

ITEM 2

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: November 20, 2012

SUBJECT: Market Creek Plaza (Euclid Avenue South of Market Street) – First Amendment to the Owner Participation Agreement – Central Imperial Component Area of the Southeastern San Diego Merged Redevelopment Project Area

CONTACT/PHONE NUMBER: David Graham/236-6980

DESCRIPTIVE SUMMARY OF ITEM:

Adoption of a resolution:

- (1) Approving the First Amendment to the Owner Participation Agreement (“First Amendment”), including all attachments thereto, between the Successor Agency and Market Creek Partners, LLC, a California limited liability company (MCP), to confirm a reduced scope of development and a corresponding reduction in reimbursement for completed public improvements relating to the Market Creek Plaza; and
- (2) Authorizing the Successor Agency's payment of \$2,400,000 to MCP as reimbursement for the cost of completed public improvements relating to the Market Creek Plaza located within the Central Imperial Component Area of the Southeastern San Diego Merged Redevelopment Project Area.

STAFF RECOMMENDATION:

Approve proposed actions.

DISCUSSION:

Background

In 2000, the former Redevelopment Agency of the City of San Diego (“Former RDA”) approved the Owner Participation Agreement (OPA) with MCP for the development of the Market Creek Plaza (“Site”) in the Lincoln Park neighborhood of southeastern San Diego, located within the Central Imperial Component Area of the Southeastern San Diego Merged Redevelopment Project Area. The OPA included the Former RDA’s obligation to reimburse MCP for the construction of certain public improvements needed for the development of the Site, in an amount up to \$3,800,000 as well as MCP’s obligation to construct a 300,000 square-foot commercial retail center including substantial needed public improvements.

The purpose of the First Amendment is to release certain obligations for both parties, including reducing the amount of the Successor Agency’s obligation from \$3.8 million to \$2.4 million, reducing the original Site from 19 acres to 6.5 acres (“Reduced Site”) and reducing MCP’s scope

of development to the completed shopping center. Additionally, community benefit covenants remain recorded on the developed parcels and will be released from the undeveloped parcels.

To offset the loss of tax increment originally projected to result from the parcels that were not developed, MCP has agreed to leave the primarily non-profit Joe & Vi Jacobs Community Center (“Jacob’s Center”) building on the property tax rolls through June 2014, although it would qualify immediately for property tax relief.

In the original OPA (Attachment B), the commercial center was described as 300,000 square feet of leasable space including a food market, office, commercial retail and specialty shops, and a multi-screen theater complex on the MCP-owned property of approximately 19 acres located east of Euclid Avenue, south of Market Street, in accordance with the approved 1999 Site Development Permit No. 99-0156 (Attachment D – Original OPA 2000 Development Plan).

The original development program could not be fully implemented due to the economic recession and deteriorated market conditions. The proposed multi-screen theater complex in the original scope was the primary casualty of the collapsing commercial market. Additional office buildings, structured parking and child care facilities were also not constructed.

This original project is consistent with the San Diego General Plan, Southeastern San Diego Community Plan and advances the Southeastern Economic Development Corporation (SEDC) Strategic Plan and the objectives of the Central Imperial Redevelopment Project by eliminating a blighted, brownfield industrial site and developing a catalytic Transit-Oriented Development at the Market Street and Euclid Avenue Transit Center. The project is also consistent with the SANDAG Regional Comprehensive Plan and State and Federal public policy initiatives for investment in low-income-opportunity areas within walking distance of transit centers.

DISCUSSION:

The First Amendment (Attachment A) revises the OPA to reflect a final, comprehensive resolution of issues that have been long negotiated and finally agreed to by both parties’ negotiating teams. The main revisions related to the reduced scope of development include:

	Original Project Description	First Amendment Project Description
Development Proposed vs. Accomplished	300,000 square feet of Commercial mixed-use including: <ul style="list-style-type: none"> • food market • office, three multi-story buildings • structured parking facility • commercial retail • specialty shops • multi-screen movie theater complex • child care facility 	80,974 square feet of Commercial mixed-use including: <ul style="list-style-type: none"> • food market • office • commercial retail • specialty shops
Public Improvements	Improvements including: <ul style="list-style-type: none"> • Chollas Creek restoration • amphitheatre & festival space • vehicular bridge • trolley underpass • street improvements on Market St. & Euclid Ave. • traffic signals 	Improvements including: <ul style="list-style-type: none"> • Chollas Creek restoration • amphitheatre & festival space • vehicular bridge • trolley underpass • street improvements on Market St. & Euclid Ave. • traffic signals
Boundaries of OPA	Refer to Attachment G Parcel Map for 16-acre site	Refer to Attachment F Parcel Map for 6.5-acre site

Changes to the OPA: The First Amendment also includes changes to reflect the factual circumstances and certain “clean-up” amendments to more accurately comply with the requirements and language of Assembly Bill x1 26 (AB 26), which resulted in the dissolution of the Former RDA as of February 1, 2012, and now governs the operations of the Successor Agency.

To accomplish the revisions outlined above, the First Amendment includes revisions, deletions, replacements, or additions to the OPA and its attachments, summarized below:

First Amendment to OPA		
Att. No.	Attachment Name	Summary of Change
1	Site Map	Revised to significantly reduce the Site from 16 to 6.5 acres, reflecting the reduction in development program, per as-built conditions (see Attachments F, G and H).
2	Legal Description	Revised to describe the Reduced Site.
3	Schedule of Performance	Amended to reflect completed construction and milestones, and to establish schedule for signing and delivering exhibits attached to First Amendment.
4	Scope of Development	Revised in Sections 16 and 17 of First Amendment to reflect the Reduced Site and the reduced square footage of developed shopping center.
7	Payment Agreement	Amended to reflect reduced as-built improvements and lower Successor Agency contribution to infrastructure costs, reduced from \$3.8 million to \$2.4 million.
8	Project Budget	Removed per Section 19 of First Amendment, as it is no longer relevant post construction.
9	Release of Construction Covenants	Modified to pertain to as-built construction.
10	First Amendment to Agreement Containing Covenants	Amended to release recorded community benefit covenants from undeveloped parcels of the original Site and those lots that are occupied by surface parking only.
11	Agreement Regarding Payment of Property Taxes	New agreement to prevent MCP from removing the Jacobs Center office building from the property tax rolls through June 30, 2014 (see Attachment E).

The modifications to the OPA are described in the tables above and the associated attachments, but three aspects of the First Amendment deserve more detailed explanation and discussion:

Release of Community Benefit Covenants: In 2001, covenants were recorded on the entire original 16-acre Site that sought to benefit the local community. The covenants included such requirements as higher level of maintenance of common and public facilities, graffiti removal standards, local employment hiring preferences, tenant approval by SEDC, and equal opportunity requirements. MCP originally requested to remove the recorded covenants from all but the 6.5-acre Reduced Site, but after objections from the community and SEDC, MCP has now agreed to retain the covenants on all developed parcels within the original Site. As part of this action, the recorded covenants will be removed only from the undeveloped parcels and the surface parking lots, all of which are anticipated to be redeveloped as part of the upcoming Village Plan.

Agreement Regarding Payment of Property Taxes: Attachment 11 to the First Amendment is a new document to be recorded on the property title for Assessor's Parcel Numbers 548-020-37, 38 and 39 (Attachment E), now developed with the Jacobs Center building with associated parking. The Jacobs Center for Neighborhood Innovation (JCNI) wishes to apply for a welfare exemption from property tax payment under applicable law, but has agreed to not apply for the exemption with respect to any assessment of property taxes imposed on or before June 30, 2014. Attachment 11 will be recorded against the Jacobs Center property and provides that, if the property should be removed from the property tax rolls prior to June 30, 2014, an In Lieu Payment equal to the property taxes would be payable to the Successor Agency. The original assessed value of the Site prior to redevelopment was approximately \$3.2 million and the current value is approximately \$25 million. If JCNI is successful in obtaining the property tax exemption starting in July 2014, the assessed value of the Site will be reduced by \$12 million (Attachment C, Tax Increment Analysis by Keyser Marston Associates dated June 7, 2012).

Payment Agreement: Attachment 7 – Payment Agreement is being replaced to reflect the reduced development constructed and to reduce the Successor Agency's reimbursement payment for the completed public improvements from \$3.8 million to \$2.4 million, payable in three installments on the following schedule:

<u>Payment Amount</u>	<u>Schedule</u>
\$900,000	Concurrent with First Amendment execution by Successor Agency
\$750,000	On or before January 31, 2013
<u>\$750,000</u>	On or before January 31, 2014
Total	\$2,400,000

This incremental payment schedule was originally based on negotiations over the last few years, in an effort to avoid the negative impact associated with making a large, lump sum payment from the Former RDA's Central Imperial fund balances. The Payment Agreement allows prepayment without any penalties to the Successor Agency, consistent with the approved ROPS 2, which included a payment of up to \$2.4 million in July 2012.

Project Description: In 2005, MCP completed construction of the majority of the development program at Market Street and Euclid Avenue, including five retail buildings totaling approximately 81,000 square feet of development in the Market Creek Plaza shopping center on approximately 6.5 acres (APN 548-020-40) including a Food 4 Less (the first major grocery store in the Encanto area in several decades), a full-service Wells Fargo Bank, Starbucks, and a frame of eating, drinking and retail uses. Infrastructure construction was completed to include improvements to the Euclid Trolley Station, Euclid Avenue, Market Street, an urban creek renewal of Chollas Creek, a trolley underpass, traffic signals, and a 500-seat outdoor amphitheater, among other public or quasi-public improvements, for total costs in excess of \$7,000,000.

In 2007, MCP completed additional construction toward completion of the development program, building the approximately 73,000 square-foot Jacobs Center, a community center with meeting facilities and offices, located on the area west of Market Creek Plaza and west of Las Chollas Creek and occupied by a variety of community benefit organizations.

Conclusion

This First Amendment will resolve all remaining issues between the parties related to the OPA, and enable both sides to finalize and complete their respective outstanding obligations pursuant to the OPA. Payment of the reduced amount of \$2.4 million for this long-standing public improvement obligation is a more favorable outcome for the Successor Agency than the original obligation of \$3.8 million. Although MCP has completed a reduced scope of private development compared to the intent of the original OPA, MCP has completed the public improvements required by the OPA at considerable expense, estimated at approximately \$7 million in total. Those public improvements, together with the private improvements in the Market Creek Plaza, have revitalized the neighborhood and yielded tremendous financial, employment, services and other benefits to the local community. This infrastructure will continue to serve future transit-oriented development. The Market Creek Plaza has provided local jobs and business opportunities, and the Joe & Vi Jacobs Community Center has provided a multitude of community benefits.

The many benefits received by the Successor Agency, SEDC and the community as a result of the Market Creek Plaza development, as well as MCP's agreement to retain the office building property on the property tax rolls through at least June 30, 2014, clearly justify the Successor Agency's reduced reimbursement payment of \$2.4 million.

David Graham
Office of the Mayor

Jay Goldstone
Chief Operating Officer

Attachments: A – Proposed First Amendment to Owner Participation Agreement by and between the Successor Agency and Market Creek Partners, LLC
B – Original OPA with Market Creek Partners, LLC
C – Tax Increment Analysis - Keyser Marston Associates dated June 7, 2012
D – Original OPA 2000 Development Plan
E – Property Tax Agreement Parcels
F – Amended Development Plan – Existing Conditions
G – Aerial Photo of Site
H – Parcel Map of Site

FIRST AMENDMENT TO
OWNER PARTICIPATION AGREEMENT

by and between

THE CITY OF SAN DIEGO,
solely in its capacity as the designated successor agency to
the Redevelopment Agency of the City of San Diego,

AGENCY,

and

MARKET CREEK PARTNERS, LLC,

PARTICIPANT

FIRST AMENDMENT TO OWNER PARTICIPATION AGREEMENT

This First Amendment to Owner Participation Agreement (“Amendment”) is executed effective as of _____, 2012 (“Effective Date”), by and between the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (the “Agency”), and MARKET CREEK PARTNERS, LLC, a California limited liability company (the “Participant”).

R E C I T A L S

The Agency and Participant (collectively, the “Parties”) enter into this Amendment on the basis of the following facts, understandings and intentions:

A. The former Redevelopment Agency of the City of San Diego (“Former RDA”) and Participant entered into that certain Owner Participation Agreement, filed with the office of the Agency on December 22, 2000, as Document No. D-03266 (the “Original OPA”), with respect to the redevelopment of certain real property within an area of the City of San Diego (the “City”) presently designated as the Central Imperial Component Area of the Southeastern San Diego Merged Redevelopment Project Area. The term “Agreement” as used in this Amendment shall refer to the Original OPA, as modified by this Amendment.

B. Since executing the Original OPA, the Parties agreed to a reduction in the scope of the development. In consultation with the Former RDA, Participant has developed and operated a shopping center and constructed various public improvements required for development of the Site (as redefined below). That development has benefited the Agency and the community in ways anticipated by the Original OPA. In addition, an issue arose between the Parties with respect to their respective obligations under the Original OPA to finance and construct certain public improvements.

C. The Parties wish to enter into this Amendment to document the changes that have occurred and been agreed to since the execution of the Original OPA, and in settlement of the issue noted above, including, without limitation, the reduction in the size of real property that is subject to the Agreement and the revisions to the Scope of Development, all as described in more detail below.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. Project Area. Any reference to the Central Imperial Redevelopment Project area, wherever found in the Agreement, is to be understood as a reference to the Central Imperial Component Area of the Southeastern San Diego Redevelopment Project Area as it existed as of January 31, 2012.

2. Amendment of Section 101. The second and third sentences of Section 101 of the Original OPA describing the size and purpose of the redevelopment project are hereby deleted in their entirety and replaced with the following:

“The Site is comprised of approximately 6.55 acres in land area. In order to facilitate the Agency’s effort to cause the effective redevelopment of the Central Imperial Redevelopment project, it is proposed by the Participant that the Site be redeveloped as a neighborhood shopping center consisting of five (5) retail buildings totaling approximately 80,974 gross square feet.”

3. Amendment of Section 102. The first sentence of the first paragraph of Section 102 of the Original OPA is hereby deleted in its entirety and replaced with the following:

“This Agreement is subject to the provisions of the Central Imperial Redevelopment Plan, which was approved and adopted on September 14, 1992 by the City Council of the City of San Diego by Ordinance No. 17831 [NS], together with all subsequent amendments thereto (collectively, the “Redevelopment Plan”).”

4. Amendment of Section 106. The entirety of Section 106 of the Original OPA is hereby deleted and replaced with the following:

“The Agency is the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic. The principal office of the Agency, for purposes of this Agreement, is c/o Civic San Diego, 401 B Street, Suite 400, San Diego, CA 92101.”

5. Amendment of Section 107. The second sentence of Section 107 of the Original OPA is hereby deleted and replaced with the following:

“The principal office of the Participant is 404 N. Euclid Avenue, San Diego, CA 92114.”

6. Amendment of Section 207. Section 207 of the Original OPA is hereby deleted in its entirety. Any reference to Agency Executive Director in Section 207 or otherwise in the Original OPA shall be deemed to be a reference to the Mayor of the City of San Diego and Section 207 shall now read:

“Subject to the terms and conditions of the Agreement, the cost of developing the Site (“Development Costs”) and constructing all improvements thereon and all off-site improvements (collectively, the “Improvements”) shall be borne by the Participant.”

7. Amendment of Section 217(3). Section 217(3) of the Original OPA is hereby deleted in its entirety and replaced with the following:

“(3) Mortgages or other conveyances of a security interest in the Site to a lender for financing or refinancing the Development Costs; and”

8. Deletion of Sections 410(b), 410(e), and 411(a). Sections 410(b), 410(e), and 411(a) of the Original OPA are hereby deleted in their entirety and replaced with the words “Intentionally Omitted.” In addition, any reference to the Loan Agreement, wherever found in Sections 410 and 411 of the Original OPA, is to be understood as a reference to the Payment Agreement, the form of which is attached to this Amendment as Attachment No. 7.

9. Release of Construction Covenants. As the County Recorder’s office will not record a document entitled “Certificate of Completion,” that document contemplated by the Original OPA shall be renamed the “Release of Construction Covenants.” Any reference to the Certificate of Completion, wherever found in the Agreement, is to be understood as a reference to the Release of Construction Covenants, the form of which is attached to this Amendment as Attachment No. 9.

10. Amendment of Section 606. Section 606 of the OPA is hereby deleted in its entirety and replaced with the following:

“Concurrent with the execution of this Amendment, the Parties shall execute the Payment Agreement attached to this Agreement as Attachment No. 7.”

11. Amendment of Section 608. Section 608 of the OPA is hereby deleted in its entirety and replaced with the words “Intentionally Omitted.”

12. Release and Termination. Upon execution of this Amendment, the Agreement shall apply and encumber only the Site as redefined in this Amendment. As reflected in the following sections, the term “Site” refers to the real property described and depicted in the amended Attachment Nos. 1 and 2 attached hereto. This Amendment terminates the Original OPA as to and forever releases all the property (other than the Site as redefined below) that is more particularly described in Attachment No. 12 hereto, and those with an interest in that property, from any and all rights and obligations under the Agreement.

13. Attachment No. 1. To redefine the term “Site” for purposes of the Agreement, Attachment No. 1 to the Original OPA is hereby deleted in its entirety and replaced with Attachment No. 1 to this Amendment.

14. Attachment No. 2. To redefine the term “Site” for purposes of the Agreement, Attachment No. 2 to the Original OPA is hereby deleted in its entirety and replaced with Attachment No. 2 to this Amendment.

15. Attachment No. 3. Attachment No. 3 to the Original OPA is hereby deleted in its entirety and replaced with Attachment No. 3 to this Amendment.

16. Attachment No. 4. The first sentence under “Section I. GENERAL DESCRIPTION” of Attachment No. 4 to the Original OPA is hereby deleted in its entirety and replaced with the following:

“The Site is approximately 6.55 acres and shall be developed as a neighborhood shopping center consisting of approximately 80,974 gross square feet of space.”

17. Attachment No. 4. The first sentence under “Section II. Participant Improvements subsection A. General” of Attachment No. 4 to the Original OPA is hereby deleted in its entirety and replaced with the following:

“The Participant shall use and develop the Site as a neighborhood shopping center consisting of five(5) retail buildings totaling approximately 80,974 gross square feet.”

18. Attachment No. 7. Attachment No. 7 to the Original OPA is hereby deleted in its entirety and replaced by Attachment No. 7 to this Amendment.

19. Attachment No. 8. Attachment No. 8 to the Original OPA is hereby deleted in its entirety and replaced with the phrase “Attachment No. 8 – Intentionally Omitted.”

20. Amendment of Agreement Containing Covenants Affecting Real Property. The parties desire to amend the Agreement Containing Covenants Affecting Real Property (Attachment No. 5 to the Original OPA), an executed original of which was recorded in the San Diego County Recorder’s Office

as Document No. 2001-0635800 on September 5, 2001, in accordance with that certain First Amendment included as Attachment No. 10 to this Amendment.

21. Execution of Documents. Within the time frame provided for in Attachment No. 3 hereto (i.e., the amended Schedule of Performance), the Mayor or his/her designee, acting on the Agency's behalf, shall: (i) execute the Payment Agreement in substantial conformance with Attachment No. 7 to this Amendment; (ii) execute the Release of Construction Covenants in substantial conformance with Attachment No. 9 to this Amendment and record the same with the San Diego County Recorder's Office; (iii) execute the First Amendment to Agreement Containing Covenants Affecting Real Property in substantial conformance with Attachment No. 10 to this Amendment and record the same with the San Diego County Recorder's Office; and (iv) execute the Agreement Regarding Payment of Property Taxes in substantial conformance with Attachment No. 11 to this Amendment and record the same with the San Diego County Recorder's Office. The Agency's obligation to execute this Amendment and the documents attached hereto is conditioned upon completion of the following events: (a) Participant's execution, and delivery to the Agency (in recordable form, where applicable), of the documents identified in clauses (i), (ii) and (iii) of the immediately preceding sentence; (b) the execution of the "Owner" entities, and delivery to the Agency in recordable form, of the document identified in clause (iv) of the immediately preceding sentence; and (c) the approval of this Amendment by the Oversight Board for the Agency at a duly noticed meeting, followed by the approval or deemed approval of this Amendment by the California Department of Finance in accordance with California Health and Safety Code section 34179(h).

22. Time for Acceptance by Agency. This Amendment, when executed by Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency within ninety (90) days after the date of signature by Participant, as shown below in Participant's signature block. If the Agency has not authorized, executed and delivered to Participant the execution version of this Amendment within such 90-day period, then Participant may terminate this Amendment upon delivery of written notice to the Agency. In any event, Participant's termination right under the immediately preceding sentence shall not apply after the Agency has authorized, executed and delivered to Participant the execution version of this Agreement without the Agency having first received a written notice of termination from Participant.

23. Full Force and Effect. Except as amended hereby, the Original OPA remains in full force and effect and the Parties ratify and affirm their respective obligations under the Original OPA.

24. Incorporation. All recitals set forth above, and all exhibits attached hereto, are incorporated herein by this reference.

25. Capitalized Terms. Capitalized terms not otherwise defined or redefined in this Amendment shall have the meaning ascribed to them in the Original OPA.

[Remainder of page intentionally left blank]

26. Date of Agreement; Counterparts. This Amendment shall take effect when signed by both Parties. The reference date of this Agreement shall be the date it is signed by the Agency. This Agreement shall be executed in five duplicate originals, each of which is deemed to be an original.

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

CITY OF SAN DIEGO, solely in capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

Jay M. Goldstone
Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

JAN GOLDSMITH
CITY ATTORNEY

By: _____

Kevin Reisch
Deputy City Attorney

MARKET CREEK PARTNERS, LLC,
a California limited liability company

Date: 10/10/2012

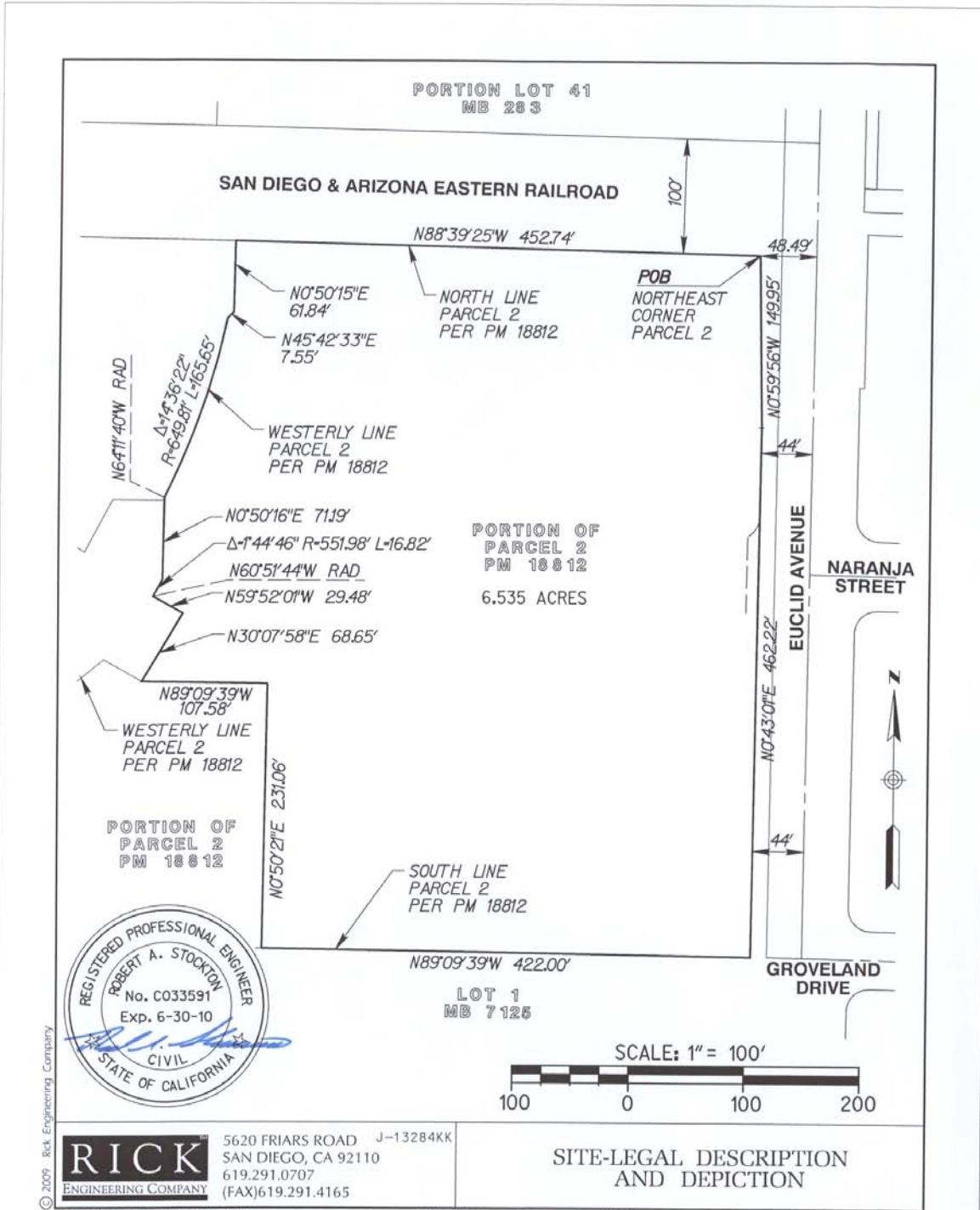
By: [Signature]

Name: Charles Patton

Title: Managing Member

ATTACHMENT NO. 1

SITE MAP



ATTACHMENT NO. 2

LEGAL DESCRIPTION

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

LOT 4 AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-40

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

*The term “Agreement” as used herein shall refer to the original Owner Participation Agreement. The term “Amendment” as used herein shall refer to the foregoing First Amendment to Owner Participation Agreement.

I. GENERAL PROVISIONS

- | | | |
|----|---|-----------|
| 1. | <u>Execution of Agreement by Agency.</u> Agency shall hold a hearing on the Agreement, shall authorize execution and execute the Agreement and shall deliver the Agreement to Participant. | Complete. |
| 2. | <u>Submission - Architect, Landscape Architect and Civil Engineer.</u> Participant shall submit to Agency for approval of the names and qualifications of its Architect, Landscape Architect, and Civil Engineer. | Complete. |
| 3. | <u>Approval – Architect, Landscape Architect and Civil Engineer.</u> Agency shall approve or disapprove the Architect, Landscape Architect, and Civil Engineer. | Complete. |
| 4. | <u>Submission - Basic Concept Drawings.</u> Participant shall prepare and submit to Agency for approval the Basic Concept Drawings and related documents for the Site. | Complete. |
| 5. | <u>Approval – Basic Concept Drawings.</u> Agency shall approve or disapprove Basic Concept Drawings and related documents for the Site. | Complete. |
| 6. | <u>Determination of Soil Conditions.</u> Participant shall determine whether the soil conditions on the Site is suitable for the development thereon pursuant to Section 208 of the Agreement. | Complete. |

7. First Amendment to Owner Participation Agreement. Agency shall execute and deliver to Participant.

Within ten (10) days after the Amendment, having been executed by Participant, is approved by the Oversight Board for the Agency and is approved or deemed approved by the California Department of Finance, subject to Section 22 of this Amendment.

8. Payment Agreement. Agency shall execute and deliver to Participant.

Simultaneously with the Agency's execution of the Amendment, provided that the Agency has received Participant's executed original of the Payment Agreement.

9. Release of Construction Covenants. Agency shall execute and record at the San Diego County Recorder's Office.

Execution shall occur simultaneously with the Agency's execution of the Amendment; recordation shall occur within three (3) business days thereafter.

10. First Amendment to Agreement Containing Covenants Affecting Real Property. Agency shall execute and record at the San Diego County Recorder's Office.

Execution shall occur simultaneously with the Agency's execution of the Amendment; recordation shall occur within three (3) business days thereafter.

11. Agreement Regarding Payment of Property Taxes. Agency shall execute and record at the San Diego County Recorder's Office.

Execution shall occur simultaneously with the Agency's execution of the Amendment; recordation shall occur within three (3) business days thereafter.

- II. CONSTRUCTION AND DEVELOPMENT
 1. Submission – Schematic/Design Development Drawings. Participant shall prepare and submit to Agency the Schematic/Design Development Drawings for the Site.

Complete.

 2. Approval – Schematic/Design Development Drawings. Agency shall approve or disapprove the Schematic/Design Development Drawings for the Site.

Complete.

3. Submission – Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Participant shall prepare and submit to Agency the Preliminary Construction Drawings and Preliminary Landscaping and Grading Plans for the Site. Complete.
4. Approval – Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Agency shall approve or disapprove the Preliminary Construction Drawings and Preliminary Landscaping and Grading Plans for the Site. Complete.
5. Submission – 50% Final Construction Drawings and Landscaping and Finish Grading Plans. Participant shall prepare and submit to Agency the 50% Final Construction Drawings and Specifications and the 50% Final Landscaping and Finish Grading Plans for the Site. Complete.
6. Approval – 50% Final Construction Drawings and Landscaping and Finish Grading Plans. Agency shall approve or disapprove the 50% Final Construction Drawings and Specifications and the 50% Final Landscaping and Finish Grading Plans for the Site. Complete.
7. Submission – Final Construction Drawings and Final Landscaping and Grading Plans. Participant shall prepare and submit to Agency the Final Construction Drawings and Final Landscaping and Grading Plans for the Site. Complete.
8. Approval – Final Construction Drawings, and Final Landscaping and Grading Plans. Agency shall approve or disapprove the Final Construction Drawings and Final Landscaping and Grading Plans for the Site. Complete.
9. Evidence of Financing. Participant shall submit to Agency Participant’s submission of evidence of financing referred to in Section 207 of the Agreement with respect to the Site. Complete.

10. Approval of Financing. Agency shall approve or disapprove the submission of Participant's evidence of financing with respect to the Site, and shall so notify Participant. Complete.
11. Commencement of Construction. Participant shall commence construction of the Improvements on the Site. Complete.
12. Completion of Construction. Participant shall complete construction of the Improvements on the Site. Complete.

ATTACHMENT NO. 7
PAYMENT AGREEMENT

[Attached hereto]

ATTACHMENT NO. 7

PAYMENT AGREEMENT

This Payment Agreement (the “Agreement”) is entered into as of _____, 2012, by and between the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (the “Agency”), and MARKET CREEK PARTNERS, LLC, a California limited liability company (the “Participant”). The Agency and the Participant (individually, “Party” and collectively, the “Parties”) agree as follows:

RECITALS

A. The principal office of the Agency, for purposes of this Agreement, is c/o Civic San Diego, 401 B Street, Suite 400, San Diego, California 92114. The term “Agency” as used in this Agreement includes any assignee of or successor to its rights, powers and responsibilities.

B. The principal office of the Participant is located at 404 N. Euclid Avenue, San Diego, California 92114. Wherever the term “Participant” is used herein, such term shall include any permitted nominee, assignee or successor in interest of the Participant under this Agreement.

C. The former Redevelopment Agency of the City of San Diego (“Former RDA”) and Participant entered into that certain Owner Participation Agreement, filed with the office of the Agency on December 22, 2000, as Document No. D-03266 (“Original OPA”), as amended by that certain First Amendment to the Owner Participation Agreement dated _____, 2012 (“First Amendment”) between the Parties, with respect to the redevelopment of certain real property in the City of San Diego (the “Site”) located within the Central Imperial Redevelopment Component Area (the “Project Area”) of the Southeastern San Diego Merged Redevelopment Project Area as it existed on January 31, 2012. The First Amendment reduced the scope of development contemplated by the Original OPA. The Site, which comprises a smaller area relative to the area described in the Original OPA, is shown on the map attached hereto as Exhibit A and is more particularly described in Exhibit B.

D. The redevelopment of the Site involved construction of certain improvements specified in the Original OPA, as amended by the First Amendment (collectively, “Amended OPA”). The Participant has completed construction of such improvements.

E. Since 2000, pursuant to the Original OPA, the Former RDA has been and now the Agency is required to finance the construction of certain public improvements (the “Agency Public Improvements”) constructed by the Participant on behalf of the Agency in conjunction with the development of the Site. It had been the intention from the outset to finance the Agency Public Improvements utilizing tax increment collected from the Project Area. In partial fulfillment of its obligations under the OPA, the Agency has already collected and set aside Nine Hundred Thousand Dollars (\$900,000) for payment to the Participant. The purpose of this Agreement is to document the advance or loan of certain funds by the Participant under the Original OPA and the subsequent repayment by the Agency to the Participant of those funds as more particularly described herein.

F. The Parties have been unable to locate the executed original of the prior version of this Agreement (“Earlier Agreement”). Further, following execution of the Original OPA, the Participant incurred costs in excess of Eight Million Dollars (\$8,000,000) in designing and completing the Agency Public Improvements. Given that the First Amendment reduced the scope of development contemplated by the Original OPA, the Parties disagree about the amount the Agency owes to Participant and other matters, but agree that the Original OPA established the Agency’s obligation to make no less than the payments provided for in this Agreement. In this regard, the Agency identified a contractual obligation to pay Participant up to \$3,800,000 as part of certain payment schedules adopted pursuant to Assembly Bill x1 26. In order to fully resolve the dispute between the Parties with respect to the Agency’s obligations, and to carry out the Agency’s obligations under the Original OPA, this Agreement amends, restates and supersedes the terms of the Earlier Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Parties agree as follows:

1. CERTAIN DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings. Terms not otherwise defined herein shall have the meaning ascribed to them in the Amended OPA.

1.1 “Community Redevelopment Law” shall mean the California Community Redevelopment Law, Health and Safety Code §§ 33000 et seq., as amended from time to time, including, but not limited to, the amendments created by passage of Assembly Bill x1 26.

1.2 “Fiscal Year” shall mean the period from July 1 of one calendar year, through and including June 30 of the immediately following calendar year.

1.3 “Net Tax Increment” shall mean the amount of (a) ad valorem property tax revenues allocated and paid to the Agency or its predecessor prior to February 1, 2012 pursuant to Article XVI, Section 16 of the California Constitution and Health and Safety Code §§ 33670 et seq., or other applicable laws, attributable to the base one percent (1%) tax rate levied upon property located within the Project Area, after reduction for amounts the Agency is required to: (i) set aside and use for housing for persons and families of low and moderate income under Health and Safety Code § 33334.2; (ii) pay to affected taxing agencies under Health and Safety Code § 33607.5; (iii) pay to an educational revenue augmentation fund under Health and Safety Code §§ 33680 et seq.; (iv) pay to other third parties with agreements approved by the Agency prior to the Original OPA pursuant to a statutorily established obligation, from property taxes otherwise allocated to the Agency; and (v) pay to those certain bondholders pursuant of tax allocation bonds for the Project Area issued prior to the date of this Agreement; and (b) a sufficient portion of the Redevelopment Property Tax Trust Fund and the Redevelopment Obligation Retirement Fund, as defined in the Community Redevelopment Law, or any successor funds, to pay the amounts owed to Participant hereunder.

1.4 “Principal Amount” shall mean the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000), which represents an enforceable obligation as that term is defined in Health and Safety Code section 34171(d)(1) and a compromise position established for purposes of resolving the dispute about the total amount advanced and loaned to the Agency by the Participant with respect to the financing of Agency Public Improvements as contemplated in the Original OPA.

1.5 “Previously Collected Net Tax Increment” shall mean the more than \$922,000 collected by the Agency as a result of the efforts of the Participant in furtherance of the Original OPA between Fiscal Year 2001-2002 and Fiscal Year 2010-2011.

1.6 “Termination Date” shall mean the date upon which the Agency has paid in full to the Participant the Principal Amount and, if applicable, any interest owed thereon.

2. PAYMENT OF PRINCIPAL AMOUNT, AND INTEREST

2.1 For value received, the Agency hereby agrees to pay the Principal Amount to the Participant in three increments, as follows:

(a) Concurrent with the execution of this Agreement, a first payment of Nine Hundred Thousand Dollars (\$900,000), derived from the Previously Collected Net Tax Increment;

(b) On or before January 31, 2013, a second payment of Seven Hundred Fifty Thousand Dollars (\$750,000); and

(c) On or before January 31, 2014, a third payment of Seven Hundred Fifty Thousand Dollars (\$750,000).

2.2 The Agency warrants that sufficient Previously Collected Net Tax Increment is available to make the payment required by paragraph (a) of Section 2.1 hereof. The Agency further warrants that, according to its financial projections, sufficient Net Tax Increment will exist to timely make the payments required by paragraphs (b) and (c) of Section 2.1 hereof. In the event that a payment of the Principal Amount is not made by the dates provided for in Section 2.1 hereof, the Agency shall be in default and the difference between the amounts actually paid to the Participant and the applicable portion of the Principal Amount then owed to the Participant shall earn interest at the annual rate of eight percent (8%).

2.3 The Agency shall comply with all requirements of the Community Redevelopment Law, and other applicable laws, in an effort to ensure the timely allocation and payment to the Agency of the funds required by this Agreement.

2.4 If the Agency timely makes the three incremental payments of the Principal Amount described in Section 2.1 hereof, then (i) no interest shall accrue on the Principal Amount from and after the date of this Agreement, and (ii) the Principal Amount shall be deemed paid in full upon the Participant’s receipt of the third incremental payment and shall constitute the full amount of money owed by the Agency with respect to the Participant’s earlier loan of funds in connection with the construction of the Agency Public Improvements. The Parties further agree

that, subject to Agency's compliance with the terms of this Agreement, the Agency does not presently owe any monetary amounts to the Participant under the Amended OPA other than as described in this Agreement.

3. PREPAYMENT OF PRINCIPAL AMOUNT

Notwithstanding any other provision of this Agreement, the Agency may prepay the outstanding balance of the Principal Amount, together with all interest (if applicable) accrued as of the date of prepayment, at any time without prior notice to the Participant and without any penalty or charge. The Participant agrees to cooperate with the Agency, including without limitation providing any appropriate estoppel certificate regarding the status of this Agreement, and the payoff and termination hereof, as may be reasonably requested by the Agency or in connection with any bond issue or other refinancing of the Agency's obligations hereunder.

4. SECURITY FOR ANNUAL PAYMENT

4.1 As security for the Agency's obligation to pay the amounts specified by Section 2 hereof, the Agency hereby pledges and allocates to the Participant all Net Tax Increment required to satisfy the Agency's obligations under this Agreement. Such pledge and allocation shall be a first priority pledge and allocation of that Net Tax Increment until such time as the Agency has paid Participant all the amounts owed pursuant to Section 2 hereof. The pledge and allocation of Net Tax Increment is for the exclusive benefit of the Participant, and permitted assignees of the Participant's rights under this Agreement, and shall be irrevocable until all of the Principal Amount (and any interest accrued thereon) has been paid in full.

4.2 Upon payment in full of the amount due to the Participant under this Agreement, the pledge of the Net Tax Increment described in Section 4.1 hereof shall automatically terminate.

5. ASSIGNMENT BY PARTICIPANT

5.1 The Participant may freely assign its rights to receive payment of the amounts due under this Agreement, provided that the Participant provides written notice of such assignment to the Agency.

5.2 The Agency shall not be obligated to pay any portion of the amounts due under this Agreement to any person or party other than the Participant unless the Agency is notified by the Participant in writing of the name of the party to which payments are to be paid directly, the amount to be paid to such party, and the address to which such payment is to be sent. The Agency shall not be liable for any failure on the part of the Participant to give such notice to the Agency or if the Agency for any reason does not actually receive any such notice.

6. INDEBTEDNESS

6.1 The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out an enforceable obligation, which indebtedness shall be payable only out of real property taxes levied on parcels within the Project

Area by or for the benefit of taxing agencies in the Project Area and allocated to the Agency pursuant to the Community Redevelopment Law.

6.2 The obligations of the Agency under this Agreement shall be a special obligation of the Agency, and the Agency shall not be obligated to use funds from sources other than those specified in this Agreement. Notwithstanding the foregoing, nothing herein shall preclude the Agency from paying amounts required by Section 2 hereof, or any part thereof, from any funds lawfully available to the Agency from time to time.

6.3 The obligations of the Agency under this Agreement shall not constitute a debt of the City of San Diego or any other public agency except the Agency, and no portion of the General Fund or the general assets of the City of San Diego shall be used to satisfy any obligation of the Agency under this Agreement.

7. TERMINATION OF AGREEMENT

This Agreement shall terminate automatically on the Termination Date. Upon occurrence of the Termination Date, the Parties shall execute and acknowledge a memorandum reciting that all sums due under this Agreement have been paid in full and that the Agreement is terminated. The execution and acknowledgment of such memorandum shall be for evidentiary purposes only, and is not a precondition to the automatic termination of this Agreement.

8. GENERAL TERMS AND CONDITIONS

8.1 Notices, Demands and Communications Between the Parties

Formal notices, demands, and communications between the Parties shall be deemed to be sufficiently given and actually received if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency or the Participant as designated in Recitals A and B, respectively. 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 as provided in this Section 8.1.

8.2 Assignment

Except as set forth in Section 5 of this Agreement, the Participant shall have no right to assign this Agreement or any rights under this Agreement without the prior written consent of the Agency, which consent will not be unreasonably withheld, delayed or conditioned. Any permitted assignment outside Section 5 of this Agreement shall be by instrument reasonably satisfactory to the Agency in which the assignee agrees to assume all obligations of the Participant hereunder (the "Assignment Agreement"). The Agency shall approve or disapprove the Assignment Agreement within ten (10) days of its receipt. Any disapproval by the Agency shall specify the reason therefor. All costs of the Agency incurred in reviewing the Assignment Agreement and processing any assignment shall be borne by the Participant. Any assignment attempted other than as expressly provided herein shall be void and unenforceable.

8.3 Nonliability of Agency Officials and Employees

No member, official, employee or consultant of the Agency shall be personally liable to the Participant, or any permitted assignee of or successor to the Participant's rights under this Agreement, in the event of any default or breach by the Agency or for any amount which may become due to the Participant, or any permitted assignee of or successor to the Participant's rights under this Agreement, or on any obligations under the terms of this Agreement.

8.4 Attorneys' Fees

In the event either Party is required to institute any legal action or proceeding to enforce its legal rights arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled, in addition to its other relief, to recover reasonable attorneys' fees, expert fees and court costs incurred therein.

8.5 Entire Agreement; Amendments and Waivers

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement, and the Earlier Agreement is hereby terminated and of no further force or effect. All amendments to this Agreement must be in writing and signed by the duly authorized representatives of each Party. All waivers of any provisions of this Agreement must be in writing and signed by the Agency or the Participant. All recitals set forth above are incorporated herein by this reference.

8.6 Incorporation

All recitals set forth above, and all exhibits attached hereto, are incorporated herein by this reference.

[Remainder of this page intentionally left blank]

8.7 Date of Agreement; Counterparts

This Agreement shall take effect when it is signed by both Parties. The reference date of this Agreement shall be the date it is signed by the Agency. This Agreement shall be executed in five duplicate originals, each of which is deemed to be an original.

CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

Jay M. Goldstone
Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

JAN GOLDSMITH
City Attorney

By: _____

Kevin Reisch
Deputy City Attorney

MARKET CREEK PARTNERS, LLC,
a California limited liability company

Date: _____

By: _____

Name: _____

Title: Managing Member

Exhibit A
 SITE MAP

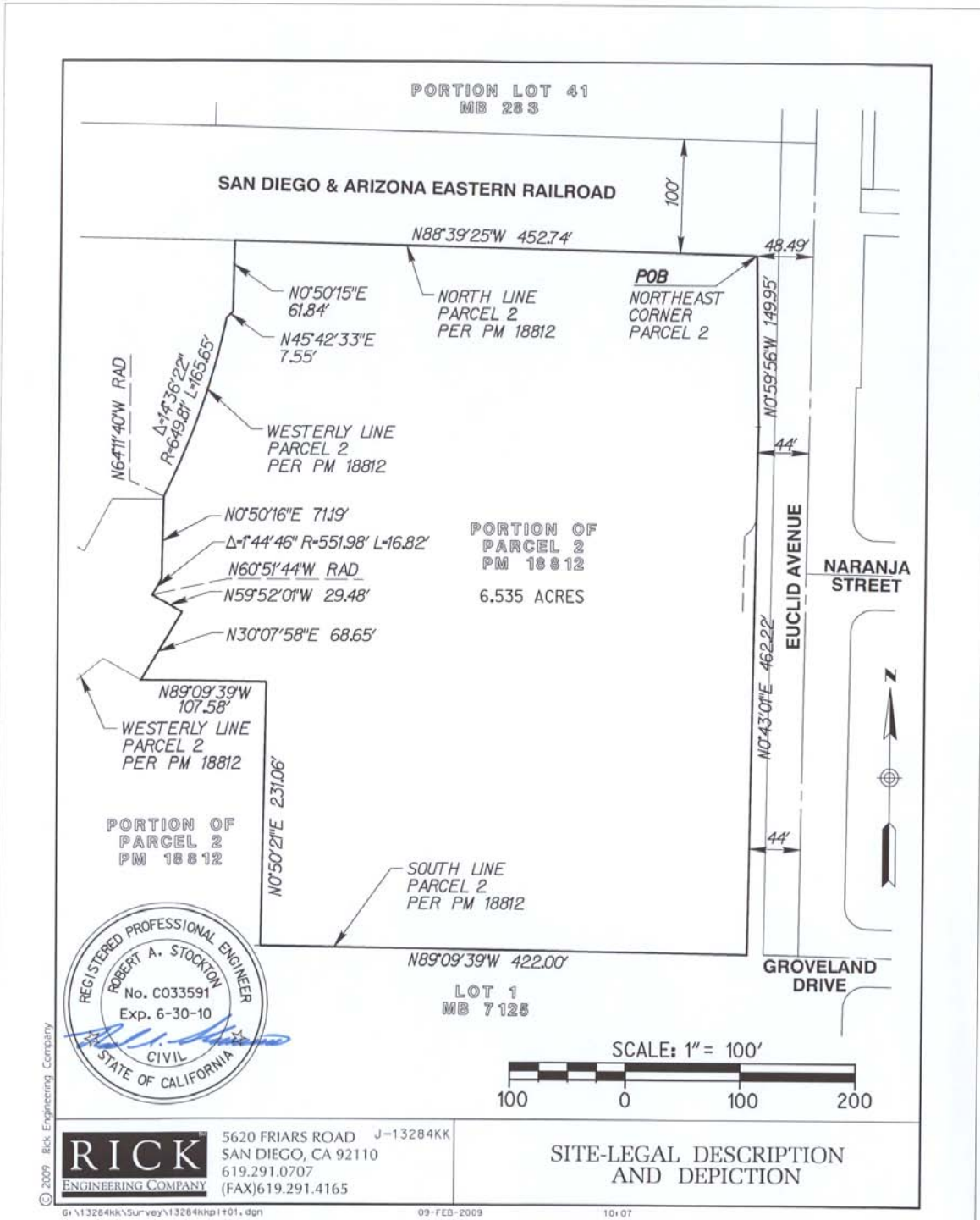


Exhibit B

LEGAL DESCRIPTION OF SITE

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

LOT 4 AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-40

ATTACHMENT NO. 9

RELEASE OF CONSTRUCTION COVENANTS

[Attached hereto]

OFFICIAL BUSINESS

Document entitled to free recording
per Cal. Gov. Code §§ 6103, 27383

Recording Requested By:

City of San Diego,
as Redevelopment Successor Agency

When Recorded, Mail To:

MARKET CREEK PARTNERS, LLC
404 N. Euclid Avenue
San Diego, California 92114
Attention: Chip Buttner

APN: 548-020-40

Space above this line for Recorder's use only

RELEASE OF CONSTRUCTION COVENANTS
(formerly the Certificate of Completion)

WHEREAS, MARKET CREEK PARTNERS, LLC, a California limited liability company ("Developer"), and the former Redevelopment Agency of the City of San Diego, a public body, corporate and politic ("Former RDA"), entered into that certain Owner Participation Agreement, filed with the Agency's Secretary as Document No. D-03266 on December 22, 2000 (the "Original OPA"), as amended by that certain First Amendment to Owner Participation Agreement between Developer and the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Former RDA ("Agency"), dated _____, 2012 (the "First Amendment");

WHEREAS, the Original OPA, as amended by the First Amendment (collectively, the "Agreement"), provides for the development of certain retail/commercial improvements specifically described in the Agreement (the "Improvements") solely on that certain real property more particularly described therein and in Exhibit A attached hereto and incorporated herein ("Site"). The Site is located in the Central Imperial Component Area of the Southeastern San Diego Merged Redevelopment Project Area as it existed as of January 31, 2012;

WHEREAS, the Developer has developed the Improvements on the Site pursuant to the terms and conditions of the Agreement;

WHEREAS, as referenced in Section 225 of the Agreement, the Agency shall furnish the Developer with a Certificate of Completion (or Partial Certificate of Completion) which shall now be in the form of a "Release of Construction Covenants" (as required by the San Diego County Recorder's Office) following completion of construction of all or a portion of the Improvements;

WHEREAS, the Agency acknowledges that the Developer had taken the necessary measures and satisfactorily completed the last of the construction of the Improvements on the Site in or about 2005, as required by the Agreement;

WHEREAS, the Improvements have been properly completed by the Developer on the Site;
and

WHEREAS, the Developer has requested that the Agency issue this Release of Construction Covenants to document that Developer completed construction of the Improvements.

NOW, THEREFORE, the parties hereto acknowledge and agree to the following terms and conditions of this Release of Construction Covenants:

1. Except as otherwise limited by the provisions set forth below, and pursuant to Section 225 of the Agreement, the Agency does hereby certify that the Developer caused the construction and development of the last of the Improvements and completion of the same in or about 2005.

2. This Release of Construction Covenants constitutes the Agency's conclusive determination that the Improvements have been properly completed by the Developer in full compliance with the requirements of the Agreement.

3. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Improvements or any part thereof. Moreover, nothing contained in this instrument shall modify in any way any provisions of the Agreement.

4. This Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

5. This Release of Construction Covenants shall inure to the benefit of Developer, its successors and assigns and the Site.

6. However, notwithstanding anything contained in this Release of Construction Covenants to the contrary, this Release of Construction Covenants shall only and exclusively apply to those obligations of the Developer described in the Agreement with respect to the Improvements, and shall not otherwise apply to and/or modify or amend any of the Developer's obligations established in the Agreement not specifically identified, contemplated and released by this Release of Construction Covenants and the Agreement.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Agency, acting by and through its duly authorized representative, has duly executed this Release of Construction Covenants.

CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

Jay M. Goldstone
Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

JAN GOLDSMITH
CITY ATTORNEY

By: _____

Kevin Reisch
Deputy City Attorney

AGREED AND ACCEPTED:

MARKET CREEK PARTNERS, LLC,
a California limited liability company

Date: _____

By: _____

Name: _____

Title: Managing Member

NOTARY ACKNOWLEDGMENT FORM FOR AGENCY

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY ACKNOWLEDGMENT FORM FOR MARKET CREEK PARTNERS, LLC

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

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

LOT 4 AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-40

ATTACHMENT NO. 10

FIRST AMENDMENT TO AGREEMENT CONTAINING
COVENANTS AFFECTING REAL PROPERTY

OFFICIAL BUSINESS

Document entitled to free recording
per Cal. Gov. Code §§ 6103, 27383

Recording Requested By and
When Recorded Mail To:

THE CITY OF SAN DIEGO
c/o Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

APN: 548-020-37 through -44

Space above this line for Recorder's use only

**FIRST AMENDMENT TO AGREEMENT CONTAINING
COVENANTS AFFECTING REAL PROPERTY**

THIS FIRST AMENDMENT TO AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY is entered into as of _____, 2012 ("Amendment"), by and between THE CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Agency"), and MARKET CREEK PARTNERS, LLC, a California limited liability company and WEST SIDE CREEK, LLC, a California limited liability company and JACOBS CENTER FOR NEIGHBORHOOD INNOVATION, a California corporation (collectively, "Participant").

RECITALS

Agency and Participant (collectively, the "Parties") enter into this Amendment with reference to the following circumstances:

A. The former Redevelopment Agency of the City of San Diego ("Former RDA") and Market Creek Partners, LLC ("MCP") entered into that certain Owner Participation Agreement, filed with the Agency's Secretary as Document No. D-03266 on December 22, 2000 (the "Original OPA"), with respect to the development of certain real property in the City of San Diego.

B. Subsequently, the Former RDA and MCP entered into that Agreement Containing Covenants Affecting Real Property ("Original Agreement") and recorded the same as Document No. 2001-0635800 in the Official Records of San Diego County on September 5, 2001, a copy of which is attached hereto as Exhibit "A", against that same property. The term "Agreement" as used herein refers collectively to the Original Agreement as amended by this Amendment.

C. Prior to the execution of this Amendment, the Agency and MCP entered into that certain First Amendment to the Owner Participation Agreement, dated _____, 2012 (collectively, with the Original OPA, the "Amended OPA"). The Amended OPA released and terminated the Amended OPA as to the Covenant Site (defined below) and Released Property (defined below).

D. The Parties wish to amend the definition of Site in the Original Agreement so that the rights and obligations established therein and in this Amendment apply solely to the property more particularly described in Exhibit "B-1" attached hereto ("OPA Site") and to the property more particularly described in Exhibit "B-2" attached hereto ("Covenant Site") as well as make the other changes described in this Amendment. For purposes of the Agreement, the OPA Site and the Covenant Site shall be collectively referred to as the "Site."

E. This Amendment is entered into and recorded in accordance with the Amended OPA.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Release and Termination. Upon execution of this Amendment, the Agreement shall apply to and encumber only the Site, as specifically defined in this Amendment, and shall only serve as a covenant running with the land for the Site. This Amendment terminates the Original Agreement as to and forever releases the real property more particularly described in Exhibit "C" attached hereto ("Released Property") and those with an interest in the Released Property, from any and all rights and obligations under the Original Agreement and this Amendment.

2. Amendment of Section 1(b). Section 1(b) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"b. Participant constructed for operation upon the Site a shopping center consisting of five (5) retail buildings totaling approximately 80,974 square feet, improvements to Chollas Creek, an amphitheater, an office building of approximately 78,000 gross square feet along with appropriate and ancillary improvements and landscaping (the "Improvements")."

3. Amendment of Section 1(f). In the second line of Section 1(f) of the Original Agreement, the reference to "Property" (a term that is not defined) is hereby replaced with the term "Site" as described in Exhibit "B" hereto.

4. Amendment of Section 2. In the last two (2) sentences of Section 2 of the Original Agreement, the term "Participant" is hereby replaced by the term "owner" and the term "Site" is hereby replaced by the term "property."

5. Full Force and Effect. Except as amended hereby, the Original Agreement remains in full force and effect, and the Parties ratify and affirm their respective obligations under the Original Agreement.

6. Incorporation. All recitals set forth above, and all exhibits attached hereto, are incorporated herein by this reference.

7. Capitalized Terms. This Amendment redefines certain terms used in the Original Agreement including, without limitation, Site and Improvements. Except as otherwise defined or

redefined herein, capitalized terms in this Amendment shall have the meaning ascribed to them in the Original Agreement.

8. Counterparts. This Amendment may be executed in counterparts, each of which, when taken together, shall constitute an executed original. This Amendment shall take effect when executed by all parties hereto.

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

CITY OF SAN DIEGO, solely in capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

Jay M. Goldstone
Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

JAN GOLDSMITH
CITY ATTORNEY

By: _____

Kevin Reisch
Deputy City Attorney

MARKET CREEK PARTNERS, LLC,
a California limited liability company

Date: _____

By: _____

Name: _____

Title: Managing Member

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

WEST SIDE CREEK, LLC,
a California limited liability company

Date: _____

By: _____

Name: _____

Title: Managing Member

JACOBS CENTER FOR NEIGHBORHOOD
INNOVATION, a California corporation

Date: _____

By: _____

Name: _____

Title: _____

NOTARY ACKNOWLEDGMENT FORM FOR THE AGENCY

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY ACKNOWLEDGMENT FORM FOR MARKET CREEK PARTNERS, LLC

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY ACKNOWLEDGMENT FORM FOR WEST SIDE CREEK, LLC

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY ACKNOWLEDGMENT FORM FOR JACOBS CENTER FOR NEIGHBORHOOD INNOVATION

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

ORIGINAL AGREEMENT

[Attached hereto]

DOC # 2001-0635800

SEP 05. 2001 4:24 PM

OFFICIAL BUSINESS
Document entitled to free
recording per Government
Code Section 6103

11854

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 0.00



Recording Requested by
and When Recorded Return to:
REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO
c/o Southeastern Economic Development Corporation
995 Gateway Center Way, Suite 300
San Diego, California 92102

FR
BP
10M
NF

Attn: Carolyn Y. Smith, President SEDC

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

THIS AGREEMENT is entered into as of 8/27, 2001, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic (herein referred to as "Agency") and MARKET CREEK PARTNERS, LLC, a California Limited Liability Company (hereinafter referred to as "Participant").

A. Participant is the owner of that certain real property (the "Site") and Improvements (as defined below) to be constructed thereon, located in the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto and incorporated herein as Exhibit A.

B. The Site is within the Central Imperial Redevelopment Project area (the "Project") in the City of San Diego and is subject to the provisions of the Redevelopment Plan for the Project approved and adopted on September 14, 1992 by the City Council of the City of San Diego by Ordinance No. 17831 [NS], as amended by a First Amendment dated January 8, 1996 and adopted by Ordinance No. 18252 [NS], a Second Amendment dated December 10, 1996 and adopted by Ordinance No. 18367 [NS], and a Third Amendment dated November 14, 2000 and adopted by Ordinance No. 18882 [NS] (collectively referred to herein as the "Redevelopment Plan"). The Redevelopment Plan is incorporated herein by this reference and made a part hereof as though fully set forth herein.

C. Participant intends to redevelop the Site and construct a regional shopping center thereon (the "Improvements") in accordance with that certain Owner Participation Agreement entered into between the Agency and the Participant on December 8, 2000 (the "OPA"), which OPA is incorporated herein by reference.

D. This Agreement is entered into and recorded in accordance with the Redevelopment Plan and the OPA.

NOW, THEREFORE, THE AGENCY AND THE PARTICIPANT AGREE AS FOLLOWS:

1. Participant, on behalf of itself and its successors, assigns, and each successor in interest to the Site or any part thereof, hereby covenants and agrees as follows:

a. During the time the Redevelopment Plan is in effect, the Site shall be devoted only to the development permitted and the uses specified in the applicable provisions of the Redevelopment Plan and this Agreement, whichever document is most restrictive.

b. Participant shall construct for operation upon the Site a regional shopping center of up to 300,000 square feet of gross leasable space which may include a food market, office, general commercial retail and specialty shops and a multi-screen movie theater complex, all in accordance with that certain Southeast Development Permit No. 99-0156, dated September 28, 1999 and together with appropriate and ancillary parking and landscaping (the "Improvements").

c. Participant, its successors and assigns, shall maintain the Improvements on the Site, remove all graffiti from the Site within forty eight (48) hours of its application and keep the Site reasonably free from any accumulation of debris or waste materials. Participant shall also maintain the required landscaping in a healthy condition. Participant agrees that if the Site is not maintained as provided for hereinabove, the Agency, after providing Participant with written notice, may conduct the necessary maintenance on the Site at the participant's expense. Upon the performance of such work by the Agency, Agency shall have a lien on the Site in an amount equal to the cost of such maintenance work as well as all legal and administrative costs incurred by the Agency.

d. Participant, its successors and assigns, agree to participate in any Assessment District(s) created consistent with applicable state law and/or applicable regulations and ordinances of the City of San Diego. Upon formation, the Assessment District(s) shall include the maintenance of public improvements, landscaping, public lighting facilities, public places, graffiti removal and general security and incidental expenses incurred within the District, which shall include within its boundaries, but not be limited to, the Site. It is further anticipated that the maintenance of the Site under the Assessment District(s) referred to above will require a maintenance easement on a portion of the Site. Participant hereby agrees to grant to Agency, the City of San Diego and/or such other appropriate legal authority an easement on the Site for the purpose of landscape maintenance. Such easement shall be recorded upon the request of the Agency. X

e. Participant, its successors and assigns, shall protect, maintain and preserve the Improvements on the Site and obtain approval in writing from Agency prior to any material alteration or modification of such Improvements, such approval not to be unreasonably withheld or delayed.

f. Participant, its successors and assigns, including without limitation tenants, lessees, subtenants, sublessees and any other operator of a business on the Property, or any portion thereof, shall provide a right-of-first preference in employment practices as set forth in the Employment and Training Requirement, incorporated herein and attached hereto as Exhibit B.

g. Participant shall not store any materials, equipment, supplies or products outside the buildings and structures developed on the Site unless prior written approval is obtained from the Agency. If any outdoor storage is approved, it shall be screened from the public view with fencing and landscaping. Chain link fencing shall not be permitted as a screening material.

h. Participant herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the Site, nor shall Participant itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessee, subtenants, or vendees in the Site.

i. Participant, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Site or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Site, or any portion thereof, after the date of this Agreement shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for itself, its successors 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 race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land." X

(2) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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 race, color, creed, religion,

sex, sexual orientation, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use or enjoyment of the land herein leased nor shall the lease itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants or vendees in the land herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry 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 it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

2. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Agency, its successors and assigns, and the City of San Diego (the "City") and its successors and assigns, against Participant, its successors and assigns, to or of the Site or any portion thereof or any interest therein, and any party in possession or occupancy of said Site or portion thereof. Agency and the City shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the Agency and the City, without regard to whether the Agency or City has been, remains, or is an Participant of any land or interest therein in the Site or the Project area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Agreement shall not benefit nor be enforceable by any Participant of any other real Site within or outside the Project area or any person or entity having any interest in any such other real Site. X

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

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Site, provided, however, that any subsequent Participant of the Site shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Agreement, whether such Participant's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. The covenants against discrimination set forth in subsections 1(h) and 1(i) of this Agreement shall remain in effect in perpetuity. Every other covenant and condition and restriction contained in this Agreement shall remain in effect for the duration of the Redevelopment Plan.

6. Participant shall be responsible for the operation of the Improvements on the Site either by direct management or by contracting its managerial functions to a Site management company acceptable to the Agency which will be charged with managing the Improvements on behalf of the Participant. The Agency shall have the right to review and approve any such entity prior to its selection by the Participant. Such approval shall not be unreasonably withheld. Agency hereby approves the Diamond Management, Inc., a California Corporation, as the initial management company. Participant shall include in any such Site management agreement a provision providing for the termination of the agreement in the event that the manager violates any federal, state or local health and safety laws and regulations which are not cured within thirty (30) days following the giving of notice of such violations by the Agency or any other governmental entity, or in the case of a violation that cannot be cured within such thirty (30) day period, such additional time as the Participant may reasonably grant.

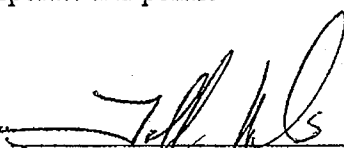
X

7. If a violation of any of the foregoing covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of thirty (30) days or more, Agency and its successors and assigns, without regard to whether Agency or its successors and assigns is a Participant of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Participant of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

IN WITNESS WHEREOF, the Agency and the Participant 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

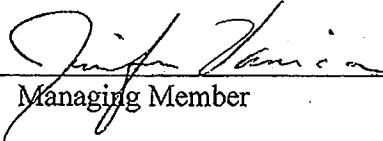
Dated: 8/27/01

By: 
Deputy Executive Director

11859

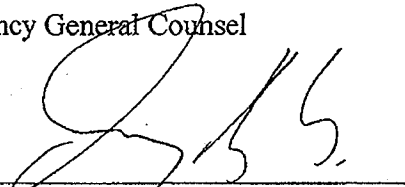
MARKET STREET PARTNERS, LLC,
a California Limited Liability Company

Date: 8/14/01

By: 
Managing Member

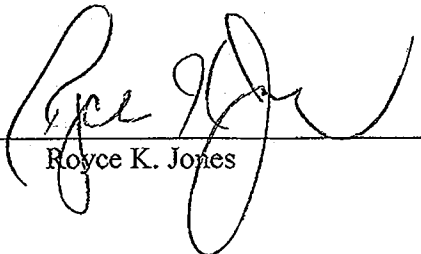
APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN
Agency General Counsel

By: 
Deputy

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: 
Royce K. Jones

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On 7/14/01 before me, Gladys Hubbard, personally appeared Jennifer Vanira, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature Gladys M. Hubbard

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

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

WITNESS my hand and official seal.

Signature _____

11861

GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

Name of the Notary: Gladys m. Hubbard

Commission Number: 1304099 Date Commission Expires: May 11, 2005

County Where Bond is Filed: San Diego

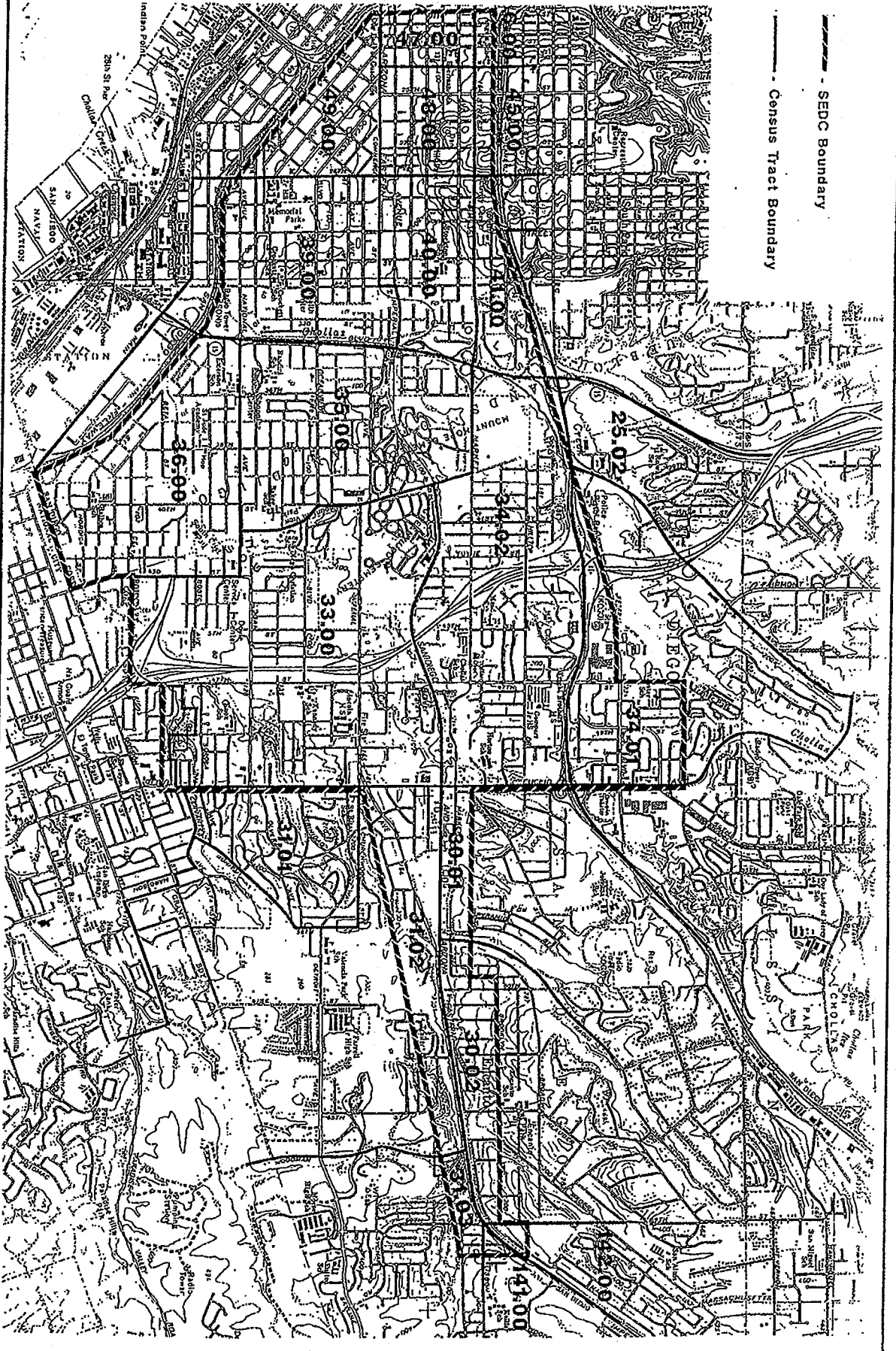
Manufacturer or Vendor Number: USS1
(Located on both sides of the notary seal border)

Signature:  SEDC
Firm Name (if applicable)

Place of Execution: San Diego, CA Date: 9/5/01

11862

--- SEDC Boundary
--- Census Tract Boundary



Census Tract Boundaries

Attachment

1

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

A portion of Lot 41 of Horton's Purchase. In the Ex-Mission Lands of San Diego, County of San Diego, City of San Diego, State of California, according to Map thereof No. 283 Filed in the office of the County Recorder of said San Diego County, March 9, 1878, more particularly described as follows:

COMMENCING at the Centerline Intersection of Market Street and Euclid Avenue;
THENCE along the centerline of said Euclid Avenue, South $00^{\circ} 14' 30''$ West 331 feet to the center line intersection of Euclid Avenue and the 100 foot wide San Diego and Arizona Eastern Railroad Easement as shown on the Langley Subdivision recorded on June 9, 1960 as Map 4562, said County Records;
THENCE continuing along said Centerline, South $00^{\circ} 14' 30''$ West 50 feet;
THENCE leaving said Centerline, North $89^{\circ} 45' 30''$ West, 44.00 feet, to the Northeasterly Corner of Lot 1 of Said Map 4562, said Corner also being the TRUE POINT OF BEGINNING;
THENCE along the Westerly Sideline of Euclid Avenue as Dedicated per said Map 4562, South $00^{\circ} 14' 30''$ West 612 feet, to a point on the Southerly line of said Lot 41;
THENCE along said Southerly line of Lot 41 North $89^{\circ} 38' 10''$ West 1282 feet, to the Southwest corner of said lot 41;
THENCE along the Westerly line of said Lot 41, North $00^{\circ} 18' 50''$ East 612 feet, to the Southerly line of said Railroad Easement;
THENCE along said Southerly line of said Railroad Easement, South $89^{\circ} 38' 5''$ East 1281 feet to the TRUE POINT OF BEGINNING.

EXHIBIT B

EMPLOYMENT AND TRAINING REQUIREMENTS

Participant is committed to creating jobs by the construction and operation of the Participant's project on the Site available to the residents of the Southeastern San Diego community to the greatest extent feasible.

In order to accomplish this objective, Participant covenants and agrees for itself and its successors and assigns to the Site or any portion thereof and all persons claiming under or through them including, without limitation, tenants, lessees, subtenants, subleases and any other operator of a business on the Site, subject to the performance of Agency of the assistance hereinafter described, to provide the following services for the benefit of Agency and the community:

1. Agency, upon receipt of written request from Participant as developer (on behalf of itself or its contractors and subcontractors) and/or from any operator of a business on the Site, shall initiate appropriate employment training assistance, including On-the-Job Training. Such training shall be tailored to the needs of the employer as outlined in a written training program reviewed and approved by SEDC and may be provided by the San Diego Workforce Partnership and/or any other appropriate agencies acceptable to the Participant and SEDC on behalf of the Agency.

2. Participant as developer, its contractors and subcontractors, and any operator of a business on the Site, as the case may be, shall assist Agency and training providers by specifically identifying their training needs and participating in the design, development, monitoring and implementation of training programs which meet the employer's standards.

3. Participant as developer, its contractors and subcontractors, and any operator of a business on the Site shall actively and directly recruit employment candidates from Southeastern San Diego, as they are defined herein, for any facility construction positions to the greatest extent possible.

On an on-going basis, all operators of a business on the Site shall actively and directly recruit employment candidates from Southeastern San Diego, as defined herein, for employment positions that become available at the facility.

Recruitment for construction and employment positions shall include, but need not be limited to, advertisement in community newspapers and written notification to the Employment Development Department of the State of California, State Service Center, 1551 Fourth Avenue, Suite 600, San Diego, California 92101, and the Southeastern Economic Development Corporation, 995 Gateway Center Way, Suite 300, San Diego, CA 92102.

4. Consistent with the paragraphs hereinabove, SEDC and Participant will work jointly to achieve the maximum level of participation by area residents in the employment opportunities offered by this project. Both parties will seek to utilize all available resources to identify, train and present for employment consideration residents from the area served by SEDC who are qualified to perform jobs that will be available during construction of the project and for those permanent jobs resulting from in the business operations conducted after the completion of construction. Moreover, Participant shall from time to time, following written request from SEDC, develop a written training program, in which the internal training methods of the Participant shall be comprehensively outlined and discussed with SEDC to effectuate the employment and training goals set forth herein. Coordination efforts may include resources of agencies and organizations such as the City of San Diego Enterprise Zone, the State of California Employment Development Department, or the San Diego Workforce Partnership.

5. For purposes of these employment training services and employment requirements, Participant as developer, agrees to give written notice to every operator of a business on the Site of the obligations and requirements of that operator to use its best efforts to employ, to the greatest extent feasible, Southeastern San Diego residents, as defined herein, who meet the employment standards and requirements of such operator.

6. For purposes of these Employment and Training Requirements, Southeastern San Diego residents shall be defined as those persons who reside in Census Tracts No. 30.01, 30.02, 31.01, 31.02, 31.03, 33, 34.01, 34.02, 35, 36, 38, 39, 40, 41, 45, 46, 47, 48, 49, 50 and 51 at the time a training or employment opportunity arises. Census Tract Boundaries are delineated on the map which is incorporated herein and attached hereto as Attachment No. 1.

11866

State of California

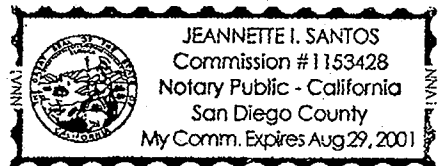
County of San Diego

On August 27, 2001, before me, Jeannette I. Santos, Notary Public
 personally appeared Paul & Heidi
~~personally known to me~~ (or proved to me on the basis of
 satisfactory evidence) to be the person(s) whose name(s) is/are
 subscribed to the within instrument and acknowledged to me that
 he/she/they executed the same in his/her/their authorized
 capacity(ies), and that by his/her/their signature(s) on the
 instrument the person(s), or the entity upon behalf of which the
 person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jeannette I. Santos
 Notary's Signature

(SEAL)



State of California

County of San Diego

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

WITNESS my hand and official seal.

 Notary's Signature

(SEAL)

EXHIBIT B-1

LEGAL DESCRIPTION OF THE OPA SITE

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

LOT 4 AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-40

EXHIBIT B-2

LEGAL DESCRIPTION OF COVENANT SITE

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

LOT A, 3, and 6 AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-39, -42 and -44

EXHIBIT C

LEGAL DESCRIPTION OF THE RELEASED PROPERTY

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

LOTS 1, 2, 5, AND 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-37, -38, and -41 and -43

ATTACHMENT NO. 11

AGREEMENT REGARDING PAYMENT OF PROPERTY TAXES

[Attached hereto]

OFFICIAL BUSINESS

Document entitled to free recording
per Cal. Gov. Code §§ 6103, 27383

Recording Requested By and
When Recorded Mail To:

REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO
c/o Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

APN: 548-020-37, -38 and -39

Space above this line for Recorder's use only

AGREEMENT REGARDING PAYMENT OF PROPERTY TAXES

This Agreement Regarding Payment of Property Taxes (the "Agreement") is entered into as of _____, 2012, by and between the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (the "Agency"), on the one hand, and JACOBS FACILITIES, LLC, a California limited liability company, and WEST SIDE CREEK, LLC, a California limited liability company (collectively, the "Owner"), on the other hand.

RECITALS

The Agency and the Owner (collectively, the "Parties") enter into this Agreement with reference to the following circumstances:

A. The principal office of the Agency, for purposes of this Agreement, is c/o Civic San Diego, 401 B Street, Suite 400, San Diego, California 92101. The term "Agency" as used in this Agreement includes any assignee of or successor to its rights, powers and responsibilities.

B. West Side Creek, LLC is the owner of fee title to that certain real property in the City of San Diego, as more particularly described in Exhibit A attached hereto and incorporated herein ("Property"). Jacobs Facilities, LLC, a California limited liability company, is the ground lessee of the Property and the owner of the improvements constructed on the same. The principal office of the Owner is located at 404 N. Euclid Avenue, San Diego, California 92114. Wherever the term "Owner" is used herein, such term shall include any permitted nominee, assignee or successor in interest of the Owner under this Agreement.

C. The former Redevelopment Agency of the City of San Diego and the prior owner of the Property, Market Creek Partners, LLC, a California limited liability company ("Market Creek Partners"), entered into that certain Owner Participation Agreement, filed with the Agency's Secretary as Document No. D-03266 on December 22, 2000 (the "Original OPA"). The Agency and

Market Creek Partners entered into that certain First Amendment to the Owner Participation Agreement dated _____, 2012 (“First Amendment”), which removed the Property from the Original OPA, and that certain Payment Agreement referenced in the First Amendment (“Payment Agreement”).

D. The Parties are entering into this Agreement to memorialize the terms under which the Owner agrees to refrain from applying for a welfare exemption for property tax payments for the Property.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. FIRST AMENDMENT AND PAYMENT AGREEMENT

Prior to execution of this Agreement, the Agency has executed the First Amendment and the Payment Agreement. As of the date hereof, (i) the Agency represents and warrants that it is in compliance with the terms of the Original OPA, as amended by the First Amendment (collectively, the “Amended OPA”), and the Payment Agreement; and (ii) the Owner represents and warrants that it is not aware of any event or circumstance that causes the Agency to be in breach of any of its obligations under the Amended OPA or the Payment Agreement.

2. PAYMENT OF PROPERTY TAXES ON THE PROPERTY

2.1 No Application for Tax Welfare Exemption

The Parties acknowledge that, but for the existence of this Agreement, the Owner wishes to apply for a welfare exemption from property tax payments with respect to the Property (“Tax Welfare Exemption”) under applicable law, including the California Revenue and Taxation Code. Notwithstanding the above, subject to the Agency complying with its material obligations under this Agreement, the Amended OPA and the Payment Agreement, the Owner agrees that it will not apply for any Tax Welfare Exemption for tax years 2011-2012, 2012-2013, or 2013-2014, nor will it apply for a retroactive application of any Tax Welfare Exemption for any tax years prior to 2011-2012.

2.2 In Lieu Payment

Notwithstanding the provisions of Section 2.1 above, if any Tax Welfare Exemption is awarded for the Property for tax year 2013-2014 or any preceding tax year, and if the Agency is then in compliance with its material obligations under this Agreement, the Amended OPA and the Payment Agreement, then the Owner agrees to pay to the Agency an amount equal to the property taxes attributable to the Property that otherwise would have been collected and deposited into the Redevelopment Property Tax Trust Fund for that applicable period pursuant to Assembly Bill x1 26 (the “In Lieu Payment”). The Owner shall deliver written notice to the Agency concerning the award of any Tax Welfare Exemption within five (5) business days after the Owner first receives notice of the award. Promptly after receipt of the Owner’s written notice, the Agency shall calculate the exact amount of the In Lieu Payment and shall deliver written notice to the Owner identifying the exact amount. The Owner shall make the In Lieu Payment (if applicable) to the Agency with respect

to each pertinent tax year within fifteen(15) calendar days after the Owner's receipt of the Agency's written notice identifying the exact amount of the In Lieu Payment. If the In Lieu Payment is not made in a timely manner, the Parties agree that interest shall accrue on the In Lieu Payment commencing on the first tardy date, at the annual rate of eight percent (8%), compounded monthly, and the amount of the In Lieu Payment plus all accrued interest thereon shall be deemed a lien against the Property in the Agency's favor.

3. GENERAL TERMS AND CONDITIONS

3.1 Notices, Demands and Communications Between the Parties

Formal notices, demands, and communications between the Parties shall be deemed to be sufficiently given and actually received if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency or the Owner as designated in Recitals A and B, respectively. 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 as provided in this Section 3.1.

3.2 Expiration or Termination of Agreement. The term of this Agreement shall expire on December 31, 2017, unless this Agreement is earlier terminated by the Owner as a result of the Agency's breach of any of its material obligations under this Agreement, the Amended OPA or the Payment Agreement. In no event, however, shall the mere lapse of the expiration date of this Agreement entitle the Owner to seek a retroactive application of the Tax Welfare Exemption to tax year 2013-2014 or any preceding tax year. Before the Owner may terminate this Agreement as the result of a material breach, the Owner must provide the Agency with written notice explaining the alleged material breach, and the Agency shall have thirty (30) days to cure any monetary breach and sixty (60) days to cure any non-monetary breach. If the Agency reasonably disputes that a non-monetary breach has occurred, then the Owner may not terminate this Agreement without a judgment or order to that effect issued by a court of competent jurisdiction.

3.3 Successors and Assigns.

This Agreement shall be binding on all successors and assigns of the Parties.

3.4 Nonliability of Agency Officials and Employees

No member, official, employee or consultant of the Agency shall be personally liable to the Owner, or any assignee of or successor to the Owner's rights under this Agreement, in the event of any default or breach by the Agency under the terms of this Agreement.

3.5 Attorneys' Fees

In the event either Party is required to institute legal action or proceeding to enforce its legal rights arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled, in addition to its other relief, to recover reasonable attorneys' fees, expert fees and court costs incurred therein.

3.6 Entire Agreement; Amendments and Waivers

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 the subject matter of this Agreement. All amendments to this Agreement must be in writing and signed by the duly authorized representatives of each Party. All waivers of any provisions of this Agreement must be in writing and signed by the Agency or the Owner.

3.7 Interplay with Amended OPA

To the extent there is any actual or perceived conflict between this Agreement and the Amended OPA, including, but not limited to, Section 216 of the Original OPA, the provisions of this Agreement shall control.

3.8 Joint and Several Liability

With respect to any obligation imposed on the Owner by this Agreement, each entity jointly defined herein as the Owner shall be jointly and severally liable for such obligation.

3.9 Incorporation

All recitals set forth above, and all exhibits attached hereto, are incorporated herein by this reference.

[remainder of this page intentionally left blank]

3.10 Date of Agreement; Counterparts

This Amendment shall take effect when signed by both Parties. The reference date of this Agreement shall be the date it is signed by the Agency. This Agreement may be executed in counterparts, each of which is deemed to be an original.

CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

Jay M. Goldstone
Chief Operating Officer

APPROVED AS TO FORM AND LEGALITY:

JAN GOLDSMITH
City Attorney

By: _____

Kevin Reisch
Deputy City Attorney

JACOBS FACILITIES, LLC,
a California limited liability company

Date: _____

By: _____

Name: _____

Title: Managing Member

WEST SIDE CREEK, LLC,
a California limited liability company

Date: _____

By: _____

Name: _____

Title: Managing Member

NOTARY ACKNOWLEDGMENT FORM FOR AGENCY

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTARY ACKNOWLEDGMENT FORM FOR OWNER

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

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

LOTS 1, 2, AND 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED MARKET CREEK PLAZA, ACCORDING TO MAP NO. 15782, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 11, 2010, AS FILE NO. 2010-0236022 OF OFFICIAL RECORDS.

APN: 548-020-37, -38, -39

CENTRAL IMPERIAL REDEVELOPMENT PROJECT
SAN DIEGO, CALIFORNIA

OWNER PARTICIPATION AGREEMENT

By and Between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,
AGENCY,

and

MARKET CREEK PARTNERS, LLC

PARTICIPANT

RR-201005
NOV 14 2000

DOCUMENT NO. D-03266/R-03266
FILED DEC 22 2000
OFFICE OF THE REDEVELOPMENT AGENCY
SAN DIEGO, CALIF.

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OWNER PARTICIPATION AGREEMENT

This Owner Participation Agreement (the "Agreement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency"), and MARKET CREEK PARTNERS, LLC, a California Limited Liability Company (the "Participant"). The Agency and the Participant agree as follows:

I. [§ 100] SUBJECT OF AGREEMENT

A. [§ 101] Purpose of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the Central Imperial Redevelopment Project by providing for the development of certain real property commonly referred to as the "Market Creek Plaza" which is located on Euclid Avenue, south of Market Street, within City of San Diego, State of California (the "Site"). The Site is comprised of approximately nineteen (19) acres in land area. In order to facilitate the Agency's effort to cause the effective redevelopment of the Central Imperial Redevelopment Project, it is proposed by the Participant that the Site be redeveloped as a neighborhood shopping center of up to three hundred thousand (300,000) square feet of gross leasable space which may include a food market, office, general commercial retail and specialty shops and a multi-screen movie theater complex, all in accordance with that certain Southeast Development Permit No. 99-0156, dated September 28, 1999. The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of San Diego and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

B. [§ 102] The Redevelopment Plan

This Agreement is subject to the provisions of the Redevelopment Plan (which was approved and adopted on September 14, 1992 by the City Council of the City of San Diego by Ordinance No. 17831 [NS]), as amended by a First Amendment dated January 8, 1996 and adopted by Ordinance No. 18252 [NS], a Second Amendment dated December 10, 1996 and adopted by Ordinance No. 18367 [NS], and a Third Amendment dated November 14, 2000 and adopted by Ordinance No. 18882 [NS] (collectively referred to herein as the "Redevelopment Plan"). The Redevelopment Plan is incorporated herein by this reference and made a part hereof as though fully set forth herein.

Any amendments hereafter to the Redevelopment Plan (as so approved and adopted) which change the uses or development permitted on the Site as proposed in this Agreement, or otherwise change the restrictions or controls that apply to the Site, or otherwise affect the Participant's obligations or rights with respect to the Site, shall require the written consent of the Participant which the Participant may withhold in its sole discretion. Amendments to the Redevelopment Plan applying to other property in the Central Imperial Redevelopment Project area shall not require the consent of the Participant.

C. [§ 103] The Redevelopment Project Area

The Central Imperial Redevelopment Project area is located in the City of San Diego, California (the "City"). The Central Imperial Redevelopment Project area is generally described as follows:

East of Interstate 805, mostly west of Euclid Avenue, north of Ocean Boulevard, and south of "G" and Guymon Streets. The Project Area also extends east from Euclid Avenue to Flicker Street, generally between Market Street and Imperial Avenue.

The exact boundaries of the Redevelopment Project area are specifically and legally described in the Redevelopment Plan for such Redevelopment Project.

D. [§ 104] The Site

The "Site" includes those portions of the Central Imperial Redevelopment Project area upon which the development provided for herein will be constructed. The development of the Site may be accomplished in multiple phases.

The Site is as illustrated and designated on the "Site Map" which is incorporated herein and attached to this Agreement as Attachment No. 1 and as more precisely described in the "Legal Description" which is incorporated herein and attached hereto as Attachment No. 2. This Agreement is made with reference to the following facts:

E. [§ 105] Parties to the Agreement

1. [§ 106] Agency

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

The principal office of the Agency is located in the City Administration Building, Community Concourse, San Diego, California 92101.

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

2. [§ 107] Participant

Participant is a California Limited Liability Company, and shall be responsible and liable for each of the Participant's obligations set forth in this Agreement.

The principal office of the Participant is 5160 Federal Boulevard, San Diego, California 92105.

Wherever the term "Participant" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

F. [§ 108] Prohibition Against Change In Ownership Management and Control of Participant

The Participant represents and agrees that its undertakings pursuant to this Agreement are, and that the Site will be used, for the purpose of redevelopment of the Site and not for speculation in land holding. The Participant further recognizes that, in view of

1. the importance of the redevelopment of the Site to the general welfare of the community;
2. the public aids that have 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 the Participant or a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of the Participant, or the degree thereof, is for practical purposes a transfer or disposition of the Site or part thereof then owned by the Participant;

the qualifications and identity of the Participant, and its principals, are of particular concern to the community and the Agency. The Participant further recognizes that it is because of such qualifications and identity that the Agency is entering into this Agreement with the Participant. No voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Prior to the issuance of a Certificate of Completion, the Participant shall not assign all or any part of this Agreement without the prior written approval of the Agency, which approval shall not be unreasonably withheld if, in the reasonable determination of the Agency, the proposed assignee of the Participant has the qualifications of a Participant comparable in all material respects (including experience, character and financial capability) to the original Participant.

Except for assignments duly approved by the Agency as provided above, the Participant covenants and agrees for itself, and any successor in interest of itself, that prior to issuance by the Agency of a Certificate of Completion and without the prior written approval of the Agency, there shall be no significant change in the ownership of the Participant, or in the relative proportions thereof, or with respect to the identity of the parties in control of the Participant, by any method or means.

The Participant shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of the Participant or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. This Agreement may be terminated by the Agency if there is any significant change (voluntary or involuntary except as the result of death or incapacity) in membership, management or control, of the Participant or its associates prior to issuance of a Certificate of Completion for the Site as hereunder provided.

The restrictions of this Section 108 shall terminate upon issuance by the Agency of a Certificate of Completion for the entire Site or any portion thereof, as applicable.

II. [§ 200] DEVELOPMENT OF THE SITE

A. [§ 201] Responsibilities of Participant

1. [§ 202] Scope of Development

The Site shall be developed in accordance with and within the limitations established in the "Scope of Development" incorporated herein and attached hereto as Attachment No. 4.

2. [§ 203] Basic Concept Drawings

The Participant shall prepare and submit Basic Concept Drawings and related documents for the development of the Site to the Agency for review and written approval within the time established in the Schedule of Performance. Basic Concept Drawings shall include a site plan showing the improvements as they are to be developed and constructed on the Site, together with related off-site public improvements.

The Site, and related off-site public improvements, shall be developed as established in the Basic Concept Drawings and related documents except as changes may be mutually agreed upon between the Participant and the Agency. Any such changes shall be within the limitations of the Scope of Development.

3. [§ 204] Landscaping and Grading Plans

The Participant shall prepare and submit to the Agency for its approval preliminary and final landscaping and preliminary and finish grading plans for the Site. Those plans shall be prepared and submitted within the times established in the Schedule of Performance. The landscaping plans shall include a lighting program which highlights the design of exterior components of the development including but not limited to building facades, architectural detail, landscaping and sculpture.

The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as the Participant's architect. Within the times established respectively therefor in the Schedule of Performance, the Participant shall submit to the Agency for approval the name and qualifications of its master architect and civil engineer for overall development of the Site and related off-site public improvements, and its architect, landscape architect, and civil engineer for the Site.

4. [§ 205] Construction Drawings and Related Documents for the Site

The Participant shall prepare and submit construction drawings and related documents (collectively called the "Drawings") for the development pertaining to each development parcel of the Site (including the off-site public improvements to be constructed concurrently with the applicable development parcel) to the Agency for review (including but not limited to architectural review), and written approval within the times established in the Schedule of Performance (Attachment No. 3). Such construction drawings and related documents shall be submitted in four stages: Overall Schematic Drawings and Design Criteria for the entire Site, and Schematic/Design Development Drawings, 50% Construction Drawings, and Final Construction Drawings for the Site. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.

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

During the preparation of all drawings and plans, the Agency and the Participant shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the Agency. The Agency and the Participant 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.

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 Site, the Participant and the Agency shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

5. [§ 206] Agency Approval of Plans, Drawings, and Related Documents

Subject to the terms of this Agreement, the Agency shall have the right of review (including without limitation architectural review) of all plans and submissions, including any proposed changes therein which materially affect the exterior of the development or the scope or composition of the development. The Agency shall approve or disapprove the plans, drawings and related

documents referred to in Section 203, 204 and 205 of this Agreement within the times established in the Schedule of Performance (Attachment No. 3). Failure by the Agency to either approve or disapprove within the times established in the Schedule of Performance shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency requests to be made. Such reasons and such changes must be consistent with the Scope of Development (Attachment No. 4) and any items previously approved or deemed approved hereunder. The Participant, upon receipt of a disapproval based upon powers reserved by the Agency hereunder shall revise the plans, drawings and related documents, and shall resubmit to the Agency as soon as practicable after receipt of the notice of disapproval.

If the Participant desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Agency for reasonable approval. If the Final Construction Drawings, as modified by the proposed change, conform to the requirements of Section 205 of this Agreement and the Scope of Development, the proposed change shall be approved and the Participant shall be notified in writing within fifteen (15) days after submission. Such change in the construction plans shall, in any event, be deemed approved unless rejected, in whole or in part, by written notice thereof setting forth in detail the reasons therefor, and such rejection shall be made within said fifteen (15) day period.

6. [§ 207] Cost of Construction/Evidence of Finance

Subject to the terms and conditions of this Agreement, the cost of developing the Site and constructing all improvements thereon and all off-site public improvements (collectively the "Improvements") shall be borne by the Participant as follows:

a. The parties estimate that the cost to the Participant to construct the Improvements on the Site in accordance with this Agreement shall be approximately Thirty-Seven Million Three Hundred Thirty-Six Thousand Dollars (\$37,336,000) (the "Development Costs"). The parties anticipate that the Development Costs shall be as set forth in the Project Budget attached to this Agreement as Attachment No. 8, which is incorporated herein by this reference (the "Project Budget"). The Project Budget may be shall be subject to change from time-to-time by the Participant subject to the prior written approval of the Agency Executive Director or designee (which approval shall not be unreasonably withheld), upon which approval the Project Budget shall be replaced by the approved revised Project Budget. Notwithstanding any provision to the contrary contained in any document, the Participant shall have the right to amend the Project Budget from time-to-time, without Agency approval but subject to providing written notice to the Agency, so long as the proposed amendment: (1) increases or decreases the total Development Costs by not more than ten percent (10%), in the aggregate, of the total Development Costs set forth in the initial Project Budget; and (2) does not increase or decrease any line item, in the aggregate, by more than twenty percent (20%) of the amount set forth for such item in the initial Project Budget.

b. The parties anticipate that the Participant will finance the Development Costs with a combination of funds to be provided to the Participant, and Participant's equity, as follows:

- (1) Prior to the commencement of construction of the Improvements on the Site, the Participant shall finance the Development Costs with a combination of Participant's equity a first deed of trust construction loan which is estimated to be as follows:

Participant Equity: \$10,536,000

Construction Loan: \$26,800,000

Total Development : \$37,336,000

c. Participant shall have the right at any time and from time-to-time to modify and substitute other sources of financing for those sources of financing currently anticipated, as provided in this Section 207, following written notification to the Agency Executive Director or designee.

d. Within the time established therefor in the Schedule of Performance, the Participant shall submit to the Agency evidence satisfactory to the Agency that the Participant has obtained the financing necessary for the construction of the Improvements in accordance with this Agreement. Such evidence of financing shall include the following:

- (1) A final project budget, consisting either of confirmation that the Project Budget attached to this Agreement as Attachment No. 8 remains unchanged, or a revised Project Budget, containing an estimate of all Development Costs.
- (2) A copy of the contract between the Participant and the general contractor for the construction of the Improvements, or if the Participant will act as its own general contractor, then all subcontracts for the construction of such Improvements, certified by the Participant to be a true and correct copy thereof; and
- (3) To the extent the sources of funds set forth in paragraph b(1) of this Section include Participant's Equity, evidence satisfactory to the Agency that Participant has sufficient unencumbered funds available for payment of Development Costs when and as needed; and
- (4) To the extent the sources of funds set forth in paragraph b(1) of this Section include construction loan funds, copies of the final construction loan documents demonstrating that

Participant has adequate funds available to cover the total Development Costs.

e. To the extent necessary to confirm that Participant has the funds necessary to pay for and complete the construction of the Improvements in accordance with this Agreement and that such financing is not materially inconsistent with the provisions of this Agreement, the Agency Executive Director shall have the right to approve or disapprove the Participant's evidence of financing, and shall approve or disapprove such evidence of financing within the time established in this Agreement or the Schedule of Performance. Such approval shall not be unreasonably withheld, delayed or conditioned and subject to this Section 207 of this Agreement, such financing shall be deemed approved unless rejected, in whole or in part, by written notice thereof setting forth in detail the reasons therefor, and such rejection shall be made within fifteen (15) days after submission of a request for approval. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to the Participant stating the reasons for such disapproval.

7. [§ 208] Condition of Site

The Site (and Improvements), as well as any portion thereof (including the Improvements) shall be held by the Participant with no warranty, express or implied by the Agency as to the condition of the soil or water, its geology, or the presence of known or unknown faults or the condition of the Improvements. It shall be the sole responsibility of the Participant, at the Participant's expense, to investigate and determine the soil and water conditions of the Site and the suitability of the Site and the Improvements to be developed thereon by the Participant. If the soil or water conditions of the Site, or any part thereof, or the condition of the Improvements, are not in all respects entirely suitable for the use or uses to which the Site (and Improvements) will be put, then it shall be the sole responsibility and obligation of the Participant to take such action as may be necessary to place the Site and the soil and water conditions thereof, and the Improvements, in all respects in a condition entirely suitable for the development of the Site.

8. [§ 209] Construction Schedule

The Participant shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements on the Site, together with related off-site public improvements, and the development thereof as provided in the Scope of Development (Attachment No. 4). The Participant shall begin and complete all construction and development within the times specified in the Schedule of Performance (Attachment No. 3) with such reasonable extensions of said dates as may be granted by the Agency and subject to events of force majeure. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Participant and the Agency.

During periods of construction, the Participant shall submit to the Agency a written report of the progress of the construction when and as reasonably requested by the Agency, but not more often than quarterly; provided however, such reports are reasonably acceptable to the Agency and

timely submitted to the Agency. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by the Participant.

During periods of construction, the Agency shall give reasonable assistance to the Participant in encouraging other governmental entities to make prompt, timely inspections in order to keep the development of the Site on schedule.

9. [§ 210] Indemnification During Construction; Bodily Injury and Property Damage Insurance

During the period commencing with execution of this Agreement by the Agency, and until such time as the Agency has issued a Certificate of Completion with respect to the construction of the Improvements on the entire Site, the Participant agrees to and shall defend, indemnify and hold the Agency, the City, and their officers, employees, contractors and agents harmless 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 to the property of any person which shall occur on the Site, or in connection with this Agreement, and which in either event shall be directly or indirectly caused by any acts done or any errors or omissions of the Participant or its officers, employees, contractors or agents. The Participant shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Agency, the City, or their respective officers, employees, contractors, or agents.

Without limiting the foregoing indemnity, during the period commencing with execution of this Agreement by the Agency, and ending on the date when a Certificate of Completion has been issued with respect to the entire Site, the Participant shall furnish or cause to be furnished to the Agency, duplicate originals or appropriate certificates of bodily injury and property damage insurance policies covering the matters referred to in the above indemnity, in the amount of at least Three Million Dollars (\$3,000,000) combined single limit naming the Agency, the City, and their respective officers, employees, contractors and agents as additional insureds.

10. [§ 211] Antidiscrimination During Construction

The Participant for itself and its successors and assigns agrees that in the construction of the Improvements on the Site and off-site as provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of sex, sexual orientation, marital status, race, color, creed, religion, national origin, or ancestry.

11. [§ 212] Local, State, and Federal Laws

The Participant shall carry out the construction of the Improvements on the Site and off-site in conformity with all applicable laws, including all applicable federal and state labor standards.

12. [§ 213.1] City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, or off-site, the Participant 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 with jurisdiction over such construction, development or work. The Agency shall provide all proper assistance to the Participant in securing these permits.

13. [§ 213.2] City Fees

The Participant shall be responsible for the payment of all City Fees attributable to the construction of the Improvements on the Site.

14. [§ 214] Rights of Access

Representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency (or his designee). Such representatives shall give reasonable written notice to the Participant in advance of their access to the Site (except in cases of emergency), and in all respects their activities shall comply with then applicable laws and regulations regarding health and safety, and Participant's written safety rules and regulations.

B. [§ 215] Responsibilities of the Agency

Except as specifically provided, the Agency shall not be responsible for performing any of the work relative to the construction and development of the Improvements specified in the Scope of Development (Attachment No. 4).

C. [§ 216] Taxes, Assessments, Encumbrances and Liens

The Participant shall pay when due all real estate taxes and assessments assessed and levied on or against the Site and each portion thereof, subsequent to the conveyance of title thereto. The Participant shall not place, or allow to be placed, on the Site or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. The Participant shall remove, or shall have removed, any levy or attachment made on the Site (or any portion thereof), except those created by work of the Agency, or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Participant from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Participant in respect thereto. The covenants of the Participant set forth in this Section 216 relating to the placement of any unauthorized mortgage, trust deed, encumbrance, or lien, shall remain in effect only until a Certificate of Completion of construction

has been recorded with respect to the Site or the portion thereof upon which any unauthorized mortgage, trust deed, encumbrance or lien might be placed.

D. [§ 217] Prohibition Against Transfer Prior to Issuance of Certificate of Completion

Prior to the recordation by the Agency of a Certificate of Completion (referred to in Section 224 of this Agreement), the Participant shall not, except as permitted by this Agreement, assign or purport 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 Site or the improvements thereon, without prior written approval of the Agency, which approval (if consistent with the standards set forth in Section 108) shall not be unreasonably withheld. This prohibition shall not apply to the Site (or portion thereof) subsequent to the recordation of the Certificate of Completion with respect thereto. This prohibition shall not be deemed to prevent the granting of easements or permits necessary to facilitate the financing and developing of the Site, nor shall it prohibit the granting of any security interests expressly described in this Agreement necessary for the financing and developing of the Site, or the exercise of any rights under any leases not inconsistent with the development of the Site as contemplated by this Agreement.

In the event that the Participant does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign the Site (or any portion thereof), or the buildings or structures thereon, prior to the issuance of the Certificate of Completion pertaining thereto, the Agency shall be entitled to exercise any and all legal rights available to it pursuant to such violation.

In the absence of specific written agreement by the Agency, no sale, transfer, conveyance or assignment of this Agreement or the Site (or any portion thereof), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Participant or any other party from any obligations under this Agreement.

The prohibition against Transfers contained in this Section 217 shall not apply to the following:

- (1) Transfers occurring subsequent to the recordation of the Certificate of Completion;
- (2) The granting of easements or permits to facilitate the construction of the Improvements on the Site;
- (3) Mortgages or other conveyances of a security interest in the Site to a lender for financing or refinancing the Development Costs, as provided in Section 207 of this Agreement; and

- (4) A Transfer to an Affiliate. For the purposes of this Agreement, the term "Affiliate" means: (a) an entity that directly or indirectly controls, is controlled by or is under common control with the Participant, or (b) an entity at least a majority of whose economic interest is owned by Participant; and the term "control" means the power to direct the management of such entity through voting rights, ownership or contractual obligations. Without Agency's prior written consent, no assignment of this Agreement shall relieve the Participant of liability under this Agreement. No assignment of this Agreement shall become effective until Agency, Participant and the assignee execute a written assignment agreement that is acceptable to the Agency Executive Director.

E. [§ 218] Security Financing; Rights of Holders

1. [§ 219] No Encumbrances Except Mortgages, Deeds of Trust, Conveyances and Leases-Back or Other Conveyance for Financing for Development

Notwithstanding anything contained herein to the contrary, nothing shall preclude Participant from obtaining mortgages, deeds of trust, conveyances and leases-back, or any other form of conveyance required for any reasonable method of financing before the recordation of the Certificate of Completion on the Site or portion thereof (referred to in Section 225 of this Agreement), provided such conveyance is solely and exclusively for the purpose of securing loans of funds to be used for financing and developing of the Improvements on the Site or off-site public improvements related thereto, and any other expenditures necessary and appropriate to develop the Site under this Agreement. The Participant shall notify the Agency in advance of any mortgage, deed of trust, conveyance and lease-back, or other form of conveyance for financing if the Participant proposes to enter into the same before the recordation of the Certificate of Completion. The Participant shall not enter into any such conveyance for financing without the prior written approval of the Agency, which approval the Agency agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by the Agency within thirty (30) days after receipt of notice thereof by the Agency. Any such disapproval shall state the reason therefor. Such lender approved by the Agency pursuant to this Section 218, shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

In any event, the Participant shall promptly notify the Agency of any mortgage, deed of trust, conveyance and lease-back, or other financing, conveyance, encumbrance or lien that has been created or attached to the Site (or portion thereof) prior to completion of the construction of the improvements thereon whether by voluntary act of the Participant or otherwise.

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

2. [§220] Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion; nor shall any covenants or any other provision in the Agreement Containing Covenants Affecting Real Property (Attachment No. 5) for the Site be so construed as to so obligate such holder. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

3. [§ 221] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Agency shall deliver any notice or demand to the Participant with respect to any breach or default by the Participant in completion of construction of the Improvements on the Site, the Agency shall at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement with respect to the Site, a copy of such notice or demand. Each such holder, with respect to the Site, 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 holder upon obtaining possession, such holder 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 in the remedy or cure of which cannot be commenced within such 90-day period, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that such holder shall not be required to remedy or cure any non-curable default of the Participant. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements on the Site (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Participant's obligations to the Agency by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder related, and submit evidence satisfactory to the Agency that it has the qualifications and/or financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency.

4. [§ 222] Failure of Holder to Complete Improvements

In any case where six (6) months after default by the Participant in completion of the improvements on the Site (for which a Certificate of Completion has not yet been issued by the

Agency), the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site, (or portion thereof), has not exercised the option to construct, or if it has exercised the option but has not proceeded diligently with construction (including diligent efforts to obtain possession if necessary), the Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage, deed of trust or other security interest; provided, however, that the holder shall have thirty (30) days after its receipt of notice from the Agency of its intent to effect this purchase, in which the holder may exercise the option to construct (if it has not previously done so), or may resume proceeding diligently with construction, as the case may be, and if the holder does so act, the notice from the Agency shall be deemed withdrawn; the foregoing right to delay purchase by the Agency may be exercised only once by the holder. If the ownership of the Site (or any portion thereof) has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following as they pertain to the Site (or portion thereof):

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings).
 - b. All expenses with respect to foreclosure.
 - c. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent ownership or management of the Site (or portion thereof), such as insurance premiums and real estate taxes.
 - d. The cost of any improvements made by such holder.
 - e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency.
5. [§223] Right of Agency to Cure Mortgage, Deed of Trust, or Other Security Interest Default

In the event of a default or breach by the Participant of a mortgage, deed of trust or other security interest with respect to the Site (or portion thereof) prior to the issuance of a Certificate of Completion therefor by the Agency, and the holder has not exercised its option to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Participant of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site (or portion thereof) to the extent of such costs and disbursements incurred prior to the issuance of a

Certificate of Completion therefor. Any such lien shall be subordinate and subject to mortgages, deeds of trust, or other security instruments executed for the sole purpose of obtaining funds to purchase and develop the Site (or portion thereof) as authorized herein.

F. [§ 224] Right of the Agency to Satisfy Other Liens on the Property After Title Passes

Prior to the recordation of the Certificate of Completion for the Site or portion thereof, (referred to in Section 225 of this Agreement), and after the Participant has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site (or portion thereof), other than the liens referred to in Section 221, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Participant to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Participant in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site (or any portion thereof) to forfeiture or sale.

G. [§ 225] Certificate of Completion

Promptly after completion of all construction and development to be completed by the Participant upon the Site, the Agency shall furnish the Participant with a Certificate of Completion upon written request therefor by the Participant. The Agency shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site, and of full compliance with the terms hereof with respect to the Site. The Agency shall also furnish the Participant with a Certificate of Completion for portions of the improvements upon the Site that are properly completed if the Participant is not in default under this Agreement. After the recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instruments which survive this Agreement. Neither the Agency nor any other person, after the recordation of the Certificate of Completion, shall have any rights, remedies or controls that it would otherwise have or be entitled to exercise under this Agreement with respect to the Site (or portion thereof), as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to the Site (or portion thereof) shall be limited thereafter to those set forth in the documents recorded pursuant to this Agreement or which otherwise survive this Agreement.

The Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the Recorder of San Diego County.

If the Agency refuses or fails to furnish a Certificate of Completion for the Site (or portion thereof, as applicable) after written request from the Participant, the Agency shall, within ten (10) days of the written request, provide the Participant with a written statement which details the reasons

the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Participant must take to obtain a Certificate of Completion. If the reasons for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond by the Participant with the Agency in an amount representing a fair value of the work not yet completed. If the Agency shall have failed to provide such written statement within said 10-day period, the Participant shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, nor any part thereof. Such Certificate of Completion is not notice of completion as referred to in Section 3093 of the California Civil Code.

H. [§ 226] Project Identification Sign

Prior to commencement of construction on the Site up until the issuance of a Certificate of Completion by the Agency as set forth in Section 225 above, the Participant shall prepare and install, at its cost and expense, a project identification sign at one location along the street frontage of the Site. The sign shall be at least eighteen (18) square feet in size and visible to passing pedestrian and vehicular traffic. The design of the sign as well as its proposed location shall be submitted to the Agency for review and approval prior to installation. The sign shall, at a minimum, include:

- Development name
- Participant
- The phrase:

A Project of the Redevelopment Agency of the City of San Diego
Mayor Susan Golding

Councilmembers Harry Mathis
 Byron Wear
 Christine Kehoe
 George Stevens
 Valerie Stallings
 Judy McCarty
 Juan Vargas

and

Southeastern Economic Development Corporation
Board of Directors David Poole, Chair
 Douglas Oden, Vice Chair
 Kathleen Garcia, Secretary
 Gregory Thorpe, Treasurer
 Ruben Rodriguez
 Agnes Benson

Kurt Chilcott
Zoniece Jones
Carolyn Y. Smith

President
-- Completion Date _____
-- For information call _____

Participant shall obtain a current roster of Redevelopment Agency and SEDC Board of Directors members before signs are printed.

III. [§ 300] USE OF THE SITE

A. [§ 301] Uses

The Participant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that during construction and thereafter the Participant, its successors and assignees shall devote the Site to the uses specified in the Redevelopment Plan, the Scope of Development, and the Agreement Containing Covenants Affecting Real Property for the period specified in the applicable documents.

B. [§ 302] Maintenance of the Site

During construction and thereafter, the Participant shall maintain the improvements on the Site and shall keep the Site free from any accumulation of debris or waste materials.

During construction and thereafter, the Participant shall also maintain the landscaping required to be planted on the Site under the Scope of Development in a healthy condition.

C. [§ 303] Obligation to Refrain From Discrimination

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

D. [§ 304] Form of Nondiscrimination and Nonsegregation Clauses

The Participant 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 itself, its successors 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 sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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 sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit 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 land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of sex, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry 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 it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

E. [§ 305] Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the Participant and any successor in interest to the Site or any part thereof for the benefit and in favor of the Agency, its successors and assigns, and the City. Such covenants as are to survive the issuance of the Certificate of Completion by the Agency shall be as contained in the Agreement Containing Covenant Affecting Real Property (Attachment No. 5) and shall remain in effect for the periods specified therein. Covenants in this Agreement not expressly

set forth in the Agreement Containing Covenants Affecting Real Property shall terminate upon the issuance of a Certificate of Completion therefor.

F. [§ 306] Rights of Access - Public Improvements and Facilities

The Agency for itself, and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible, for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Participant, and the Agency shall indemnify and hold the Participant harmless from any claims or liabilities pertaining to such entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

IV. [§400] **DEFAULTS, REMEDIES AND TERMINATION**

A. [§ 401] Defaults - General

Subject to the extensions of time set forth in Section 504, 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 immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, and during any period of curing shall not be in default.

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.

B. [§ 402] Legal Actions

1. [§ 403] Institution of Legal Actions

In addition to any other rights or remedies, 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, or any other appropriate court of that county, or in the Federal District Court in the Southern District of California.

2. [§ 404] Applicable Law

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

3. [§ 405] Acceptance of Service of Process

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

In the event that any legal action is commenced by the Agency against the Participant, service of process on the Participant shall be made by personal service upon the President, Secretary, managing partner or other officer of the Participant, and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

C. [§ 406] 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.

D. [§ 407] Damages

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within ten (10) days after receipt of the notice of default if an obligation to pay money, or within thirty (30) days after the notice of default otherwise, or if such default (other than the payment of money) is of a type which is not capable of being cured within thirty (30) days, then if the default is not commenced to be cured within thirty (30) days after of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Neither party, however, shall have any right to indirect or consequential or punitive damages against the other, and each party hereby waives the right to claim the same against the other.

E. [§ 408] Specific Performance

If either party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within ten (10) days after receipt of the notice of default if an obligations to pay money, or within thirty (30) days after the notice of default otherwise, or if such default (other than the

payment of money) is of a type which is not capable of being cured within thirty (30) days, then if the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the nondefaulting party, at its option, may thereafter (but not before, unless necessary to prevent immediate harm) commence an action for specific performance of the terms of this Agreement pertaining to such default.

F. [§ 409] Remedies and Rights of Termination

1. [§ 410] Termination by Participant

In the event that:

- a. the Participant is unable, despite diligent and good faith efforts, and within the time established respectively therefor in the Schedule of Performance to obtain approval from the City of the Preliminary Subdivision Map, or the Final Subdivision Map, with respect to the Site, as referred to in Section 603 of this Agreement; or
- b. the Participant is unable, despite diligent and good faith efforts, to obtain financing consistent with this Agreement, for the construction and development of the Improvements on the Site in accordance with this Agreement and the Scope of Development (Attachment No. 4) and deliver to the Agency either submission of evidence of financing referred to in Section 207 within the time established therefor in the Schedule of Performance; or
- c. the Participant is unable, despite diligent and best efforts, to obtain prior to the date established in this Agreement, any of the following permits or entitlements for the development of the Site in accordance with this Agreement (including the Scope of Development) and the Drawings approved by the Agency:
 - i) all discretionary permits and/or approvals required by the City or other governmental entity having jurisdictions; or
 - ii) sewer and water permits; or
 - iii) building permits; or
- d. the Participant shall reasonably determine that the condition on the Site is not suitable for development thereon pursuant to Section 208

of this Agreement prior to the conveyance date established therefor in the Schedule of Performance; or

- e. the Participant is unable, despite diligent and good faith efforts, to obtain and submit to the Agency any submission of evidence of financing commitments referred to in Section 207 of this Agreement with respect to the Site, within the time established respectively therefor in the Schedule of Performance; or
- f. the Participant is unable despite diligent and good faith efforts, and within the time established therefor in the Schedule of Performance, to enter into a Loan Agreement with the Agency as referred to in Section 605 of the Agreement ; or
- g. the Agency, within the time established therefor in the Schedule of Performance, fails to enter into the Loan Agreement with the Agency as referred to in Section 605 of this Agreement and such failure is not be cured within thirty (30) days after the date of written demand by the Participant; or
- h. the Agency fails to timely perform any other material obligation of the development as required under this Agreement and such failure is not be cured within thirty (30) days after the date of written demand by the Participant,

then this Agreement may, at the option of the Participant, be terminated by giving written notice thereof to the Agency, and to the extent applicable, the Participant shall be entitled to exercise all rights and recourse attributable to the Agency's default(s).

2. [§ 411] Termination by Agency

In the event that:

- a. the Participant shall fail to deliver to the Agency any submission of evidence of financing commitments referred to in Section 207 of this Agreement with respect to the Site within the times established therefor in the Schedule of Performance (Attachment No. 3); or
- b. the Participant (or any successor in interest), in violation of the provisions of this Agreement, assigns or attempts to assign the Agreement or any right herein, or in the Site (or portion thereof); or
- c. there is a substantial change in the ownership of the Participant, or with respect to the identity of the parties in control of Participant, or

the degree thereof contrary to the provisions of Sections 107 and 108 hereof; or

- d. the Participant does not deliver any submission of plans, drawings, and related documents as required by this Agreement by the dates respectively provided in this Agreement without the advance written consent of the Agency; or
- e. the Participant is unable, despite diligent and good faith effort, to obtain any of the following permits or entitlements for the development of the Site in accordance with this Agreement (including the Scope of Development) and the Drawings approved by the Agency:
 - i) all discretionary permits and/or approvals required by the City or other governmental entity having jurisdiction; or
 - ii) sewer and water permits, or
 - iii) building permits; or
- f. the Participant is unable, despite diligent and good faith efforts, and within the time established respectively therefor in the Schedule of Performance, to obtain approval from the City of the Preliminary Subdivision Map, or the Final Subdivision Map, with respect to the Site, as referred to in Section 603 of this Agreement; or
- g. the Agency is unable, despite diligent and good faith efforts, and within the time established therefor in the Schedule of Performance to enter into a Loan Agreement with the Participant as referred to in Section 605 of this Agreement; or
- h. the Participant, within the time established therefor in the Schedule of Performance, fails to enter into the Loan Agreement with the Agency as referred to in Section 605 of this Agreement; or
- i. the Participant fails to timely perform any other material obligation of the development of the Site as required under this Agreement; or
- j. if any default or failure referred to in subdivisions (a) through (i) of this Section shall not be cured within thirty (30) days after the date of written demand by the Agency,

then this Agreement and any rights of the Participant, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the Agency, shall at the option of the Agency, be

terminated with respect to the Site by written notice thereof to the Participant, and to the extent applicable, the Agency shall be entitled to exercise all rights and recourse attributable to the Participant's default(s).

V. [§ 500] GENERAL PROVISIONS

A. [§ 501] Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between the Agency and the Participant shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and the Participant, as designated in Sections 106 and 107 hereof. Such notices, demands and communications if given in person shall be deemed given when delivered, and if given by mail shall be deemed given three (3) business days after deposit in the mails. 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 as provided in this Section 501.

B. [§ 502] Conflicts of Interest

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 personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

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

C. [§ 503] Nonliability of Agency Officials and Employees

No member, official, employee or consultant of the Agency shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Participant or to its successor, or on any obligations under the terms of this Agreement.

D. [§ 504] Enforced Delay: Extension of Time of Performance

In addition to specific provisions of this Agreement, performance by either party hereunder (except for the payment of money) 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, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of the City or any other public or governmental agency or entity, foreign or domestic, (other than that acts or failure to act of the Agency shall not excuse

performance by the Agency) or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause 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. Times of performance under this Agreement may also be extended in writing by the Agency and the Participant.

Wherever this Agreement refers to performance by a specific time, or in accordance with the Schedule of Performance (Attachment No. 3), including without limitation in Sections 510 and 511 hereof, such times shall include any extensions pursuant to this Section 604.

E. [§ 505] Inspection of Books and Records

Prior to the issuance of the Certificate of Completion, the Agency has the right at all reasonable times to inspect the books and records of the Participant pertaining to the Site as pertinent to the purposes of this Agreement. The Participant also has the right at all reasonable times to inspect the books and records of the Agency pertaining to the Site as pertinent to the purposes of the Agreement.

F. [§ 506] Approvals

Except where this Agreement expressly provides for the approval of either party in its discretion, approvals required of the Agency or the Participant shall not be unreasonably withheld or delayed.

G. [§ 507] Real Estate Commissions

The Agency shall not be liable for any real estate commissions, brokerage fees or finders fees which may arise as a result of this transaction. Each party represents to the other party that it has not employed any broker or incurred any liability for the payment of any real estate commission or brokerage or finder's fee in connection with this Agreement.

H. [§ 508] Attorneys' Fees

In the event that any litigation is commenced between the parties to this Agreement concerning any provision of this Agreement, including all attachments hereto, or the rights and obligations of any party, the parties to this Agreement hereby agree that the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted by the court, to a reasonable sum as and for its attorneys' fees in that litigation which shall be determined by the court in that litigation or in a separate action brought for that purpose.

VI. [§ 600] SPECIAL PROVISIONS

A. [§ 601] Employment and Training Agreement

The Participant and the Agency shall execute the Employment and Training Agreement which is incorporated herein and attached to this Agreement as Attachment No. 6, concurrently with the execution of this Agreement.

B. [§ 602] Tenant Review and Approval

Tenant space leased within any portion of the improvements constructed on the Site by the Participant shall be subject to Agency approval. Agency approval shall not be unreasonably withheld and shall be given or denied within twenty (20) calendar days following Agency receipt of written notification from the Participant identifying proposed tenants. In the event that the Agency has not responded within the requisite twenty (20) - day period, the proposed tenant shall be deemed disapproved. However, notwithstanding the foregoing, the Agency hereby approves Food-4-Less as a tenant on the Site.

C. [§ 603] Subdivision Maps

Within the times established respectively therefore in the Schedule of Performance (Attachment No. 3), the Participant shall prepare and use diligent and good faith efforts to obtain approval from the City of a preliminary subdivision map (the "Preliminary Subdivision Map"), and a final subdivision map (the "Final Subdivision Map"), and to record the Final Subdivision Map. Wherever used herein the term Preliminary Subdivision Map shall include processing, and the term Final Subdivision Map shall include accomplishing any related public right-of-way vacations and dedications necessary or appropriate for the development of the Site. The Participant shall prepare and process the Preliminary and Final Subdivision Maps in sufficient time that the Final Subdivision Map may be recorded pursuant to this Section.

The Agency shall cooperate with the Agency to obtain approval from the City of the Preliminary and Final Subdivision Maps and any Subsequent Parcel Maps. The Preliminary and Final Subdivision Maps, and any Subsequent Parcel Maps, shall be subject to approval by the Participant.

D. [§ 604] Reciprocal Easement Agreements

[Not Applicable]

E. [§ 605] Financing of Agency Public Improvements

1. [§ 606] Payment Agreement

Within the time established therefor in the Schedule of Performance (Attachment No. 3), the Participant shall use diligent and good faith efforts, to enter into a payment agreement with the Agency (the "Payment Agreement"); pursuant to which, certain amounts of tax increment generated by the development of the Site shall be paid to the Participant as reimbursement for certain costs advanced by the Participant on the behalf of the Agency to finance the construction of certain public improvements provided in the Scope of Development (Attachment No. 4) as the "Agency Public Improvements" in furtherance of the development on the Site. The parties intend that the Payment Agreement be relatively simple and straightforward, consistent in all substantive respects with this Agreement and in the form attached to this Agreement as Attachment No. 7.

2. [§ 607] Participant Advances

With respect to the initial financing of the Agency Public Improvements, the Participant shall pay or advance payment on the behalf of the Agency, all costs reasonably and necessarily incurred by the Participant and approved in advance by the Agency with respect to the planning, engineering, design, financing, construction, supervision, and inspection of the Agency Public Improvements.

F. [§ 608] Option of Agency to Finance and/or Construct

Notwithstanding Section 605 hereinabove, the Agency shall have the right, but not the obligation, to attempt to obtain financing for all or part of the Agency Public Improvements to be constructed pursuant to the Scope of Development (Attachment No. 4). Such financing may come from any federal, state or local grant and/or loan to the Agency or City, whose terms and conditions are consistent with this Agreement, or with respect to which this Agreement may be amended to be consistent, and keep the Participant substantially in its same economic position as contemplated hereunder.

The Participant agrees to cooperate with the Agency and assist the Agency and/or City as reasonably necessary to apply for, obtain and/or implement any such grant or loan, including without limitation consent to any amendments to this Agreement meeting the criteria above. In the event the Agency determines it is necessary or appropriate in connection with obtaining a grant and/or loan as referred to above, the Agency may, at its election, assume the obligation to construct and install any or all of the Agency Public Improvements, in which case the Participant shall be released from such obligation to finance the Agency Public Improvements.

The Agency's election to finance and/or construct the Agency Public Improvements under this Section shall only be valid if written notice of such election is delivered to the Participant: (1) at least sixty (60) days before the date established herein for the Participant to enter into the Payment Agreement with the Agency (referred to in Section 606) or (2) as otherwise mutually agreed by the Agency and the Participant.

G. [§ 609] Agreement Containing Covenants Affecting Real Property

The Participant and the Agency shall execute and cause the recordation of an "Agreement Containing Covenants Affecting Real Property" substantially in the form attached to this Agreement as Attachment No.5 and incorporated herein by this reference, concurrently with the execution of this Agreement by the Agency,. The Participant shall obtain and cause to be recorded any and all instruments necessary to subordinate any prior encumbrances on the Site to said Agreement Containing Covenants Affecting Real Property.

H. [§ 610] Relocation of Occupants

The Participant shall be fully responsible for all relocation and costs attributable to such relocation and/or displacement of the occupants of the Site. In addition, the Participant shall defend and hold the Agency harmless against and from any and all claims and/or judgments awarded by a court of competent jurisdiction with respect to any relocation action filed against the Agency by any occupant of the Site

I. [§ 611] Construction of African-American Museum

[To Be Addressed By Separate Agreement]

VII. [§ 700] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement shall be executed in five duplicate originals each of which is deemed to be an original. This Agreement includes thirty (30) pages and eight (8) attachments which constitute the entire understanding and agreement of the parties.

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 Site.

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with the Agreement Containing Covenants Affecting Real Property, and this Agreement shall continue in full force and effect with respect to the Site until after recordation of a Certificate of Completion for the Site as provided in Section 224.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency or the Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Participant. This Agreement and any provisions hereof may be amended by mutual written agreement by the Participant and the Agency and such amendment shall not require the consent of any other fee owner, tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having an interest in the Site, except as otherwise expressly provided in this Agreement.

VIII. [§ 800] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY; DATE OF AGREEMENT

This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency within sixty (60) days after this Agreement is signed by the Participant, or this Agreement may be terminated by the Participant on written notice to the Agency.

The date of this Agreement shall be the date it is signed by the Agency.

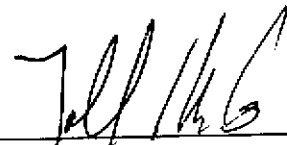
MARKET CREEK PARTNERS, LLC,
a California Limited Liability Company
(Participant)

Date: 12/1/00

By: 
Managing Member

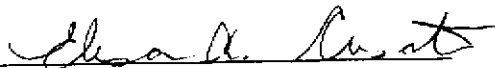
REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO, a Public Body, Corporate and Politic
(Agency)

Date: 12/8/00

By: 
Deputy Executive Director

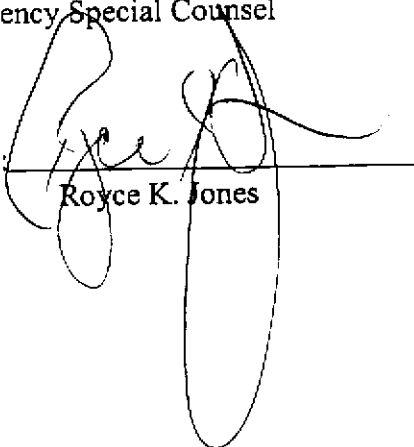
APPROVED AS TO FORM AND LEGALITY
ON THIS 15 day of December, 2000.

CASEY GWINN
Agency General Counsel

By: 
Elisa A. Cusato, Deputy

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: 
Royce K. Jones

ATTACHMENT NO. 1

SITE MAP

[To Be Added]

ATTACHMENT NO. 2
LEGAL DESCRIPTION

[To Be Added]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

I. GENERAL PROVISIONS

- | | | |
|----|---|---|
| 1. | <u>Execution of Agreement by Agency.</u> Agency shall hold a hearing on the Agreement, shall authorize execution and execute the Agreement and shall deliver the Agreement to Participant. | Within thirty (30) days after the Agreement is executed by Participant and submitted to Agency. |
| 2. | <u>Submission - Architect, Landscape Architect and Civil Engineer.</u> Participant shall submit to Agency for approval of the names and qualifications of its Architect, Landscape Architect, and Civil Engineer. | Complete. |
| 3. | <u>Approval - Architect, Landscape Architect and Civil Engineer.</u> Agency shall approve or disapprove the Architect, Landscape Architect, and Civil Engineer. | Complete. |
| 4. | <u>Submission - Basic Concept Drawings.</u> Participant shall prepare and submit to Agency for approval the Basic Concept Drawings and related documents for the Site. | Complete. |
| 5. | <u>Approval - Basic Concept Drawings.</u> Agency shall approve or disapprove Basic Concept Drawings and related documents for the Site. | Complete. |
| 6. | <u>Delivery of Good Faith Deposit.</u> Not Applicable. | Not Applicable. |
| 7. | <u>Access for Soils Investigation.</u> Not Applicable. | Not Applicable. |
| 8. | <u>Determination of Soil Conditions.</u> Participant shall determine whether the soil conditions on the Site is suitable for the development thereon pursuant to Section 208 of the Agreement. | Complete. |

II. PREDEVELOPMENT ACTIVITIES

1. Submission - Preliminary Subdivision Map. Participant shall commence and diligently attempt to obtain approval from the City of San Diego, the Preliminary Subdivision Map with respect to the Site. Not Applicable.

III. CONSTRUCTION AND DEVELOPMENT

1. Submission - Schematic/Design Development Drawings. Participant shall prepare and submit to Agency the Schematic/Design Development Drawings for the Site. Complete.
2. Approval - Schematic/Design Development Drawings. Agency shall approve or disapprove the Schematic/Design Development Drawings for the Site. Complete.
3. Submission - Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Participant shall prepare and submit to Agency the Preliminary Construction Drawings and Preliminary Landscaping and Grading Plans for the Site. Complete.
4. Approval - Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Agency shall approve or disapprove the Preliminary Construction Drawings and Preliminary Landscaping and Grading Plans for the Site. Complete.
5. Submission - 50% Final Construction Drawings and Landscaping and Finish Grading Plans. Participant shall prepare and submit to Agency the 50% Final Construction Drawings and Specifications and the 50% Final Landscaping and Finish Grading Plans for the Site. Within sixty (30) days after approval by Agency of the Preliminary Construction Drawings for the Site.

6. Approval - 50% Final Construction Drawings and Landscaping and Finish Grading Plans. Agency shall approve or disapprove the 50% Final Construction Drawings and Specifications and the 50% Final Landscaping and Finish Grading Plans for the Site. Within fifteen (15) days after receipt by Agency.
7. Submission - Final Construction Drawings, and Final Landscaping and Grading Plans. Participant shall prepare and submit to Agency the Final Construction Drawings and Final Landscaping and Grading Plans for the Site. Within thirty (30) days after Agency approval of the 50% Final Construction Drawings Schematic Drawings for the Site.
8. Approval - Final Construction Drawings, and Final Landscaping and Grading Plans. Agency shall approve or disapprove the Final Construction Drawings and Final Landscaping and Grading Plans for the Site. Within fifteen (15) days after receipt by the Agency.
9. Evidence of Financing. Participant shall submit to Agency Participant's submission of evidence of financing referred to in Section 207 of the Agreement with respect to the Site. Not more than thirty (30) days prior to the date established herein for the commencement of construction of the Improvements on the Site.
10. Approval of Financing. Agency shall approve or disapprove the submission of Participant's evidence of financing with respect to the Site, and shall so notify Participant. Within ten (10) business days after receipt of such submission by Agency.
11. Commencement of Construction. Participant shall commence construction of the Improvements on the Site. Within ninety (90) days after execution of the Agreement by the Agency.
12. Completion of Construction. Participant shall complete construction of the Improvements on the Site. Within twelve (12) months after the commencement of construction of the Improvements on the Site

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL DESCRIPTION

The Site is approximately nineteen (19) acres and shall be developed as a neighborhood shopping center of up to three hundred thousand (300,000) square feet of gross leasable space. The improvements to be constructed on the Site shall be of high architectural quality, well landscaped, and effectively and aesthetically designed. The shape, scale, exterior design, and exterior finish of the improvements to be developed on the Site must be consonant with, visually as well as physically related to, and an enhancement to the adjacent residential neighborhood and the Central Imperial Redevelopment Project area.

The Participant's plans, drawings and proposals submitted to the Agency for approval shall describe in reasonable detail the architectural character intended for the improvements. The total development of the Site shall be in conformity with the Redevelopment Plan. The provisions, design criteria, and property development standards set forth in this Scope of Development apply to the Site, except where specifically indicated otherwise.

II. PARTICIPANT IMPROVEMENTS

A. General

The Participant shall use and develop on the Site a neighborhood which may include a food market, office, general commercial retail and specialty shops and a multi-screen movie theater complex, all in accordance with that certain Southeast Development Permit No. 99-0156, dated September 28, 1999 shopping center of up to 300,000 square feet of gross leasable space and related parking and landscaping. Notwithstanding anything contained herein to the contrary, however, should the Participant, despite its diligent and good faith efforts, not be able to obtain the necessary entitlements from the City to construct the minimum amount of square footage, the Participant shall construct on the Site the maximum amount of square footage permitted by the City. The improvements to be developed on the Site shall be of high architectural quality with landscaped areas effectively and aesthetically designed. The improvements shall be developed in accordance with all applicable zoning and other land use regulations.

B. Site Improvements

The Participant shall be responsible for construction of all site improvements listed below to the specifications and acceptance of the Agency. These improvements shall include, but not be limited to:

1. Site

Landscaping and Irrigation system
Earthwork (Preliminary and Finish Grading)
Perimeter and interior fencing, if desired by the Participant

2. Sewer (On-Site) and Connections to the Sewer in the Public Right-of-Way

3. Water

On-site fire protection mains and domestic service including meters and connection thereof to water lines in the public right-of-way, as required by the City.

4. Private Storm Drain System (On-Site), if an additional system is required by the City of San Diego.

5. Utilities

On-Site electric power, gas, telephone and other utility requirements of the development, and any extraordinary off-site utility requirements of the development.

All items of improvements shall be performed in accordance with the technical specifications, standards and practices of the City of San Diego. The Participant's plans for such improvements shall be submitted to the Agency for review and approval prior to advertising for bids.

C. Urban Design Standards, Controls and Restrictions

Standards, controls and restrictions regarding construction and development, including, but not limited to, maximum land coverage, setbacks and building construction shall be in accordance with all applicable City Codes.

All on-site and off-site elements shall be subject to design review by the Agency in accordance with the procedures set forth in this Agreement. The Participant shall conform to the following standards of design in establishing the urban design concept, architectural and landscaping features for the Site.

The Agency's approval of the Final Construction Drawings and Landscaping and Finish Grading Plans shall be deemed to be an acknowledgment of compliance with the design standards and limitations contained in this Section C.

1. Architectural Standards

The architecture of all structures shall maintain a high quality of architectural design and establish visual continuity with existing and proposed developments within Gateway Center East.

(a) Form and Scale

The structures on the Site shall combine a form and scale which are compatible with the adjoining land uses, and the street environment.

(b) Street Level Design

The facades as seen from the street shall be such that the shape, exterior design and exterior finish of the structures are consonant with and visually related to each other and surrounding developments.

(c) Building Materials

Building materials of a high quality expressing the character of San Diego's physical environment and climate shall be used in all buildings and structures developed on the Site. Other materials may also be considered, excluding corrugated aluminum and iron.

(d) Energy Considerations

Energy efficient features shall be incorporated into the design of the development including passive energy conservation methods. The Participant will be required to demonstrate consideration of energy features as a part of the design review process.

(e) Refuse Containers

Refuse containers shall be screened from public view with fencing and landscaping.

(f) Signs

All public signs on the exteriors of buildings and structures are of special concern to the Agency. All signs must be approved by the Agency and must comply with all applicable City Codes.

(g) Outdoor Storage

No material, equipment, supplies or products shall be stored or permitted to remain outside on the Site unless prior written approval is obtained from the Agency. If any outdoor storage is allowed, it shall be screened from the public view with fencing and landscaping. Chain link fencing shall not be permitted as a screening material.

(h) Graffiti

The Participant shall design the development so as to discourage graffiti problems, and to establish a maintenance program for graffiti removal if the development is subjected to graffiti. All graffiti on the Site shall be removed by the Participant within forty-eight (48) hours after application.

2. Siting and Land Use Standards

(a) Structure Locations

The location of the structures shall relate to and take advantage of the developments and attractions surrounding the Site. Special attention shall be placed on designing the structures so as not to have a negative impact on the area in general.

(b) Structure Heights

The height of all structures developed on the Site shall be in accordance with all applicable City Codes.

(c) Noise

All buildings and structures on the Site shall be located so as to minimize the noise impact on adjacent areas. Loading facilities and other similar activities shall be designed with this concern in mind.

3. Streetscape Design Standards

(a) Landscaping

Participant shall provide and maintain landscaping within public rights-of-way between the property line of each building lot and the curb line of adjacent streets. All landscaping shall be integrated with the existing landscaping for adjacent sites in the Project Area and consistent with the requirements of all applicable City Codes.

Landscaping includes such materials as paving, trees, shrubs, and other plant materials, landscape containers, top soil, soil preparation, automatic irrigation, and landscape and pedestrian lighting.

Landscaping shall carry out the objectives and principles of the Agency's desire to accomplish an aesthetically superior environment.

(b) Vehicle Access

Driveways and parking lots shall be coordinated with the design of pedestrian access. Truck parking and loading shall be limited to the street.

(c) Pedestrian Access

The Site shall be developed such that pedestrian access is provided to the Site.

(d) Utilities

The Participant shall be responsible for all on-site utility installations and connections necessary or appropriate to develop the Site. Such utilities shall include but not be limited to the bringing of sanitary sewers, curb inlets, Channel connections, headwall, sewer mains, water mains, manholes, sewer laterals, water laterals, gate valves, fire hydrants, sewer pump stations, sewer pump main, electrical power, water supply, telephone, and gas facilities, all as required by the City and for the development of the Site by the Participant. All utility services shall be underground or concealed within buildings to the extent permitted by appropriate utility companies and utility districts. No mechanical equipment or meters shall be left exposed in yard areas or on roofs.

(e) Views

All improvements shall be sited to minimize the impact of the buildings and structures on the views of existing and proposed structures surrounding the Site. Special attention shall be placed on minimizing the impact on the adjacent area.

(f) Building Coverage

Minimum building setbacks shall be in conformance with applicable City Codes and Basic Concept Drawings approved by the Agency.

(g) Open Space

[Reserved]

(h) Rooftops

Exposed duct work for heating and cooling and all mechanical equipment and other roof structures on all buildings and structures on the Site whose roof area is visible from surrounding structures or proposed structures, pedestrian ways, streets, etc., shall be screened from the direct view of such surrounding structures in a manner approved by the Agency. Nothing contained in this paragraph or the Agreement shall be construed to require Participant to install any air conditioning units, evaporative coolers or other cooling equipment.

(i) Parking Location

Except as otherwise provided herein, all parking for the development shall be located within the boundaries of the Site.

(j) Lighting

Street, parking lot and pedestrian lighting shall be provided in accordance with standards established by the Agency. All lighting shall be shaded so as to minimize the impact upon the adjacent area.

(k) Handicap Access

Participant shall design and construct all of the improvements on the Site in compliance with all laws with respect to ingress and egress access ways for handicapped persons.

(l) Public Improvements Repairs

The Participant shall make all street repairs caused by the development of the improvements on the Site. All such repairs shall be at the Participant's expense and shall be constructed in accordance with the technical specifications, standards, and practices of the City. The Participant shall also provide all on-site public improvements for the Site.

(m) Construction

During construction of the improvements on the Site, the Participant shall take all reasonable precautions to minimize dust and disturbance

to adjacent properties caused by such construction. The Participant shall work normal working hours in accordance with applicable City codes and regulations.

D. Removal and/or Remedy of Soil and/or Water Contamination

The Participant shall (at its own cost and expense) remove and/or otherwise remedy as provided by law and implementing rules and regulations, and sufficiently to adequately protect the public health and safety (including the health and safety of occupants of the Site and adjacent properties), any contaminated or hazardous soil and/or water conditions on the Site. Such work shall include without limitation the following:

- a. Remove (and dispose of) and/or treat any contaminated soil and/or water on the Site (and adjacent public rights of way which the Participant is required to improve) as necessary to comply with applicable governmental standards and requirements.
- b. Design and construct all improvements on the Site in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.
- c. Prepare a site safety plan and submit it to the appropriate governmental and other authorities for approval in connection with obtaining a building permit for the construction of improvements on the Site. Such site safety plan shall assure workers and other visitors to the Site of protection from any health and safety hazards during development and construction of the improvements. Such site safety plan shall include monitoring and appropriate protective action against vapors and/or the effect thereof.
- d. Obtain from the County of San Diego and/or California Regional Water Quality Control Board and/or any other authorities required by law any permits or other approvals required in connection with the removal and/or remedy of soil and/or water contamination, in connection with the development and construction on the Site.

The Participant agrees that the Agency, and its consultants and agents, shall have the right (but not the obligation) to enter upon the Site at any time to monitor the excavation and construction on the Site to test the soils and/or water on the Site, and to take such other actions as may be reasonably necessary to assure compliance with this Section D of the Scope of Development (Attachment No. 4). Nothing herein (including without limitation the Agency's right to inspect) shall be construed to make the Agency and/or the Southeastern Economic Development Corporation or their respective officers, employees, contractors and agents liable for the

responsibilities under Section 208 of the Owner Participation Agreement (the "Agreement") and this Section D. However, notwithstanding the foregoing sentence, in no event shall the above sentence be construed by any of the parties to the Agreement so as to preclude the Participant from asserting any rights or claims it may have against any prior owner of the Site (other than the Agency) relative to the clean-up and/or remediation of any hazardous material on the Site pursuant to this Section D and Section 208 of the Agreement.

E. Equal Opportunity Program

a. Non-discrimination Clause

The Participant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Participant shall provide equal opportunity in all employment practices. The Participant shall ensure that their subcontractors comply with the City of San Diego's "Equal Employment Opportunity Program" as set forth in the City of San Diego Municipal Code, Chapter II, Division 27.

b. Equal Employment Opportunity

The Participant has received, read, understands and agrees to be bound by the "Equal Employment Opportunity Program and the City Manager's policies and procedures implementing the Program, contained in the Equal Employment Opportunity Packet provided by the Agency.

The Participant has submitted and Agency acknowledges receipt of, either a Work Force Report or an Equal Employment Opportunity Plan as required by City of San Diego Municipal Code Section 22.2705.

c. The Participant has received, read and understands the Equal Opportunity Contracting Information Packet provided by the Agency.

The Participant has submitted and Agency acknowledges receipt of an initial Equal Opportunity Report. The Participant agrees to periodically provided updated reports as requested by the Agency.

III. AGENCY RESPONSIBILITIES

A. Agency Public Improvements

The Agency shall be responsible for the financing of the "Agency Public Improvements" which are more specifically delineated in Exhibit "A" which is attached hereto and fully incorporated herein as though fully set forth herein. However, notwithstanding the foregoing,

the Agency's obligation to finance the Agency Public Improvements shall be pursuant to the terms and conditions contained in that certain Payment Agreement by and between the Participant and the Agency and Section 606 and 607 of the Agreement.

IV. EASEMENTS

The Agency and the Participant shall grant and permit all necessary and appropriate easements and rights for the development of the Site including, but not limited to, easements and rights of vehicular access, pedestrian access and all utility services on such terms and conditions as Agency and Participant may agree.

V. ENVIRONMENTAL REVIEW

The Participant agrees to pay for all environmental review and documents necessary for the development of the Site. The Agency shall be responsible for certification of any environmental documents in connection with the approval of the development provided for herein. The Participant shall also be responsible for preparing any supplemental environmental documents required to carry out the Agreement. The Participant agrees to cooperate with the Agency in the preparation of any such documents and shall fully comply with all mitigation measures set forth therein.

EXHIBIT "A"

AGENCY PUBLIC IMPROVEMENTS

[To Be Added By Staff]

ATTACHMENT NO. 5

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

Recording Requested by
and When Recorded Return to:
REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO
c/o Southeastern Economic Development Corporation
995 Gateway Center Way, Suite 300
San Diego, California 92102

Attn:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

THIS AGREEMENT is entered into as of _____, 2000, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic (herein referred to as "Agency") and MARKET CREEK PARTNERS, LLC, a California Limited Liability Company (hereinafter referred to as "Participant").

A. Participant is the owner of that certain real property (the "Site") and Improvements (as defined below) to be constructed thereon, located in the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto and incorporated herein as Exhibit A.

B. The Site is within the Central Imperial Redevelopment Project area (the "Project") in the City of San Diego and is subject to the provisions of the Redevelopment Plan for the Project approved and adopted on September 14, 1992 by the City Council of the City of San Diego by Ordinance No. 17831 [NS]), as amended by a First Amendment dated January 8, 1996 and adopted by Ordinance No. 18252 [NS], a Second Amendment dated December 10, 1996 and adopted by Ordinance No. 18367 [NS], and a Third Amendment dated November 14, 2000 and adopted by Ordinance No. 18882 [NS] (collectively referred to herein as the "Redevelopment Plan"). The Redevelopment Plan is incorporated herein by this reference and made a part hereof as though fully set forth herein.

C. Participant intends to redevelop the Site and construct a regional shopping center thereon (the "Improvements") in accordance with that certain Owner Participation Agreement entered into between the Agency and the Participant on _____, 2000 (the "OPA"), which OPA is incorporated herein by reference.

D. This Agreement is entered into and recorded in accordance with the Redevelopment Plan and the OPA.

NOW, THEREFORE, THE AGENCY AND THE PARTICIPANT AGREE AS FOLLOWS:

1. Participant, on behalf of itself and its successors, assigns, and each successor in interest to the Site or any part thereof, hereby covenants and agrees as follows:

a. During the time the Redevelopment Plan is in effect, the Site shall be devoted only to the development permitted and the uses specified in the applicable provisions of the Redevelopment Plan and this Agreement, whichever document is most restrictive.

b. Participant shall construct for operation upon the Site a regional shopping center of up to 300,000 square feet of gross leasable space which may include a food market, office, general commercial retail and specialty shops and a multi-screen movie theater complex, all in accordance with that certain Southeast Development Permit No. 99-0156, dated September 28, 1999 and together with appropriate and ancillary parking and landscaping (the "Improvements").

c. Participant, its successors and assigns, shall maintain the Improvements on the Site, remove all graffiti from the Site within forty eight (48) hours of its application and keep the Site reasonably free from any accumulation of debris or waste materials. Participant shall also maintain the required landscaping in a healthy condition. Grantee agrees that if the Site is not maintained as provided for hereinabove, the Agency, after providing Participant with written notice, may conduct the necessary maintenance on the Site at the participant's expense. Upon the performance of such work by the Participant, Participant shall have a lien on the Site in an amount equal to the cost of such maintenance work as well as all legal and administrative costs incurred by the Agency.

d. Participant, its successors and assigns, agree to participate in any Assessment District(s) created consistent with applicable state law and/or applicable regulations and ordinances of the City of San Diego. Upon formation, the Assessment District(s) shall include the maintenance of public improvements, landscaping, public lighting facilities, public places, graffiti removal and general security and incidental expenses incurred within the District, which shall include within its boundaries, but not be limited to, the Site. It is further anticipated that the maintenance of the Site under the Assessment District(s) referred to above will require a maintenance easement on a portion of the Site. Participant hereby agrees to grant to Agency, the City of San Diego and/or such other appropriate legal authority an easement on the Site for the purpose of landscape maintenance. Such easement shall be recorded upon the request of the Agency.

e. Participant, its successors and assigns, shall protect, maintain and preserve the Improvements on the Site and obtain approval in writing from Agency prior to any material alteration or modification of such Improvements, such approval not to be unreasonably withheld or delayed.

f. Participant, its successors and assigns, including without limitation tenants, lessees, subtenants, sublessees and any other operator of a business on the Property, or any portion

thereof, shall provide a right-of-first preference in employment practices as set forth in the Employment and Training Requirement, incorporated herein and attached hereto as Exhibit B.

g. Participant shall not store any materials, equipment, supplies or products outside the buildings and structures developed on the Site unless prior written approval is obtained from the Agency. If any outdoor storage is approved, it shall be screened from the public view with fencing and landscaping. Chain link fencing shall not be permitted as a screening material.

h. Participant herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the Site, nor shall Participant itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessee, subtenants, or vendees in the Site.

i. Participant, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Site or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Site, or any portion thereof, after the date of this Agreement shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for itself, its successors 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 race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, 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 race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use or enjoyment of the land herein leased nor shall the lease itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees,

subtenants or vendees in the land herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry 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 it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

2. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Agency, its successors and assigns, and the City of San Diego (the "City") and its successors and assigns, against Participant, its successors and assigns, to or of the Site or any portion thereof or any interest therein, and any party in possession or occupancy of said Site or portion thereof. Agency and the City shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the Agency and the City, without regard to whether the Agency or City has been, remains, or is an Participant of any land or interest therein in the Site or the Project area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Agreement shall not benefit nor be enforceable by any Participant of any other real Site within or outside the Project area or any person or entity having any interest in any such other real Site.

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

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Site, provided, however, that any subsequent Participant of the Site shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Agreement, whether such Participant's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. The covenants against discrimination set forth in subsections 1(h) and 1(i) of this Agreement shall remain in effect in perpetuity. Every other covenant and condition and restriction contained in this Agreement shall remain in effect for the duration of the Redevelopment Plan.

6. Participant shall be responsible for the operation of the Improvements on the Site either by direct management or by contracting its managerial functions to a Site management company acceptable to the Agency which will be charged with managing the Improvements on behalf of the Participant. The Agency shall have the right to review and approve any such entity

prior to its selection by the Participant. Such approval shall not be unreasonably withheld. Agency hereby approves the Diamond Management, Inc., a California Corporation, as the initial management company. Participant shall include in any such Site management agreement a provision providing for the termination of the agreement in the event that the manager violates any federal, state or local health and safety laws and regulations which are not cured within thirty (30) days following the giving of notice of such violations by the Agency or any other governmental entity, or in the case of a violation that cannot be cured within such thirty (30) day period, such additional time as the Participant may reasonably grant.

7. If a violation of any of the foregoing covenants occurs or is attempted, and such occurrence or attempt is uncorrected for a period of thirty (30) days or more, Agency and its successors and assigns, without regard to whether Agency or its successors and assigns is an Participant of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Participant of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

IN WITNESS WHEREOF, the Agency and the Participant 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: _____
Deputy Executive Director

MARKET STREET PARTNERS, LLC,
a California Limited Liability Company

Date: _____

By: _____
Managing Member

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN
Agency General Counsel

By: _____
Deputy

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Royce K. Jones

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

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

WITNESS my hand and official seal.

Signature _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

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

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

[To Be Added By Staff]

EXHIBIT B

EMPLOYMENT AND TRAINING REQUIREMENTS

Participant is committed to creating jobs by the construction and operation of the Participant's project on the Site available to the residents of the Southeastern San Diego community to the greatest extent feasible.

In order to accomplish this objective, Participant covenants and agrees for itself and its successors and assigns to the Site or any portion thereof and all persons claiming under or through them including, without limitation, tenants, lessees, subtenants, subleases and any other operator of a business on the Site, subject to the performance of Agency of the assistance hereinafter described, to provide the following services for the benefit of Agency and the community:

1. Agency, upon receipt of written request from Participant as developer (on behalf of itself or its contractors and subcontractors) and/or from any operator of a business on the Site, shall initiate appropriate employment training assistance, including On-the-Job Training. Such training shall be tailored to the needs of the employer as outlined in a written training program reviewed and approved by SEDC and may be provided by the San Diego Workforce Partnership and/or any other appropriate agencies acceptable to the Participant and SEDC on behalf of the Agency.

2. Participant as developer, its contractors and subcontractors, and any operator of a business on the Site, as the case may be, shall assist Agency and training providers by specifically identifying their training needs and participating in the design, development, monitoring and implementation of training programs which meet the employer's standards.

3. Participant as developer, its contractors and subcontractors, and any operator of a business on the Site shall actively and directly recruit employment candidates from Southeastern San Diego, as they are defined herein, for any facility construction positions to the greatest extent possible.

On an on-going basis, all operators of a business on the Site shall actively and directly recruit employment candidates from Southeastern San Diego, as defined herein, for employment positions that become available at the facility.

Recruitment for construction and employment positions shall include, but need not be limited to, advertisement in community newspapers and written notification to the Employment Development Department of the State of California, State Service Center, 1551 Fourth Avenue, Suite 600, San Diego, California 92101, and the Southeastern Economic Development Corporation, 995 Gateway Center Way, Suite 300, San Diego, CA 92102.

4. Consistent with the paragraphs hereinabove, SEDC and Participant will work jointly to achieve the maximum level of participation by area residents in the employment opportunities offered by this project. Both parties will seek to utilize all available resources to identify, train and present for employment consideration residents from the area served by SEDC who are qualified to

perform jobs that will be available during construction of the project and for those permanent jobs resulting from in the business operations conducted after the completion of construction. Moreover, Participant shall from time to time, following written request from SEDC, develop a written training program, in which the internal training methods of the Participant shall be comprehensively outlined and discussed with SEDC to effectuate the employment and training goals set forth herein. Coordination efforts may include resources of agencies and organizations such as the City of San Diego Enterprise Zone, the State of California Employment Development Department, or the San Diego Workforce Partnership.

5. For purposes of these employment training services and employment requirements, Participant as developer, agrees to give written notice to every operator of a business on the Site of the obligations and requirements of that operator to use its best efforts to employ, to the greatest extent feasible, Southeastern San Diego residents, as defined herein, who meet the employment standards and requirements of such operator.

6. For purposes of these Employment and Training Requirements, Southeastern San Diego residents shall be defined as those persons who reside in Census Tracts No. 30.01, 30.02, 31.01, 31.02, 31.03, 33, 34.01, 34.02, 35, 36, 38, 39, 40, 41, 45, 46, 47, 48, 49, 50 and 51 at the time a training or employment opportunity arises. Census Tract Boundaries are delineated on the map which is incorporated herein and attached hereto as Attachment No. 1.

ATTACHMENT NO. 1
CENSUS TRACT BOUNDARIES
[TO BE ADDED]

ATTACHMENT NO. 6

EMPLOYMENT AND TRAINING AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

and

MARKET STREET PARTNERS, LLC

The Redevelopment Agency of the City of San Diego (the "Agency") and Market Street Partners, LLC, a California Limited Liability Company (the "Participant") are committed to creating jobs by the construction and operation of the Participant's project within the Central Imperial Redevelopment Project area of the City of San Diego available to the residents of the Southeastern San Diego community to the greatest extent feasible.

I. [§ 100] Services Provided by the Agency and the Participant; Employment Training Assistance

In order to accomplish the objectives of this Agreement, the Agency and the Participant (as Participant) agree to provide the following services for the benefit of each other and the community:

The Agency, upon receipt of written request from the Participant as Participant (on behalf of itself, its contractors and subcontractors), shall initiate appropriate employment training assistance, including On-the-Job Training. Such training shall be tailored to the needs of the Participant and its contractors and subcontractors, as the case may be, and be provided by the San Diego Workforce Partnership and/or other appropriate agencies mutually acceptable to the parties.

The Participant shall assist, and cause its contractors and subcontractors to assist, the Agency and training providers by specifically identifying their respective training needs and participating in the design, development, monitoring and implementation of training programs which meet the respective employer's standards.

II. [§ 200] Services Provided by the Participant

A. [§ 201] Recruitment

The Participant (as Participant), its contractors and subcontractors, as the case may be, shall actively and directly recruit qualified employment candidates from Southeastern San Diego, as they are defined herein, for any construction positions to the extent feasible and practicable.

Recruitment for such construction positions shall consist of advertising in certain community newspapers designated by the Agency and written notification to the Employment Development Department of the State of California, State Service Center, 1551 Fourth Avenue, Suite 600, San Diego, California 92101, and the Southeastern Economic Development Corporation, 995 Gateway Center Way, Suite 300, San Diego, California 92102.

B. [§ 202] Right of Preference

The Participant (as Participant), its contractors and subcontractors, as the case may be, when employment positions become available, shall accord a right of first preference to Southeastern San Diego residents, as defined herein, who meet the standards and qualifications of employment as set forth by such employer.

III. [§ 300] Notice to Business Operators

For purposes of employment training services, employment recruitment and right-of-preference, the Participant agrees to give written notice to every operator of a business on the Site of the obligations and requirements of that operator of a business set forth in the Employment and Training Requirements, Exhibit B of the Agreement Containing Covenants Affecting Real Property imposing certain restrictions on the Site pursuant to that certain Owner Participation Agreement executed by the Agency and the Participant concurrently with this Agreement.

IV. [§ 400] Southeastern San Diego Residents Defined

For purposes of this Agreement, Southeastern San Diego residents shall be defined as those persons who reside in Census Tracts No. 30.01; 30.02; 31.01; 31.02; 31.03; 33; 34.01; 34.02; 35; 36; 38; 39; 40; 41; 45; 46; 47; 48; 49; 50 and 51 at the time a training or employment opportunity arises. Census Tract Boundaries are delineated on the map which is incorporated herein and attached as Exhibit A.

REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO
(Agency)

Date: _____

By: _____

MARKET STREET PARTNERS, LLC
a California Limited Liability Company
(Participant)

Date: _____

By: _____
Manager

APPROVED AS TO FORM AND LEGALITY
ON THIS ___ DAY OF _____, 2000

CASEY GWINN
Agency General Counsel

By: _____

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Royce K. Jones

EXHIBIT A

CENSUS TRACT BOUNDARIES

[To be added]

ATTACHMENT NO. 7

Recording Requested by:

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

When Recorded Return to:

SPACE ABOVE THIS LINE FOR RECORDING USE

PAYMENT AGREEMENT

This Payment Agreement (the "Agreement") is entered into as of _____, 2000 by the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency") and MARKET CREEK PARTNERS, LLC, a California Limited Liability Company (the "Participant"). The Agency and the Participant agree as follows:

RECITALS

A. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Division 24, of Part 1.7 of the Health and Safety Code of the State of California. The principal office of the Agency is located at City Administration Building, Community Concourse, San Diego, California 92101. "Agency" as used in this Agreement includes the Redevelopment Agency of the City of San Diego, and any assignee of or successor to its rights, powers and responsibilities.

B. The Participant is Market Creek Partners, LLC, a California Limited Liability Company. The principal office of the Participant is located at 5160 Federal Boulevard, San Diego, California 92105. Wherever the term "Participant" is used herein, such term shall include any permitted nominee, assignee or successor in interest of the Participant under this Agreement.

C. The Agency and the Participant are the parties to that certain Owner Participation Agreement, dated November ____, 2000 (the "OPA") with respect to the redevelopment of certain real property (the "Site"), within the Central Imperial Redevelopment Project area (the "Project Area") located within the City of San Diego, California (the "City"). The Site is shown on the map attached hereto as Exhibit A and is more particularly described in Exhibit B.

D. The redevelopment of the Site involves construction of certain improvements specified in the OPA. The Participant has heretofore constructed or is now commencing to construct such improvements.

E. Pursuant to the OPA, the Agency is required to finance the construction of certain public improvements on the Site (the "Agency Public Improvements") which shall be performed by the Participant on the behalf of the Agency in conjunction with the development of the Site. The purpose of this Agreement is to provide for the advance or loan of certain funds to the Agency by the Participant and the subsequent repayment by the Agency to the Participant of those funds together with additional funds expended by the Participant to finance the Agency Public Improvements from certain tax increment generated by the redevelopment of the Site.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties hereto hereby agree as follows:

1. CERTAIN DEFINITIONS

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

1.1 "Aggregate Available Tax Increment" shall mean the combined amount of "Available Tax Increment A" as hereinafter described below.

1.2 "Amortization Amount" shall mean the scheduled payment of principal and interest owed by the Agency to the Participant for each Fiscal Year as shown on the Amortization Schedule attached hereto as Exhibit C.

1.3 "Amortization Commencement Date" shall mean the July 1 next following the issuance by the Agency of a Certificate of Completion for the first square foot of development on the Site under the OPA.

1.4 "Available Tax Increment A" shall mean the amount of the excess of (a) Property Tax Revenues A, after reduction for any amounts (based pro rata upon application of any formulas which pertain to the Redevelopment Project area) which the Agency is required to: (1) set aside and use for housing for persons and families of low and moderate income under Health & Safety Code § 33334.2; (2) pay to affected taxing agencies under Health & Safety Code § 33607.5; (3) pay to an educational revenue augmentation fund under Health & Safety Code §§ 33680 et seq.; and (4) pay to other third parties pursuant to a statutorily established obligation, from property taxes otherwise allocated to the Agency, over (b) the Base Year Amount A.

1.5 "Base Year Amount A" shall be Three Million Two Hundred Fifteen Thousand One Hundred and Eighty-Eight Dollars (\$3,215,188) [determined by applying the base one percent (1%)

tax rate levied upon the Site to the base year assessment roll for the Central Imperial Redevelopment Project for properties (or a pro rata portion thereof) within the Site, as it may be adjusted from time to time by the San Diego County Assessor due to properties removed from the rolls or other such adjustments provided by law.

1.6 “Fiscal Year” shall mean the period from July 1 of one calendar year, through and including June 30 of the immediately following calendar year.

1.7 “Net Aggregate Tax Increment” shall mean the amount of excess Aggregate Available Tax Increment, after reduction for payment to those certain bondholders pursuant to the issuance of the Central Imperial Tax Allocation Bonds, Series 2000. An example of the calculation of the Net Aggregate Tax Increment is attached hereto as Exhibit D.

1.8 “Principal Amount” shall mean the amount of Three Million Eight Hundred Six Thousand Dollars (\$3,806,000) advanced and loaned to the Agency by the Participant with respect to the financing of Agency Public Improvements.

1.9 “Property Tax Revenues A” shall include (but only include) ad valorem property tax revenues allocated and paid to the Agency pursuant to Article XVI, Section 16 of the California Constitution and Health & Safety Code §§ 33670 *et seq.*, attributable to the base one percent (1%) tax rate levied upon the Site. Property Tax Revenues A include the gross amounts so allocated and paid to the Agency, without reduction for any amounts which the Agency is required to: (1) pay to those certain bondholders pursuant to the issuance of the Central Imperial Tax Allocation Bonds, Series 2000; (2) set aside and use for housing for persons and families of low and moderate income under Health & Safety Code § 33334.2; (3) pay to affected taxing agencies under Health & Safety Code § 33607.5; (4) pay to an educational revenue augmentation fund under Health & Safety Code §§ 33680 *et seq.*; and (5) pay to other third parties pursuant to a statutorily established obligation, from property taxes otherwise allocated to the Agency.

1.10 “Termination Date” shall mean June 30 of the thirtieth (30th) Fiscal Year of scheduled amortization of Principal Amount.

2. PAYMENT OF PRINCIPAL AMOUNT, AND INTEREST

2.1 For value received, the Agency hereby agrees to pay to the Participant towards the payment of the Principal Amount, one hundred percent (100%) of Net Aggregate Tax Increment (the “100% Payment”) for the first fifteen (15) Fiscal Years and fifty percent (50%) of Net Aggregate Tax Increment (the “50% Payment”) for the remaining fifteen (15) Fiscal Years (or Fiscal Years 16 through 30), or until such time as the Principal Amount and all accrued interest thereon has been repaid. In the event that the Principal Amount and/or accrued interest thereon has not been repaid by the Termination Date, then all such amounts owing shall be deemed forgiven. The Principal

Amount shall be repaid annually, together with interest, over a thirty year (30) year period as provided herein and shown on the Amortization Schedule.

2.2 Within forty-five (45) days after the Agency receives its final installment of Property Tax Revenues A from the County of San Diego Auditor-Controller for each of the first fifteen (15) Fiscal Years after the Amortization Commencement Date, the Agency shall pay to the Participant the 100% Payment. Within forty-five (45) days after the Agency receives its final installment of Property Tax Revenues A from the County of San Diego Auditor-Controller for each of the remaining fifteen (15) Fiscal Years (Fiscal Years 16 through 30) after the Amortization Commencement Date, the Agency shall pay to the Participant the 50% Payment, as applicable. Both the 100% and 50% Payments are collectively referred to herein as the "Annual Payment." Any interest earned on Available Tax Increment A due to investment of such funds by the Agency prior to the making of an Annual Payment to the Participant shall be the property of the Agency. Concurrently with the making of an Annual Payment, the Agency shall provide the Participant with a financial report showing the amount of Property Tax Revenues A allocated and paid to the Agency for the preceding Fiscal Year or applicable portion thereof, and how the Annual Payment paid to the Participant for that Fiscal Year or applicable portion thereof, was determined.

2.3 The Agency shall only be required to calculate the Annual Payment on the basis of Property Tax Revenues A and to pay the Annual Payment from Property Tax Revenues A which are actually collected, allocated to and received by the Agency for the applicable Fiscal Year. The Agency shall comply with all requirements of the Community Redevelopment Law, Health & Safety Code §§ 33000 *et seq.*, to ensure the allocation and payment to it of Property Tax Revenues A, including without limitation the timely filing of any necessary statements of indebtedness with appropriate officials of San Diego County.

2.4 Not Applicable.

3. PREPAYMENT OF PRINCIPAL AMOUNT

Notwithstanding any other provision of this Agreement, the Agency may prepay the outstanding balance (not paid, or deemed paid pursuant to Section 2.4 above) of the Principal Amount, together with all interest accrued (and not paid, or deemed paid pursuant to Section 2.4 above) as of the date of prepayment, at any time without prior notice to the Participant and without any penalty or charge. The Participant agrees to cooperate with the Agency, including without limitation providing any appropriate estoppel certificate regarding the status of this Agreement, and the payoff and termination hereof, as may be reasonably requested by the Agency or in connection with any bond issue or other refinancing of the Agency's obligations hereunder.

4. SECURITY FOR ANNUAL PAYMENT

4.1 As security for the Agency's obligation to make the Annual Payment to the Participant, the Agency hereby pledges and allocates to the Participant all Net Aggregate Tax Increment. Such pledge and allocation shall be a first priority pledge and allocation of all Net Aggregate Tax Increment for the first fifteen (15) Fiscal Years and fifty percent (50%) of Net Aggregate Tax Increment for the remaining fifteen (15) Fiscal Years (Fiscal Years 16 through 30), as applicable. The pledge and allocation of Net Aggregate Tax Increment is for the exclusive benefit of the Participant, and permitted assignees of the Participant's rights under this Agreement, and shall be irrevocable until all of the Principal Amount (and any interest accrued thereon) has been paid in full, or forgiven as provided in Section 2.1 above.

4.2 Notwithstanding the foregoing:

(a) The Agency shall have the right, without notice to the Participant, in Fiscal Years 16 through 30 to make a priority pledge of Net Aggregate Tax Increment in excess of the fifty percent (50%) Net Aggregate Tax Increment or any portion thereof, pledged to Participant and not required to make the Annual Payment pursuant to this Agreement; and

(b) Upon payment (including any deemed payment pursuant to Section 2.1 above) in full of the amount due to the Participant under this Agreement, the pledge of Net Aggregate Tax Increment shall automatically terminate, and any priority pledge of Net Aggregate Tax Increment shall automatically become a senior priority pledge of all Net Aggregate Tax Increment.

5. USES OF FUNDS; ASSIGNMENT TO LENDER

5.1 The Participant may only assign its rights to receive the Principal Amount or Annual Amount due under this Agreement upon the prior written consent of the Agency. Such written consent shall be given or denied within ten (10) days following written notice from the Participant. Any written disapproval shall include the reason therefor. In the event that the Agency fails to respond to said notice within the 10 day period, the proposed assignment shall be deemed disapproved. However, the Agency shall approve the assignment of the Participant's rights to receive Principal Amount or Annual Payment under this Agreement to a "sophisticated institutional or an individual investor." For purposes of this Agreement, a "sophisticated institutional or an individual investor" shall mean an entity or person shall mean any legally recognized entity or individual(s) who possess sufficient knowledge and experience in financial and business matters that renders it (them) capable of evaluating the merits and risks of investment of this Agreement or has received such information as it (them) has (have) deemed necessary to make such evaluation and bear the economic risk of investment of this Agreement. Any such assignment shall only be made pursuant to a written agreement reasonably satisfactory to the Agency in form and substance.

5.2 Notwithstanding the foregoing, the Agency, following an approved assignment, shall not be obligated to pay any portion of the Principal Amount, or any Annual Payment related thereto, to any person or party other than the Participant unless the Agency is notified by the Participant in writing of the name of the party to which payment of the Principal Amount, or the Annual Payments related thereto, are to be paid directly, the amount to be paid to such party, and the address to which such payment is to be sent. The Agency shall not be liable for any failure on the part of the Participant to give such notice to the Agency or if the Agency for any reason does not actually receive any such notice.

5.3 In the event that the Participant defaults on its obligations to any Agency approved lender on the project ("Lender"), or defaults on its obligations to the Agency under the OPA, and such Lender elects to assume the obligations of the Participant pursuant to Section 221 of the OPA, the Participant may assign its rights under this Agreement to such Lender with the prior written approval of the Agency and the Agency shall pay the Principal Amount, and the Annual Payments related thereto, directly to such Lender as provided for in this Agreement. Such assignment shall be made pursuant to a written agreement reasonably satisfactory to the Agency in form and substance.

6. INDEBTEDNESS

6.1 The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Central Imperial Redevelopment Project, which indebtedness shall be payable only out of real property taxes levied on parcels within the Project Area by or for the benefit of taxing agencies in the Project Area and allocated to the Agency pursuant to Health & Safety Code § 33670.

6.2 The obligations of the Agency under this Agreement shall be a special obligation of the Agency and the Agency shall not be obligated to use funds from sources other than those specified in this Agreement. Notwithstanding the foregoing, nothing herein shall preclude the Agency from paying the Principal Amount, the Annual Payments, or any part thereof, from any funds lawfully available to the Agency from time to time.

6.3 The obligations of the Agency under this Agreement shall not constitute a debt of the City of San Diego or any other public agency except the Agency, and the City of San Diego shall have no obligation whatsoever with respect to such obligations.

7. TERMINATION OF AGREEMENT

7.1 This Agreement shall terminate automatically upon the payment (including deemed payment pursuant to Section 2.4 above) of all sums due under this Agreement, or if not sooner terminated, on the Termination Date. Upon payment (including deemed payment) in full of all sums

due under this Agreement, or on the Termination Date, as applicable, the Agency and the Participant shall execute and acknowledge a memorandum reciting that all sums due under this Agreement have been paid in full and that the Agreement is terminated. The execution and acknowledgment of such memorandum shall be for evidentiary purposes only, and is not a precondition to the automatic termination of this Agreement upon the occurrence of either condition referred to above.

8. GENERAL TERMS AND CONDITIONS

8.1 Notices, Demands and Communications between the Parties

Formal notices, demands, and communications between the Agency and the Participant shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency or the Participant as designated in Recitals A and B, respectively. 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 as provided in this Section 8.1.

8.2 Assignment

Except as set forth in Section 5 of this Agreement, the Participant shall have no right to assign this Agreement or any rights under this Agreement without the prior written consent of the Agency, which consent will not be unreasonably withheld, delayed or conditioned. Any permitted assignment shall be by instrument reasonably satisfactory to the Agency in which the assignee agrees to assume all obligations of the Participant hereunder (the "Assignment Agreement"). The Agency shall approve or disapprove the Assignment Agreement within ten (10) days of its receipt. Any disapproval by the Agency shall specify the reason therefor. All costs of the Agency incurred in reviewing the Assignment Agreement and processing any assignment shall be borne by the Participant. Any assignment attempted other than as expressly provided herein shall be void and unenforceable.

8.3 Nonliability of Agency Officials and Employees

No member, official, employee or consultant of the Agency shall be personally liable to the Participant, or any permitted assignee of or successor to the Participant's rights under this Agreement, in the event of any default or breach by the Agency or for any amount which may become due to the Participant, or any permitted assignee of or successor to the Participant's rights under this Agreement, or on any obligations under the terms of this Agreement.

8.4 Attorneys' Fees

In the event either party to this Agreement is required to institute litigation to enforce its legal rights arising out of this Agreement, the prevailing party in such action shall be entitled in addition to its other relief, to recover reasonable attorneys' fees and court costs incurred therein.

8.5 Entire Agreement; Amendments and Waivers

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreement between the parties with respect to the subject matter of this Agreement. All amendments to this Agreement must be in writing and signed by the Agency and the Participant. All waivers of any provisions of this Agreement must be in writing and signed by the Agency or the Participant.

8.6 Exhibits

All exhibits attached hereto are incorporated herein by reference.

8.7 Date of Agreement; Counterparts

The date of this Agreement shall be the date it is signed by the Agency. This Agreement shall be executed in five duplicate originals each of which is deemed to be an original. This Agreement includes nine (9) pages and four (4) exhibits.

REDEVELOPMENT AGENCY OF THE CITY OF SAN
DIEGO
(Agency)

Date: _____

By: _____
Deputy Executive Director

MARKET STREET PARTNERS, LLC
a California Limited Liability Company
(Participant)

Date: _____

By: _____
Managing Member

APPROVED AS TO FORM AND LEGALITY
on this ____ day of _____ 2000.

CASEY GWINN
Agency General Counsel

By: _____
Deputy

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Royce K. Jones

Exhibit A

MAP OF SITE

[To be added.]

Exhibit B

LEGAL DESCRIPTION OF SITE

[To Be Added]

Exhibit C

AMORTIZATION SCHEDULE

[To Be Added]

Exhibit D

SAMPLE CALCULATION OF AVAILABLE TAX INCREMENT

[To Be Added]

ATTACHMENT NO. 8

PROJECT BUDGET

[TO BE ADDED BY PARTICIPANT]

284155

RESOLUTION NUMBER R-_____

ADOPTED ON NOV 14 2000

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE OWNER PARTICIPATION AGREEMENT WITH MARKET CREEK PARTNERS, LLC, FOR THE DEVELOPMENT OF A 19-ACRE RETAIL CENTER LOCATED ON EUCLID AVENUE, SOUTH OF MARKET STREET.

WHEREAS, the Redevelopment Agency of the City of San Diego [the Agency] is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Central Imperial Redevelopment Project [the Project]; and

WHEREAS, Market Creek Partners, LLC, is an entity formed by the Jacobs Center for NonProfit Innovation [Developer] to construct a 19-acre retail center project on property formerly known as the Langley site, which is on Euclid Avenue, south of Market Street [the Site]; and

WHEREAS, the Site is one of the seventeen properties removed as part of the First Amendment to the Central Imperial Redevelopment Plan in 1995; and

WHEREAS, on October 24, 2000, the Agency and Council approved a Third Amendment to the Central Imperial Redevelopment Plan to add the Site back into the Project area; and

WHEREAS, also on October 24, 2000, the Agency and Council certified the final Mitigated Negative Declaration for the Third Amendment to the Redevelopment Plan for the Central Imperial Redevelopment Project and the implementation of the associated activities, made certain findings regarding the environmental impacts of the proposed Third Amendment to

the Redevelopment Plan for the Central Imperial Redevelopment Project, and adopted a mitigation monitoring and reporting program with regard to the development of the Site; and

WHEREAS, the Agency proposes to enter into an Owner Participation Agreement with Developer to effectuate the development of the Site; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That it has received and heard all oral and written objections to the proposed Owner Participation Agreement and that all such oral and written objections are overruled.
2. That the Owner Participation Agreement with Market Creek Partners, LLC, is approved for the construction of a 19-acre retail center on Euclid Avenue, south of Market Street; a copy of the agreement is on file in the office of the City Clerk as Document No. RR-234155.

APPROVED: CASEY GWINN, City Attorney

By Elisa A. Cusato
Elisa A. Cusato
Deputy City Attorney

EAC:lc
10/31/00
Or.Dept:SEDC
Aud.Cert:N/A
R-2001-399
Form=r&t.frm

Passed and adopted by the Council of San Diego on November 14, 2000 by the following vote:

YEAS: MATHIS, WEAR, STEVENS, BLAIR, STALLINGS, McCARTY.

NAYS: NONE.

NOT PRESENT: KEHOE, VARGAS, MAYOR GOLDING.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

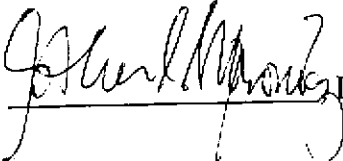
(SEAL)

By: Esther Woronicz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-294155, passed and adopted by the Council of The City of San
Diego, California on November 14, 2000.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy



KEYSER MARSTON ASSOCIATES
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
REAL ESTATE
REDEVELOPMENT
AFFORDABLE HOUSING
ECONOMIC DEVELOPMENT

To: Jerome Groomes, President
Southeastern Economic Development Corporation

From: KEYSER MARSTON ASSOCIATES, INC.

SAN FRANCISCO
A. JERRY KEYSER
TIMOTHY C. KELLY
KATE EARLE FUNK
DEBBIE M. KERN
REED T. KAWAHARA
DAVID DOEZEMA

Date: June 7, 2012

Subject: Market Creek Plaza - Tax Increment Analysis

LOS ANGELES
KATHLEEN H. HEAD
JAMES A. RABE
GREGORY D. SOO-HOO
KEVIN E. ENGSTROM
JULIE L. ROMNEY

In accordance with your request, Keyser Marston Associates, Inc. (KMA) has updated the tax increment analysis for the Market Creek Plaza (Project) as developed by Jacobs Center for Neighborhood Innovation (Developer). It is KMA's understanding that the Southeastern Economic Development Corporation (SEDC) has agreed to the following terms with the Developer for the repayment of certain public improvements constructed as part of the Project.

SAN DIEGO
GERALD M. TRIMBLE
PAUL C. MARRA

The following are the key terms:

- SEDC to pay Developer \$2,400,000 in FY 2012:
- Developer agrees to not remove office parcel (548-020-37, 38, & 39) from property tax until June 30, 2014 or after.

As shown on Exhibit 1, SEDC is proposing to pay Developer \$2.4M for prior off-site improvements constructed by Developer as detailed on Exhibit 2. The estimated tax increment generated by the development with the removal of the office parcel is estimated to be \$3,846,000 including the affordable housing set aside (\$2,872,000 plus \$974,000). As shown on Exhibit 2, Developer has funded in excess of \$7M for the off-site infrastructure improvements.

attachment

EXHIBIT 1

TAX INCREMENT ANALYSIS: 150,000-SF DEVELOPMENT W/REMOVAL OF OFFICE BUILDING FROM TAX ROLLS
 MARKET CREEK OPA
 SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION

Fiscal Year	Year	Estimated Assessed Value	(Less) Base Assessed Value (1)	Net Increase in Assessed Value	Gross Tax Revenues @ 1.009232%	(Less) County Administrative Charges	(Less) Statutory Pass Throughs		(Less) Housing Set-Aside	Net Tax Increment	Developer Reimbursement	Agency Share of Net Tax Increment
							Tier 1	Tier 2				
2000-01	Year 0	\$0	(\$3,215,188)									
2001-02	Year 1	\$10,279,490 (2)	(\$3,215,188)	\$7,064,302	\$71,295	(\$713)	(\$14,259)	-	(\$14,259)	\$42,064		\$42,064
2002-03	Year 2	\$14,131,078 (2)	(\$3,215,188)	\$10,915,890	\$110,167	(\$1,102)	(\$22,033)	-	(\$22,033)	\$64,998		\$64,998
2003-04	Year 3	\$14,793,698 (2)	(\$3,215,188)	\$11,578,510	\$116,854	(\$1,169)	(\$23,371)	-	(\$23,371)	\$68,944		\$68,944
2004-05	Year 4	\$17,357,651 (2)	(\$3,215,188)	\$14,142,463	\$142,730	(\$1,427)	(\$28,546)	-	(\$28,546)	\$84,211		\$84,211
2005-06	Year 5	\$18,491,003 (2)	(\$3,215,188)	\$15,275,815	\$154,168	(\$1,542)	(\$30,834)	-	(\$30,834)	\$90,959		\$90,959
2006-07	Year 6	\$19,303,102 (2)	(\$3,215,188)	\$16,087,914	\$162,364	(\$1,624)	(\$32,473)	-	(\$32,473)	\$95,795		\$95,795
2007-08	Year 7	\$19,689,161 (2)	(\$3,215,188)	\$16,473,973	\$166,261	(\$1,663)	(\$33,252)	-	(\$33,252)	\$98,094		\$98,094
2008-09	Year 8	\$20,082,942 (2)	(\$3,215,188)	\$16,867,754	\$170,235	(\$1,702)	(\$34,047)	-	(\$34,047)	\$100,439		\$100,439
2009-10	Year 9	\$26,266,776 (2)	(\$3,215,188)	\$23,051,588	\$232,644	(\$2,326)	(\$46,529)	-	(\$46,529)	\$137,260		\$137,260
2010-11	Year 10	\$26,615,211 (2)	(\$3,215,188)	\$23,400,023	\$236,161	(\$2,362)	(\$47,232)	-	(\$47,232)	\$139,335	\$0	\$139,335
2011-12	Year 11	\$25,221,727 (2)	(\$3,215,188)	\$22,006,539	\$222,097	(\$2,221)	(\$44,419)	\$0	(\$44,419)	\$131,037	\$2,400,000	\$0
2012-13	Year 12	\$25,410,890	(\$3,215,188)	\$22,195,702	\$224,006	(\$2,240)	(\$44,801)	\$0	(\$44,801)	\$132,164	\$0	\$0
2013-14	Year 13	\$25,601,472	(\$3,215,188)	\$22,386,284	\$225,930	(\$2,259)	(\$45,186)	\$0	(\$45,186)	\$133,298	\$0	\$0
2014-15	Year 14	\$25,793,483	(\$3,215,188)	\$22,578,295	\$227,867	(\$2,279)	(\$45,573)	\$0	(\$45,573)	\$134,442	\$0	\$0
2015-16	Year 15	\$13,833,926 (3)	(\$3,215,188)	\$10,618,738	\$107,168	(\$1,072)	(\$21,434)	\$0	(\$21,434)	\$63,229	\$0	\$0
2016-17	Year 16	\$14,110,605	(\$3,215,188)	\$10,895,417	\$109,960	(\$1,100)	(\$21,992)	\$0	(\$21,992)	\$64,876	\$0	\$0
2017-18	Year 17	\$14,392,817	(\$3,215,188)	\$11,177,629	\$112,808	(\$1,128)	(\$22,562)	\$0	(\$22,562)	\$66,557	\$0	\$0
2018-19	Year 18	\$14,680,673	(\$3,215,188)	\$11,465,485	\$115,713	(\$1,157)	(\$23,143)	\$0	(\$23,143)	\$68,271	\$0	\$0
2019-20	Year 19	\$14,974,287	(\$3,215,188)	\$11,759,099	\$118,677	(\$1,187)	(\$23,735)	\$0	(\$23,735)	\$70,019	\$0	\$0
2020-21	Year 20	\$15,273,773	(\$3,215,188)	\$12,058,585	\$121,699	(\$1,217)	(\$24,340)	\$0	(\$24,340)	\$71,802	\$0	\$0
2021-22	Year 21	\$15,579,248	(\$3,215,188)	\$12,364,060	\$124,782	(\$1,248)	(\$24,956)	\$0	(\$24,956)	\$73,621	\$0	\$0
2022-23	Year 22	\$15,890,833	(\$3,215,188)	\$12,675,645	\$127,927	(\$1,279)	(\$25,585)	\$0	(\$25,585)	\$75,477	\$0	\$0
2023-24	Year 23	\$16,208,650	(\$3,215,188)	\$12,993,462	\$131,134	(\$1,311)	(\$26,227)	\$0	(\$26,227)	\$77,369	\$0	\$0
2024-25	Year 24	\$16,532,823	(\$3,215,188)	\$13,317,635	\$134,406	(\$1,344)	(\$26,881)	\$0	(\$26,881)	\$79,299	\$0	\$0
2025-26	Year 25	\$16,863,479	(\$3,215,188)	\$13,648,291	\$137,743	(\$1,377)	(\$27,549)	\$0	(\$27,549)	\$81,268	\$0	\$0
2026-27	Year 26	\$17,200,749	(\$3,215,188)	\$13,985,561	\$141,147	(\$1,411)	(\$28,229)	\$0	(\$28,229)	\$83,277	\$0	\$0
2027-28	Year 27	\$17,544,764	(\$3,215,188)	\$14,329,576	\$144,619	(\$1,446)	(\$28,924)	\$0	(\$28,924)	\$85,325	\$0	\$0
2028-29	Year 28	\$17,895,659	(\$3,215,188)	\$14,680,471	\$148,160	(\$1,482)	(\$29,632)	\$0	(\$29,632)	\$87,414	\$0	\$0
2029-30	Year 29	\$18,253,572	(\$3,215,188)	\$15,038,384	\$151,772	(\$1,518)	(\$30,354)	\$0	(\$30,354)	\$89,546	\$0	\$0
2030-31	Year 30	\$18,618,644	(\$3,215,188)	\$15,403,456	\$155,457	(\$1,555)	(\$31,091)	\$0	(\$31,091)	\$91,719	\$0	\$0
2030-32	Year 31	\$18,991,016	(\$3,215,188)	\$15,775,828	\$159,215	(\$1,592)	(\$31,843)	\$0	(\$31,843)	\$93,937	\$0	\$0
2030-33	Year 32	\$19,370,837	(\$3,215,188)	\$16,155,649	\$163,048	(\$1,630)	(\$32,610)	\$0	(\$32,610)	\$96,198	\$0	\$0
Cumulative Totals (rounded)									\$974,000	\$2,872,000	\$2,400,000	\$922,000

Assumptions:	FY 11-12	FY 12-13	FY 13-14
Inflation Factor @	0.75%	1.0%	2.0%
Administrative Fees @	1.0%		
Tier 1 Pass-Throughs @	20.0%		
Tier 2 Pass-Throughs @	16.8%		
Housing Set-Aside	20.0%		

(1) Per Central Imperial 3 Redevelopment Project's Base Year Assessment Roll Report.

(2) Based on actual assessed values, as provided by the County Assessor.

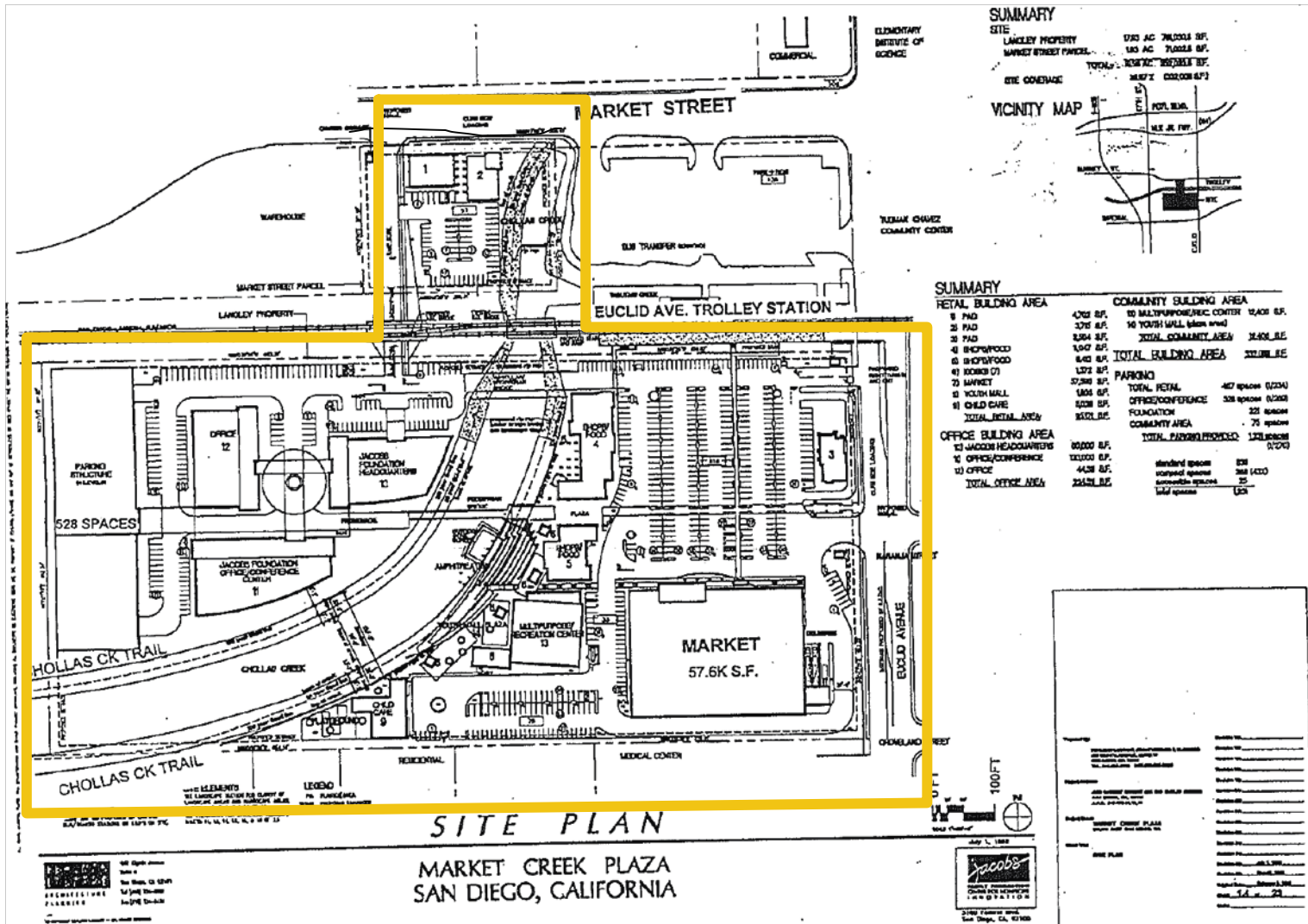
(2) Assumes removal of APN 548-020-33-00 (office building).

EXHIBIT 2

**JCNI PUBLIC IMPROVEMENT COSTS
MARKET CREEK OPA
SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION**

8/2/2011

Traffic Signals	\$	206,918
Chollas Creek Improvements	\$	2,656,071
Vehicular Bridge	\$	982,256
Trolley Underpass (Bridge)	\$	1,453,651
ADA ramp on Euclid	\$	20,022
North Entrance slope	\$	228,138
Euclid Street Improvements	\$	76,526
Market Creek Drive Improvements	\$	119,642
Market Street Improvements	\$	<u>24,539</u>
Subtotal	\$	5,767,763
Overhead, GC & Fee	\$	<u>1,270,244</u>
Total	\$	7,038,007

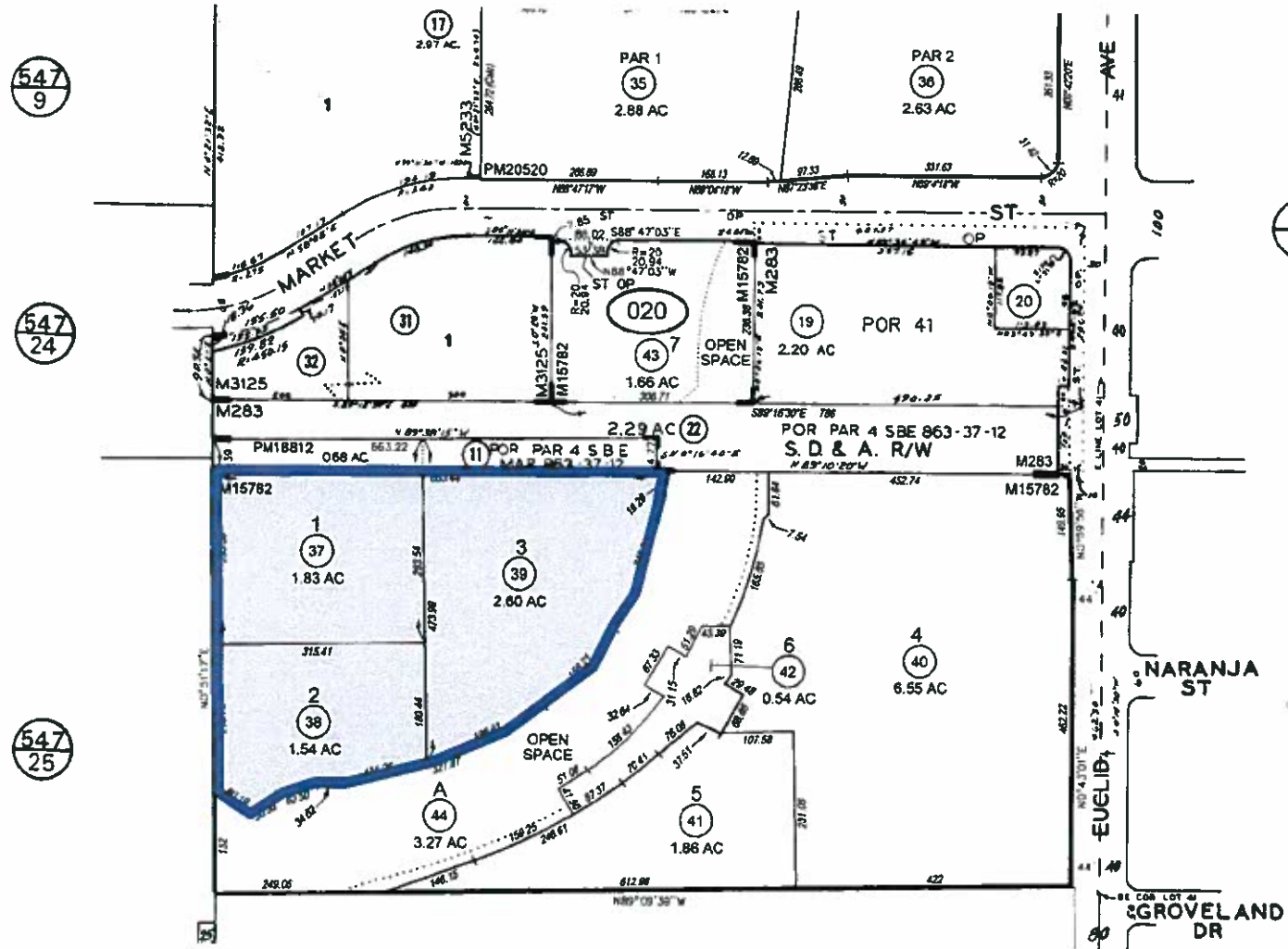


Original OPA 2000 Development Plan

June 2012

Attachment D

First Amendment to OPA with Market Creek Partners

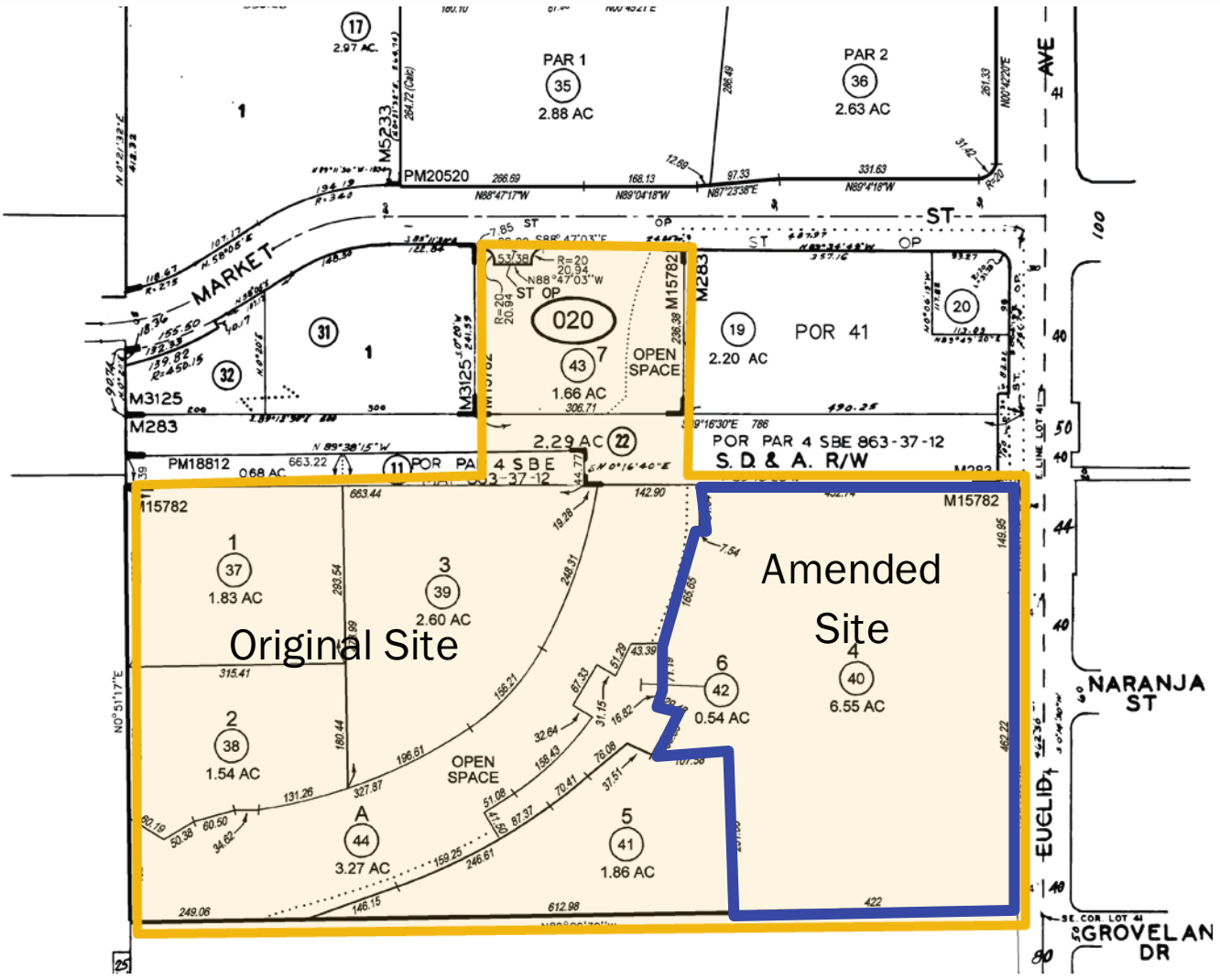


October 2012

Property Tax Agreement Parcels

Attachment
E

First Amendment to OPA with Market Creek Partners



June 2012

Parcel Map with Original and Amended Site

Attachment
F

First Amendment to OPA with Market Creek Partners



June 2012

Aerial Photo of Site

Attachment
G

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-36

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE FIRST AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT FOR MARKET CREEK PLAZA IN SOUTHEASTERN SAN DIEGO AND THE SUCCESSOR AGENCY'S RELATED PAYMENT OF \$2,400,000

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484); and

WHEREAS, the Former RDA and Market Creek Partners, LLC, a California limited liability company (Developer), entered into that certain Owner Participation Agreement (OPA) in or about December 2000 regarding development of the 19-acre Market Creek Plaza site (Site), presently located within the Central Imperial Component Area of the Southeastern San Diego Merged Redevelopment Project Area; and

WHEREAS, the OPA included the Former RDA's obligation to reimburse the Developer for the construction of certain public improvements needed for development of the Site, in an amount up to \$3,800,000, as well as the Developer's obligation to construct a 300,000-square-foot commercial retail center on the Site; and

WHEREAS, the Developer has completed the public improvements envisioned by the OPA, as well as a portion of the private improvements envisioned by the OPA; and

WHEREAS, as of February 1, 2012, the Successor Agency has assumed the Former RDA's rights and obligations under the OPA by operation of AB 26; and

WHEREAS, in light of the present circumstances, the Successor Agency and the Developer have negotiated the proposed First Amendment to the OPA, including certain attachments thereto, all of which are attached to the staff report accompanying this item; and

WHEREAS, the First Amendment to the OPA will, among other things: (i) reduce the amount of the Successor Agency's reimbursement obligation for the completed public improvements from \$3,800,000 to \$2,400,000; (ii) reduce the original Site from 19 acres to approximately 6.5 acres (Reduced Site); (iii) reduce the scope of development to reflect the completed shopping center on the Reduced Site; (iv) release certain community benefit covenants from the undeveloped parcels, but retain such covenants as to the developed parcels, within the Site; and (v) retain the Jacobs Community Center building on the property tax rolls through June 30, 2014; and

WHEREAS, the approved second Recognized Obligation Payment Schedule, covering the six-month period from July through December 2012 (ROPS 2), contemplates the Successor Agency's payment of up to \$3,800,000 to the Developer under the OPA.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The First Amendment to the OPA, including all attachments thereto, is approved.

2. The Successor Agency's payment of \$2,400,000 to reimburse the Developer for the cost of completed public improvements, as required by the First Amendment to the OPA and consistent with ROPS 2, is approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on November ____, 2012.

Chair, Oversight Board