

Attachment 1
Termination of Owner Participation Agreement
[Behind this Page]

**TERMINATION
OF
OWNER PARTICIPATION AGREEMENT**

THIS TERMINATION OF THE OWNER PARTICIPATION AGREEMENT [Termination Agreement] is made and entered into as of this ____ day of _____, 2008, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic [Agency] and SYEP ASSOCIATES, a California limited partnership [Owner], which shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on July 11, 2007, the Agency approved an Owner Participation Agreement [OPA] with Owner for the development of a residential rental apartment project affordable to very low income and low income persons, located at 104 Averil Road, San Diego, California, bounded on the west by Averil Road, the south by San Ysidro Boulevard, and the north by Sunset Lane, within the San Ysidro Redevelopment Project Area of the City of San Diego, State of California [Property]; and

WHEREAS, the proposed affordable housing project that is the subject of the OPA consists of forty-five (45) residential rental units, forty-four (44) of which shall be rented exclusively to Very Low Income and Low Income households at an Affordable Rent, and one of which shall be used as the manager's unit, and a subterranean parking facility providing approximately one hundred seven (107) parking spaces, and recreational amenities [Project]; and

WHEREAS, at the time the OPA was approved by the Agency, Owner had a valid purchase and sale agreement with the fee owner for the purchase of the Property in order to develop the Project; and

WHEREAS, on October 19, 2007, Owner informed Agency staff that Owner was not successful in the 2nd 2007 application round for the award of tax credits by the California Tax Credit Allocation Committee for the development of the Project but, based on the Project's scores received, it appears that Owner will be highly competitive in the 2008 application rounds; and

WHEREAS, Owner has further informed the Agency staff that Owner has been unable to secure the total financing necessary to perfect the purchase of the Property from the fee owner and seeks the Agency's assistance with possible Property acquisition; and

WHEREAS, Owner ultimately determined that the Project is no longer financially feasible and the Project is unable to be developed as proposed in the OPA and it's attached Method of Financing and Schedule of Performance; and

WHEREAS, in light of the above, Owner requests that the Agency agree to terminate the OPA and consider entering into a Disposition and Development Agreement for development of the Project; and

WHEREAS, based on the foregoing, the Parties desire to terminate the OPA.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Termination of Owner Participation Agreement.

A. As of the date of this Termination Agreement written above, the Agency and Owner hereby terminate the Owner Participation Agreement [OPA], attached hereto as Exhibit "A" and incorporated herein by this reference, entered into by and between the Parties and dated July 11, 2007, for the development of a residential rental apartment project affordable to very low income and low income persons, located at 104 Averil Road, San Diego, California, bounded on the west by Averil Road, the south by San Ysidro Boulevard, and the north by Sunset Lane, within the San Ysidro Redevelopment Project Area of the City of San Diego, State of California [Property].

B. Pursuant to this termination, the Agency and Owner are hereby released from any and all rights, obligations, duties or agreements contained in the OPA. Except as otherwise stated in this Termination Agreement, neither the Agency nor Owner shall have any further rights against or liability to the other under the OPA.

II. Indemnification.

To the maximum extent permitted by law, Owner agrees to and shall defend, indemnify and hold harmless the City of San Diego, the Redevelopment Agency of the City of San Diego, and their respective officers, employees, contractors and agents from and against all claims, liability, loss, damage, judgments, costs, expenses, or fees (including reasonable attorneys' fees and court costs) arising from or as a result of the termination of the OPA or of any act or omission of Owner in performing its obligations under the OPA, except to the extent such claims, liability, loss, damage, judgments, costs, expenses, or fees are due to the negligence or willful misconduct of the Agency, the City, or their respective officers, employees, contractors or agents.

The foregoing indemnity shall continue to remain in effect after the date of termination of the OPA.

III. Notice to Lienholder, Mortgagee, or Other Interested Party.

Owner shall notify any lienholder, mortgagee, property owner, property occupant or other interested party of the Property or Project, which is obligated to receive such notice, of this Termination Agreement and of the resulting termination of the Owner Participation Agreement entered into by and between the Parties and dated July 11, 2007.

IV. Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Termination Agreement.

V. Construction and Interpretation of Termination Agreement.

The language in all parts of this Termination 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 hereto acknowledge and agree that this Termination 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 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. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Termination Agreement, this Termination Agreement shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized.

VI. Binding Effect.

This Termination Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

VII. Attorney's Fees.

In the event that one Party brings an action or proceeding against the other Party to enforce or interpret any of the conditions or provisions of this Termination Agreement, the prevailing Party shall be entitled to recover all reasonable attorney's fees and expenses, and court costs associated with such action or proceeding.

VIII. Authority to Sign.

Owner hereby represents that the persons executing this Termination Agreement on behalf of Owner has full authority to do so and to bind Owner pursuant to the terms and conditions of this Termination Agreement.

IX. Counterparts.

This Termination Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

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

**REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO**

Dated: _____

By: _____

William Anderson
Assistant Executive Director

APPROVED the form and legality of this Agreement
this ____ day of _____, 2008.

MICHAEL J. AGUIRRE, General Counsel

By: _____

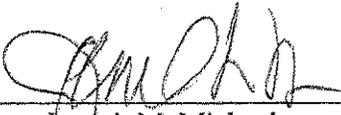
Kendall D. Berkey
Deputy General Counsel

SYEP ASSOCIATES, a California limited
partnership.

By: Las Palmas Foundation,
A California non-profit public benefit
corporation.

Its: Managing General Partner

Dated: 2/7/08

By: 

Joseph M. Michaels
President

EXHIBIT "A"

OWNER PARTICIPATION AGREEMENT

DUPLICATE ORIGINAL

OWNER PARTICIPATION AGREEMENT
(El Pedregal Family Apartments Project)

by and between

**REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO, Agency,**

and

**SYEP ASSOCIATES,
A California Limited Partnership, Owner.**

DOCUMENT NO. 04172/04172
FILED JUL 11 2007

OFFICE OF THE REDEVELOPMENT AGENCY
SAN DIEGO, CALIF.

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT [Agreement] is entered into on this day of _____, 2007, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic [Agency], and SYEP ASSOCIATES, a California limited partnership [Owner]. Agency and Owner agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 101 Purpose of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the San Ysidro Redevelopment Project by providing part of the financing for the acquisition and development of the hereinafter defined Property, and the use of the Property for residential rental apartments that are affordable to very low income and low income persons and a subterranean parking facility providing approximately one hundred seven (107) parking spaces. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of San Diego and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

Section 102 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Acquisition and Development Costs" shall mean the total cost of acquiring the Property and developing and constructing the Improvements thereon, as set forth in the Project Budget.

"Affiliate" shall mean (1) any Person directly or indirectly controlling, controlled by, or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, of any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

"Affordable Rent" shall mean rent, including a reasonable utility allowance, that does not exceed the following respective amounts:

- a. for a very low income person with an income not exceeding fifty percent (50%) of the area median income, the product of thirty percent (30%) times fifty percent

(50%) of the area median income adjusted for family size appropriate for the unit;
and

- b. for a low income person with an income exceeding fifty percent (50%) but not exceeding sixty percent (60%) of the area median income, the product of thirty percent (30%) times sixty percent (60%) of the area median income adjusted for family size appropriate for the unit.

"Agency Deed of Trust" shall mean the deed of trust securing the Agency Loan, to be recorded upon the occurrence of the Closing, subordinate to the deeds of trust securing any Senior Loan, substantially in the form attached to this Agreement as Attachment No. 9.

"Agency Loan" shall mean the Agency Residual Receipts Loan.

"Agency Loan Documents" shall mean the Agency Note, Agency Deed of Trust, Assignment of Rents, Assignment of Agreements, Environmental Indemnity and the UCC-1 Financing Statement.

"Agency Residual Receipts Loan" shall mean the residual receipts loan of Low and Moderate Income Housing Funds payable from the proceeds of the Line of Credit by the Agency to Owner in the principal amount not to exceed \$3,606,000, as described in the Method of Financing, which shall be evidenced by the Agency Residual Receipts Note and secured by the Agency Deed of Trust and the other Agency Loan Documents.

"Agency Residual Receipts Note" shall mean the promissory note substantially in the form attached to this Agreement as Attachment No. 8.

"Agreement Affecting Real Property" shall mean the Agreement Affecting Real Property (Including Rental Restrictions) to be recorded upon the occurrence of the Closing, substantially in the form attached to this Agreement as Attachment No. 6.

"Approved Title Conditions" shall mean title that is subject to current property taxes and assessments, Permitted Mortgages, the Low Income Housing Tax Credit Regulatory Agreement and any other easements and other encumbrances specifically approved by the Agency Executive Director.

"Area Median Income" shall mean the median family income for San Diego County as annually estimated by the U.S. Department of Housing and Urban Development and published by the California Department of Housing and Community Development.

"Assignment of Rents" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 10, to be recorded upon the occurrence of the Closing.

"Assignment of Agreements" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 11.

"City" shall mean the City of San Diego, California.

"Closing" shall mean the point in time when (i) all conditions precedent to the Closing as set forth in the Method of Financing (Attachment No. 3) have been satisfied; and (ii) the Agency Deed of Trust and other Agency Loan Documents and Agreement Affecting Real Property are recorded.

"Closing Date" shall mean the date on which the Closing is scheduled to take place, as provided in the Schedule of Performance.

"Completion" shall mean the point in time when all of the following shall have occurred: (1) issuance of a permanent certificate of occupancy by the City of San Diego; (2) recordation of a Notice of Completion by Owner or its contractor; (3) certification by the project architect that construction of the Improvements (with the exception of minor "punch list" items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; and (4) any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded or insured against.

"Construction Loan" shall mean the conventional loan to be made to Owner at the time of the Closing, secured by the Construction Loan Deed of Trust.

"Construction Loan Deed of Trust" shall mean the deed of trust securing the Construction Loan.

"Deferred Developer Fee" shall mean that portion of Owner's Developer Fee, in an amount of up to \$340,000, which shall be deferred for payment until after construction of Improvements is completed. The Deferred Developer Fee, plus interest at the minimum interest all owed under IRS rules, paid out of Residual Receipts until paid in full.

"Disbursement Agreement" shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 15.

"Environmental Indemnity" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 12.

"Escrow Agent" shall mean First American Title Insurance Company, or another escrow agent mutually acceptable to Agency and Owner.

"Hazardous Materials" shall have the meaning set forth in the Environmental Indemnity (Attachment No. 12).

"Improvements" shall mean the residential housing development to be constructed on the Property, consisting of forty five (45) dwelling units and an associated subterranean parking facility providing approximately one hundred seven (107) parking spaces, and recreational amenities, all as described in the Scope of Development. The Improvements shall comply with the current California Building Code that includes comprehensive accessibility and adaptability requirements for multifamily new construction development. Owner shall incorporate Universal

Design components into the Improvements and to comply with the items in the Agency's Universal Design Checklist (Attachment No. 17).

"Investor Limited Partner Capital Contribution" shall mean funds provided to Owner by the Tax Credit Equity Investor in consideration of the Tax Credit.

"Legal Description" shall mean the legal description of the Property attached to this Agreement as Attachment No. 2 which is hereby incorporated herein by this reference.

"Line of Credit" shall mean the separate lines of credit available to the Agency pursuant to a Credit Agreement with San Diego National Bank for the Affordable Housing Collaborative Opportunity Fund and the City Heights and Naval Training Center Redevelopment Project Areas.

"Low Income" shall have, for purposes of this Agreement, the same meaning set forth in California Health & Safety Code Section 50079.5.

"Low Income Housing Tax Credit" shall mean the tax credit authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code.

"Low and Moderate Income Housing Fund" shall mean the Low and Moderate Income Housing Fund established by the Agency pursuant to California Health and Safety Code Section 33334.3, which said funds therein are used for the purposes of increasing, improving, and preserving the City of San Diego's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50093, for lower income households, as defined by Section 50079.5, very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106, that is occupied by these persons and families.

"Method of Financing" shall mean the document attached to this Agreement as Attachment No. 3 which is hereby incorporated herein by this reference.

"Permanent Loan" shall mean the conventional permanent loan to repay a portion of the Construction Loan, as described in the Method of Financing.

"Permanent Loan Deed of Trust" shall mean the deed of trust securing the Permanent Loan.

"Permitted Transfer" shall mean any of the following:

- (1) A conveyance of a security interest in the Property in connection with any Senior Loan and any transfer of title by foreclosure, deed, or other conveyance in lieu of foreclosure in connection therewith;
- (2) A conveyance of the Property to any Affiliate or a sale back from such Affiliate to Owner;

- (3) The inclusion of equity participation by Owner by the addition of limited partners to Owner's limited liability company or limited partnership, or similar mechanisms, and the purchase of any such limited partnership interest or interests by the General Partner;
- (4) The lease for occupancy of all or any part of the Improvements on the Property; and
- (5) The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement.

Any transfer described in clauses (a) through (c) shall be subject to the reasonable approval of documentation by the Agency Executive Director or designee in accordance with the standards set forth in the respective provisions of this Agreement.

"Person" shall mean an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company or other entity, domestic or foreign.

"Project Budget" shall mean the schedule of sources and uses attached to this Agreement as Attachment No. 7 which is hereby incorporated herein by this reference.

"Property" shall mean the real property described in Section 104 of this Agreement.

"Redevelopment Plan" shall mean the Redevelopment Plan for the San Ysidro Redevelopment Project which was approved and adopted on April 16, 1996, by the City Council of the City of San Diego by Ordinance No. O-18295 (New Series), including subsequent amendments.

"Release of Construction Covenants" shall mean the certificate to be issued by the Agency in accordance with Section 324 of this Agreement.

"Residual Receipts" shall mean the Gross Income, less the Operating Expenses, calculated on a calendar year basis, as defined in the Residual Receipts Promissory Note. All calculations of Residual Receipts shall be subject to verification and reasonable approval by the Agency.

"Schedule of Performance" shall mean the document attached to this Agreement as Attachment No. 5 which is hereby incorporated herein by this reference.

"Scope of Development" shall mean the document attached to this Agreement as Attachment No. 4 which is hereby incorporated herein by this reference.

"Senior Lender" shall mean the maker of any Senior Loan or beneficiary of any Senior Loan deed of trust.

"Senior Loan" shall mean the Construction Loan and the Permanent Loan secured by a deed of trust or other instrument to which the Agency agrees to subordinate the Agency Loan Deed of Trust and the other Agency Loan Documents.

"Site Map" shall mean the document attached to this Agreement as Attachment No. 1 which is hereby incorporated herein by this reference.

"Subordination Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 14, with such modifications as may be agreed to by the Agency Executive Director or designee, or as otherwise agreed to by the Agency Executive Director or designee.

"Tax Credit Equity Investor" shall mean a Person who will be an investor, and a limited partner who will purchase the Low Income Housing Tax Credits.

"Title Company" shall mean First American Title insurance Company, or another title insurance company mutually acceptable to Agency and Owner.

"Title Insurance Policy" shall mean and include a standard form ALTA lender's policy of title insurance in favor of Agency, together with such endorsements as Agency may reasonably require, insuring the lien of the Agency Deed of Trust, in the amount of the Agency Loan (the "Agency's Title Policy").

"UCC-1" shall mean a Financing Agreement, substantially in the form attached to this Agreement as Attachment No. 13.

"Universal Design" shall mean the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design consistent with The Seven Principles of Universal Design developed by North Carolina State University's Center for Universal Design and includes the Universal Design Checklist attached to this Agreement as Attachment No. 17 which is hereby incorporated herein by this reference.

"Very Low Income" shall have the meaning set forth in California Health and Safety Code Section 50105.

Section 103 The Redevelopment Plan

This Agreement is subject to the provisions of the San Ysidro Redevelopment Plan which was approved and adopted on April 16, 1996, by the Council of the City of San Diego by Ordinance No. O-18295 (New Series), including subsequent amendments.

The Redevelopment Plan is hereby incorporated herein by this reference and made a part hereto as though fully set forth herein.

Section 104 The Property

The "Property" or "Site" is that property totaling approximately 2.24 acres and 97,574 square feet, located at 104 Averil Road, bounded on the west by Averil Road, the south by San Ysidro Boulevard, and the north by Sunset Lane, within the San Ysidro Redevelopment Project Area of the City of San Diego, State of California, illustrated on the "Site Map" (Attachment No. 1) and as described in the "Legal Description of the Property" (Attachment No. 2).

The Property is currently owned in fee by Henry and Sophie Bookspan Family Trust ("Fee Owner"). Owner represents that it has entered into a legally binding and valid purchase agreement with the Fee Owner for the purchase and sale of the Property in its entirety by Owner. Therefore, the Property is to be transferred to Owner as a condition precedent to or concurrently with the Closing.

Section 105 Agency

a. Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement is: 1200 Third Avenue; Suite 1400, San Diego, California 92101.

c. "Agency" as used in this Agreement includes the Redevelopment Agency of the City of San Diego, California, acting through its Board, and any assignee or successor to its rights, powers and responsibilities.

d. "Agency Executive Director" as used in this Agreement includes the Agency Executive Director, Agency Assistant Executive Director or designee.

Section 106 Owner

a. Owner is SYEP Associates, a California limited partnership. The address of Owner for purposes of receiving notices pursuant to this Agreement is: 531 Encinitas Boulevard; Suite 206, San Diego, California 92024.

b. Whenever the term "Owner" is used herein, such term shall mean and include: (1) the Owner as of the date hereof; or (2) any other assignee of, or successor to its rights, powers and responsibilities permitted by this Agreement.

Section 107 Assignments and Transfers

a. Owner represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping and providing affordable housing on the Property, and not for speculation in land holding. Owner further recognizes that the qualifications and identity of Owner are of particular concern to the City and the Agency, in light of the following: (1) the importance of the redevelopment of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Owner or any other act or transaction involving or resulting in a significant change in ownership or control of Owner, is for practical purposes a transfer or disposition of the property then owned by Owner. Owner further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with the Owner. Therefore, no voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Prior to Completion, Owner shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Agency. Subject to review of documentation effectuating any such proposed assignment or transfer, the Agency agrees to reasonably give such approval if the assignment is a Permitted Transfer.

c. For the reasons cited above, the Owner represents and agrees for itself, each member and any successor in interest of itself and each member that prior to Completion, without the prior written approval of the Agency, there shall be no significant change in the ownership of the Owner or in the relative proportions thereof, or with respect to the identity of the parties in control of the Owner or the degree thereof, by any method or means, except Permitted Transfers.

d. Any assignment or transfer of this Agreement or significant change in ownership of the Owner, other than a Permitted Transfer, shall require the approval of the Agency, which shall not be unreasonably withheld. To the extent Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, Agency shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of this Agreement. In addition, Agency shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of the Owner that results in payment of consideration to any Person prior to the issuance of the Release of Construction Covenants and that is not conditioned upon the issuance of the Release of Construction Covenants.

e. The Owner shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of the Owner or Assignee, or the degree thereof, of which it, or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by the Agency if there is any significant change (voluntary or involuntary) in membership, management or control, of the Owner or Assignee or its members (other than such changes occasioned by the death or incapacity of any individual) prior to Completion.

f. The restrictions of this Section 107 shall terminate upon the Completion.

PART 2. FINANCING

Section 201 Method of Financing

The Project shall be financed with a combination of sources of financing as provided in the Method of Financing (Attachment No. 3).

Section 202 Agency Assistance

a. Agency Residual Receipts Loan. On the condition that the Agency obtains the Line of Credit and is permitted to use proceeds from the Line of Credit for the acquisition and development of the Property and that the Owner obtains financing for the development of the Property including being awarded Low Income Housing Tax Credits as provided in the Method of Financing, and in accordance with and subject to the terms and conditions of this Agreement

including the Method of Financing, the Agency agrees to lend to the Owner, and the Owner agrees to borrow from the Agency, the Agency Residual Receipts Loan, as defined in the Method of Financing. At or prior to the Closing, the Agency and Owner shall execute and deliver such instruments and documents as may be necessary to evidence and secure the Agency Residual Receipts Loan, consistent with the terms of this Agreement and the Method of Financing, and each in a form that is acceptable to the Agency Executive Director or designee. Disbursement of proceeds from the Agency Residual Receipts Loan shall be made in accordance with the Disbursement Agreement attached hereto in form as Attachment 15 and incorporated herein by this reference, to be executed by the Agency, Construction Lender and the Agency as a condition precedent to the Closing.

b. Gap Assistance. The parties acknowledge that the Agency Loan is intended to be "gap" assistance, not to exceed the amount needed to bridge the gap between the total Acquisition and Development Costs (as defined herein and in the Method of Financing) and the maximum loans obtainable by Owner plus Owner's Equity, but in any event not to exceed the respective dollar amounts set forth in the Method of Financing. The proceeds of the Agency Loan shall be used exclusively to pay Acquisition and Development Costs identified in the Project Budget (Attachment No. 7). In the event the actual amount of the Acquisition and Development Costs (as defined herein and in the Method of Financing) is less than \$20,027,000, or in the event any of the permanent financing sources are greater than the respective amounts set forth in the Method of Financing and the Acquisition and Development Costs are not greater than \$20,027,000, or in the event Owner is granted Affordable Housing Program Grant funds, then the principal amount of the \$3,606,000 Agency Residual Receipts Loan shall be reduced dollar-for-dollar. In the event any of the permanent financing sources are greater than the respective amounts set forth in the Method of Financing but the Acquisition and Development Costs are greater than \$20,027,000, then the increased amount of any of the permanent financing sources (excluding any Affordable Housing Program Grant funds awarded to Owner) may first be used to pay the increase in Acquisition and Development Costs, then any remaining funds shall be used to reduce the Agency Residual Receipts Loan dollar-for-dollar. Except as otherwise provided by this Agreement, the Agency Residual Receipts Loan shall not be subordinated to such increased amount of any permanent financing sources beyond the sources and respective amounts allowed by this Agreement and in the Method of Financing, without the prior written approval of the Agency.

Section 203 Submission of Evidence of Financing

a. Within the time periods provided in the Schedule of Performance, Owner shall submit to the Agency evidence satisfactory to the Agency that the Owner has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement. Such evidence of financing shall include the following:

- (1) A copy of the commitment or commitments obtained by the Owner for the Construction Loan, including a final Project Budget approved by the Construction Lender, the Affordable Housing Program Grant if awarded, and all other commitments (all as described in the Method of Financing) to finance the construction of the Improvements, certified by the Owner to be a true and correct copy or copies thereof;

- (2) A copy of the contract between the Owner and the general contractor or major subcontractors for the construction of the Improvements, certified by the Owner to be a true and correct copy thereof;
- (3) A copy of substantially complete Construction Loan Documents (e.g. notes, trust deeds, indentures, loan agreements, etc.);
- (4) Documentation acceptable to the Agency Executive Director of the commitment of the Tax Credit Equity Investor to provide the Investor Limited Partner Capital Contribution; and
- (5) Documentation acceptable to the Agency Executive Director of other sources of capital sufficient to demonstrate that the Owner has adequate equity funds committed to provide the amount of Owner Equity required by the Method of Financing.

b. The Agency shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance. Such approval shall not be unreasonably withheld. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to the Owner stating the reasons for such disapproval.

PART 3. DEVELOPMENT OF THE PROPERTY

Section 301 Land Use Approvals

It is the responsibility of the Owner, without cost to Agency, to ensure that zoning of the Property and all applicable City land use requirements will be such as to permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. It shall be a condition of the Closing that Owner obtain all entitlements, approvals, variances and permits necessary for the construction of the Improvements. Nothing contained herein shall be deemed to entitle Owner to any City of San Diego permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Owner, (b) supersede, nullify or amend any condition which may be imposed by the City of San Diego in connection with approval of the development described herein, (c) guarantee to Owner or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in California Government Code Section 65864. Without cost to Agency, Agency shall provide appropriate technical assistance to Owner in connection with Owner's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Section 302 Condition of the Property

a. Agency makes no representation or warranty, express or implied, regarding any conditions of the Property. It shall be the sole responsibility of the Owner, at the Owner's expense, to investigate and determine all conditions of the Property and its suitability for the uses

to which the Property is to be put in accordance with this Agreement. If the conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Owner, without cost to Agency, to take such action as may be necessary to place the Property in all respects in a condition entirely suitable for its development and use in accordance with this Agreement.

b. Owner agrees to perform and be solely responsible for the clean-up of any Hazardous Materials on, in, under or within the Property, at the sole cost, risk and expense of Owner. Owner shall defend, indemnify and hold harmless the Agency and its officers, agents, employees, contractors and attorneys from any claims, liability, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, the cost of any required clean up of hazardous substances, and the cost of attorneys' fees) which may be sustained as the result of the presence or clean up of hazardous substances on, in, or under the Property. As a condition precedent to the Closing, Owner shall execute and deliver to the Agency the Environmental Indemnity (Attachment No. 12).

Section 303 Scope of Development

The Property shall be developed in accordance with and within the limitations established in the Scope of Development (Attachment No. 4).

Section 304 Basic Concept and Schematic Drawings

a. The Owner shall prepare and submit Basic Concept and Schematic Drawings and related documents for the development of the Property to the Agency for review and written approval within the time established in the Schedule of Performance. Basic Concept and Schematic Drawings shall include a site plan, elevations and sections of the Improvements as they are to be developed and constructed on the Property.

b. The Property shall be developed as established in the Basic Concept and Schematic Drawings and related documents except as changes may be mutually agreed upon between the Owner and the Agency Executive Director. Any such changes shall be within the limitations of the Scope of Development.

c. If the Owner desires to make any substantial change in the Basic Concept and Schematic Drawings after their approval, such proposed change shall be submitted to the Agency for approval.

d. The Owner shall incorporate Universal Design components into the Project and specifically comply with the items outlined in the Agency's Universal Design Checklist, attached as Attachment No. 17. The Agency, may, in its discretion, grant a written exception to one or more of the requirements listed on the Checklist, but only in circumstances where the Developer demonstrates why incorporating the Universal Design component would be infeasible.

Section 305 Landscaping and Grading Plans

a. The Owner shall prepare and submit to the Agency Executive Director for his/her approval the preliminary and final landscaping and preliminary and finish grading plans for the

Property. These plans shall be prepared and submitted within the times established in the Schedule of Performance.

b. The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as the Owner's architect. Within the times established in the Schedule of Performance, the Owner shall submit to the Agency Executive Director for his/her approval the name and qualifications of its architect, landscape architect and civil engineer.

Section 306 Construction Drawings and Related Documents

a. The Owner shall prepare and submit construction drawings and related documents [collectively called the "Plans"] to the Agency Executive Director for his/her review (including but not limited to architectural review), and written approval within the times established in the Schedule of Performance. Such construction drawings and related documents shall be submitted as fifty percent (50%) and Final Construction Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.

b. Approval of progressively more detailed Plans will be promptly granted by the Agency Executive Director or designee if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the Agency Executive Director shall not be subject to subsequent disapproval.

c. During the preparation of all Plans, the Agency Executive Director and the Owner shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents by the Agency Executive Director. The Agency Executive Director and the Owner shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents can receive prompt and speedy consideration.

d. If any revisions or corrections of Plans approved by the Agency shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Property, the Owner and the Agency Executive Director shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

Section 307 Agency Approval of Plans

a. Subject to the terms of this Agreement, the Agency or Agency Executive Director shall have the right of review (including without limitation architectural review) of all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by Agency. The Agency Executive Director shall approve or disapprove the Plans referred to in Sections 304, 305 and 306 of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency Executive Director requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. The Owner, upon receipt of a disapproval based upon powers reserved by the Agency hereunder, shall revise the Plans and resubmit them to the Agency Executive Director as soon as possible after receipt of the notice of disapproval.

b. If the Owner desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Agency for approval.

Section 308 Cost of Construction

The cost of demolishing any improvements on the Property and developing the Property and constructing the Improvements, including any offsite or onsite improvements required by the City in connection therewith, shall be the responsibility of the Owner, without any cost to Agency, subject to the terms of this Agreement.

Section 309 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Agency and Owner.

b. After the Closing, the Owner shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided in the Scope of Development. The Owner shall begin and complete all construction and development within the times specified in the Schedule of Performance or within such reasonable extensions of said dates as may be granted by the Agency.

c. During periods of construction, the Owner shall submit to the Agency a written report of the progress of construction when and as reasonably requested by the Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report submitted by the Owner.

Section 310 Indemnification and Insurance

a. Owner's Indemnity. To the maximum extent permitted by law, Owner agrees to and shall defend, indemnify and hold harmless Agency, the City of San Diego, and their respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided Owner shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the Agency, City, or their respective officers, officials, employees, contractors or agents:

- (1) The existence, release, presence or disposal on, in, under, about or adjacent to the Property of any Hazardous Materials, except to the extent it is due to the negligence or willful misconduct of Agency, City, or their respective officers, officials, employees, contractors or agents;

- (2) The development, construction, marketing, use or operation of the Property by Owner, its officers, contractors, subcontractors, agents, employees or other persons acting on Owner's behalf (the "Indemnifying Parties");
- (3) The displacement or relocation of any person from the Property as the result of the development of the Property by the Indemnifying Parties;
- (4) Any Plans or designs for Improvements prepared by or on behalf of Owner or any of the Indemnifying Parties including, without limitation, any errors or omissions with respect to such plans or designs;
- (5) Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of Owner, or resulting from any breach or default by Owner, under this Agreement; and
- (6) Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City of San Diego or the Agency.

The foregoing indemnity shall continue to remain in effect after the Completion.

b. Insurance Policies.

- (1) Commencing upon the Closing or Owner's possession of the Property, whichever occurs first, and at all times prior to the issuance of the Release of Construction Covenants, Owner shall maintain in effect and deliver to Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):
 - (a) All-Risk Policies: Owner shall maintain or cause to be maintained coverage of the type now known as builder's completed value risk insurance, as delineated on an All Risk Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a "Replacement Cost Endorsement" in amount sufficient to prevent Owner from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Agency, and (3) an endorsement to include coverage for

budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence (except that earthquake coverage, if obtained, shall carry a deductible not to exceed 25% of the policy amount, or such other deductible amount as Agency may reasonably determine is acceptable, in light of the cost of the premium for such insurance);

- (b) Liability Insurance: Owner shall maintain or cause to be maintained general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Owner on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Owner, or any person acting for Owner, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Owner or its tenants, or any person acting for Owner, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence. Owner shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the occurrence of the Closing. Owner agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Owner may be held responsible for the indemnification of Agency or the payment of damages to persons or property resulting from Owner's activities, activities of its tenants or the activities of any other person or persons for which Owner is otherwise responsible.

- (c) Automobile Insurance: Owner shall maintain or cause to be maintained automobile insurance, maintained in full force and effect in an amount of not less than Two Million Dollars (\$2,000,000) per accident.
- (d) Workers' Compensation Insurance: Owner shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Owner in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Owner. Notwithstanding the foregoing, Owner may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.
- (2) All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) calendar days prior written notice to Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Agency and Owner as insureds, additional insureds, and/or loss payable parties as their interests may appear.
- (3) The Insurance Policies shall name as additional insureds the following:
- "The City of San Diego, the Redevelopment Agency of the City of San Diego, and their officers, officials, employees, contractors, agents and attorneys."
- (4) Owner agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Owner agrees to submit binders or certificates evidencing such insurance to Agency prior to the Closing. Within thirty (30) calendar days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall

be submitted to Agency. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

- (5) If Owner fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the right, but not the obligation, at Agency's election, and upon ten (10) calendar days prior notice to Owner, to procure and maintain such insurance. The premiums paid by Agency shall be treated as a loan, due from Owner, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Section 311 Nondiscrimination and Equal Opportunity

a. Compliance with City's Equal Opportunity Contracting Requirements.

Owner and its contractors, subcontractors, consultants, subconsultants, vendors and suppliers shall comply with the City's Equal Opportunity Contracting Requirements, which are attached to this Agreement as Attachment No. 16 and incorporated herein by this reference.

b. Nondiscrimination.

Owner shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Owner understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. This language shall be incorporated into all contracts between Owner and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

c. Compliance Investigations.

Upon the City's request, Owner agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all contractors, subcontractors, consultants, subconsultants, vendors and suppliers that Owner has used in the past five (5) years on any of its contracts that were undertaken in San Diego County, including the total dollar amount paid by Owner for each subcontractor or supply contract. Owner further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Owner understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against Owner up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Owner further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.

d. Prior to commencing construction and in accordance with the Schedule of Performance, Owner shall contact the City's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

Section 312 Local, State and Federal Laws

a. Owner hereby agrees to carry out development, construction (as defined by applicable law) and operation of the Property, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any requirement to pay state prevailing wages). Owner hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to Owner or its contractor(s) for the Property in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. Owner hereby agrees that Owner shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner hereby agrees that Owner shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner hereby agrees that Owner shall have the obligation, at Owner's sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, officials, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Owner of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Chapter 804, Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by Owner to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; (5) failure by Owner to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (6) failure by Owner to obligate any party as may be required by Labor Code Sections 1726, 1776 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law)

of the Property, including, without limitation, any public work (as defined by applicable law), Owner shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion and the recordation of the Release of Construction Covenants.

b. Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Owner shall be responsible for obtaining all permits required by the City for the construction of the Improvements on the Property and ensuring that the use of the Property for the purposes described in this Agreement complies with the zoning and other City land use regulations (including any applicable exemptions and/or exceptions) applicable to the Property.

c. Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Owner shall satisfy all conditions to the issuance of any permit required for the development of the Property. The Agency shall provide reasonable assistance to Owner in obtaining these permits.

d. This Agreement is not a "Development Agreement" under Section 65864 et seq. of the California Government Code. Owner shall comply with all applicable conditions of approval required by the City of San Diego.

Section 313 Permits

a. Before commencement of demolition, construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Owner shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such demolition, construction, development or work.

b. In cases where it is anticipated that Owner will demolish any structure, Owner shall contact the City of San Diego for the appropriate procedures pertaining to assessment, remediation and cleanup.

Section 314 Rights of Access

Representatives of the Agency and the City shall have the reasonable right of access to the Property, upon twenty-four (24) hours' written notice to Owner (except in the case of an emergency, in which case Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency.

Section 315 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes, nor will have any responsibility or duty to Owner or to any third party to review, inspect, supervise, pass judgment upon, or inform Owner or any third party of any matter in connection with the development or construction of the Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Owner and all third parties shall rely upon its or their own judgment regarding such matters; and any review, inspection, supervision, exercise of judgment or information supplied to Owner, or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Property, and neither Owner (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of construction, improvement or development of the Property.

Section 316 Taxes, Assessments, Encumbrances and Liens

Owner shall pay, when due, all real estate taxes and assessments assessed and levied on or against the Property. Prior to Completion, Owner shall not place, or allow to be placed, on title to the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Owner shall remove, or shall have removed, any levy or attachment made on title to the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Owner from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Owner in respect thereto. The covenants of the Owner set forth in this Section 316 shall remain in effect only until the issuance and recordation of a Release of Construction Covenants.

Section 317 Prohibition against Transfer

a. Prior to Completion, Owner shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property or the Improvements thereon, without prior written approval of the Agency. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it prohibit Permitted Transfers.

b. Except as permitted by paragraph a., in the event Owner does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign the Property or the buildings or structures thereon prior to Completion without the approval of the Agency, subject to the notice and cure provisions of Section 501, the Agency shall have the right to terminate this Agreement.

c. In the absence of a specific written agreement by the Agency, and except as otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this Agreement or the Property (or any portion thereof), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve Owner or any other party from any obligations under this Agreement.

Section 318 No Encumbrances except Senior Loans

a. Notwithstanding Section 317, upon and after the Closing, Owner shall have the right to encumber the Property with one or more Senior Loan Deed of Trust, but only for the purpose of securing loans of funds to be used for financing and refinancing the Acquisition and Development Costs, and other expenditures necessary and appropriate to develop the Property under this Agreement, all in accordance with the terms of the Method of Financing and consistent with the amounts to be financed by Owner per the Method of Financing [Permitted Financing Purposes]. Prior to Completion: (1) Owner shall not have any authority to encumber the Property for any purpose other than Permitted Financing Purposes; (2) the Owner shall notify the Agency in advance of any proposed financing; and (3) Owner shall not enter into any agreements for financing requiring a conveyance of security interests in the Property without the prior written approval of the Agency. The maker of any loan approved by the Agency pursuant to this Section 318 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

b. In any event, the Owner shall promptly notify the Agency of any security interest created or attached to the Property whether by voluntary act of the Owner or otherwise.

c. The words "security interest" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development.

d. The Agency Executive Director or designee shall have the authority to make reasonable modifications to Sections 317 through 323 that may be requested by a Senior Lender or Tax Credit Equity Investor, provided such modification does not adversely affect the receipt of any material benefit by Agency hereunder. Upon the reasonable request of a Senior Lender or Tax Credit Equity Investor, the Agency Executive Director or designee shall execute from time-to-time such reasonable modifications, interpretations and estoppel certificates to the extent they are consistent with the terms of this Agreement.

e. The requirements of this Section 318 shall not apply following Completion.

Section 319 Lender Not Obligated to Construct Improvements

No lender shall be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Property to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

Section 320 Notice of Default to Mortgagees: Right of Mortgagee to Cure Defaults

Whenever the Agency shall deliver any notice or demand to the Owner with respect to any breach or default by the Owner in completion of construction of the Improvements, the Agency shall at the same time deliver to each Senior Lender of record a copy of such notice or demand. Each such Senior Lender shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) calendar days after the receipt of the notice, to cure or

remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Senior Lender upon obtaining possession of the Property, such Senior Lender shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety (90) calendar day period, such Senior Lender shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such Senior Lender shall not be required to remedy or cure any non-curable default of the Owner. Any Senior Lender who forecloses on its Senior Loan, or is assigned or otherwise succeeds to Owner's rights under this Agreement, shall have the right to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the Agency by which such Senior Lender expressly assumes the Owner's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Senior Lender that properly completes such Improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

Section 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by the Owner, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Property (or portion thereof) has not elected to complete construction of the Improvements, or if it has elected to complete the Improvements but has not proceeded diligently with construction, the Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges permitted by the mortgage instrument approved by the Agency. If the ownership of the Property (or portion thereof) has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance of the Property from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings).
- b. All expenses with respect to foreclosure.
- c. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Property (or portion thereof), such as insurance premiums and real estate taxes.
- d. The cost of any improvements made by such holder.
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust

debt and such debt had continued in existence to the date of payment by the Agency.

Section 322 Right of the Agency to Cure Defaults

In the event of a default or breach by the Owner of a Senior Loan prior to Completion, and the Senior Lender has not commenced to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Owner of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to the Senior Loan.

Section 323 Right of the Agency to Satisfy Other Liens on the Property

Prior to Completion and after the Owner has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Property, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Owner to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Owner in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale. In such event, the Agency shall be entitled to reimbursement from the Owner of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Property to the extent of such costs and expenses. Any such lien shall be subordinate and subject to any Senior Loan.

Section 324 Release of Construction Covenants

a. Promptly after Completion of the construction of the Improvements as required by this Agreement, Agency shall deliver to Owner a Release of Construction Covenants, upon written request therefor by Owner. Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement.

b. The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Office of the Recorder of San Diego County.

c. If Agency fails to deliver the Release of Construction Covenants within ten (10) calendar days after written request from Owner, Agency shall provide Owner with a written statement of its reasons [Statement of Reasons] within that ten (10) calendar day period. The statement shall also set forth the steps Owner must take to obtain the Release of Construction Covenants. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by Agency, Agency will issue the Release of Construction Covenants upon the posting of a bond by Owner with Agency in an amount representing Agency's estimate of the cost to complete the work.

d. Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any Senior Lender, or any insurer

of a mortgage securing money loaned to finance the Improvements, nor any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093.

PART 4. USE OF THE PROPERTY

Section 401 Uses

a. Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Owner, such successors and such assignees shall use the Property only for the uses specified in the Redevelopment Plan, this Agreement (including the Scope of Development), and the Agreement Affecting Real Property. No change in the use of the Property shall be permitted without the prior written approval of Agency.

b. Without limiting the generality of the foregoing, Owner shall use the Property for the development and operation of a residential rental development consisting of forty-five (45) residential rental units, forty-four (44) of which shall be rented exclusively to Very Low Income and Low Income households at an Affordable Rent, and one of which shall be used as the manager's unit, and a subterranean parking facility providing approximately one hundred seven (107) parking spaces, and recreational amenities, all as described in the Scope of Development, in accordance with the requirements of the Agreement Affecting Real Property.

Section 402 Maintenance of the Property

Owner shall maintain the Property in accordance with the requirements of the Agreement Affecting Real Property.

Section 403 Obligation to Refrain from Discrimination

Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. Owner, specifically and more particularly, covenants by and for itself, himself or herself, its, 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 Property, nor shall the Owner or any person claiming under or through it, 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 of the Property.

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

Section 404 Form of Non-discrimination and Non-segregation Clauses

Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Owner, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. All deeds, leases or contracts 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."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

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."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the preceding paragraph.

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."

Section 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of the Agency and enforceable against the original Owner and successors in interest by the Agency or the City. The covenants described in this Part 4 shall commence upon the Closing, shall be set forth in the Agreement Affecting Real Property, and shall remain in effect for the respective periods specified therein.

Section 406 Agreement Affecting Real Property

Concurrently with the Closing, Owner and Agency shall execute and cause the recordation of an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 6, which is incorporated herein by this reference.

Section 407 Monitoring

a. The parties acknowledge that this Agreement is subject to the provisions of Section 33418 of the California Health and Safety Code, which provides in pertinent part:

“(a) An Agency shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an Authority shall require owners or managers of the housing to submit an annual report to the Authority. The annual reports shall include for each rental unit the rental rate and the income and family size of the occupants The income information required by this section shall be supplied by the tenant in a certified statement of a form provided by the Authority.”

b. To satisfy the requirements of said Section 33418, prior to initial occupancy of the Improvements, Owner shall enter into a reporting and monitoring agreement with the Agency or the San Diego Housing Commission, as provided in the Agreement Affecting Real Property. Owner shall pay customary monitoring fees.

PART 5. DEFAULTS AND REMEDIES

Section 501 Defaults - General

a. Subject to the extensions of time set forth in Section 602, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and the party in default (1) initiates corrective action

within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

e. If Owner fails to take corrective action or cure the default within a reasonable time, the Agency shall give the Senior Lender and, as provided in paragraph f., below, the Tax Credit Equity Investor notice thereof. The Tax Credit Equity Investor may take such action, including removing and replacing the general partner of Owner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Agency agrees to accept cures tendered by any Senior Lender or Tax Credit Equity Investor within the cure periods provided in the Note. Additionally, in the event the Senior Lender or Tax Credit Equity Investor is precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against Owner or the general partner of Owner, the Agency agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender or Tax Credit Equity Investor is so precluded from acting, not to exceed ninety (90) calendar days, provided such Tax Credit Equity Investor and Senior Lender are otherwise in compliance with the foregoing provisions. In no event shall the Agency be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) calendar days after the first notice of default is given.

f. After Owner gives written notice to Agency that the Tax Credit Equity Investor has been admitted to Owner's limited liability company or limited partnership, Agency shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that Agency sends to Owner, at the address for the Tax Credit Equity Investor as provided by written notice to Agency by Owner.

Section 502 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

Section 503 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 504 Acceptance of Service of Process

a. In the event that any legal action is commenced by the Owner against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against the Owner, service of process on the Owner shall be made by personal service upon the Owner (or upon a general partner, managing member or officer of the Owner) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

Section 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 506 Damages

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

Section 507 Specific Performance

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 508 Termination by Either Party

Prior to the Closing, either party shall have the right to terminate this Agreement, by providing written notice to the other party, in the event of a failure of any condition precedent to the occurrence of the Closing as set forth in the Method of Financing, provided that such condition is for the benefit of and such failure is outside the control of the party seeking to terminate this Agreement, whereupon neither the Agency nor Owner shall have any further rights against or liability to the other under this Agreement.

Section 509 Termination by Owner

Prior to the Closing, subject to the notice and cure provisions of Section 501, Owner shall have the right to terminate this Agreement, by providing written notice to the Agency, in the event of a default by Agency pursuant to this Agreement, provided that Owner has timely applied to the California Tax Credit Allocation Committee [CTCAC] for Low Income Housing Tax Credits.

Section 510 Termination by Agency

a. Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Owner, in the event the Agency does not obtain the Line of Credit or is not permitted to use proceeds from the Line of Credit, if obtained, for the development of the Property, whereupon the Agency shall not have any further liability to the Owner and the Owner shall have no further rights against the Agency under this Agreement.

b. Subject to the notice and cure provisions of Section 501, Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Owner, in the event of a default by Owner or failure of any condition precedent to the occurrence of the Closing, including but not limited to the following:

- (1) Owner fails to apply timely to CTCAC for Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance; or
- (2) Owner, having timely applied for Low Income Housing Tax Credits by the time established therefor in the Schedule of Performance is not approved by CTCAC, and fails to re-apply timely to CTCAC for Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance; or
- (3) Owner, after having timely applied for three rounds of Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance, is not approved by CTCAC; or
- (4) Owner fails to submit to the Agency the evidence of financing commitments or fails to satisfy any other condition precedent to the occurrence of the Closing as provided in the Method of Financing within the time established therefor in the Schedule of Performance; or
- (5) Owner (or any successor in interest) assigns or attempts to assign the Agreement or any right therein, or transfers the Property (or any portion thereof or interest therein), except as permitted by this Agreement; or
- (6) There is substantial change in the ownership of the Owner, or with respect to the identity of the parties in control of Owner, or the degree thereof contrary to the provisions of Section 107 hereof;

- (7) Owner fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement therefore;
- (8) Owner fails to acquire fee title to the Property on or before the Closing Date; or
- (9) There is any other material default by Owner under the terms of this Agreement which is not cured within the time provided herein.

c. After the Closing, but before Completion, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

- (1) Owner fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 501 of this Agreement, provided that the Owner shall not have obtained an extension or postponement to which the Owner may be entitled pursuant to Section 602 hereof; or
- (2) Owner abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided the Owner has not obtained an extension or postponement to which the Owner may be entitled to pursuant to Section 602 hereof; or
- (3) Owner assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or
- (4) Owner otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

PART 6. GENERAL PROVISIONS

Section 601 Notices

Formal notices, demands and communications between Agency and Owner shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Owner as set forth in Sections 105 and 106 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express,

or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 602 Enforced Delay: Extension of Time of Performance

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause listed above [Force Majeure Delay] shall be for the period of the enforced delay 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 thirty (30) calendar days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and the Owner.

Section 603 Conflict of Interest

a. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.

b. Owner warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

Section 604 Non-liability of Agency Officials and Employees

No member, official, agent, legal counsel or employee of Agency shall be personally liable to Owner, or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Owner or successor or on any obligation under the terms of this Agreement.

Section 605 Inspection of Books and Records

Prior to Completion, the Agency shall have the right at all reasonable times to inspect the books and records of the Owner pertaining to the Property as pertinent to the purposes of this Agreement. The Owner shall also have the right at all reasonable times to inspect the books and records of the Agency pertaining to the Property as pertinent to the purposes of this Agreement.

Section 606 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Agency or Owner in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Agency shall be deemed granted by the written approval of the Agency's Executive Director or designee. Agency agrees to provide notice to Owner of the name of the Executive Director's designee on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Executive Director or designee may, in his/her sole discretion, refer to the governing body of the Agency any item requiring Agency approval; otherwise, "Agency approval" shall mean and refer to approval by the Executive Director or designee.

Section 607 Real Estate Commissions

Neither Owner nor Agency shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. Owner and Agency each represents that it has engaged no broker, agent or finder in connection with this Agreement.

Section 608 Construction and Interpretation of Agreement

a. The language in all parts of this 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 hereto acknowledge and agree that this 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 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. Accordingly, in the event of an ambiguity in, or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this 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 Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that

in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

Section 609 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

Section 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause Agency to be responsible in any way for the debts or obligations of Owner or any other Person.

Section 611 Compliance with Law

Owner agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Owner or any lessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party thereto or not, that Owner, lessee or permittee has violated any such ordinance or statute in the development and use of the Property shall be conclusive of that fact as between Agency and Owner.

Section 612 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 613 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and Owner, and not for the benefit, directly or indirectly, of any other person or entity, except for the City and as otherwise expressly provided herein.

Section 614 Authority to Sign

Owner hereby represents that the persons executing this Agreement on behalf of Owner have full authority to do so and to bind Owner to perform pursuant to the terms and conditions of this Agreement.

Section 615 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in five duplicate originals, each of which is deemed to be an original. This Agreement includes thirty-six (36) pages and seventeen (17) attachments, which constitutes the entire understanding and agreement of the parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency or Owner, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Owner.

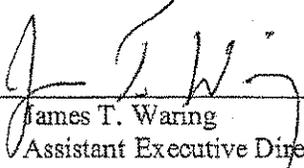
PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Owner and delivered to Agency, must be authorized, executed and delivered by Agency within sixty (60) calendar days after date of signature by Owner or this Agreement may be terminated by Owner upon written notice to Agency. The effective date of this Agreement shall be the date when this Agreement has been executed by Agency.

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

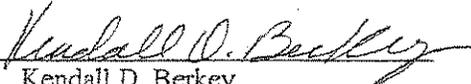
REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

Dated: 2-11-07

By: 
James T. Waring
Assistant Executive Director

APPROVED the form and legality of this Agreement
this 11th day of July 2007.

MICHAEL J. AGUIRRE, General Counsel

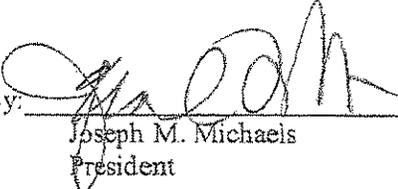
By: 
Kendall D. Berkey
Deputy General Counsel

SYEP ASSOCIATES, a California limited
partnership.

By: Las Palmas Foundation,
A California non-profit public benefit
corporation.

Its: Managing General Partner.

Dated: 6/19/07

By: 
Joseph M. Michaels
President