

Attachment 2
Disposition and Development Agreement
[Behind this Page]

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Document entitled to free
recording per Government
Code Section 6103

Recording Requested by:
REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

When Recorded Return to:
Redevelopment Agency of the
City of San Diego
1200 Third Avenue; Suite 1400
San Diego, California 92101

Attn: Project Manager – San Ysidro
Redevelopment Project Area

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DISPOSITION AND DEVELOPMENT 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, Developer.**

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT [Agreement] is entered into on 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 [Developer]. The Agency and Developer 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 for the disposition of the hereinafter defined Property as well as part of the financing for the construction and development of the Property, and the use and operation of the Property for rental housing that is affordable to Very Low Income and Low Income persons. The Project shall consist 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, together with approximately fifteen (15) surface parking spaces, a subterranean parking facility providing approximately ninety (90) parking spaces, and recreational amenities. 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

Except as otherwise provided for in this Agreement, the following capitalized terms shall have the following meanings for purposes of this Agreement:

"Additional Proceeds" shall mean (a) any alternative funding sources not identified in the final Project Budget; or (b) any permanent financing sources greater than the respective amounts set forth in the Method of Financing (Attachment No. 3); or (c) any Affordable Housing Program Grant funds granted to Developer.

"Affiliate" shall mean (a) any Person directly or indirectly controlling, controlled by, or under common control with another Person; (b) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (c) 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” 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.

“Agency Executive Director” as used in this Agreement includes the Agency Executive Director, Agency Assistant Executive Director, or designee.

“Agency Deed of Trust” shall mean the deed of trust securing the Agency Loan substantially in the form attached to this Agreement as Attachment No. 10, to be recorded upon the occurrence of the Closing, the lien of which is subordinate to the deeds of trust securing any Senior Loan.

“Agency Loan” shall mean the Agency Residual Receipts Loan.

“Agency Loan Documents” shall mean the Agency Residual Receipts Note, Agency Deed of Trust, Assignment of Rents, Assignment of Agreements, and 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 Developer 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. 9.

“Agreement Affecting Real Property” shall mean the Agreement Affecting Real Property (Including Rental Restrictions) substantially in the form attached to this Agreement as Attachment No. 7, to be recorded upon the occurrence of the Closing.

"AHP Funding" shall mean a grant or loan of funds under the Federal Home Loan Bank's Affordable Housing Program to finance a portion of the costs of developing the Property, as described in the Method of Financing (Attachment No. 3).

"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. 11, 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. 12, to be recorded upon the occurrence of the Closing.

"CDLAC" shall mean the California Debt Limit Allocation Committee.

"CTCAC" or "TCAC" shall mean the California Tax Credit Allocation Committee.

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

"Close of Escrow" shall mean the "Closing".

"Closing" shall mean the point in time when (a) payment of the Purchase Price is made by Developer to the Agency for the purchase of the Property (if the Agency initially acquires the Property); (b) the Construction Loan, Low Income Housing Tax Credits, and all other sources of financing (loans and equity) are available; (c) the Agency Deed of Trust and other Agency Loan Documents, Grant Deed, Agreement Affecting Real Property, and Notice of Affordability Restrictions on Transfer of Property are recorded; and (d) all conditions precedent to the Closing as set forth in the Method of Financing (Attachment No. 3) have been satisfied.

"Closing Date" shall mean the date on which the Closing is scheduled to take place.

"Completion" shall mean the point in time when all of the following shall have occurred: (a) issuance of a permanent certificate of occupancy by the City of San Diego [City]; (b) recordation of a Notice of Completion by Developer or its contractor; (c) 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 (d) 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 construction period loan to be made to Developer at or before the time of the Closing, secured by the Construction Loan Deed of Trust, as described in the Method of Financing (Attachment No. 3).

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

“Cost Certification” shall mean the certificate issued by an independent tax accountant and signed by the project owner that verifies the actual total project costs and eligible basis incurred.

“Cost Overruns” shall mean any costs which exceed those identified in the final Project Budget.

“Cost Savings” shall mean the difference between the final Project Budget and Cost Certification, so long as the total costs identified in the Cost Certification are less than the total Project Budget.

“Deferred Developer Fee” shall mean that portion of the Developer Fee, in an amount at a minimum of \$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 owed under the IRS rules and the rules applicable to Low Income Housing Tax Credits issued by the State of California, shall be paid out of Residual Receipts until paid in full.

“Developer Fee” shall mean the fee authorized to compensate Developer for the Project.

“Development Costs” shall mean the total cost of development of the Property including acquisition of the Property, related closing costs, demolition costs, relocation costs, construction costs and Developer Fee, as provided for in the Project Budget (Attachment No. 8), and in the Method Financing (Attachment No. 3).

“Disbursement Agreement” shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 16.

“Environmental Indemnity” shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 13.

“Escrow Agent” shall mean First American Title Insurance Company, or another escrow agent mutually acceptable to the Agency and Developer.

“Grant Deed” shall mean the Grant Deed (Including Rental Restrictions) substantially in the form attached to this Agreement as Attachment No. 6, to be recorded upon the occurrence of the Closing.

“Hazardous Materials” shall have the meaning set forth in the Environmental Indemnity (Attachment No. 13).

"Improvements" or "Project" shall mean the residential housing development to be constructed on the Property, consisting of forty five (45) dwelling units, together with approximately fifteen (15) surface parking spaces, a subterranean parking facility providing approximately ninety (90) parking spaces, and recreational amenities, all as described in the Scope of Development (Attachment No. 4). The Improvements shall comply with the current California Building Code that includes comprehensive accessibility and adaptability requirements for multifamily new construction development. Developer shall incorporate Universal Design components into the Improvements and to comply with the items in the Agency's Universal Design Checklist (Attachment No. 18).

"Investor Limited Partner Capital Contribution" or "Member Capital Contribution" shall mean funds provided to Developer by the Tax Credit Equity Investor in consideration of the Tax Credits, in the amounts as set forth in the Method of Financing (Attachment No. 3).

"Legal Description" shall mean the legal description of the Property attached to this Agreement as Attachment No. 2 and 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 Credits" shall mean the tax credits authorized by the Tax Reform Act of 1986 and governed by Section 42 of the Internal Revenue Code, to be applied for by and awarded to Developer by the California Tax Credit Allocation Committee for the development of the Improvements on the Property.

"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 and incorporated herein by this reference.

"Mortgagee" shall mean any maker of a Permitted Mortgage Loan to Developer.

"Net Agency Residual Receipts Loan" shall mean the net balance of the Agency Residual Receipts Loan available for disbursement to Developer for construction of the Improvements and development of the Property in accordance with this Agreement after deduction of the total

Purchase Price for Developer's purchase of the Property from the Agency and after any other deductions permitted by this Agreement on or before the Closing.

"Notice of Affordability Restrictions on Transfer of Property" shall mean the Notice of Affordability Restrictions on Transfer of Property required to be recorded against the Property pursuant to California Health and Safety Code Section 33334.3(f) and substantially in the form attached to this Agreement as Attachment No. 19, to be recorded upon the occurrence of the Closing.

"Permanent Loan" shall mean the permanent loan to be made to Developer to repay a portion of the Construction Loan, secured by the Permanent Loan Deed of Trust, as described in the Method of Financing (Attachment No. 3).

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

"Permitted Mortgage" shall mean any conveyance of a security interest in the Property to one or more Mortgagees to secure any loan to finance the development of the Property as required by this Agreement, specifically including the Construction Loan, the Permanent Loan, and any other loan specifically described in the Method of Financing or, subject to the Agency's prior written approval any loan to refinance the Construction Loan, Permanent Loan, or other loan specifically described in the Method of Financing, or the conveyance of title to the Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such loan.

"Permitted Mortgage Loan" shall mean the obligations secured by a Permitted Mortgage.

"Permitted Transfer" shall mean any of the following:

- a. Any Permitted Mortgage;
- b. A conveyance of the Property to any Affiliate or a sale back from such Affiliate to Developer;
- c. The contribution of capital to Developer and the admission to Developer of the Tax Credit Equity Investor;
- d. The lease for occupancy of all or any part of the Improvements on the Property;
and
- e. 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 (d) shall be subject to the reasonable approval by the Agency Executive Director or designee, upon review of documentation, 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 document attached hereto as Attachment No. 8 and incorporated herein by this reference, and any amendments thereto approved in accordance with this Agreement, providing the schedule of sources and uses and listing the Development Costs.

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

"Purchase Price" shall mean the total price Developer shall pay to the Agency for the purchase of the Property, which amount shall be determined as the greater of the following amounts: (a) the fair market value of the Property at its highest and best use as determined in accordance with California Health and Safety Code Section 33433, the report and analysis of which are attached hereto as Attachment No. 20 and incorporated herein by this reference; or (b) the total of all costs and expenses incurred by the Agency for the Agency's acquisition of the Property including, without limitation, costs relating to clearance, relocation, closing and title, condemnation, and feasibility.

"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 424 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 and incorporated herein by this reference.

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

"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 lien of the Agency Deed of Trust and the other Agency Loan Documents.

"Site" shall mean the "Property".

"Site Plan and Concept Drawings" or "Site Plan" shall mean the document attached to this Agreement as Attachment No. 1 and incorporated herein by this reference.

"Subordination Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 15, with such modifications as may be agreed to by the Agency Executive Director or designee in accordance with this Agreement.

"Tax Credits" shall mean the "Low Income Housing Tax Credits".

"Tax Credit Equity Investor" shall mean a Person who is or will be an investor in, and a limited partner of, Developer and 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 the Agency and Developer.

"Title Insurance Policy" shall mean and include the following ALTA extended coverage policies of title insurance issued by the Title Company, subject to the Approved Title Conditions:

- a. A mortgagee's policy of title insurance in favor of each Permitted Mortgagee, together with such endorsements as the Permitted Mortgagee may reasonably require, insuring the lien of the Permitted Mortgage, in the amount of the Permitted Mortgage [Lender's Title Policy]; and
- b. A mortgagee's policy of title insurance in favor of the Agency, together with such endorsements as the Agency may reasonably require, insuring the lien of the Agency Deed of Trust, in the amount of the Agency Loan [Agency's Title Policy].

"UCC-1" shall mean a Financing Agreement substantially in the form attached to this Agreement as Attachment No. 14.

"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. 18 and 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 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 consisting of two (2) parcels totaling approximately 2.24 acres and 97,574 square feet, referenced by Assessor Parcel Numbers 638-080-47-00 and 638-080-49-00, and 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, as illustrated on the "Site Plan and Concept Drawings" (Attachment No. 1) and as legally described in the "Legal Description of the Property" (Attachment No. 2).

The Property is currently owned in fee by the Henry and Sophie Bookspan Family Trust.

Section 105 Agency

a. The 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.

Section 106 Developer

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

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

Section 107 Assignments and Transfers

a. Developer 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. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the Agency and the City, 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 Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Prior to Completion, Developer 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, Developer 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 Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer 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 Developer, other than a Permitted Transfer, shall require the written approval of the Agency, which shall not be unreasonably withheld. To the extent the Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, the 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, the Agency shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer 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. Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of Developer 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 Developer 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. ACQUISITION AND DISPOSITION OF THE PROPERTY

Section 201 Acquisition of the Property

a. In accordance with and conditioned on all the terms, covenants, and conditions of this Agreement and in consideration of the performance by each party of all of its obligations under this Agreement, Developer hereby agrees (i) to attempt to acquire the Property in accordance with this Agreement, which Property consists of two (2) parcels totaling approximately 2.24 acres and 97,574 square feet, referenced by Assessor Parcel Numbers 638-080-47-00 and 638-080-49-00, and 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; and (ii) to use good

faith efforts in acquiring title to the Property in accordance with the terms of this Agreement, in order to further the purposes of the Redevelopment Plan and this Agreement and to facilitate the redevelopment of the Property approved by the Agency pursuant to the Redevelopment Plan and this Agreement, including without limitation the creation of unified ownership and control of the redeveloped Property in Developer.

b. If Developer is unable to acquire title to the Property as referenced in Section 201(a) above, the Agency agrees to the following: Provided that Developer has submitted to the Agency evidence satisfactory to the Agency that Developer has obtained all financing commitments necessary to develop the Property in accordance with this Agreement and to fund all Development Costs including any funding deficit or increase to any line item of the Development Costs if the Agency's anticipated acquisition related costs are in excess of the fair market value of the Property at its highest and best use (as determined in accordance with California Health and Safety Code Section 33433), and provided that Developer has been awarded Low Income Housing Tax Credits by CTCAC for development of the Property, then in accordance with and conditioned on all the terms, covenants, and conditions of this Agreement, and subject to specific Agency determinations and authorizations as required by applicable law and made on a case-by-case basis, and in consideration of the performance by each party of all of its obligations under this Agreement, the Agency hereby agrees (i) to acquire the Property in accordance with this Agreement, which Property consists of two (2) parcels totaling approximately 2.24 acres and 97,574 square feet, referenced by Assessor Parcel Numbers 638-080-47-00 and 638-080-49-00, and located at 104 Averil Road, and (ii) to use good faith efforts in acquiring title to the Property, or interest therein, in accordance with the terms of this Agreement, in order to further the purposes of the Redevelopment Plan and this Agreement and to facilitate the redevelopment of the Property approved by the Agency pursuant to the Redevelopment Plan and this Agreement, including without limitation the creation of unified ownership and control of the redeveloped Property in Developer, and to sell the Property to Developer pursuant to the terms of this Agreement. The Agency may, in its sole discretion, decide either to limit its attempts to acquire the Property or any portion thereof, or to voluntarily negotiate with the property owner to acquire the Property, or to consider exercising the power of eminent domain provided that the Agency has the requisite authority to exercise the power of eminent domain, which power will be exercised, if at all, in the sole and absolute discretion of the Agency.

c. Notwithstanding the above, the Agency is not obligated nor required to acquire the Property or to attempt in any way to acquire the Property until such time Developer has submitted to the Agency evidence satisfactory to the Agency that Developer has obtained all financing commitments necessary to develop the Property in accordance with this Agreement and to fund all Development Costs including any funding deficit or increase to any line item of the Development Costs if the Agency's anticipated acquisition related costs are in excess of the fair market value of the Property at its highest and best use (as determined in accordance with California Health and Safety Code Section 33433), and Developer has been awarded Low Income Housing Tax Credits by CTCAC for development of the Property.

d. Upon the Agency's acquisition of title to the Property, or any portion thereof, (and/or upon obtaining orders of prejudgment possession meeting the requirements for conveyance), and upon satisfaction of any conditions precedent to the Close of Escrow that are

for the benefit of Developer, Developer agrees to purchase the Property from the Agency, for the consideration and subject to the terms, conditions and provisions set forth in this Agreement.

e. Notwithstanding paragraph (b) of this Section or any other provision of this Agreement, in the event there is any uncured default by Developer under this Agreement, the Agency shall have the right, in its sole discretion, to terminate this Agreement at any time prior to the Close of Escrow and to recover from Developer all costs and expenses incurred by the Agency for the Agency's acquisition of, or attempt to acquire, the Property.

Section 202 Relocation of Tenants and Occupants of the Property

The Agency shall be responsible, at Developer's sole cost and expense (using any source of funds available to Developer for such purpose), for relocating any and all tenants and occupants of the Property in accordance with all applicable relocation laws and requirements, and in accordance with a mutually approved relocation budget to be entered into by the Agency and Developer should there exist any tenants and occupants of the Property to be relocated. To implement this Section 202, Developer shall from time to time advance to the Agency, upon request, such funds as the Agency Executive Director or designee shall reasonably determine are necessary for the payment of relocation benefits to displaced persons, or the Agency may use the Agency Residual Receipts Loan funds for this purpose. Developer shall defend, indemnify and hold harmless the Agency, the City and their officers, employees, agents, contractors and attorneys from any claims, liabilities, injury, damages, costs and expenses (including, without limiting the generality of the foregoing, attorneys' fees) relating to the payment of relocation costs or the relocation process, which may be sustained as the direct result of the relocation of any person from the Property. However, Developer shall not be responsible for (and such indemnity shall not apply to) any gross negligence or willful misconduct of the Agency, the City, or their respective officers, officials, employees, contractors or agents.

Section 203 Sale and Purchase

a. Agreement to Sell and Purchase. In accordance with and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, and Developer agrees to purchase, the Property.

b. Purchase Price. Developer agrees to pay to the Agency the Purchase Price for the Property as defined herein and provided in the Method of Financing, which amount shall be determined as the greater of the following amounts: (1) the fair market value of the Property at its highest and best use as determined in accordance with California Health and Safety Code Section 33433; or (2) the total of all costs and expenses incurred by the Agency for the Agency's acquisition of the Property including, without limitation, costs relating to clearance, relocation, closing and title, condemnation, and feasibility.

Section 204 Escrow

a. Within thirty (30) calendar days prior to the scheduled Closing Date, the Agency agrees to open an escrow in the City of San Diego with the Title Company, or such other escrow agent as may be acceptable to both the Agency and Developer [Escrow Agent], as escrow agent for conveyance of the Property. Sections 104 through 107 and 201(b)-(e) through 212

(inclusive) of this Agreement shall constitute the joint escrow instructions of the Agency and Developer with respect to the sale of the Property, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

The Agency and Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Agent is empowered to act under such instructions, and upon indicating its acceptance in writing, delivered to the Agency and to Developer within five (5) calendar days after opening of the escrow, the Escrow Agent shall carry out its duties as Escrow Agent pursuant to this Agreement.

b. Upon delivery to the Escrow Agent of the Agency Deed of Trust, Assignment of Rents, Assignment of Agreements, Environmental Indemnity, UCC-1 Financing Statement, Agreement Affecting Real Property, Grant Deed, and Notice of Affordability Restrictions on Transfer of Property, all fully executed by the applicable parties, the Escrow Agent shall record these documents (as well as any other instruments to be recorded by the Escrow Agent in connection with the Construction Loan, the AHP Grant and any other financing described in the Method of Financing) in accordance with these escrow instructions, provided that title to the Property can be vested in Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix, and cancel any transfer stamps required by law. Any insurance policies governing the Property are not to be transferred.

c. Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges, and costs, but not earlier than ten (10) calendar days prior to the scheduled date for the conveyance of the Property:

- (1) The escrow fee;
- (2) The premiums for the title insurance policies to be issued to Mortgagees, Developer and the Agency as set forth in Section 210 of this Agreement;
- (3) Cost of drawing the deed;
- (4) Recording fees;
- (5) Notary fees;
- (6) Any State, County, or City documentary stamps or transfer tax; and
- (7) Ad valorem taxes, if any, upon the Property or upon this Agreement or any rights under this Agreement prior to the conveyance of title or possession.

d. The Agency shall timely and properly execute, acknowledge and deliver the Grant Deed conveying to Developer title to the Property in accordance with the requirements of this Agreement, and deliver the executed and acknowledged Grant Deed, Agreement Affecting Real Property, and Notice of Affordability Restrictions on Transfer of Property, together with an

estoppel certificate certifying that Developer has completed all acts necessary to entitle Developer to such conveyance, if such be the fact.

e. The Escrow Agent is authorized to:

- (1) Pay, and charge the Agency and Developer, respectively, for any fees, charges and costs payable under this Section 204 of this Agreement. Before such payments are made, the Escrow Agent shall notify the Agency and Developer of the fees, charges and costs necessary to clear title and close the escrow.
- (2) Disburse funds and deliver the Grant Deed, Agreement Affecting Real Property, Notice of Affordability Restrictions on Transfer of Property, Agency Deed of Trust and other documents to the entitled parties when the conditions of this escrow have been fulfilled by the Agency and Developer. The Grant Deed shall not be recorded unless and until the Escrow Agent is also prepared to record the Agreement Affecting Real Property, the Notice of Affordability Restrictions on Transfer of Property and the Agency Deed of Trust, and the Title Company is committed to issue the Title Insurance Policies.
- (3) Record any instruments delivered through this escrow if necessary or proper to vest title in Developer in accordance with the terms and provisions of this Agreement.

f. All funds received in this escrow shall be deposited by the Escrow Agent in a general escrow account with any state or national bank doing business in the State of California and reasonably approved by Developer and the Agency, and may be combined in such with other escrow funds of the Escrow Agent.

g. If this escrow is not in the condition to close on or before the time for conveyance set forth in the Schedule of Performance, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return shall be recognized until ten (10) calendar days after the Escrow Agent (or the party making such demand) shall have mailed copies of such demand to the other party or parties at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the ten (10) calendar day period, in which event the Escrow Agent is authorized to hold all money, papers, and documents with respect to the Property until instructed by a mutual agreement of the parties or, upon failure, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible.

h. If objections are raised as provided for above, the Escrow Agent shall not be obligated to return any such money, papers, or documents except upon the written instructions of both the Agency and Developer, or until the party entitled has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said ten (10)

calendar day period, the Escrow Agent shall immediately return the demanded money, papers, or documents.

i. The parties understand they may be required to execute additional standard form escrow instructions required by the Escrow Agent [General Instructions]. In the event of a conflict between this Agreement and any such General Instructions, this Agreement shall control. The parties agree, however, that they will refuse to sign General Instructions which: (1) purport to relieve the Escrow Agent of liability for negligence or intentional wrong-doing; (2) excuse the Escrow Agent from strict compliance with each and all of the provisions of this document and the General Instructions; or (3) purport to authorize the Escrow Agent to follow the instructions or directive of any person not a direct signatory party to this Agreement. Any amendment to the escrow instructions shall be in writing and signed by both the Agency and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

j. All communications from the Escrow Agent to the Agency or Developer shall be directed to the addresses set forth in Sections 105 and 106 of this Agreement, and in the manner set forth in Section 701 of this Agreement for notices between the parties.

k. Prorations.

- (1) General. Rentals, revenues, and other income, if any, from the Property, and operating expenses, if any, affecting the Property shall be prorated as of 11:59 P.M. on the day preceding the Close of Escrow. For purposes of calculating prorations, the Agency shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Close of Escrow occurs.
- (2) Taxes and Assessments. All non-delinquent real estate taxes on the Property shall be prorated as of the Close of Escrow based on the actual current tax bill, but if such tax bill has not yet been received by the Agency by the Close of Escrow, then current year's taxes shall be deemed to be one hundred two percent (102%) of the amount of the previous year's tax bill, adjusted in accordance with paragraph (4), below. All delinquent taxes and all assessments, if any, on the Property shall be paid at the Close of Escrow by the Agency, at Developer's sole cost and expense, and shall be included as part of the Development Costs. To implement this Section, Developer shall advance to the Agency, upon request, such funds as the Agency Executive Director or designee shall reasonably determine are necessary for the payment of delinquent taxes and assessments, or the Agency may use the Agency Residual Receipts Loan funds for this purpose.
- (3) Operating Expenses. Any other expenses incurred in operating the Property that Agency customarily pays, and any other costs incurred in the ordinary course of business or the management and operation of the Property shall be prorated on an accrual basis. The Agency shall be

responsible, at Developer's sole cost and expense, to pay all such expenses, which said expenses shall be included as part of the Development Costs, that accrue prior to the Close of Escrow. To implement this Section, Developer shall advance to the Agency, upon request, such funds as the Agency Executive Director or designee shall reasonably determine are necessary for the payment of operating expenses, or the Agency may use the Agency Residual Receipts Loan funds for this purpose. Developer shall pay all such operating expenses that may accrue on the Close of Escrow and thereafter.

- (4) Method of Proration. All prorations shall be made in accordance with customary practice in San Diego County, except as expressly provided in this Agreement. The Agency and Developer agree to cause their accountants or agents to prepare a schedule of tentative prorations prior to the Close of Escrow. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid into Escrow by the respective parties. Any such prorations not determined or not agreed upon as of the Close of Escrow shall be paid by the Agency to Developer, or by Developer to the Agency, as the case may be, in cash as soon as practical following the Close of Escrow. A copy of the schedule of prorations as agreed upon by the Agency and Developer shall be delivered to Escrow Agent at least three (3) business days prior to the Closing Date.

1. Except as otherwise provided for in this Agreement, the Agency and Developer shall each pay their legal and professional fees and fees of other consultants incurred by the Agency and Developer, respectively.

Section 205 Conveyance of Title and Delivery of Possession

a. Subject to any mutually agreed upon written extension of time, the Agency shall convey title to the Property to Developer on or before the scheduled Closing Date (so long as all conditions precedent have been satisfied), or such later date mutually agreed upon in writing by the Agency and Developer and communicated in writing to the Escrow Agent.

b. Except as otherwise provided for in this Agreement, possession of the Property shall be delivered to Developer at the Close of Escrow. Developer shall accept title and possession to the Property upon the Close of Escrow.

Section 206 Form of Grant Deed

a. The Agency shall convey to Developer title to the Property in the condition provided in Section 207 of this Agreement by Grant Deed in a form to be mutually agreed upon by the Agency and Developer consistent with this Agreement and substantially in the form attached and incorporated as Attachment No. 6. The Grant Deed shall contain covenants necessary or desirable to carry out this Agreement.

b. Notwithstanding the foregoing paragraph (a) or any other provision in this Agreement to the contrary, if at or prior to the date for conveyance of title to the Property to

Developer as set forth in the Schedule of Performance, the Agency has not obtained title to the Property, or portion thereof, but has obtained an order for possession prior to judgment [Order], authorizing the Agency to take possession of the Property, or portion thereof, the Agency may convey its interest in such Property, or portion thereof, and Developer shall accept such interest, if the following conditions are met:

- (1) The Agency delivers exclusive possession of the Property, or portion thereof, to Developer by a lease acceptable to the Title Company, on or prior to the time set for conveyance;
- (2) Any and all occupants have relocated from the Property, or portion thereof;
- (3) The right of possession which Developer acquires from the Agency is such that the Title Company will issue a policy or policies of title insurance insuring Developer's leasehold interest, subject to only those items described in the first full paragraph (a) of this Section 206;
- (4) Developer is able to obtain financing for the development of the Property on the basis of said title insurance policy or policies;
- (5) The Agency diligently proceeds with all condemnation actions until a final judgment is rendered, and said judgment authorizes the taking, and the time for appeal has expired pursuant to law;
- (6) Developer provides adequate security, as determined by the Agency, securing the Developer's repayment of the Agency Residual Receipts Loan.

c. In the event the Agency tenders possession of the Property, or portion thereof, as provided in this Agreement, Developer shall not terminate this Agreement, but shall accept such right of possession and shall proceed with the development of the Property.

d. All references to conveyance of title to the Property in this Agreement shall also mean delivery of possession as referred to in this Section as the context may require.

Section 207 Condition of Title

Subject to Section 201 and Section 206 of this Agreement, the Agency shall convey to Developer fee title to the Property free and clear of all liens, encumbrances, assessments, easements, leases and taxes [Title Exceptions]; except: (i) any Title Exceptions applicable to the Property that were of record upon conveyance of the Property to the Agency; (ii) those which are set forth in the Grant Deed, substantially in the form attached and incorporated as Attachment No. 6, those which are set forth in the Agreement Affecting Real Property, substantially in the form attached and incorporated as Attachment No. 7, and those which are set forth in the Notice of Affordability Restrictions on Transfer of Property, substantially in the form attached and incorporated as Attachment No. 19; and (iii) those which are accepted in writing by Developer.

Section 208 Time and Place for Delivery of Grant Deed

Subject to any mutually agreed-upon written extension of time, the Agency shall deposit the Grant Deed, together with the Agreement Affecting Real Property and the Notice of Affordability Restrictions on Transfer of Property, with the Escrow Agent on or before the scheduled Closing Date.

Section 209 Conditions Precedent to Close of Escrow

The Close of Escrow and the obligations of the Agency and Developer hereunder are subject to the satisfaction prior to the Close of Escrow (unless otherwise provided) of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

a. Title. The Agency shall have obtained title to the Property (which may include possession pursuant to Order of Prejudgment Possession), free and clear of any and all encumbrances, except the Approved Title Conditions and those items stated in Section 207 above.

b. Representations, Warranties and Covenants

(1) Developer shall have duly performed each and every agreement to be performed by Developer hereunder and Developer's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Close of Escrow.

(2) The Agency shall have duly performed each and every agreement to be performed by the Agency hereunder and the Agency's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Close of Escrow.

c. Deliveries.

(1) Developer shall have paid any deposits into escrow and delivered the items to be delivered by Developer, when and as required by this Agreement.

(2) The Agency shall have paid any deposits into escrow and delivered the items to be delivered by Agency, when and as required by this Agreement.

d. Conditions Precedent. As of the Close of Escrow, all of the Conditions Precedent to Closing as set forth in the Method of Financing shall have been satisfied.

e. Title Insurance. As of the Close of Escrow, the Title Company shall be committed to issue the Title Insurance Policies.

f. Failure of Conditions to Close of Escrow. In the event any of the conditions precedent to the Close of Escrow are not timely satisfied or waived, for a reason other than the default of the Agency or Developer, the following shall apply:

- (1) Either party shall have the right to terminate this Agreement, the Escrow and the rights and obligations of the Agency and Developer hereunder, except as otherwise provided herein;
- (2) Escrow Agent is instructed to promptly return to Developer and the Agency all funds, if any, and documents deposited by them, respectively, into Escrow which are held by Escrow Agent on the date of said termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under paragraph g.); and
- (3) Neither party shall have any further rights or obligations hereunder except as otherwise provided in this Agreement.

g. Cancellation Fees and Expenses. In the event the Escrow terminates because of the non-satisfaction of any condition for a reason other than the default of the Agency or Developer under this Agreement, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne by Developer and all other charges shall be borne by the party incurring same. In the event either party terminates this Agreement pursuant to any provision of this Agreement, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne by Developer and all other charges shall be borne by the party incurring same.

h. Disbursements and Other Actions to be taken by the Escrow Agent. At the Close of Escrow, Escrow Agent shall promptly undertake all of the following in the manner indicated below:

- (1) Cause the Grant Deed, Agency Deed of Trust, Agreement Affecting Real Property, Notice of Affordability Restrictions on Transfer of Property and any other documents required by this Agreement or which the Parties may mutually direct, to be recorded in the Official Records of the County Recorder of San Diego County, and obtain conformed copies for distribution to the Agency and Developer.
- (2) Direct the Title Company to issue the Owner's Title Insurance Policy to Developer, the Agency's Title Policy to the Agency and the Lenders' Title Insurance Policies to the Permitted Mortgagees.
- (3) Prepare and distribute to Developer and the Agency each, copies of both parties' escrow closing statements and a complete copy of all documents handled by Escrow.

Escrow Agent agrees that recordation of the Grant Deed shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue the Title Policies in accordance with this Agreement.

Section 210 Title Insurance

Concurrent with recordation of the Grant Deed, the Agreement Affecting Real Property, and the Notice of Affordability Restrictions on Transfer of Property, the Title Company shall provide and deliver the Title Insurance Policies to the respective insured parties. The Agency shall be responsible only to pay, at Developer's sole cost and expense, the title insurance premium for the Owner's Title Insurance Policy to the extent of a standard coverage CLTA title insurance policy on the Property in the amount of the Purchase Price. The Agency may use the Agency Residual Receipts Loan funds to pay this cost, which cost shall be included as part of the Development Costs. Developer shall be responsible for paying the premium for the following: (a) any additional title insurance, including any extended coverage or special endorsements which it requests; (b) the Lenders' Title Insurance Policies; and (c) the Agency's Title Insurance Policy.

Section 211 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Property, and taxes upon this Agreement or any rights pursuant to the Agreement levied, assessed or imposed for the period prior to conveyance of title or possession of the Property to Developer, shall be the responsibility of the Agency, at Developer's sole cost and expense, and included as part of the Development Costs. The Agency may use the Agency Residual Receipts Loan funds to pay this cost. All ad valorem taxes and assessments levied or imposed for any period commencing after conveyance of title or possession of the Property to Developer shall be paid by Developer.

Section 212 Occupants of the Property

The Agency agrees that title to the Property shall be conveyed free of any possession or right of possession except that of Developer, unless waived by Developer in writing.

PART 3. FINANCING

Section 301 Method of Financing

The Project shall be financed with a combination of sources of financing as provided in the Method of Financing, attached to this Agreement as Attachment No. 3 and incorporated herein by this reference.

Section 302 Agency Assistance

a. Agency Residual Receipts Loan. On the condition that the Agency is permitted to use proceeds from the Line of Credit for the acquisition and development of the Property and that Developer obtains financing for the development of the Property including, without limitation, 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 Developer, and Developer agrees to borrow, the Agency Residual Receipts Loan in an amount not to exceed \$3,606,000, as defined herein, to be used toward the Development Costs, including Property acquisition. Developer agrees to perform all obligations required of Developer pursuant to this Agreement and its Attachments. At or prior to the Closing, the Agency and Developer 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.

b. Gap Assistance. The parties acknowledge that the Agency Residual Receipts Loan is intended to be "gap" assistance, not to exceed the amount needed to bridge the gap between the total Development Costs (as defined herein) and the maximum loans obtainable by Developer plus Developer'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 a portion of the Development Costs as identified in the Project Budget, attached hereto, including Property acquisition. In the event the actual amount of the Development Costs (as defined herein and in the Project Budget) is less than \$19,923,000 (or as otherwise approved by the Agency pursuant to an amendment to the Project Budget), or in the event Developer finds alternative funding sources to pay the Development Costs, 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 Development Costs are not greater than \$19,923,000 (or as otherwise approved by the Agency pursuant to an amendment to the Project Budget), or in the event Developer is granted Affordable Housing Program Grant funds, then the principal amount of the not to exceed \$3,606,000 Agency Residual Receipts Loan shall be reduced dollar-for-dollar by the resulting cost savings [Cost Savings] or additional proceeds [Additional Proceeds]. In the event any of the permanent financing sources are greater than the respective amounts set forth in the Method of Financing and the Development Costs are greater than \$19,923,000 (or as otherwise approved by the Agency pursuant to an amendment to the Project Budget), then the increased amount of the permanent financing sources (excluding any Affordable Housing Program Grant funds awarded to Developer) may first be used to pay the increase in 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 Board.

Section 303 Submission of Evidence of Financing

a. Within the time periods provided in the Schedule of Performance, Developer shall submit to the Agency evidence satisfactory to the Agency that Developer has obtained the financing necessary for the 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 Developer for the Construction Loan, including a final Project Budget approved by the Construction Lender, the Affordable Housing Program Grant if awarded, the Low Income Housing Tax Credits from the California Tax Credit

Allocation Committee [CTCAC], and all other commitments (all as described in the Method of Financing) to finance the construction of the Improvements and the development of the Property, certified by Developer to be a true and correct copy or copies thereof;

- (2) Prior to Closing, a copy of the executed contract between Developer and the general contractor or major subcontractors for the construction of the Improvements and the development of the Property, certified by Developer 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 or Member Capital Contribution consistent with the Method of Financing; and
- (5) Documentation acceptable to the Agency Executive Director of other sources of capital sufficient to demonstrate that Developer has adequate equity funds committed to provide the amount of Developer 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 Developer stating the reasons for such disapproval.

PART 4. DEVELOPMENT OF THE PROPERTY

Section 401 Land Use Approvals

It is the responsibility of Developer, without cost to the 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, including demolition of the existing structures, 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 Developer obtains all entitlements, approvals, variances and permits necessary for the construction of the Improvements and the development of the Property, including demolition of the existing structures. Nothing contained herein shall be deemed to entitle Developer to any City of San Diego permit or other City approval necessary for the development of the Property or construction of the Improvements, including demolition of the existing structures, or to waive any applicable City requirements relating thereto. This Agreement does not: (a) grant any land use entitlement to Developer; (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 Developer 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 the Agency, the Agency shall provide appropriate technical assistance to Developer in connection with Developer's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Section 402 Condition of the Property

a. The Agency makes no representation or warranty, express or implied, regarding any conditions of the Property. The Property and all existing improvements shall be conveyed in an "as is" condition, with no warranty, express or implied by the Agency as to the condition of the Property including, without limitation, soil (or water), its geology, or the presence of known or unknown faults or as to the condition of the improvements. It shall be the sole responsibility of Developer, at Developer's expense, to investigate and determine all conditions of the Property, including the improvements, and its suitability for the uses to which the Property is to be put in accordance with this Agreement, including demolition of the existing improvements. 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 Developer, without cost to the 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. Developer 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 Developer. Developer shall defend, indemnify and hold harmless the Agency, the City and their 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, under or within the Property. However, Developer shall not be responsible for (and such indemnity shall not apply to) any gross negligence or willful misconduct of the Agency, the City, or their respective officers, officials, employees, contractors or agents. As a condition precedent to the Closing, Developer shall execute and deliver to the Agency the Environmental Indemnity, attached to this Agreement as Attachment No. 13 and incorporated herein by this reference.

Section 403 Scope of Development

The Property shall be developed in accordance with and within the limitations established in the Scope of Development, attached to this Agreement as Attachment No. 4 and incorporated herein by this reference.

Section 404 Basic Concept and Schematic Drawings

a. Developer 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 to changes that may be mutually agreed upon between Developer and the Agency Executive Director. Any such changes shall be within the limitations of the Scope of Development.

c. If Developer 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. Developer shall incorporate Universal Design components into the Project and specifically comply with the items outlined in the Agency's Universal Design Checklist, attached to this Agreement as Attachment No. 18 and incorporated herein by this reference. 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 Developer demonstrates why incorporating the Universal Design component would be infeasible.

Section 405 Landscaping and Grading Plans

a. Developer 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 Developer's architect. Within the times established in the Schedule of Performance, Developer shall submit to the Agency Executive Director for his/her approval the name and qualifications of its architect, landscape architect and civil engineer.

Section 406 Construction Drawings and Related Documents

a. Developer 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 if developed as a logical evolution of Plans theretofore approved.

c. During the preparation of all Plans, the Agency Executive Director and Developer shall hold regular progress meetings, as needed, to coordinate the preparation of, submission to, and review of Plans and related documents by the Agency Executive Director or designee. The Agency Executive Director and Developer 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, Developer and the Agency Executive Director shall cooperate in efforts to make said revisions or corrections to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

Section 407 Agency Approval of Plans

a. Subject to the terms of this Agreement, the Agency 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 the Agency. The Agency shall approve or disapprove the Plans referred to in Sections 404, 405 and 406 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 requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder, shall revise the Plans and resubmit them to the Agency as soon as possible after receipt of the notice of disapproval.

b. If Developer 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 408 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 Developer, without any cost to the Agency, subject to the terms of this Agreement.

Section 409 Demolition and Soil Remediation

a. Developer shall be responsible, at its own cost and expense (using any source of funds available to Developer for such purpose), for the demolition of existing structures located on the Property. Prior to initiation of demolition, Developer shall contact the City's Environmental Services Department to obtain the appropriate approvals.

b. Developer shall be responsible, at Developer's cost and expense, for the soil remediation of the Property. In doing so, Developer shall contact the City's Environmental Services Department to obtain the appropriate approvals. Developer agrees to comply with all federal, state and local laws in any activities related to soil remediation. Developer also agrees that remediation of the Site will occur with oversight provided by the County of San Diego Department of Environmental Health ("DEH") pursuant to DEH's voluntary assistance program.

Section 410 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 Developer in accordance with this Agreement.

b. After the Closing, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements and development of the Property, including the demolition of any existing structures, as provided in the Scope of Development. Developer 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, Developer 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 Developer.

Section 411 Indemnification and Insurance

a. Developer's Indemnity. To the maximum extent permitted by law, Developer agrees to and shall defend, indemnify and hold harmless the Agency, the City, 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 Developer shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the Agency, the City, or their respective officers, officials, employees, contractors or agents:

- (1) The existence, release, presence or disposal on, in, under, within, about or adjacent to the Property of any Hazardous Materials, except to the extent it is due to the negligence or willful misconduct of the Agency, the City, or their respective officers, officials, employees, contractors or agents;
- (2) The development, construction, marketing, use or operation of the Property by Developer or its officers, contractors, subcontractors, agents, employees or other persons acting on Developer'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 Developer 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 the Agency resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer, 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 and the development of the Property, including demolition of the existing structures, by the City or the Agency.

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

b. Insurance Policies.

- (1) Commencing upon the Closing or Developer's possession of the Property, whichever occurs first, and at all times prior to the issuance of the Release of Construction Covenants, Developer shall maintain in effect and deliver to the Agency duplicate originals or appropriate certificates of the following insurance policies [Insurance Policies]:
 - (a) All-Risk Policies: Developer 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 an amount sufficient to prevent Developer 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 the 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 the Agency may reasonably determine is acceptable, in light of the cost of the premium for such insurance);

- (b) Liability Insurance: Developer 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 Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer, its tenants, or any person acting for Developer, 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 Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect the Agency against incurring any legal costs in defending claims for any alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the term of this Agreement and until Completion 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. Developer shall deliver to the Agency a Certificate of Insurance evidencing such insurance coverage prior to the occurrence of the Closing or Developer=s possession of the Property, whichever occurs first. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of the Agency, the City, or their officers, officials, employees, contractors, agents and attorneys, or the payment of damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible.
- (c) Automobile Insurance: Developer 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: Developer 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 Developer 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 Developer. Notwithstanding the foregoing, Developer 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 Developer shall deliver to the 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 the Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) shall name the Agency, the City and Developer 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) Developer agrees to timely pay all premiums for such insurance and, at Developer's sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit binders or certificates evidencing such insurance to the Agency prior to the Closing or Developer's possession of the Property, whichever occurs first. 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 the 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 Developer fails or refuses to procure or maintain insurance as required by this Agreement, the Agency shall have the right, but not the obligation, at the Agency's election, and upon ten (10) calendar days' prior notice to Developer, to procure and maintain such insurance. The premiums paid by the Agency shall be treated as a loan, due from Developer, to be paid on the first day of the month following the date on which the premiums

were paid. The Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Section 412 Nondiscrimination and Equal Opportunity

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

Developer 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. 17 and incorporated herein by this reference.

b. Nondiscrimination.

Developer 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. Developer 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 Developer and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

c. Compliance Investigations.

Upon the City's request, Developer 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 Developer 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 Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517. Developer 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 Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Developer 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 of the Project and in accordance with the Schedule of Performance, Developer shall contact the City's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

Section 413 Local, State and Federal Laws

a. Developer 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). Developer hereby expressly acknowledges and agrees that neither the City nor the Agency has ever previously affirmatively represented to Developer 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. Developer hereby agrees that Developer 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. Developer hereby agrees that Developer 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. Developer hereby agrees that Developer shall have the obligation, at Developer'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. Developer shall indemnify, protect, defend and hold harmless the Agency, the City and their respective officers, officials, employees, contractors and agents, with counsel reasonably acceptable to the Agency and the 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 Developer 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 Developer 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 Developer 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 Developer 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), Developer 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, Developer shall be responsible for obtaining all permits required by the City for the construction of the Improvements on the Property and the development of the Property, including any demolition of existing structures, 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, Developer shall satisfy all conditions to the issuance of any permit required for the development of the Property. The Agency shall provide appropriate and reasonable assistance to Developer in obtaining these permits.

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

Section 414 Permits

a. Before commencement of demolition, construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Developer 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 Developer will demolish any structure, Developer shall contact the City of San Diego for the appropriate procedures pertaining to assessment, remediation and cleanup.

Section 415 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 Developer (except in the case of an emergency, in which case the 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 demolishing any structure and constructing the Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Agency Executive Director.

Section 416 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes, nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon, or inform Developer or any third party of any matter in connection with the development of the Property 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. Developer 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 Developer, or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Property, and neither Developer (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 417 Taxes, Assessments, Encumbrances and Liens

Developer shall pay, when due, all real estate taxes and assessments assessed and levied on or against the Property. Prior to Completion, Developer 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, Developer 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 Developer from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to Developer in respect thereto. The covenants of Developer set forth in this Section 417 shall remain in effect only until the issuance and recordation of a Release of Construction Covenants.

Section 418 Prohibition against Transfer

a. Prior to Completion, Developer 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 Developer 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 prior written approval of the Agency, subject to the notice and cure provisions of Section 701, 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 Developer or any other party from any obligations under this Agreement.

Section 419 No Encumbrances except Permitted Mortgages

a. Notwithstanding Section 418, upon and after the Closing, Developer shall have the right to encumber the Property with Permitted Mortgages, but only for the purpose of

securing loans of funds to be used for financing the construction of the Improvements as identified in the Development Costs, and other expenditures necessary and appropriate to develop the Property under this Agreement [Permitted Financing Purposes]. Prior to Completion: (1) Developer shall not have any authority to encumber the Property for any purpose other than Permitted Financing Purposes; (2) Developer shall notify the Agency in advance of any proposed financing; and (3) Developer shall not enter into any Mortgage without the prior written approval of the Agency. A Permitted Mortgagee of a Permitted Mortgage Loan approved by the Agency pursuant to this Section 419 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, Developer shall promptly notify the Agency of any security interest created or attached to the Property whether by voluntary act of Developer or otherwise.

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

d. The Agency shall have the authority to make reasonable modifications to Sections 418 through 424 that may be requested by a Permitted Mortgagee or the Tax Credit Equity Investor, provided such modification does not adversely affect the receipt of any material benefit by the Agency hereunder. Upon the reasonable request of a Permitted Mortgagee or the Tax Credit Equity Investor, the Agency shall execute from time-to-time such estoppel certificates and subordination agreements to the extent they are consistent with the terms of this Agreement.

e. The requirements of this Section 419 shall not apply following Completion.

Section 420 Permitted Mortgagee Not Obligated to Construct Improvements

A Mortgagee shall not 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 421 Notice of Default to Mortgagees; Right of Mortgagee to Cure Defaults

Whenever the Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Improvements or development of the Property, the Agency shall at the same time deliver to each Mortgagee of record a copy of such notice or demand. Each such Mortgagee 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 any. If such default shall be a default which can only be remedied or cured by such lender upon obtaining possession of the Property, such Mortgagee 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 Mortgagee shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such Mortgagee shall not be required to remedy or cure any non-curable default of Developer. Any Mortgagee who forecloses on its Permitted Mortgage, or is assigned or otherwise succeeds to Developer'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 Mortgagee expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by the Agency. Any such Mortgagee 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 422 Failure of Mortgagee to Complete Improvements

In any case where, six (6) months after default by Developer, 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 423 Right of the Agency to Cure Defaults

In the event of a default or breach by the developer of a Permitted Mortgage prior to Completion, and the Mortgagee 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 Developer 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 Senior Loans.

Section 424 Right of the Agency to Satisfy Other Liens on the Property

Prior to Completion and after Developer 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 Developer to pay or make provisions for the payment of any tax, assessment, lien or charge so long as Developer 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 Developer 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 Senior Loans.

Section 425 Release of Construction Covenants

a. Promptly after Completion of the construction of the Improvements as required by this Agreement, the Agency shall deliver to Developer a Release of Construction Covenants, upon written request therefor by Developer. The 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 the Agency fails to deliver the Release of Construction Covenants within ten (10) calendar days after written request from Developer, the Agency shall provide Developer with a written statement of its reasons [Statement of Reasons] within the ten (10) calendar day period. The statement shall also set forth the steps that Developer 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 the Agency, the Agency will issue the Release of Construction Covenants upon the posting of a bond by Developer with the Agency in an amount representing the 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 Developer to any Mortgagee, 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.

Section 426 Relocation of Utilities

a. Developer shall be responsible, at Developer's sole cost and expense, for relocating any and all utilities required to be relocated in order to develop the Property as contemplated by this Agreement, subject to any such utilities required by law to be removed by the utility operator at the utility operators' sole cost and expense.

b. Developer shall be responsible for coordinating with the appropriate departments of the City, the Agency and any other entity and/or party on any and all utility relocation required in order to develop the Property as contemplated by this Agreement.

PART 5. USE OF THE PROPERTY

Section 501 Uses

a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property, or any part thereof, that Developer, 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), the Agreement Affecting Real Property, the Notice of Affordability Restrictions on Transfer of Property, and the Grant Deed. No change in the use of the Property shall be permitted without the prior written approval of the Agency Board.

b. Without limiting the generality of the foregoing, Developer 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, together with approximately fifteen (15) surface parking spaces, a subterranean parking facility providing approximately ninety (90) parking spaces, and recreational amenities, all as described in the Scope of Development, in accordance with the requirements of the Grant Deed, the Agreement Affecting Real Property, and the Notice of Affordability Restrictions on Transfer of Property.

Section 502 Maintenance of the Property

Developer shall maintain the Property in accordance with the requirements of the Grant Deed, the Agreement Affecting Real Property, and the Notice of Affordability Restrictions on Transfer of Property.

Section 503 Obligation to Refrain from Discrimination

Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, 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 Developer 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.

Section 504 Form of Non-discrimination and Non-segregation Clauses

Developer shall refrain from restricting the rental, sale or lease of the Property on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts entered into after the date on which this Agreement is executed by the Agency shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

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

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

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

to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

Section 505 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 the City and enforceable against the original Developer, assigns and successors in interest by the Agency or the City. The covenants described in this Part 5 shall commence upon the Closing or as otherwise provided in the applicable document, shall be set forth in the Grant Deed, the Agreement Affecting Real Property, and the Notice of Affordability Restrictions on Transfer of Property, and shall remain in effect for the respective periods specified therein.

Section 506 Agreement Affecting Real Property

Concurrently with the Closing, Developer and the Agency shall execute and cause the recordation of an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 7 and incorporated herein by this reference.

Section 507 Notice of Affordability Restrictions on Transfer of Property

Concurrently with the Closing, the Agency shall execute and cause the recordation of an Notice of Affordability Restrictions on Transfer of Property substantially in the form attached to this Agreement as Attachment No. 19 and incorporated herein by this reference.

Section 508 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, Developer shall enter into a reporting and monitoring agreement with the Agency and/or the San Diego Housing Commission, as provided in the Grant Deed and the Agreement Affecting Real Property. Developer shall pay customary monitoring fees.

Section 509 Local Hiring and Contracting

Developer and its contractor(s) shall make reasonable efforts to ensure that qualified, small and minority owned businesses, women business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of the San Ysidro Redevelopment Project Area are used when possible. Such efforts shall include but not be limited to:

- (1) Including such firms, when qualified, on solicitation mailing lists;
- (2) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of such firms;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce, and the strategies outlined below, when appropriate;
- (6) Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the project area;
- (7) Requiring contracts, when subcontracting is anticipated, to take the positive steps listed in (a) -- (f) above;
- (8) Implementing strategies to promote local hiring, including soliciting at:
 - Local job fairs
 - Youth apprenticeship program
 - Place ads in local and DBE newspapers/newsletters
 - Network with local and supportive organizations, including but not limited to CHANGE, Black Contractors Association, Latino Builders Association, San Diego Community College District, San Diego Workforce Partnership, Labor Council, Union of Pan-Asian Communities (UPAC)
 - Metropolitan Area Advisory Committee (MAAC), Chicano

- (9) Setting goals for local hiring percentages and require developers/prime contractors to report regularly on their status of pursuing the goals;
- (10) Implementing strategies to promote use of local subcontractors and suppliers, including:
 - Maintaining and using an updated list of local contractors and suppliers
 - Doing outreach to local companies by direct mail, flyers and/or personal contacts
 - Placing ads in local and DBE newspapers and newsletters
 - Networking with local and supportive organizations, including but not limited to Business Improvement Districts, BID Council, City Office of Small Business, Metropolitan Area Advisory Council (MAAC), Chicano Federation
 - Setting goals for local contracting/supplies percentages and requiring contractors to report regularly on their status of pursuing these goals

PART 6. DEFAULTS AND REMEDIES

Section 601 Defaults - General

a. Subject to the extensions of time set forth in Section 702, 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 affect 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 affect 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 Developer fails to take corrective action or cure the default within a reasonable time, the Agency shall give Developer 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 or managing member of Developer with a substitute general partner or managing member, who shall affect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Agency agrees to accept cures tendered by the Tax Credit Equity Investor within the cure periods provided in this Agreement. Additionally, in the event the Tax Credit Equity Investor is precluded from curing a non-monetary default due to an inability to remove the general partner or managing member as a result of a bankruptcy, injunction, or similar proceeding by or against Developer or its general partner or managing member, the Agency agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Tax Credit Equity Investor of Developer is so precluded from acting, not to exceed ninety (90) calendar days, provided such Tax Credit Equity Investor is 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 Developer gives written notice to the Agency that the Tax Credit Equity Investor has been admitted to Developer's limited liability company or limited partnership, the Agency shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that the Agency sends to Developer, at the address for the Tax Credit Equity Investor as provided by written notice to the Agency by Developer.

Section 602 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(s) 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, or in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

Section 603 Applicable Law

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

Section 604 Acceptance of Service of Process

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

Section 605 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 606 Damages

Subject to the notice and cure provisions of Section 601, 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 601, 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. In the event of an uncured default by Developer, such damages recoverable by the Agency include, but are not limited to, any and all costs and expenses incurred by the Agency for the Agency's acquisition of the Property, or attempt to acquire the Property, including, without limitation, costs relating to clearance, relocation, closing and title, condemnation, and feasibility.

Section 607 Specific Performance

Subject to the notice and cure provisions of Section 601, 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 601, 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 608 Termination by Developer

Prior to the Closing, subject to the notice and cure provisions of Section 601, Developer shall have the right to terminate this Agreement, by providing written notice to the Agency, in the event of a default by the Agency pursuant to this Agreement, provided that Developer has timely applied to the California Tax Credit Allocation Committee [CTCAC] for Low Income Housing Tax Credits.

Section 609 Termination by the Agency

a. The Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Developer, in the event the Agency is not permitted to use proceeds from the Line of Credit for the development of the Property, including acquisition of the Property, or in the event the Agency does not have the requisite authority to exercise the power of eminent domain for acquisition of the Property, whereupon the Agency shall not have any further liability to Developer and Developer shall have no further rights against the Agency under this Agreement.

b. The Agency shall have the right to terminate this Agreement, by providing written notice to the Developer, if, after hearing as required by law, the Agency fails to adopt a resolution of necessity provided for in Chapter 4, Article 2 of the California Eminent Domain Law with respect to the Property or any parcel within the Property contemplated to be acquired by the Agency hereunder. Upon such termination, the Agency shall not have any further liability to Developer and Developer shall have no further rights against the Agency under this Agreement.

c. The Agency shall have the right to terminate this Agreement, by providing written notice to the Developer, if, prior to the Agency's attempt to acquire the Property, Developer fails to timely submit to the Agency the evidence of financing commitments as provided in Section 201(b) above, including without limitation providing evidence of financing commitments to fund any funding deficit or increase to any line item of the Development Costs if the Agency's anticipated acquisition related costs are in excess of the fair market value of the Property at its highest and best use (as determined in accordance with California Health and Safety Code Section 33433). Upon such termination, the Agency shall not have any further liability to Developer and Developer shall have no further rights against the Agency under this Agreement.

d. Subject to the notice and cure provisions of Section 601, the Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Developer, in the event of a default by Developer or failure of any condition precedent to the occurrence of the Closing, including but not limited to the following:

- (1) Developer fails to pay the Purchase Price as defined in this Agreement and provided for in the Method of Financing; or
- (2) Developer fails to apply timely to CTCAC for Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance; or

- (3) Developer, 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
- (4) Developer, after having timely applied for two rounds of Low Income Housing Tax Credits within the time established therefor in the Schedule of Performance, is not approved by CTCAC for Low Income Housing Tax Credits; or
- (5) Developer 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 this Agreement and in the Method of Financing within the time established therefor in the Schedule of Performance; or
- (6) Developer (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
- (7) There is substantial change in the ownership of Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 107 hereof; or
- (8) Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement and in the Schedule of Performance therefore; or
- (9) Developer fails to take title or possession of the Property under a tender of conveyance by the Agency pursuant to this Agreement; or
- (10) There is any other material default by Developer under the terms of this Agreement which is not cured within the time provided herein.

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

- (1) Developer fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 601 of this Agreement, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to Section 702 hereof; or
- (2) Developer abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 601 of this Agreement, provided Developer has not obtained an

extension or postponement to which Developer may be entitled to pursuant to Section 702 hereof; or

- (3) Developer assigns or attempts to assign this Agreement, or any rights herein, or transfers or suffers 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 601 of this Agreement; or
- (4) There is substantial change in the ownership of Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 107 hereof; or
- (5) Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement and in the Schedule of Performance therefore; or
- (6) Developer otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 601 of this Agreement.

f. In the event the Agency terminates this Agreement pursuant to paragraph e. of this Section 609, the Agency shall retain its rights under Section 610, notwithstanding the termination of this Agreement.

Section 610 Right of Reentry

a. The Agency shall have the right, at its option, to reenter and take possession of the Property, or any portion thereof, with all improvements thereon, and to terminate and revest in the Agency the estate theretofore conveyed to Developer, if after conveyance of title or possession and prior to the recordation of the Certificate of Completion, Developer (or its successors in interest) shall:

(1) Fail to commence construction of the Improvements as required by this Agreement for a period of three (3) months after written notice to proceed from the Agency (referring to this Section 610), provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to Section 702 hereof; or

(2) Abandon or substantially suspend construction of the Improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency (referring to this Section 610), provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled to pursuant to Section 702 hereof; or

(3) Assign or attempt 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 violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof (referring to this Section 610) by the Agency to Developer.

b. Such right to reenter, repossess, terminate, and revest shall be subject to and be limited by, and shall not defeat, render invalid, or limit:

(1) Any mortgage, deed of trust, or other security interest permitted by this Agreement with respect to the Property;

(2) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests permitted by this Agreement with respect to the Property.

c. The Grant Deed shall contain appropriate references and provisions to give effect to the Agency's right, as set forth in this Section 610 under specified circumstances prior to the recordation of the Certificate of Completion, to reenter and take possession of the Property, with all improvements thereon, and to terminate and revest in the Agency the estate conveyed to Developer.

d. Upon the revesting in the Agency of title to the Property, or any portion thereof, as provided in this Section 610, the Agency shall, pursuant to its responsibilities under State law, use its diligent and good faith efforts to resell such Property, or any portion thereof, as soon and in such manner as the Agency shall reasonably find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the Improvements, or such other improvements in their stead, as shall be reasonably satisfactory to the Agency and in accordance with the uses specified for the Property in the Redevelopment Plan. Upon such resale of the Property, the proceeds thereof shall be applied:

(1) First, to reimburse the Agency on its own behalf or on behalf of the City of all costs and expenses incurred by the Agency or the City, including but not limited to salaries to personnel engaged in such action (to the extent of their time spent on such action), in connection with the recapture, management, and resale of the Property; all taxes, assessments, and water and sewer charges with respect to the Property; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property; and any amounts otherwise owing to the Agency by Developer and its successor or transferee; and

(2) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of the Purchase Price paid to the Agency by Developer for the Property.

Any balance remaining after such reimbursements shall be the property of the Agency.

To the extent that the right established in this Section 610 involves a forfeiture, it must be strictly interpreted against the Agency, the party for whose benefit it is created. The rights established in this Section 610 are to be interpreted in light of the fact that the Agency will convey the Property to Developer for development and not for speculation in undeveloped land.

PART 7. GENERAL PROVISIONS

Section 701 Notices

Formal notices, demands and communications between the Agency and Developer 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 the Agency and Developer 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 702 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 the Agency shall not excuse performance of the 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 that 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 Developer.

Section 703 Conflict of Interest

a. No member, official, or employee of the 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. Developer warrants that it has not paid or given to, and will not pay or give to, any third person any money or other consideration for obtaining this Agreement.

c. No officer, employee, agent, official, consultant or contractor of Developer may purchase, rent or otherwise occupy a housing unit on the Property (other than a resident manager in the course of his or her employment).

Section 704 Non-liability of Agency Officials and Employees

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

Section 705 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 Developer pertaining to the Property and pertinent to the purposes of this Agreement. Developer shall also have the right at all reasonable times to inspect the books and records of the Agency pertaining to the Property and pertinent to the purposes of this Agreement.

Section 706 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of the Agency or Developer 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. Any amendments, modifications, or implementations of this Agreement, or to any provisions hereof, shall be approved by the governing body of the Agency [Board] and Developer. Except as otherwise expressly provided in this Agreement, approvals required of the Agency that do not result in an amendment, modification, implementation of this Agreement, or to any provisions hereof, may be granted by the written approval of the Agency Executive Director or designee. In this regard, however, the Agency Executive Director or designee, in his/her sole discretion, may refer any approvals required of the Agency that may be approved by the Agency Executive Director or designee to the Agency Board for consideration and action.

Section 707 Real Estate Commissions

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

Section 708 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 709 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 710 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 the Agency to be responsible in any way for the debts or obligations of Developer or any other Person.

Section 711 Compliance with Law

Developer 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 Developer or any lessee or permittee in any action or proceeding against them, or any of them, whether the Agency be a party thereto or not, that Developer, lessee or permittee has violated any such ordinance or statute in the development and use of the Property and the Improvements, as well as operations conducted thereon, shall be conclusive of that fact as between Agency and Developer.

Section 712 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 713 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the Agency and Developer, 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 714 Authority to Sign

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

Section 715 Incorporation by Reference

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

Section 716 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.

Section 717 Recordation of Agreement

Upon the Closing, this Agreement, together with all Attachments, shall be recorded against the Property in the Official Records of San Diego County, California, and Developer shall pay all fees, charges, costs, and expenses of such recording.

PART 8. 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 fifty four (54) pages and twenty (20) 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 the Agency or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and Developer.

PART 9. ENVIRONMENTAL ASSESSMENT – PHASE II ANALYSIS

a. Prior to the Agency acquiring the Property or being obligated to attempt in any way to acquire the Property, Developer shall cause to have been prepared a completed environmental assessment Phase II analysis of the Property to the satisfaction of the Agency Executive Director or designee.

b. In the event the environmental assessment Phase II analysis reveals any condition on the Property that either materially affects the condition of the Property or the value of the Property, the Agency shall not be obligated nor required to acquire the Property or to attempt in any way to acquire the Property and shall have the right to terminate this Agreement, by providing written notice to Developer, whereupon the Agency shall not have any further liability to Developer and Developer shall have no further rights against the Agency under this Agreement.

c. In the event the Agency does acquire the Property, Developer shall be responsible for paying all premiums on insurance or additional insurance determined necessary by the Agency during Agency ownership of the Property in relation to the physical and/or environmental condition of the Property and/or in relation to the clean-up and remediation of the property.

PART 9. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

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

IN WITNESS WHEREOF, the Agency and Developer have signed this 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,
Redevelopment Agency General Counsel

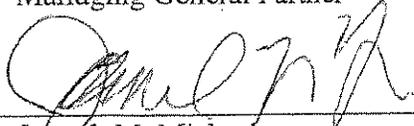
By: _____
Kendall D. Berkey
Deputy General Counsel

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

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