DISPOSITION AND DEVELOPMENT AGREEMENT

[Commercial Development of Vacant Agency-Owned Parcel at APN 545-062-0300]

by and between

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

AGENCY,

THE CITY OF SAN DIEGO

CITY,

and

MARK PETRARCA AND SHARON PETRARCA

DEVELOPER

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ATTACHMENTS

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and among the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (the "Agency"), THE CITY OF SAN DIEGO, a municipal corporation (the "City") and MARK PETRARCA and SHARON PETRARCA, husband and wife, as community property with right of survivorship (collectively, the "Developer") as of _____, 2011. The Agency, the City and the Developer agree as follows:

PART 1. SUBJECT OF AGREEMENT

The Agency (as defined in Section 703 below) is the owner of certain vacant property located within the City of San Diego, California identified as APN 542-062-0300 ("Property"). The purpose of this Agreement is to effectuate the Redevelopment Plan for the Gateway Center West Redevelopment Project Area by providing for the redevelopment of the Property as a light industrial/flex office facility comprised of a permanent pre-manufactured build-to-suit steel structure of approximately 7,000 square feet for light industrial uses, along with adjoining pavement, on-site pathways, asphalt parking spaces and certain off-site public improvements located in the right-of-way adjacent to the Property (collectively, "the Project"). 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, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

SECTION 101 Definitions

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

"Affiliate" means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, means 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. It

shall also be a presumption that the managing general partner of a limited partnership controls the limited partnership.

"Assignment and Assumption Agreement" means that agreement substantially in the form of Attachment No. 13.

"Equal Opportunity Contracting Requirements" means those requirements set forth in the Attachment No. 10.

"Closing" means the point in time when all conditions precedent to close of escrow for conveyance of the Property from Agency to Developer have been satisfied, as set forth in the Method of Financing (Attachment No. 3).

"Closing Date" means the date on which the Closing has occurred.

"Completion" means the point in time when all of the following shall have occurred: (1) issuance of a certificate of occupancy by the City; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (with the exception of minor "punchlist" items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered; and (5) the Property has been developed in accordance with this Agreement, the Scope of Development (Attachment No. 4) and plans approved by the Agency pursuant to this Agreement.

"Construction Lender" means the maker of any Construction Loan or beneficiary of any Construction Loan Deed of Trust, if any.

"Construction Loan" means, collectively, the Source of Financing in the form of a loan made to the Developer at the time of the Closing for construction of the Improvements, secured against the Property by the Construction Loan Deed of Trust, if any.

"Construction Loan Deed of Trust" means the deed of trust securing the Construction Loan, if any.

"Development Costs" means the total cost of constructing and developing the Improvements on the Property by the Developer as set forth in the Project Budget.

"Environmental Indemnity" means an instrument substantially in the form attached to this Agreement as Attachment No. 8.

"Escrow Agent" means an escrow agent mutually acceptable to Agency and Developer.

"Executive Director" refers, as applicable, to the Executive Director of the Redevelopment Agency of the City of San Diego, or designee (as to the Agency) or the Mayor of the City of San Diego, or designee (as to the City).

"Final Construction Drawings" means those construction drawings in sufficient detail to obtain a building permit.

"Grant Deed" means that instrument conveying fee simple title to Developer, substantially in form attached to this Agreement as Attachment No. 6.

"Hazardous Substances" shall have the meaning set forth in Section 211.1 and the Environmental Indemnity (Attachment No. 8).

"Improvements" means the improvements to be constructed and developed on the Property by the Developer as more particularly described and set forth in the Scope of Development (Attachment No. 4).

"Legal Description" means the legal description of the Property attached to this Agreement as Attachment No. 2.

"Method of Financing" means Attachment No. 3 to this Agreement.

"Notice of Completion" shall have the same definition as set forth in California Civil Code section 3093.

"Official Records" means the Official Records of the Office of the County Recorder for San Diego County, California.

"Permanent Lender" means the maker of any Permanent Loan or beneficiary of any Permanent Loan deed of trust, if any.

"Permanent Loan" means the Source of Financing in the form of a permanent loan to be made to the Developer upon Completion, secured against the Property by the Permanent Loan Deed of Trust, if any.

"Permanent Loan Deed of Trust" means the deed of trust securing the Permanent Loan.

"Permitted Mortgage" means a mortgage approved by the Agency as a Source of Financing for the Project.

"Permitted Transfer" means any of the following:

(1) A conveyance of a security interest in the Property in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith.

(2) A conveyance of the Property to any Affiliate of Developer;

(3) The lease for occupancy of all or any part of the Improvements within the Property; and

(4) The granting of easements or permits to facilitate the development of the Project on the Property in accordance with this Agreement.

Any transfer described above shall be subject to the reasonable approval of documentation by the Executive Director for conformance with this Agreement.

"Permitted Transferee" means the transferee of a Permitted Transfer.

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

"Project" refers to the construction of the Improvements and the Public Improvements.

"Project Budget" means the schedule of financial sources and uses for the construction of the Project as attached to this Agreement as Attachment No. 7.

"Project Costs" refers to the estimated costs of constructing the Improvements and the Public Improvements as set forth in the Project Budget.

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

"Public Improvements" means those public improvements more particularly described in the Scope of Development (Attachment No. 4).

"Release" shall have the same meaning as defined in Section 202 and the Settlement and Release Agreement (Attachment No. 14).

"Release of Construction Covenants" means the certificate, substantially in form attached hereto as Attachment No. 12, to be to be issued by the Agency upon Completion in accordance with Section 324 of this Agreement.

"Right of Entry Agreement" means that agreement substantially in form attached hereto as Attachment No. 11.

"Schedule of Performance" means the document attached to this Agreement as Attachment No. 5.

"Scope of Development" means the document attached to this Agreement as Attachment No. 4.

"Senior Lender" means the maker of any Senior Loan or beneficiary of any Senior Loan deed of trust, if any.

"Senior Loan" means the Source of Financing in the form of a Construction Loan, the Permanent Loan or any other loan, credit enhancement or construction period guaranty facility secured by a deed of trust or other instrument against the Property, if any.

"Settlement and Release Agreement" means the document attached to this Agreement as Attachment No. 14.

"Site Plan" means the document which is attached to this Agreement as Attachment No. 1.

"Source of Financing" means the source(s) of financing the Project which has been approved by the Agency as more specifically described in the Method of Financing (Attachment No. 3).

"Title Company" means a title insurance company mutually acceptable to Agency and Developer.

"Title Insurance Policy" means a Property policy of title insurance in favor of Developer with respect to the Property.

"Universal Design" means 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.

"Universal Design Checklist" means that checklist attached to this Agreement as Attachment No. 9.

SECTION 102 The Redevelopment Plan

This Agreement is subject to the Redevelopment Plan for the Gateway Center West Project Area which was approved and adopted as the Dells Redevelopment Project Area on November 17, 1976 and later amended as the Gateway Center West Project Area in 1985 by Ordinance No. 11950 (the "Redevelopment Plan"). The Redevelopment Plan, including all

amendments, is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 103 The Property

The "Property" is identified and referenced by the San Diego County Assessor's office as APN: 545-062-0300, San Diego, California 92102 and also identified as Assessor's Parcel Number 545-062-03. The Property is depicted on the Site Plan attached hereto as Attachment No. 1, and legally described in the Legal Description attached hereto as Attachment No. 2.

SECTION 104 Agency and City

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

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement shall be:

Redevelopment Agency of the City of San Diego
c/o Southeastern Economic Development Corporation, Inc.
404 Euclid Avenue, 221
San Diego, CA 92114
Attn: Chief Executive Officer/President
Tel: 619-527-7345
Fax: 619-262-9845

c. Subject to Section 703 below, "Agency" as used in this Agreement includes the Redevelopment Agency of the City of San Diego, California and any assignee or successor to its rights, powers and responsibilities.

d. City is a California municipal corporation.

e. The address of the City for purposes of receiving notices pursuant to this Agreement shall be:

The City of San Diego
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
Tel: (619) 236-6020

With a copy by First Class Mail to:
SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

f. "City" as used in this Agreement includes the City of San Diego, California and any assignee or successor to its rights, powers and responsibilities.

SECTION 105 Developer

a. Developer consists of Mark and Sharon Petrarca, a husband and wife development team. The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

Mark Petrarca and Sharon Petrarca
4420 Rainier Avenue, Suite 100
San Diego, CA 92120
Attn: Mark Petrarca
Tel: (619) 280-5134

b. Whenever the term "Developer" is used herein, such term means and include the Developer as of the date hereof, and any assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

SECTION 106 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping 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 City and the Agency, in light of the following: (1) the importance of the development 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 permitted 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 and any successor in interest 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 any interest herein or significant change in ownership of Developer, other than certain Permitted Transfers, shall require the approval of the Agency, which shall not be unreasonably withheld. To the extent Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, Agency shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of this Agreement. In addition, Agency shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of 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 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 (other than such changes occasioned by the death or incapacity of any individual) prior to Completion.

f. Permitted Transfers and any other assignments or transfers approved by the Agency in conformance with this Agreement shall be evidenced by execution of an Assignment and Assumption Agreement (Attachment No. 13) by the Developer assignee and the Agency.

g. The restrictions of this Section 107 shall terminate upon Completion.

PART 2. DISPOSITION OF PROPERTY

SECTION 201 Sale of the Property

At such time as all conditions precedent to the conveyance of the Property have been satisfied, as set forth in the Method of Financing (Attachment No. 3) and Section 202, Agency shall convey to the Developer fee simple title to the Property in consideration for Developer's payment to Agency of the purchase price in the amount of ONE HUNDRED SIXTY-FOUR THOUSAND TWO HUNDRED SIX DOLLARS ($164,206) (the "Basic Purchase Price"). The

Developer shall deposit the Basic Purchase Price into Escrow no later than ten (10) days prior to the scheduled Closing Date and in accordance with the requirements of this Agreement.

In addition to the Basic Purchase Price and to the extent required, the Developer shall pay to the Agency an "Additional Purchase Price" for the Property in the event that any cost savings is realized by the Developer as a result of a reduction in the Development Costs identified in the Project Budget (Attachment No. 7). In order to determine if an Additional Purchase Price is required, the Agency shall be permitted to audit the Development Cost of the Project upon advance written notice to the Developer within sixty (60) days following Completion. Such audit may, at the discretion of the Agency, be performed by a certified public accountant of the Agency's choosing. Upon a determination that a costs savings has been realized by the Developer as to the actual Development Costs (i.e., the actual Development Costs are less than the Development Costs estimated and set forth in the Project Budget, Attachment No. 7), the Developer shall be required to pay to the Agency as the Additional Purchase Price the entire amount of the cost saving within thirty (30) days following written notification by the Agency to the Developer requesting such Additional Purchase Price payment. There shall be no interest payable with respect to the payment of the Additional Purchase Price.

SECTION 202 Conditions Precedent to Conveyance of the Property

Subject to the notice and cure provisions of Sections 501 through 510, inclusive, of this Agreement and to the enforced delay provisions of Section 602 of this Agreement, the Agency at its option may terminate this Agreement pursuant to Section 510 if any of the conditions precedent set forth in the Method of Financing (Attachment No. 3) are not satisfied by the Developer or waived in writing by the Agency within the time limits set forth in the Schedule of Performance (Attachment No. 5).

SECTION 203 Escrow

Agency agrees to open an escrow in the County of San Diego for the conveyance of the Property with Title Company or such other escrow company, escrow department of a bank, or escrow department of a title insurance company first approved by Agency and Developer (the "Escrow Agent"), no later than the applicable dates established in the Schedule of Performance (Attachment No. 5).

Sections 201 through 207 (inclusive) of this Agreement shall constitute the joint escrow instructions of Agency and Developer with respect to the conveyance of the Property, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

Agency and Developer shall provide such additional escrow instructions as shall be necessary to close the escrow with respect to the conveyance of the Property, and consistent with this Agreement. The Escrow Agent hereby is empowered to act under such instructions, and

upon indicating its acceptance thereof in writing, delivered to Agency and to Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

Upon receipt by the Escrow Agent of all executed and acknowledged documents, as required by the Method of Financing (Attachment No. 3), the Escrow Agent shall record the Grant Deed (Attachment No. 6) in accordance with Section 204 of this Agreement when 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 or any portion thereof are not to be transferred.

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 one (1) day prior to the Closing Date for conveyance of the Property from the Agency to the Developer:

1. Escrow fee;

2. Recording fees;

3. Notary fees; and

4. Premiums for the title insurance policy or policies ordered by Developer as set forth in Section 207 of this Agreement.

Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Agency of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the Closing Date for conveyance of the Property from the Agency to the Developer:

1. Costs necessary to place the title in the condition required by the provisions of this Agreement;

2. Ad valorem taxes and any other taxes, assessments or impositions of any kind, if any, attributable to Agency's ownership of the Property prior to conveyance of the Property; and

3. State, county, city or other documentary stamps and transfer taxes, if any.

Agency shall timely and properly execute, acknowledge and deliver the Grant Deed to Developer evidencing Agency's conveyance of the Property to Developer in accordance with the requirements of this Agreement, together with an estoppel certificate certifying that Developer has completed all acts necessary to entitle Developer to acquire the Property, if such be the fact.

The Escrow Agent is authorized to:

1. Pay, and charge Agency and Developer, respectively, for any fees, charges and costs payable under this Section 203. Before such payments are made, the Escrow Agent shall notify Agency and Developer of the fees, charges and costs necessary to clear title and convey the Property;

2. Disburse funds and deliver documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by Agency and Developer; and

3. Record the Grant Deed (Attachment No. 6) in accordance with the terms and provisions of this Agreement.

All funds received in the escrow shall be deposited by the Escrow Agent in an interest bearing account for the benefit of the depositing party as directed by the depositing party.

If any escrow is not in condition to close on or before the Closing Date, either party who then shall have fully performed the acts to be performed before the Closing Date may, in writing, demand the return of its money, papers or documents. No demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party 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) day period. If any objections are raised within the ten- (10) day period, the Escrow Agent is authorized to hold the money, paper and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. Notwithstanding the foregoing, the termination rights of Agency and Developer and other rights and remedies on default are governed by Sections 501 through 512, inclusive, of this Agreement, and no demand for such return shall affect such rights or remedies. If no such demands are made, the escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both Agency and Developer affected thereby, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendments to these escrow instructions shall be in writing and signed by both 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.

All communications from the Escrow Agent to Agency or Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between Agency and Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 201 through 207, inclusive of this Agreement.

SECTION 204 Recordation of Documents

Agency and Developer, respectively, agree to perform all acts necessary to achieve recordation and delivery of documents in sufficient time for escrow to be closed in accordance with the foregoing provisions.

SECTION 205 Possession of Property Upon Close of Escrow

Possession of the Property shall be delivered to Developer concurrently with Close of Escrow, except that access and entry may be granted to Developer before the Close of Escrow as permitted pursuant to Section 211.3 of this Agreement.

SECTION 206 Condition of Title

The Agency shall convey to the Developer the Property free and clear of (i) all liens, encumbrances, covenants, restrictions, easements, leases, taxes and other defects except as to those matters identified in that certain Preliminary Title Report dated October 28, 2010 issued by the Title Company, and (ii) any exceptions created by the Agency and/or the City after the date of this Agreement.

SECTION 207 Title Insurance

Concurrently with the recordation of the Grant Deed (Attachment No. 6), Title Company shall provide and deliver to Developer a Title Insurance Policy, issued by the Title Company insuring that the Property interest to be conveyed is vested in Developer in the condition required by Section 206 of this Agreement ("Property Title Policy"). The Title Company shall provide Agency with a copy of the Property Title Policy. The Property Title Policy shall be in the amount specified by Developer.

If Developer elects to secure an A.L.T.A. owner's policy or to secure an A.L.T.A. lender's policy for the benefit of any lender for which a mortgage or Property mortgage will or is intended to be granted covering the Property as permitted by the terms of this Agreement, Agency shall cooperate with Developer to obtain such policies by providing surveys and engineering studies in its possession which relate to or affect a condition of title or a geological condition. In providing such surveys and engineering studies, Agency does not warrant the accuracy or sufficiency of such material. The responsibility of Agency assumed by this paragraph is limited to cooperating in good faith with Developer. Agency shall have no obligation to incur any cost or to take any action necessary to obtain an A.L.T.A. policy. Notwithstanding the foregoing, if Title Company is unable or unwilling to deliver said A.L.T.A. owner's or lender's policy consistent with the provisions of this Agreement, then in addition to

any other rights or remedies of Developer, Developer may terminate this Agreement pursuant to Section 509.

Developer shall pay for all premiums for all title insurance policies and coverage and special endorsements required by it for the conveyance of the Property.

SECTION 208 Reserved

SECTION 209 Reserved

SECTION 210 Occupants of the Property

The Property shall be conveyed free of any possession or right of possession except that of Developer, unless otherwise waived in writing by Developer.

SECTION 211 Condition of the Property

SECTION 211.1 Hazardous Substances

a. "Hazardous Substance," as used in this Agreement means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as "Hazardous Materials" or "Hazardous Substances" shall include, but not be limited to, substances defined as "extremely hazardous substances", "hazardous substances", "hazardous materials", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq., the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended, 49 U.S.C. sections 5101, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901, et seq.; and those substances defined as "hazardous waste" in section 25117 of the California Health and Safety Code, as "infectious waste" in section 27054.4 of the California Health and Safety Code, or as "hazardous substances" in section 25316 of the California Health and Safety Code, or "hazardous material" as defined in section 353 of the California Vehicle Code, or "hazardous substance" as defined in Section 33459(c) of the California Health and Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws; or (ii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety. "Hazardous Substances" do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all laws.

b. Developer hereby represents and warrants that the development, construction and uses of the Property permitted under this Agreement (i) will comply with all applicable environmental laws; and (ii) do not require the presence of any Hazardous Substance on the Property

c. Within five (5) days of request by Developer, Agency shall deliver to Developer, if not previously delivered, all documents relevant to the condition of the Property within the Agency's possession or control, including, without limitation, a preliminary title report with underlying exceptions, environmental reports, studies, surveys, and all other relevant documents within the Agency's possession or control (collectively referenced as "Documents"). Agency does not warrant the accuracy of these Documents or that these Documents constitute all documents that may exist regarding the conditions of the Property, and Developer has been advised to conduct its own independent inquiry to determine if more information is available and/or necessary.

SECTION 211.2 Suitability of the Property

a. Prior to Closing, Developer shall have the right to engage, at its sole cost and expense, its own environmental consultant ("Developer's Environmental Consultant"), to make such investigations as Developer deems necessary, including without limitation any "Phase 1" and/or "Phase 2" investigations of the Property or any portion thereof, and the Agency shall promptly be provided a copy of all reports and test results provided by Developer's Environmental Consultant (the "Environmental Reports").

b. The Property shall be delivered from Agency to Developer in an "as is" and "where is" physical condition and location, respectively, with no warranty, express or implied by Agency as to the presence of Hazardous Substances, or the condition of the soil, its geology or the presence of known or unknown faults. If the condition of the Property is not in all respects entirely suitable for the use or uses to which such Property will be put, then it shall be the sole responsibility and obligation of Developer to place the Property in all respects in a condition entirely suitable for the development of the Property, solely at Developer's expense.

c. Effective upon Closing, Developer agrees to indemnify, defend and hold harmless Agency, City, and the Southeastern Economic Development Corporation, Inc. ("SEDC") and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity (Attachment No. 8).

d. On and after Closing, Developer hereby waives, releases and discharges the Agency, SEDC, City, and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the Agency's or Developer's use, maintenance, ownership or operation of the Property, any

Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Agency or its employees, officers or agents. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

To the extent of the release set forth in this Section 211.2, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

SECTION 211.3 Property Access Prior to Close of Escrow

Beginning on the Effective Date of this Agreement and ending at the Closing, Developer and representatives of Developer shall have the right of access to and entry upon the Property at all reasonable times, upon five (5) days written notice to the Agency, in accordance with the terms and conditions of the Right of Entry Agreement (Attachment No. 11), for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement.

SECTION 212 Reserved

SECTION 213 Method of Financing

The Basic Purchase Price for the acquisition of the Property and the Development Costs for the development of the Improvements on the Property shall be financed in accordance with the Sources of Financing as provided in the Method of Financing (Attachment No. 3). Developer shall procure the above referenced Sources of Financing in accordance with the Schedule of Performance (Attachment No. 5).

SECTION 214 Agency Assistance

a. Public Improvements

The Agency shall be responsible for the construction and installation of the Public Improvements as specifically set forth in the Scope of Development (Attachment No. 5) and within the time prescribed in the Schedule of Performance (Attachment No. 4). Based upon a review of the Public Improvements reasonably anticipated by the Agency as being required for the development of the Property, it is estimated that such costs for the construction and installation of the Public Improvements is ONE HUNDRED FIFTY SEVEN THOUSAND FIVE HUNDRED SIXTY DOLLARS ($157,560); pursuant to which, the Agency financing will be derived from the Agency's receipt of the Basic Purchase Price from the Developer. The Agency's

obligation to finance and construct the Public Improvement shall exist only to the extent that: (i) each of the items described as the Public Improvements in the Scope of Development (Attachment No. 4) is required as a condition of regulatory approval of the development of the Improvements on the Property; (ii) the Developer has satisfied all conditions precedent to Closing and has accepted conveyance of the Property from the Agency; (iii) Developer is not in default of any of its obligations set forth in this Agreement; and (iv) the construction of the Improvements are completed by the Developer in accordance with the Scope of Development (Attachment No. 4) and Schedule of Performance (Attachment No. 5).

b. Contingency Payment Account

However, notwithstanding the foregoing, and to the extent required, Agency agrees to provide certain financial assistance to Developer (the "Contingency Payment Amount") in the event that the actual costs of certain items specifically identified as part of the Development Costs exceed the cost estimate attributable for such items listed in the Project Budget and no cost savings has been realized by the Developer from a reduction in the costs of other identified items so as to offset any such increase(s); thus, resulting in no net increase in the overall Development Costs. The Contingency Payment Amount, to the extent required, shall not exceed an amount that is equal to ten percent (10%) of the Project Budget (Attachment No. 7), or THIRTY THOUSAND SEVENTY-NINE DOLLARS ($30,079). Moreover, under no circumstances shall the Agency be required to provide any such financial assistance pursuant to the previously described Contingency Payment Amount with respect to the Electrical Panel cost identified in the Project Budget (Attachment No. 7) where the total cost of the Electrical Panel does not exceed NINETEEN THOUSAND FIVE HUNDRED DOLLARS ($19,500). Any payment of proceeds from the Contingency Payment Amount shall be based upon the reasonable determination of the Executive Director and shall be disbursed in accordance with the procedures established in the Method of Financing (Attachment No. 3).

SECTION 215 Evidence of Financing

a. Not later than fifteen (15) days prior to the scheduled Closing Date and in no event later than the times provided in the Schedule of Performance (Attachment No. 5), Developer shall submit to the Agency evidence satisfactory to the Executive Director that Developer has demonstrated that it has obtained and/or or will provide the financing necessary for the acquisition and development of the Property in accordance with this Agreement. Such evidence of financing may include, but not be limited to, the following:

1. A copy of all loan documents relating to any Construction Loan, including a final Project Budget approved by the Construction Lender, if any, certified by Developer to be a true and correct copy or copies thereof;

2. A copy of loan commitments, if any, evidencing that Permanent Loan(s) will be available at Project completion, certified by Developer to be a true and correct copy or copies thereof;

3. A copy of all financing commitments or documents evidencing that Developer has obtained or will provide the financing necessary for the acquisition and development of the Property in accordance with this Agreement, including without limitation copies of all commitments from all Sources of Financing; and

4. A copy of the contract between Developer and a general contractor or major subcontractors for the construction of the Improvements, certified by Developer to be a true and correct copy thereof.

b. The Executive Director, or his designee, shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance (Attachment No. 5). 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 3. DEVELOPMENT OF THE PROPERTY

SECTION 301 Land Use Approvals

It shall be the responsibility of Developer to ensure that zoning of the Property and all applicable City land use requirements will permit the development of the Property and construction of the Improvements as well as the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. The following shall be constitute the conditions of the Closing and shall be accomplished by the date set forth in the Schedule of Performance (Attachment No. 5): (A) Developer shall submit and Executive Director shall approve complete Final Construction Drawings; (B) Developer shall obtain all entitlements, approvals, variances and permits necessary for the construction of the Improvements and (C) Developer shall satisfy all other conditions precedent to the Closing as set forth in the Method of Financing (Attachment No. 3). 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 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 Agreement is not a Development Agreement as provided in California Government Code Section 65864.

SECTION 302 Scope of Development

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

SECTION 303 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. Developer shall consult with and seek the recommendations of property management and community service providers with experience relating to similar developments before submission of the basic concept and schematic drawings to the Agency.

b. The Property shall be developed as established in the basic concept and schematic drawings and related documents except as changes may be mutually agreed upon between Developer and the Executive Director. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 4).

c. Developer shall make commercially reasonable efforts to incorporate Universal Design components into the project as outlined in the Agency's Universal Design Checklist (Attachment No. 9).

SECTION 304 Landscaping and Grading Plans

a. Developer shall prepare and submit to the Agency for its approval preliminary and final landscaping and preliminary and finish grading plans for the Property. These plans shall be submitted within the time provided in the Schedule of Performance (Attachment No. 5) of this Agreement.

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 for approval the name and qualifications of its architect, landscape architect and civil engineer.

SECTION 305 Construction Drawings and Related Documents

a. Developer shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the Agency for review (including but not limited to architectural review), and written approval in the times established in the Schedule of

Performance (Attachment No. 5). Such construction drawings and related documents shall be submitted as 50% and Final Construction Drawings.

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

c. During the preparation of all Plans, the Executive Director and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents. The Executive Director, and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Agency 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 Executive Director shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

e. Notwithstanding the requirements of this Section 305, Developer, in its sole discretion, may elect to submit all such drawings and plans provided for herein for the construction and development of the Project in a single submission.

SECTION 306 Agency Approval of Plans

a. Subject to the terms of this Agreement, the Agency shall have the right to review (including without limitation architectural review) and approve or disapprove all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by Agency. Upon receipt of any disapproval, Developer shall revise the Plans, and shall resubmit to the Executive Director as soon as possible after receipt of the notice of disapproval. The Agency shall approve or disapprove the Plans referred to in Sections 303, 304 and 305 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 Executive Director request to be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 4) 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 shall resubmit to the Executive Director 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 Executive Director for approval. For purposes of this Section, "Substantial" shall mean any material change in building materials or equipment, specifications, or the structural or

architectural design or appearance of the Project. Nothing herein shall be interpreted as altering, modifying, waiving, amending, or reducing any requirements of any governmental permit required by any local, state or federal permitting authority for the development contemplated herein.

SECTION 307 Cost of Construction

Except as otherwise expressly provided herein, the cost of constructing the Improvements on the Property, including any onsite improvements required by the City in connection therewith, shall be the sole responsibility of Developer.

SECTION 308 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 (Attachment No. 5), 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.

b. After the Closing, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided herein and in the Scope of Development (Attachment No. 4).

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 a month and less frequently than every three (3) months following the initial report which shall be submitted not later than three (3) months following the Closing. Each 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 by Developer. If Agency utilizes the services of a construction monitor, Developer shall reasonably cooperate with the Agency's monitor to coordinate inspections.

SECTION 309 Indemnification and Insurance

a. Developer's Indemnity. To the maximum extent permitted by law, and in addition to any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the Agency, the City of San Diego, the Southeastern Economic Development Corporation, Inc., and their respective officers, employees, contractors and agents, including, without limitation, the Environmental Indemnity (Attachment No. 8) and the Right of Entry Agreement (Attachment No. 11). Developer agrees to and shall defend, indemnify and hold harmless Agency, the City, SEDC and their respective officers, 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, City, SEDC or their respective officers, employees, contractors or agents:

1. The existence, release, presence or disposal on, in, or under the Property of any Hazardous Substances resulting from the acts or omissions of Developer, its contractors, subcontractors, agents or other persons acting on Developer's behalf (individually, "Indemnifying Party," and collectively, "Indemnifying Parties");

2. The development, construction, marketing, use, operation or condition of the Property and the Improvements by any Indemnifying Party;

3. Any accident, personal injury or casualty on the Property or the Improvements resulting from the acts or omissions of any Indemnifying Party;

4. Any plans or designs for Improvements (collectively, "Plans") prepared by or on behalf of any Indemnifying Party, including without limitation any errors or omissions with respect to such plans or designs;

5. Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of 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 Project.

The foregoing indemnity obligations shall continue to remain in effect after the Completion. Developer understands, acknowledges and agrees that nothing in this Section shall be deemed or interpreted as a limitation, modification or waiver of any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the Agency, the City, SEDC, and their respective officers, employees, contractors and agents.

b. Insurance Policies.

1. Commencing upon the Closing and at all times prior to the issuance of the Release of Construction Covenants ("the Term"), Developer shall maintain in effect and deliver to Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(a) All-Risk Policies: 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, excluding earthquake(s). Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a "Replacement Cost Endorsement" in amount sufficient to prevent 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 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;

(b) Liability Insurance: Developer shall maintain or cause to be maintained general liability insurance or an equivalent owner contractors protective policy, 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, 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 Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Four Million Dollars ($4,000,000), Four Million Dollars ($4,000,000) Products and Completed Operations Aggregate, and Two Million Dollars ($2,000,000) each Occurrence. Developer shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the occurrence of the Closing. 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 Agency 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. To the extent that Developer maintains increased or additional insurance coverage during the Term, in excess of the minimum coverage requirements prescribed by paragraphs (b)(1)(b) and (b)(1)(c) of this Section 309, Developer shall ensure that the additional insureds specified in paragraph (b)(3) of this Section 309 derive the benefit of such increased or additional insurance coverage.

(c) Automobile Insurance: Developer shall maintain or cause to be maintained automobile insurance on any automobiles owned by Developer,

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, if required, for any employees of Developer, 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 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) days prior written notice to Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Agency 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, the Southeastern Economic Development Corporation, Inc., and their respective officers, employees, contractors, agents and attorneys."

The Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit binders or certificates evidencing such insurance to Agency prior to the Closing. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Agency. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

4. If the 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 Agency's election, and upon ten (10) days prior notice to the Developer, to procure and maintain such insurance. The premiums paid by the Agency shall be treated as a loan, fully due and payable

by the 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 310 Nondiscrimination and Equal Opportunity

a. Compliance with City's Equal Opportunity Contracting Requirements. The Developer and its contractors, subcontractors, consultants, subconsultants, vendors and suppliers shall comply with the City's Equal Opportunity Contracting Requirements (Attachment No. 10). Developer represents and warrants that it has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Information Packet provided by the Agency. The Developer represents and warrants that it has received, read, understands and agrees to be bound by San Diego Municipal Code Chapter 2, Article 2 Division 27 (Equal Employment Opportunity Outreach Program), the City Manager's Policies and Procedures implementing that Program contained in the Equal Opportunity Packet provided by the Agency.

b. Nondiscrimination. The 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. The 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. After the Effective Date, this language shall be incorporated into all contracts between the Developer and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

c. Compliance Investigations. Upon the City's request, the 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, if any, that the 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 the Developer for each subcontractor or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code Sections 22.3501 through 22.3517. The Developer fully understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being undertaken against Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The 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. City's Equal Opportunity Contracting Program. Prior to commencing construction and in accordance with the Schedule of Performance (Attachment No. 5), the

Developer shall contact the City's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

SECTION 311 Local, State and Federal Laws

The Developer shall carry out development and construction (as defined by applicable law) of the Project, including, without limitation, any applicable public works, (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). 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 California Labor Code Sections 1726 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 California Civil Code, California Labor Code Section 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, SEDC, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency, SEDC and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Project, including, without limitation, any and all public works (if any) (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 California 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 California Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (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 California Civil Code, California 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 expressly acknowledges and agrees that neither the City, SEDC nor the Agency has ever previously affirmatively represented to the Developer or its contractor(s) for the Project in writing 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 California Labor Code. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Project, including, without limitation, any public work (as defined by applicable law), if any, Developer

shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Chapter 804, Statutes of 2003 and/or California 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 California 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.

SECTION 312 Notice of Non-Responsibility

Agency shall, at any and all times during the term of this Agreement, have the right to post and maintain on the Property, and record against the Property, as required by law, any notice or notices of non responsibility provided for by the mechanics' lien laws of the State of California; provided, however, that Developer shall, on behalf of the Agency, post and maintain on the Property, and record against the Property, all notices of non responsibility provided for by the mechanics' lien laws of the State of California.

SECTION 313 Permits

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 construction, development or work.

SECTION 313.1 Construction and Demolition Debris Diversion Deposit Program

The Developer shall comply with the City of San Diego Construction and Demolition Debris Diversion Deposit Program, as set forth in San Diego Municipal Code sections 66.0601 through 66.0610.

SECTION 314 Rights of Access

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

The Developer has the right to designate representatives to accompany the Agency, SEDC or City representatives on such inspections. The Agency agrees to coordinate with

Developer to schedule such inspections so that Developer's representative may attend the inspections, in the discretion of Developer.

SECTION 315 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 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. The 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 the 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 316 Taxes, Assessments, Encumbrances and Liens

Commencing upon the Closing, the Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. Developer shall not place, or allow to be placed, against the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, the Developer shall remove, or shall have removed, any levy or attachment made on title to the Property and/or Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale of the Property.

SECTION 317 Prohibition against Transfer

a. Prior to Completion, the Developer shall not, except as permitted by this Agreement, including without limitation Sections 101 (definition of "Permitted Transfer") and 106, 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 Developer's interest in 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 Developer's interest in the Property (or any portion thereof) prior to Completion without the approval of the Agency, subject to the notice and cure provisions of Section 501, the Agency shall have the right to terminate this Agreement.

c. Prior to Completion, 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 Developer's interest in 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 318 No Encumbrances Except Senior Loans

a. Notwithstanding Section 317, upon and after the Closing, Developer shall have the right to encumber the Property with one or more Senior Loan Deeds of Trust, but only for the purpose of securing loans of funds to be used for financing and refinancing the Acquisition and Development Costs and other expenditures necessary and appropriate to develop the Property under this Agreement, consistent with the amounts to be financed by Developer per the Method of Financing ("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 agreements for non-Permitted Financing Purposes requiring a conveyance of security interests in the Property without the prior written approval of the Agency. The maker of any loan approved by the Agency pursuant to this Section 318 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

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

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

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

SECTION 319 Lender Not Obligated to Construct Improvements

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

SECTION 320 Notice of Default to Lenders; Right of Lender to Cure Defaults

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the Agency shall at the same time deliver to each Senior Lender of record, if any, a copy of such notice or demand; provided, however, that the Developer has provided, in writing, to the Agency, the contact information of each Senior Lender. Each such Senior Lender shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Senior Lender upon obtaining possession of the Property, such Senior Lender shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) 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) day period, such Senior Lender shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity not to exceed ninety (90) days; and provided further that such Senior Lender shall not be required to remedy or cure any non-curable default of the Developer. Any Senior Lender who forecloses on its Senior Loan, or is assigned or otherwise succeeds to the 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 Senior Lender expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by the Agency. Any such Senior Lender properly completing such improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

SECTION 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by the 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, it 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 full amount of the unpaid principal debt, plus any accrued and unpaid interest and other charges secured by the mortgage instrument approved by the Agency.

SECTION 322 Right of the Agency to Cure Defaults

In the event of a default or breach by the Developer of a Senior Loan prior to Completion and prior to completion of a foreclosure by a Senior Lender, and the Senior Lender has not commenced to complete the development, the Agency may cure the default at any time prior to completion by a Senior Lender of any foreclosure under its Senior Deed of Trust. In such event,

the Agency shall be entitled to reimbursement from the 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 the Senior Loans.

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

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

SECTION 324 Release of Construction Covenants

a. Promptly after Completion of the Improvements as required by this Agreement, Agency shall deliver to the Developer a Release of Construction Covenants, upon written request from the 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 covenants herein.

b. The Release of Construction Covenants shall be substantially in the form attached hereto as Attachment No. 12 so as to permit it to be recorded in the Official Records.

c. If Agency fails to deliver the Release of Construction Covenants within ten (10) days after written request from the Developer, the Agency shall provide the Developer with a written statement of its reasons (the "Statement of Reasons") within that ten (10)-day period. The statement shall also set forth the steps 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 Agency in an amount representing the Agency's estimate of the cost to complete the work.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Senior Lender, or any insurer of a mortgage securing money loaned to finance the Improvements, nor any part thereof. Such Release

of Construction Covenants is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

PART 4. USE OF THE PROPERTY

SECTION 401 Uses

a. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that the Developer, such successors and such assignees shall use the Property only for the uses specified in the Redevelopment Plan, any development agreements entered into by and between the City and the Developer, and this Agreement (including without limitation the Scope of Development (Attachment No. 4)). No change in the use of the Property shall be permitted without the prior written approval of Agency.

b. The type and quality of tenants and or users of the Property shall be in harmony with the balance of the Project as approved in the reasonable discretion of the Agency, and shall specifically exclude any offensive or incongruent uses including, but not limited to, the following:

1. Any public or private nuisance (as defined in California Civil Code Section 3479) connected with business operations conducted on the Property;

2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;

3. Any obnoxious odor;

4. Any noxious materials, and any toxic or caustic, or corrosive fuel or gas in violation of applicable law;

5. Any dust, dirt or particulate matter in excessive quantities;

6. Any unusual fire, explosion, or other damaging or dangerous hazard;

7. Any warehouse, other than that which is provided for and/or incidental to the primary use or business operation provided for in this Agreement, and any distillation, refining, smelting, agriculture, or mining operation;

8. Any pawn shop or retail sales operation involving second-hand merchandise;

9. Any adult business or facility as defined and regulated in the City's Municipal Code. Such uses include, without limitation, massage establishments (to the extent defined and regulated in such Code as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters, and paraphernalia businesses;

10. Any retail outlet that sells alcoholic beverages for off-site consumption; and

11. Any gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns.

SECTION 402 Maintenance

The Developer shall maintain the Improvements and keep the Property free from any accumulation of debris or waste materials. The Developer shall also maintain all landscaping in a healthy condition.

SECTION 403 Obligation to Refrain from Discrimination

The Developer covenants and agrees for itself, its successors and its assigns 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 California 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 California 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 404 Form of Nondiscrimination and Nonsegregation Clauses

The 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 shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. 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 California 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 California 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."

2. 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 California 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 California 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."

3. 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 California 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 California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

SECTION 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of and enforceable against the original Developer and successors in interest by the Agency or the City. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Closing and shall remain in effect for the duration of the Redevelopment Plan.

PART 5. DEFAULTS AND REMEDIES

SECTION 501 Defaults - General

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

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

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of thirty (30) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days after such notice is received, and the party in default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in any event no more than one hundred and twenty (120) days of receipt of such notice of default from the injured party.

e. If the Developer fails to take corrective action or cure the default within a reasonable time, the Agency shall give the Senior Lender, if any, notice thereof; provided, however, that the Developer has provided, in writing, to the Agency, the contact information of each Senior Lender. The Agency agrees to accept cures tendered by any Senior Lender within the cure periods provided herein. Additionally, in the event the Senior Lender is

precluded from curing a non-monetary default due to a bankruptcy, injunction, or similar proceeding by or against the Developer, the Agency agrees to forbear from completing a foreclosure (judicial or nonjudicial) during the period during which the Senior Lender is so precluded from acting, not to exceed 120 days, provided such Senior Lender 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 one hundred eighty (180) days after the first notice of default is given.

SECTION 502 Institution of Legal Actions

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

SECTION 503 Applicable Law

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

SECTION 504 Acceptance of Service of Process

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

SECTION 505 Rights and Remedies Are Cumulative

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

SECTION 506 Damages

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Neither the Agency nor the Developer shall be entitled to, and each hereby waives, any right to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

SECTION 507 Specific Performance

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

SECTION 508 Termination/Non-Satisfaction of Condition Precedents

Prior to the Closing, either party shall have the right to terminate this Agreement by providing written notice to the other party in the event of a failure by that party to fully satisfy any condition precedent as set forth in the Method of Financing (Attachment No. 3). However, in the event of such termination of the Agreement where the satisfaction of such condition precedent(s) is(are) outside the control of the non-performing party, then neither party (Agency or Developer) shall have any further rights against or liability to the other under this Agreement.

SECTION 509 Termination by Developer

a. Subject to the notice and cure provisions of Section 501, the Developer shall have the right, prior to the Closing, to terminate this Agreement in the event:

1. the Developer, despite its best efforts, is unable to obtain and demonstrate to the satisfaction of the Agency, that is has obtained the necessary financing for the development of the Project in accordance with the requirements of Section 215, Evidence of Financing, of the Agreement within the time established in the Schedule of Performance (Attachment No. 5); or

2. there is a material default committed by the Agency, or any failure of the Agency to fully satisfy any condition precedent which is within its control, pursuant to this Agreement.

SECTION 510 Termination by Agency

a. Subject to the notice and cure provisions of Section 501, the Agency shall have the right, prior to the Closing, to terminate this Agreement in the event of a default by the Developer or failure of the Developer to fully satisfy any condition precedent which is within its control, pursuant to this Agreement, including but not limited to the following:

1. the Developer fails to satisfy any condition precedent to the occurrence of the Closing as provided in the Method of Financing (Attachment No. 3) within the time established in the Schedule of Performance (Attachment No. 5);

2. the Developer (or any successor in interest) assigns or attempts to assign the Property or any of Developer's rights in and to the Property or any portion thereof or interest therein, or this Agreement or any portion hereof, except as permitted by this Agreement;

3. there is substantial change in the composition of the Developer, including but not limited to the death, disability, or removal of any person comprising the Developer;

4. the Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement therefore;

5. the Developer fails to acquire the Property within the time required by the Schedule of Performance; or

6. there is any other material default by the Developer under the terms of this Agreement which is not cured within the time provided herein.

b. After the Closing, but before Completion, and subject to the notice and cure provisions of Section 501, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

1. the 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 501 of this Agreement, provided that the Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to Section 602 hereof; or

2. the Developer abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided the Developer has not obtained an extension or postponement to which the Developer may be entitled to pursuant to Section 602 hereof; or

3. the Developer assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or

4. the Developer materially breaches any term or condition of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

SECTION 511 Right of Reentry

a. Subject to the notice and cure provisions of Section 501, the Agency shall have the right, at its option, to reenter and take possession of the Property with all Improvements thereon, and to terminate and revest in the Agency the Property estate theretofore conveyed to the Developer, if after conveyance of the Property and prior to Completion, the Developer (or its successors in interest) shall:

1. fail to commence construction of the Project (or portion thereof) as required by this Agreement for a period of three (3) months after the date set forth in the Schedule of Performance (Attachment No. 5), provided that the Developer shall not have obtained an extension or postponement to which the Developer may be entitled pursuant to Section 602 hereof; or

2. abandon or substantially suspend construction of the Project (or portion thereof) for a period of three (3) months after written notice of such abandonment or suspension from the Agency, provided that the Developer shall not have obtained an extension or postponement to which the Developer may be entitled to pursuant to Section 602 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 by the Agency to the 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 Permitted Mortgage instrument; or

2. any rights or interests provided in this Agreement for the protection of the holders of such Permitted Mortgage instruments.

c. The Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right, as set forth in this Section 511, to re-enter and take possession of the Property, or any part thereof, with all Improvements thereon, and to terminate and revest in the Agency the Property estate conveyed to the Developer.

d. Upon the revesting in the Agency of title to the Property, or any part thereof, as provided in this section, the Agency shall, pursuant to its responsibilities under state law, use its diligent and good faith efforts to resell the Property interests in the Property, or any part thereof, as soon and in such manner as the Agency shall 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 satisfactory to the Agency and in accordance with the uses specified for the Property, or any part thereof, in the Redevelopment Plan. Upon such resale of the Property interests in the Property, or any part thereof, the proceeds thereof shall be applied:

1. first, to reimburse the Agency and/or SEDC of all costs and expenses actually incurred by the Agency and/or SEDC, including but not limited to salaries to personnel engaged in such action, in connection with the recapture, management, and resale of the Property, or part thereof (but less any income derived by the Agency from the Property, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or part thereof (or, in the event the Property, or part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as would have been payable if the Property, or part thereof, were not so exempt); 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 the 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, or part thereof; and any amounts otherwise owing to the Agency by the Developer and its successor or transferee; and

2. second, to reimburse the Developer, its successor or transferee, up to the amount equal to (l) the costs incurred for the development of the Property,

or part thereof, or for the construction of the agreed Improvements thereon, if such costs were incurred in accordance with the Method of Financing (Attachment No. 3) and Project Budget (Attachment No.7), less (2) any gain or income withdrawn or made by the Developer therefrom or from the Improvements thereon. For purposes of this paragraph the term "cost incurred" shall include direct, out-of-pocket expenses of development, but shall exclude Developer's all overhead expenses, developer fees, and profit.

e. Any balance remaining after such reimbursements shall be retained by the Agency as its property.

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

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

Formal notices, demands and communications between the Agency and the 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 Agency and Developer as set forth in Sections 104 and 105 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

SECTION 602 Enforced Delay: Extension of Time of Performance

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the

City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "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) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) 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 603 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

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

SECTION 604 Nonliability of Agency Officials and Employees

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

SECTION 605 Inspection of Books and Records

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

SECTION 606 Approvals

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

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

SECTION 607 Real Estate Commissions; Finder's Fee

The Agency shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The Agency and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

SECTION 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or

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

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

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

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

SECTION 609 Time of Essence

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

SECTION 610 No Partnership

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

SECTION 611 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 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 shall be conclusive of that fact as between Agency and Developer.

SECTION 612 Binding Effect

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

SECTION 613 No Third Party Beneficiaries

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

SECTION 614 Authority to Sign

The Developer hereby represents that the persons executing this Agreement on behalf of the Developer have full authority to do so and to bind the Developer to perform all of its obligations in accordance with the terms and conditions of this Agreement.

SECTION 615 Incorporation by Reference

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

SECTION 616 Counterparts

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

PART 7. SPECIAL PROVISIONS

SECTION 701 Minimum Period of Property Ownership by Developer

The Developer hereby acknowledges and agrees that due to the financial subsidy provided by the Agency with respect to the development of the Improvements on the Property by the Developer and the anticipated receipt of sales tax and tax increment generated by the development of the Property to offset any and all such public assistance, it shall own and operate the Improvements on the Property for a minimum period of five (5) years following the Closing Date (the "Ownership Period"). However, in the event that the Developer seeks to sell the Property prior to the expiration of the Ownership Period, then the Developer shall pay an "Disposition Price" to the Agency upon the close of escrow of such sale in the amount set forth

in Exhibit "B" of the Grant Deed which is attached hereto and fully incorporated herein by this reference as Attachment No. 6.

SECTION 702 Property Maintained on the County Tax Roll

The Developer, and all successors and assigns, hereby acknowledge and agree that due to the financial subsidy provided by the Agency with respect to the development of the Property by the Developer with respect to the development of the Improvements on the Property by the Developer and the anticipated receipt of sales tax and tax increment generated by the development of the Property to offset any and all such public assistance, it shall neither remove or cause the removal of the Property from the San Diego County property tax roll (the "County Tax Roll") without the advance written consent of the Agency. However, if for any reason the Property or any portion of the Property is taken off the official tax roll of San Diego County, the Developer agrees for itself and all successors-in- interest, that it shall pay to the Agency upon the close of escrow effectuating the removal, an amount equal to the present value sum of the "tax increment" that the Agency would otherwise be entitled to receive due to property taxes generated and paid on the Property during the term of the Redevelopment Plan (the "In-Lieu Tax Payment") as provided for in the paragraph 3(h) of the Grant Deed. The amount of the In-Lieu Tax Payment shall be determined in the sole discretion of the Agency and shall remain a valid and enforceable lien on the Property until paid. The Grant Deed which is attached hereto as Attachment No.6 is fully incorporated herein by this reference.

SECTION 703 City's Role in Transaction

The parties acknowledge and agree that: (a) on or about March 16, 2011, Agency transferred to City fee title ownership of the Property by recorded quitclaim deed, and (b) through an assignment agreement executed in connection with such property transfer, Agency assigned to City, and City assumed, all of Agency's rights, title, interest and obligations under all assets, agreements, contracts, permits and entitlements, and other documents relating directly or indirectly to the use, management, repair, maintenance, development and operation of the Property, including this Agreement. By executing this Agreement, the parties (including Developer, Agency and City) confirm that they are all parties to this Agreement and all attachments and exhibits attached hereto this Agreement in accordance with Section 615 above. The parties agree that, except as otherwise specified herein, all references to "Agency" in this Agreement shall mean either Agency or City, whichever of those two parties is the fee title owner of the Property at the relevant time (or, as the case may be, whichever of those two parties conveyed fee title ownership of the Property to Developer pursuant to this Agreement). For the sake of clarity, as between Agency or City, the party that owns fee title to the Property (or, as the case may be, the party that conveyed fee title ownership of the Property to Developer pursuant to this Agreement) at the relevant time shall be entitled to exercise all rights, and shall be required to fulfill all outstanding obligations, attributable to "Agency" under this Agreement. Notwithstanding the foregoing, if Agency's prior transfer of the Property to City is nullified, rescinded or invalidated for any reason whatsoever, then it is expressly agreed that (i) fee title to

the Property shall automatically re-vest in Agency (or its applicable successor, which may include City), and (ii) all assets, agreements, contracts, permits and entitlements, and other documents previously assigned from Agency to City related to the Property shall automatically be re-assigned to Agency (or its applicable successor, which may include City).

PART 8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended hereto, constitutes the entire understanding and agreement of the parties.

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

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency, City and Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency, City and Developer. Notwithstanding the immediately preceding sentence or any provision of this Agreement to the contrary, (a) Developer shall be entitled to rely upon a written waiver provided solely by Agency, as fully binding and effective against both Agency and City, so long as Agency is the fee title owner of the Property at the time the written waiver is provided; (b) Developer shall be entitled to rely upon a written waiver provided solely by City, as fully binding and effective against both City and Agency, so long as City is the fee title owner of the Property at the time the written waiver is provided; (c) a written amendment executed only by Developer and Agency shall be fully binding and effective as to all parties so long as Agency is the fee title owner of the Property at the time such amendment is executed; and (d) a written amendment executed only by Developer and City shall be fully binding and effective as to all parties so long as City is the fee title owner of the Property at the time such amendment is executed.

PART 9. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

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

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

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

Dated:_____ By: _____
Janice Weinrick
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY

JAN I. GOLDSMITH
Agency General Counsel

By:_____
Charles E. Jagolinzer
Deputy General Counsel

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By:_____
Royce K. Jones

CITY OF SAN DIEGO, a California municipal corporation

Dated:_____ By: _____
James F. Barwick, CCIM
Director, Real Estate Assets Department

APPROVED AS TO FORM AND LEGALITY:

Jan I. Goldsmith, City Attorney

By:_____
Brock Ladewig
Deputy City Attorney

MARK PETRARCA AND SHARON PETRARCA husband and wife, as community property with right of survivorship

Dated:_____ By: _____
Mark Petrarca

Dated:_____ By: _____
Sharon Petrarca

Attachment No. 1

SITE PLAN

Attachment No. 2

LEGAL DESCRIPTION

Attachment No. 3

METHOD OF FINANCING

Attachment No. 4

SCOPE OF DEVELOPMENT

Attachment No. 5

SCHEDULE OF PERFORMANCE

Attachment No. 6

GRANT DEED

Attachment No. 7

PROJECT BUDGET

Attachment No. 8

ENVIRONMENTAL INDEMNITY

Attachment No. 9

UNIVERSAL DESIGN CHECKLIST

Attachment No. 10

EQUAL OPPORTUNITY CONTRACTING REQUIREMENTS

Attachment No. 11

RIGHT OF ENTRY AGREEMENT

Attachment No. 12

RELEASE OF CONSTRUCTION COVENANTS

Attachment No. 13

ASSIGNMENT AND ASSUMPTION AGREEMENT