



Southeastern  
Economic  
Development  
Corporation

## Memorandum

Date issued: November 3, 2009 Report No. SEDC 09-011

Meeting of: November 17, 2009

To: Chair and Members of the Redevelopment Agency

From: Nancy M. Lytle, Vice President of Projects and Development

**Subject: *Agreement to Terminate Disposition and Development Agreement with Pacific Development Partners, LLC. with Settlement and Mutual General Release***

T 619.527.7345

F 619.262.9845

www.sedecinc.com

---

### SUMMARY

SEDC Board of Directors Recommendation – That the Southeastern Economic Development Corporation (SEDC) Board of Directors (Board) recommend to the Redevelopment Agency of the City of San Diego (Agency) the approval of the Agreement to Terminate Disposition and Development Agreement with Settlement and Mutual General Release (Termination and Release Agreement).

### BACKGROUND

In 1996, SEDC, on behalf of the Agency, purchased a 14.7 acre site (Site) located in the Central Imperial Redevelopment Project Area. The Site, commonly known as the Valencia Business Park, was located within the 100-year flood plain. Upon acquisition, the Agency approved an additional expenditure of approximately \$7 Million and authorized SEDC to cause the installation of extensive public improvements on the Site in order to allow a net 8 acre portion to be developable. These public improvements include, but are not limited to, the following:

- Construction of flood control improvements to the Las Chollas Creek to accommodate a 100-year storm event
- Elevation of the Site from the 100-year flood plain
- Construction and dedication of public open-space along Las Chollas Creek
- Installation of sidewalks, landscaping, street trees and irrigation within the street right-of-way of Stevens Way and Imperial Avenue and the MTS Trolley Line
- Subdivision of the Site into nine lots including two open space lots containing Las Chollas Creek

In 2005, the United States Postal Service opened the 25,000 square foot post office (retail distribution center) on Lot 1. During the same time period, the Agency terminated an earlier Disposition and Development Agreement with a different developer and, in November 2006, approved the Disposition and Development Agreement (2006 DDA) with Pacific Development Partners, LLC. (PDP) for development of Lots 2-7, consisting of 4.33 acres of the Site.

Pursuant to the DDA, PDP was required to develop certain light-industrial uses on Lots 2-7. However, after seeking tenants for an industrial development, PDP determined that industrial uses on Lots 2-7 were not economically feasible and consequently decided to revise the planned development to include retail and commercial uses. In order to implement the development of retail and commercial uses (rather than light-industrial uses), PDP submitted to SEDC a request for a zoning change of Lots 2-7 and an amendment to the DDA.

Accordingly, in June of 2007, SEDC applied to the Planning Commission for a rezone of Lots 2-7 from SESD I-1 to SESD CT-2. The CT-2 Community Commercial zone allows for community serving retail uses, consistent with PDP's revised planned development of Lots 2-7. On December 6, 2007, the Planning Commission voted to recommend to the San Diego City Council approval of the proposed rezone. However, due to community controversy arising over PDP's change in the planned development of Lots 2-7 and other issues and community concerns involving PDP and SEDC, the application for a zoning change was never presented to the San Diego City Council for final approval and, therefore, never completed.<sup>1</sup> Additionally, an amendment to the DDA was never presented to the Agency for consideration.

After a series of events including SEDC's issuance of a Request for Proposals involving Lots 2-7 and issuance of a Notice of Default to PDP for failing to develop Lots 2-7 according to the 2006 DDA, PDP asserted claims against SEDC and the Agency including a request to compensate PDP for expenses allegedly incurred in connection with seeking a rezone of Lots 2-7 and responding to the Request for Proposals issued by SEDC.

In light of the claims and disputes asserted by and between SEDC and PDP and in light of the Agency's and SEDC's desire to redevelop Lots 2-7, the SEDC Board directed SEDC's management and Agency Special Counsel to negotiate a termination of the 2006 DDA and to settle any and all claims by and between the parties in connection with the 2006 DDA and development of Lots 2-7.

The parties have reached a tentative agreement on all terms, which are included in the proposed Termination and Release Agreement. In furtherance of the public interest, the parties have agreed, subject to the terms therein, to voluntarily terminate the 2006 DDA and to settle any and all claims in connection with the 2006 DDA and development of Lots 2-7.

---

<sup>1</sup> Should a future developer pursue the rezone application for Lots 2-7, final approval of the rezone rests with the San Diego City Council. Additionally, due to a Loan Agreement with the Federal Department of Housing and Urban Development (HUD), which provided assistance for the acquisition of the Site, any such rezone of Lots 2-7 would also be subject to HUD approval.

As part of the settlement of claims and disputes, the Agency would make a total payment of \$75,000 to PDP which would be offset by the Agency's retention of the \$50,000 good faith deposit paid by PDP to the Agency pursuant to the 2006 DDA, resulting in a net out-of-pocket cost to the Agency of \$25,000. The parties acknowledge that, should this matter result in litigation, it is reasonably foreseeable that the estimated legal fees and costs of the parties would exceed \$25,000.

Pursuant to the proposed Termination and Release Agreement, PDP, the Agency, and SEDC where applicable, would: (i) voluntarily terminate the 2006 DDA; (ii) settle any and all claims and disputes by and among the parties that may exist pertinent to the 2006 DDA, the development of Lots 2-7, and the implementation of the 2006 DDA; and (iii) release each party from any and all claims and disputes (potential or otherwise) that each party may have against the other party, in accordance with the terms and conditions of the Termination and Release Agreement.

#### DISCUSSION

On September 30, 2009, the SEDC Board recommended approval to the Agency of the proposed Termination and Release Agreement with PDP. Further, the Board authorized the Acting President/CEO to execute, on behalf of SEDC, any and all documents necessary to give effect to the Termination and Release Agreement if approved by the Agency.

Based on the issues related to the 2006 DDA, the series of events including SEDC's issuance of a Request for Proposals and issuance of a Notice of Default to PDP, and the desire to redevelop Lots 2-7, the SEDC Board determined it necessary to terminate the 2006 DDA with PDP and resolve any and all claims and disputes among the parties. These actions and the action now requested of the Agency will expedite the redevelopment of Lots 2-7. Additionally, any litigation involving Lots 2-7 would delay development of the Site. By approving this action, the Agency will allow SEDC to redevelop the remainder of Valencia Business Park in a timely manner.



Submitted by  
Nancy M. Lytle  
Vice President of Projects and Development



Approved by  
Brian L. Trotier  
Acting President/CEO

NML:dn  
Attachments 1: DDA Terminate-Release Agreement

**AGREEMENT TO TERMINATE  
DISPOSITION AND DEVELOPMENT AGREEMENT  
WITH SETTLEMENT AND MUTUAL GENERAL RELEASE**

THIS AGREEMENT TO TERMINATE DISPOSITION AND DEVELOPMENT AGREEMENT WITH SETTLEMENT AND MUTUAL GENERAL RELEASE (“Termination and Release Agreement”) is made and entered into as of \_\_\_\_\_, 2009 (“Effective Date”), by and among the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (“Agency”), SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation (“SEDC”), and PACIFIC DEVELOPMENT PARTNERS, LLC, a Nevada limited liability company (“PDP”). The Agency and SEDC are hereafter collectively referred to as the “Governmental Entities.”

RECITALS

The Governmental Entities and PDP (sometimes collectively referred to as the Parties, and individually, a Party) enter into this Termination and Release Agreement in consideration of the mutual covenants and promises set forth below, with reference to the following facts and circumstances:

WHEREAS, in furtherance of the objectives of the California Community Redevelopment Law (“CRL”), the Agency has undertaken a program for the redevelopment of certain areas within the City of San Diego, State of California, and, in this regard, has adopted the Redevelopment Plan for the Central Imperial Redevelopment Project establishing the Central Imperial Redevelopment Project Area (“Project Area”) pursuant to the CRL; and

WHEREAS, SEDC is authorized, on behalf of the Agency, to administer redevelopment activities within the Project Area; and

WHEREAS, in furtherance of the objectives of the Redevelopment Plan for the Project Area, the Agency and PDP entered into that certain Disposition and Development Agreement dated as of December 18, 2006 (“DDA”) for the development of certain parcels of unimproved land within the Project Area known as Lots 2-7 of the proposed Valencia Business Park, consisting of approximately 4.33 acres, situated on Imperial Avenue, bordered on the north by the San Diego East Trolley Line, on the south by the Encanto Branch of South Las Chollas Creek (“Las Chollas Creek”), on the west by 54<sup>th</sup> Street, and on the east by Merlin Drive (“Property”); and

WHEREAS, pursuant to the terms and conditions of the DDA, PDP was required to develop certain light-industrial uses on the Property; and

WHEREAS, after seeking tenants for an industrial development, PDP determined that industrial uses on the Property were not economically feasible and consequently decided to revise the planned development to include retail and commercial uses; and

WHEREAS, in order to implement the development of retail and commercial uses (rather than light-industrial uses) on the Property, PDP submitted to SEDC a request for a zoning change of the Property and an amendment to the DDA; and

WHEREAS, due to community controversy regarding PDP's change in the planned development of the Property and other issues and community concerns involving PDP and SEDC, a zoning change of the Property was not completed and an amendment to the DDA was not presented to the Agency for consideration; and

WHEREAS, after a series of events including SEDC's issuance of a Request for Proposals involving the Property and issuance of a Notice of Default to PDP for failing to develop the Property according to the DDA, PDP asserted claims against SEDC and the Agency including a request to compensate PDP for expenses allegedly incurred in connection with seeking a rezone of the Property and responding to the Request for Proposals; and

WHEREAS, in light of the claims and disputes asserted by and between the Parties and in furtherance of the public interest, the Parties agree, subject to the terms herein, to voluntarily terminate the DDA and to settle any and all claims by and between the Parties in connection with the DDA and the development of the Property; and

WHEREAS, as part of the settlement of claims and disputes herein, the Agency agrees to make a total payment of \$75,000 to PDP which is offset by the Agency's retention of the \$50,000 good faith deposit paid by PDP to the Agency pursuant to the DDA, resulting in a net out-of-pocket cost to the Agency of \$25,000; and

WHEREAS, the Parties acknowledge that, should this matter result in litigation, it is reasonably foreseeable that the estimated legal fees and costs of the Parties would exceed \$25,000; and

WHEREAS, by and through this Termination and Release Agreement, PDP and the Governmental Entities desire to: (i) voluntarily terminate the DDA; (ii) settle any and all claims and disputes by and among the Parties that may exist pertinent to the DDA, the development of the Property, and the implementation of the DDA; and (iii) release each Party from any and all claims and disputes (potential or otherwise) that each Party may have against the other Party, in accordance with the terms and conditions of this Termination and Release Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants, conditions, representations, warranties and terms hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and without any Party admitting fault or liability in connection with this Termination and Release Agreement, the undersigned hereby agree as follows:

PDP-Agency-SEDC  
Termination of DDA/Settlement  
10-16-/09  
Final

1. Defined Terms. Any and all capitalized terms contained in this Termination and Release Agreement that are not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

2. Termination of Disposition and Development Agreement.

(a) Upon the Effective Date, the Agency and PDP hereby terminate the DDA dated as of December 18, 2006, filed with the City Clerk of the City of San Diego on November 28, 2006 as Document R-302147 and also filed with the Office of the Agency on December 28, 2006 as Document D-04091, with respect to the development of that certain real property legally described in the Legal Description of the Property, attached hereto as Exhibit "A" and incorporated herein by this reference ("Property").

(b) Pursuant to this termination, the DDA shall be of no further force and effect, and PDP hereby terminates, releases and quitclaims to the Agency any and all rights, claims and interest PDP may have obtained and/or have as a result of the DDA.

(c) Except as otherwise stated in and in accordance with this Termination and Release Agreement, the Agency and PDP are hereby released from any and all rights, obligations, duties or agreements contained in the DDA and each Party shall not have any further rights against, or liability to, the other Party under the DDA.

3. Settlement Payment. As part of the settlement of claims and disputes herein, the Agency, on behalf of the Governmental Entities, agrees to make a total payment to PDP in the full sum of Seventy Five Thousand Dollars (\$75,000). PDP agrees to accept from the Agency, on behalf of the Governmental Entities, the total payment of \$75,000, representing full settlement of any and all claims and disputes of PDP that may exist pertinent to the DDA, the development of the Property, and the implementation of the DDA.

4. Agency's Retention of Deposit. The Parties acknowledge that PDP made the Deposit, in the full sum of Fifty Thousand Dollars (\$50,000), with the Agency pursuant to Section C of the Method of Financing, incorporated into the DDA and attached thereto as Attachment No. 2. As part of the settlement of claims and disputes herein, the Parties hereby agree that the Agency shall be entitled to retain the entire amount of the Deposit as its sole property, including any accrued interest thereon, in consideration for the Agency's willingness to enter into this Termination and Release Agreement and relinquish the benefits accruing to the Agency under the DDA. PDP expressly waives and forfeits the right to receive a refund of all or any portion of the Deposit or any accrued interest thereon.

5. Party Releases.

(a) Release by PDP. PDP hereby agrees to release and forever discharge each of the Governmental Entities, individually and jointly, and each of their respective officers, directors, officials, agents, members, attorneys, representatives, and employees, and anyone working for, through or under them, from any and all claims, controversies, actions, causes of action, obligations, expenses, costs, attorneys' fees, demands, liabilities and damages of whatsoever nature and character, of any kind, at law or in equity, past, present or future, known or unknown, suspected or unsuspected, now or hereafter acquired, arising out of or relating to the Property and/or the DDA, excluding only any breach by either of the Governmental Entities of the provisions of this Termination and Release Agreement. In this regard, PDP realizes and acknowledges that subsequent to the execution of this Termination and Release Agreement, it may incur, suffer or sustain injury, loss, damages or costs arising out of or relating to the Property and/or the DDA that are unknown and unanticipated as of the Effective Date of this Termination and Release Agreement, and this release shall include a release of any such injury, loss, damages or costs. In addition to the foregoing, PDP hereby expressly waives all rights which PDP may have or hereafter claim to have under the provisions of California Civil Code Section 1542 (and the equivalent law of any other jurisdiction) which provides:

A GENERAL RELEASE DOES NOT EXTEND TO  
CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR.



\_\_\_\_\_  
PDP's Initials

Name: Mark T. Burger

Title: Managing Members



\_\_\_\_\_  
Ronald A. Recht

(b) Release by the Governmental Entities. The Governmental Entities, and each of them in their individual capacity, hereby release and forever discharge PDP and its officers, directors, agents, members, attorneys and employees, and anyone working for, through or under it, from any and all claims, controversies, actions, causes of action, obligations, expenses, costs, attorneys' fees, demands, liabilities and damages of whatsoever nature and character, of any kind, at law or in equity, past, present or future, known or unknown, suspected or unsuspected, now or hereafter acquired, arising out of or relating to the Property and/or the DDA, excluding only any breach by PDP of the provisions of this Termination and Release Agreement. In this regard, each of the Governmental Entities realizes and acknowledges that

subsequent to the execution of this Termination and Release Agreement, it may incur, suffer or sustain injury, loss, damages or costs arising out of or relating to the Property that are unknown and unanticipated as of the Effective Date of this Termination and Release Agreement, and this release shall include a release of any such injury, loss, damages or costs. In addition to the foregoing, the Governmental Entities hereby expressly waive all rights which they may have or hereafter claim to have under the provisions of California Civil Code Section 1542 (and the equivalent law of any other jurisdiction) which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

\_\_\_\_\_  
Agency's Initials  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
SEDC's Initials  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

6. Covenant Not to Sue. The Parties hereto acknowledge that a material inducement for entering into this Termination and Release Agreement is the promises and covenants set forth herein, which are material terms of this Termination and Release Agreement.

(a) PDP covenants and agrees not to bring any claims or causes of action, actions, suits, proceedings, defenses, affirmative defenses, obligations, liabilities, demands, damages, losses, costs, attorneys' fees or expenses of any nature against the Governmental Entities, or any of them, individually or jointly, or any of their respective officers, directors, officials, agents, representatives, members, attorneys and employees, and anyone working for, through or under any of them, regarding the matters settled and released hereby, and further covenants and agrees that this Termination and Release Agreement is a bar to any such claims and causes of action, actions, suits, proceedings, defenses, obligations, liabilities, demands, damages, losses, costs, attorneys' fees or expenses of any nature against the Governmental Entities, or any of them, individually or jointly, or any of their respective officers, directors, officials, agents, representatives, members, attorneys and employees, and anyone working for, through or under any of them.

 \_\_\_\_\_       \_\_\_\_\_  
PDP's Initials  
Name: Mark T. Burger / Ronald A Recht

Title: Managing Members

(b) Each of the Governmental Entities covenants and agrees not to bring any claims or causes of action, actions, suits, proceedings, defenses, affirmative defenses, obligations, liabilities, demands, damages, losses, costs, attorneys' fees or expenses of any nature against PDP or any of its officers, directors, agents, members, attorneys and employees, and anyone working for, through or under it, regarding the matters settled and released hereby, and further covenants and agrees that this Termination and Release Agreement is a bar to any such claims and causes of action, actions, suits, proceedings, defenses, obligations, liabilities, demands, damages, losses, costs, attorneys' fees or expenses of any nature against PDP or any of its officers, directors, agents, members, attorneys and employees, and anyone working for, through or under it.

\_\_\_\_\_  
Agency's Initials  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
SEDC's Initials  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

7. Benefits and Burdens. This Termination and Release Agreement shall be binding upon and shall inure the benefit of the Parties and their respective employees, agents, attorneys, representatives, predecessors-in-interest, successors-in-interest, and/or assigns.

8. Ownership of Claims. Each Party represents and warrants that it owns all rights, title and interest to any and all claims, causes of action, demands and indebtedness provided to be released or waived by them pursuant to this Termination and Release Agreement, and no such claims, causes of action, demands or indebtedness have been transferred, assigned, hypothecated or otherwise alienated in whole or in part. The Parties mutually agree to indemnify, defend and hold harmless each other from any liabilities, losses, claims, demands, costs, expenses or attorneys' fees incurred by each other as the result of any such transfer, assignment, hypothecation, or alienation.

9. Notice to Interested Parties. PDP shall notify any proposed lienholder, mortgagee, property owner, property occupant, lessee, or other interested party of the Property or Project under the DDA, which is obligated to receive such notice, concerning the existence of this Termination and Release Agreement and the resulting termination of the DDA.

10. General Provisions.

(a) Expenses of Negotiation. Each Party shall bear its own costs and expenses, including attorneys' fees, incurred with respect to the negotiation and preparation of this Termination and Release Agreement.

(b) Survival. Each and every provision of this Termination and Release Agreement shall survive the termination of the DDA.

(c) Further Assurances. Each Party agrees to take such actions, and to execute and deliver such documents, as reasonably required to effectuate the provisions and the intent of this Termination and Release Agreement. Moreover, each Party represents and warrants that in executing this Termination and Release Agreement, it has relied solely upon its own judgment, belief and knowledge and upon the advice and recommendations of its own counsel, consultants and experts concerning the nature, value and extent of this Termination and Release Agreement.

(d) Applicable Law. This Termination and Release Agreement shall constitute a contract under the internal laws of the State of California and shall be governed and construed in accordance with the laws of the State of California without regard to the doctrine of conflicts of laws.

(e) Entire Agreement. This Termination and Release Agreement sets forth the entire understanding and agreement of the Parties with respect to the matters addressed herein, and no other representations or warranties or agreements whatsoever have been made by any Party not herein contained. Each Party further acknowledges that it has not executed this Termination and Release Agreement in reliance upon any promise, representation or warranty, or in reliance upon any belief as to any fact or matter, not expressly contemplated by this Termination and Release Agreement.

(f) Amendments. It is expressly understood and agreed that this Termination and Release Agreement shall not be altered, amended, modified or otherwise changed in any respect or particular whatsoever except by a writing expressly referring to this Termination and Release Agreement and duly executed by each Party and its duly authorized representative.

(g) Incorporation. All of the recitals set forth above, as well as the Exhibit attached hereto, are hereby incorporated by reference into the substantive provisions of this Termination and Release Agreement.

(h) No Presumption. The language in all parts of this Termination and Release Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge and agree that this Termination and Release Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Termination and Release

Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. In the event of an ambiguity in or dispute regarding the interpretation of this Termination and Release Agreement, any rule or presumption requiring or permitting interpretation of an ambiguity against or in favor of any Party based on who prepared or drafted this Termination and Release Agreement shall not apply and is hereby waived by the Parties.

(i) Binding Effect. Each and every provision of this Termination and Release Agreement shall (i) bind and be enforceable against each Party and its respective heirs, executors, administrators, legal representatives, successors and assigns; and (ii) inure to the benefit of, and be enforceable by, each Party and its respective heirs, executors, administrators, legal representatives, successors and assigns.

(j) No Beneficiaries. There are no parties to this Termination and Release Agreement other than the Agency, SEDC and PDP. The provisions of this Termination and Release Agreement are not intended to benefit, and shall not be interpreted as benefiting, any person or entity other than the Agency, SEDC and PDP.

(k) Attorneys' Fees. If any legal action, arbitration or other proceeding is initiated by either Party to interpret or enforce this Termination and Release Agreement, or because of an alleged dispute or default in connection with the provisions of this Termination and Release Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs incurred in such action or proceeding, in addition to any other relief to which such Party may be deemed entitled.

(l) Severability. If any term or provision of this Termination and Release Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Termination and Release Agreement shall not be affected thereby and each other term and provision of this Termination and Release Agreement shall be valid and enforceable to the fullest extent permitted by law.

(m) Authorization to Sign. PDP hereby represents and warrants that the person(s) executing this Termination and Release Agreement on behalf of PDP has full authority to do so and to bind PDP to the provisions of this Termination and Release Agreement.

(n) Counterparts. This Termination and Release Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(o) Effective Date. The "Effective Date" as referenced in the preamble of this

Termination and Release Agreement shall be the date on which the Agency's authorized representative executes this Termination and Release Agreement as shown in the Agency's signature block below, assuming that SEDC and PDP have both executed this Termination and Release Agreement.

11. No Admission. The Parties hereto agree that this Termination and Release Agreement is a compromise and settlement of claims and in no way constitutes, nor be construed as, an admission of liability on the part of any of the Parties hereto for any claims, injuries or damages that have been, or may have been, sustained by any of the Parties as a result of any of the claims, allegations or transactions that are the subject of this Termination and Release Agreement.

12. Representation by Counsel. Each Party acknowledges and represents that:

(a) It has read this Termination and Release Agreement and consulted with its respective attorney(s) regarding its contents and consequences;

(b) This Termination and Release Agreement is being executed solely in reliance on its judgment, belief and knowledge of the matters set forth herein and on the advice of its attorney(s); and

(c) The terms and conditions of this Termination and Release Agreement are contractual and not mere recitals, among the Parties.

13. Conditions of Effectiveness of Agreement. As a condition to the effectiveness of this Termination and Release Agreement, the Agency, on behalf of the Governmental Entities, shall deliver or caused to be delivered to PDP the Seventy-Five Thousand Dollar (\$75,000) settlement payment referred to in Paragraph 3 above on or before December 31, 2009 (the "Payment Date"). If the Agency, on behalf of the Governmental Entities, shall fail to deliver or cause to be delivered such settlement payment to PDP on or before the Payment Date, then without further action by any of the Parties, this Termination and Release Agreement shall terminate, be null and void and of no further force or effect, and each of the Parties shall retain any and all rights and remedies available to it at law or in equity with respect to the matters otherwise released in this Termination and Release Agreement.

///  
///  
///  
///  
///  
///  
///

IN WITNESS WHEREOF, the Governmental Entities and PDP have executed this Termination and Release Agreement as of the dates set opposite their signatures below:

“AGENCY”

**REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO**, a public body, corporate and politic

Dated: \_\_\_\_\_, 2009

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

APPROVED the form and legality of this Agreement  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

JAN I. GOLDSMITH  
Agency General Counsel

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

APPROVED:

KANE, BALLMER & BERKMAN  
Agency Special Counsel

By: \_\_\_\_\_  
Royce K. Jones

PDP-Agency-SEDC  
Termination of DDA/Settlement  
10-16-/09  
Final

“SEDC”

**SOUTHEASTERN ECONOMIC  
DEVELOPMENT CORPORATION**, a  
California nonprofit public benefit corporation

Dated: \_\_\_\_\_, 2009

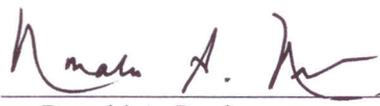
By: \_\_\_\_\_  
Brian Trotier  
Acting President/Chief Executive Officer

“PDP”

**PACIFIC DEVELOPMENT PARTNERS, LLC**  
a Nevada Limited Liability Company  
(Developer)

By: RAR Family Limited Partnership  
a California Limited Partnership  
(Managing Member)

Date: OCTOBER 22, 2009

By:   
\_\_\_\_\_  
Ronald A. Recht  
(General Partner)

By: MTB Family Limited Partnership  
a California Limited Partnership  
(Managing Member)

Date: OCTOBER 22, 2009

By:   
\_\_\_\_\_  
Mark T. Burger  
(General Partner)

PDP-Agency-SEDC  
Termination of DDA/Settlement  
10-16-/09  
Final

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of San Diego, County of San Diego, State of California described as follows:

Lots 2 through 7 of Valencia Business Park, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14256, filed in the Office of the County Recorder of San Diego County, August 10, 2001.

APN: 548-060-21, 22, 23, 24, 25 and 26

PDP-Agency-SEDC  
Termination of DDA/Settlement  
10-16-/09  
Final