security device or instrument in respect of the Housing Commission Parcel or any portion thereof or any interest or estate therein. Upon the foreclosure of any such lien, the owner acquiring an interest in any portion of the Housing Commission Parcel shall be bound by and shall observe the terms and provisions hereof.

10. The Housing Commission shall perform such further acts as may be reasonably necessary or appropriate to carry out and accomplish the intent of this Agreement, including, but not limited to causing any and all existing lenders with deeds of trust or similar security devices or instruments secured against the Housing Commission Parcel or any portion thereof or any interest or estate therein to consent to and subordinate their liens to this Agreement. Such consent and subordination shall substantially conform in form and substance to the Lender's Consent and Subordination document attached hereto and incorporated herein by this reference. Such Lender's Consent and Subordination document shall be executed prior to or concurrently with the execution of this Agreement and shall be recorded concurrently herewith.

11. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

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[signatures on following page]

IN WITNESS WHEREOF, the Agency and the Housing Commission have signed this Agreement as of the dates set opposite their signatures.

REDEVELOPMENT AGENCY OF  
THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Janice Weinrick  
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY

JAN I. GOLDSMITH  
Agency General Counsel

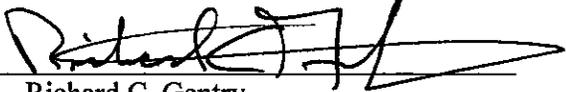
By: \_\_\_\_\_  
Kendall Berkey  
Deputy General Counsel

KANE, BALLMER & BERKMAN  
Agency Special Counsel

By: *Murray O. Kane*  
Murray O. Kane

[signatures continue on following page]

SAN DIEGO HOUSING COMMISSION, a public agency

By:   
Richard C. Gentry  
President & CEO

APPROVED AS TO FORM:

CHRISTENSEN & SPATH LLP

By:   
Charles Christensen  
General Counsel  
San Diego Housing Commission

**Lender's Consent and Subordination**

The undersigned, U.S. Bank National Association, a National Banking Association ("**Lender**"), is the current beneficiary under the following deed of trust/mortgage ("**Encumbrance**"): that certain Deed of Trust made by San Diego Housing Commission as trustor, in favor of Lender, as beneficiary, recorded in the Official Records of San Diego County, California on November 1, 2006, as Instrument No. 2006-0777952, securing a promissory note in the original principal amount of twenty million five hundred fifty thousand Dollars (\$20,550,000.00). The Encumbrance currently encumbers the real property described as exhibit B on the attached Agreement Affecting Real Property. In conformance with Section 9 and 10 of the Agreement Affecting Real Property, Lender hereby consents to the provisions of the Agreement Affecting Real Property and hereby unconditionally subordinates the lien of the Encumbrance to the provisions of the Agreement Affecting Real Property.

**Lender:**

U.S. Bank National Association,  
a National Banking Association

By:   
Name: PAUL C. HOWARD  
Its: VICE PRESIDENT

STATE OF CALIFORNIA

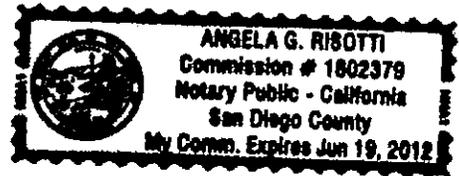
COUNTY OF San Diego

On December 7, 2009 before me, Angela G. Risotti, a Notary Public, personally appeared Richard C. Bentley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Angela G. Risotti (Seal)



STATE OF CALIFORNIA

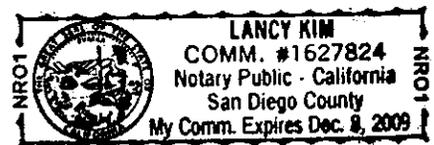
COUNTY OF San Diego

On December 8, 2009 before me, Lancy Kim, a Notary Public, personally appeared Paul L. Howard, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Signature] (Seal)



STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT "A"

SUBDIVISION MAP

Lots 1, 2 and 3 of Smart Corner, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15217 filed in the Office of the County Recorder of San Diego County December 22, 2005.

EXHIBIT "B"

LEGAL DESCRIPTION  
HOUSING COMMISSION PARCEL

All that certain real property located in the County of San Diego, State of California, described as follows:

LOT 3 OF SMART CORNER, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15217.

EXCEPTING THEREFROM ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF ANY KIND AND CHARACTER LYING MORE THAN 500 FEET BELOW THE SURFACE, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF THE PROPERTY LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM THE PROPERTY, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE OR DISTURB EITHER THE SURFACE OF THE PROPERTY OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER.

PARCEL 1 OF PARCEL MAP NO.20318, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 13, 2007.