

NAVAL TRAINING CENTER

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,

and

McMILLIN-NTC, LLC,
a Delaware limited liability company

ntc\dda.13
6-7-00

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency") and McMILLIN-NTC, LLC, a Delaware limited liability company (the "Master Developer") as of June 26, 2000. The Agency and the Master Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

PART 1 SUBJECT OF AGREEMENT

Section 1.1 Statement of Purpose

a. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Naval Training Center Redevelopment Project (the "Redevelopment Project"), adopted by the City Council of the City of San Diego on May 13, 1997 and the Naval Training Center San Diego Reuse Plan (the "Reuse Plan"), adopted by the City Council of the City of San Diego on October 20, 1998, and, by so doing, to create a center that celebrates San Diego's maritime history and opens public access to a waterway linking San Diego and Mission Bays. The redevelopment of the Naval Training Center pursuant to this Agreement will anchor revitalization of the North Bay region. It will also support education, training, and research and development programs that attract new industries to San Diego and strengthen the region's performance in international trade from Mexico to the Pacific Rim.

b. This Agreement provides for the disposition of certain real property in the Redevelopment Project (the "Site") by the Agency to the Master Developer and by the Master Developer to one or more Assignees (subject to the provisions of this Agreement), by grant deed or ground lease, as the case may be, and the development of a mixed-use project on the Site involving the construction and installation of public infrastructure improvements, the rehabilitation and reuse of existing buildings and construction of new buildings and improvements, as well as the development of a public waterfront park and recreation area on property to be owned by the City of San Diego located adjacent to the Site. The completed project will include residential, commercial, entertainment, office, hotel and educational uses, a golf course, and a "Historic Core" consisting of a Civic, Arts and Cultural Center, as defined with more specificity in Section 1.2, below, and a Mixed Use Area, defined with more specificity in Section 1.2., below.

c. 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 citizens of the City of San Diego and the health, safety, morals, and welfare of its residents,

and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

Section 1.2 Definitions

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

"Additional City-Imposed Costs" and "Additional City-Imposed Requirements" shall have the respective meanings set forth in Section 9.15 of this Agreement.

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

"Agency Certificate of Completion" shall mean a certificate to be issued by Agency in accordance with Section 6.15 of this Agreement, substantially in the forms attached to this Agreement as Attachment No. 13-A and 13-B, as applicable, which are incorporated herein by this reference.

"Agreement Affecting Real Property" means an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 8, which is incorporated herein by this reference.

"Assignee" shall mean any individual, corporation, partnership, limited liability company or other entity to whom or to which Master Developer assigns its interests in this Agreement as to any portion of the Site, which assignment shall be subject to the approval of the Agency as provided in this Agreement.

"Assignment" or "Transfer" shall mean the sale, transfer or conveyance of Master Developer's interests in this Agreement and any Parcel, the Improvements thereon, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, or any agreement to do so; the execution of any installment land sale contract or similar instrument affecting all

or a portion of a Parcel or the Improvements thereon; or the sublease of all or substantially all of a Parcel or the Improvements thereon (other than for occupancy). "Assignment" or "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in Master Developer, or any conversion of Master Developer to an entity form other than that of Master Developer at the time of execution of this Agreement. This definition shall not be construed to include any of the following transactions: (1) the sale or rental of residences; (2) the rental of apartments; (3) the rental of commercial spaces, including rental of space in the Educational Core for the uses permitted therein; or (4) the rental of hotel rooms.

"Assignment and Assumption Agreement" shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 16-A, by which Master Developer assigns its interests in this Agreement as to one or more Parcels to an Assignee, the Assignee agrees to comply with the terms and conditions of this Agreement as to such Parcel, and the Agency approves the assignment of such Parcel to the Assignee, or Attachment No. 16-B, by which Master Developer assigns its interests in this Agreement as to one or more Parcels in the Civic, Arts and Cultural Center to the Foundation, the Foundation agrees to comply with the terms and conditions of this Agreement as to such Parcel, and the Agency approves the assignment of such Parcel to the Foundation.

"Boat Channel" shall mean Parcels VII and III-B as shown on the Map of Disposal Parcels, which is attached to this Agreement as Attachment No. 1-C.

"CEQA" shall mean the California Environmental Quality Act and implementing regulations and guidelines.

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

"Civic, Arts and Cultural Center" shall mean that portion of the Historic Core consisting of Lease Parcels in that portion of Map Area 5 corresponding to Lots 9, 10, 11, 19, 21, 23, 24, 25 and 34, and that portion of Map Area 6 corresponding to Lots 1, 2, 4 through 8, 12 and 16 through 20.

"Civic, Arts and Cultural Center Implementation Plan" shall mean the plan to be prepared by the Civic, Arts and Cultural Foundation, which, at a minimum, shall:

- (1) be consistent with the General Statement of Purpose which is attached to this Agreement as Attachment No. 19;
- (2) be consistent with the Precise Plan and the Development Permits;

(3) contain, at a minimum, the following elements:

- (a) a description of the specific uses proposed to be permitted, which shall be consistent with the Precise Plan and the Development Permits and shall include a mix of uses that may include, but not be limited to, art and cultural uses, museums, civic activities and retail uses consistent with the Precise Plan and the Development Permits;
- (b) a statement that the Foundation agrees to comply with applicable standards set forth in this Agreement, the Precise Plan and the Development Permits;
- (c) a rehabilitation budget and financing plan which shall identify the sources and uses of funds needed to complete the Stage One Rehabilitation of the Civic, Arts and Cultural Center, including estimated time frames for rehabilitation. To the extent the financing plan identifies sources of funds, the Implementation Plan shall be accompanied by loan documents and similar documentation evidencing the terms, conditions and availability of such financing;
- (d) a marketing plan for the subleasing of space in the Civic, Arts and Cultural Center, which shall also include: (i) minimum absorption goals for occupancy of space in the Civic, Arts and Cultural Center; and (ii) a financial analysis of estimated revenues and expenses, that will set forth the rents that will be required to be paid by subtenants in order to pay all of the Foundation's operating costs, including debt service on any loan identified in paragraph (c), above, that will finance any part of the rehabilitation of the Civic, Arts and Cultural Center, including, but not limited to, loans made to the Foundation by Master Developer; and
- (e) the location of the 10,000 square feet of space to be provided to the City pursuant to subdivision 1.8.g.(4) of this Agreement.

"Civic, Arts and Cultural Foundation" or "Foundation" shall mean the nonprofit public benefit corporation (to be formed) to administer the Civic, Arts and Cultural Center of the Historic Core.

"Closing" or "Close of Escrow" shall mean: (1) subject to the satisfaction of all applicable Phase Three Conditions Precedent, the point in time when the Agency conveys fee title or a leasehold interest in a portion of the Site to the Master Developer; (2) subject to the satisfaction of all applicable Phase Three (Foundation) Conditions Precedent, the point in time when the Agency conveys a leasehold interest in the Civic, Arts and Cultural Center to the Foundation, as provided in this Agreement; (3) subject to the satisfaction of all applicable Phase Three Conditions Precedent, the point in time when the Master Developer conveys fee title to the Officers' Houses to purchasers, as provided in this Agreement; and (4) subject to the satisfaction of all applicable Phase Four Conditions Precedent, the point in time when the Master Developer conveys fee title or a leasehold interest in the remaining portions of the Site to an Assignee, as provided in this Agreement.

"Closing Conditions" shall mean, with respect to a Parcel, all conditions precedent to Closing that are applicable to such Parcel, including the Phase Three Conditions Precedent and the Phase Four Conditions Precedent.

"Coastal Commission Approval" shall mean certification of the Precise Plan as an amendment to the City's Local Coastal Program by the California Coastal Commission ("Commission") pursuant to California Public Resources Code Section 30514 and Article 12 of Title 14 of the California Administrative Code. If the Commission conditionally certifies the Precise Plan subject to the City Council's acceptance of suggested modifications, "Coastal Commission Approval" shall not be final until the acceptance of such modifications by the City Council.

"Completion" shall mean, with respect to a Parcel, the point in time when all of the following shall have occurred: (1) to the extent a certificate of occupancy is required, issuance of a permanent certificate of occupancy by the City of San Diego, and to the extent a certificate of occupancy is not required by the City of San Diego, the issuance of a certificate of completion from the City's Planning and Development Review staff; (2) recordation of a Notice of Completion by Master Developer, its Assignee or such Party's contractor; (3) certification by the project architect that such Improvements (with the exception of minor "punchlist" items) have been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications (which shall not be required for single family houses); and (4) any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against.

"Consumer Price Index" shall mean the Consumer Price Index - all Urban Consumers, San Diego, published by the Bureau of Labor Statistics, or such comparable index as may be reasonably acceptable to Agency.

"Cooperation Agreement" shall mean the agreement by and between the City and the Agency substantially in the form attached to this Agreement as Attachment No. 21, which is incorporated herein by this reference.

"Development Costs" means costs incurred for the development of one or more Parcels, to the extent set forth in the approved Project Budget, which shall be subject to adjustment as provided in this Agreement.

"Development Permit" shall include any Neighborhood Use Permit, Conditional Use Permit, Neighborhood Development Permit, Site Development Permit, Planned Development Permit, Coastal Development Permit, Construction Permit, Building Permit or other permit type as may be necessary and pursuant to Chapter 12 of the Land Development Code of the City of San Diego, and shall include a site plan as may be required by the applicable permit, landscape plans, irrigation plans, architectural elevations, architectural floor plans, grading, cross-sections, vesting tentative map, etc.

"DPU" means Development Phasing Unit, as set forth in the Reuse Plan.

"Educational Core" means that portion of the Site which consists of Lots 1 through 11 of Map Area 4.

"Entitlements" shall mean and include approval of the development proposed by Master Developer or any Assignee by the City of San Diego and any other governmental body having jurisdiction over the Site, including, to the extent applicable, but not limited to, the following: approvals or actions required by CEQA including but not limited to the mitigation measures described in Attachment No. 25; General Plan Amendment; Precise Plan; Vesting Tentative Maps; recordation of Final Maps; Development Permits; and Building Permits.

"Environmental Indemnity" shall mean an instrument substantially in the form of the documents attached to this Agreement as Attachments No. 9-A, 9-B and 9-C, as applicable, which are incorporated herein by this reference.

"Environmental Insurance" shall have the meaning set forth in Section 6.8 hereof.

"Escrow Agent" shall mean First American Title Insurance Company or any other title insurance company or escrow agent mutually acceptable to Agency and Master Developer.

"Federal Government" shall mean the United States of America, by and through the Secretary of the Navy or designee.

"Force Majeure Delay" shall have the meaning set forth in Section 10.2.

"Governmental Requirements" shall mean all laws, rules, regulations, standards, guidelines and other requirements issued by any federal, state, county, municipal or other governmental authority having jurisdiction over the Site.

"Grant Deed" shall mean a grant deed from Agency (as grantor) to Master Developer (as grantee), substantially in the forms attached to this Agreement as Attachment No. 5-A and 5-B, as applicable, which are incorporated herein by this reference.

"Gross Revenues" shall have the corresponding meaning set forth in the Participation Agreement.

"Ground Lease" shall mean a lease between Agency (as landlord) and Master Developer (as tenant), substantially in the form attached to this Agreement as Attachment No. 6-A, which is incorporated herein by this reference, or a lease between Agency (as landlord) and the Foundation (as tenant of one or more Parcels in the Civic, Arts and Cultural Center), substantially in the form attached to this Agreement as Attachment No. 20, which is incorporated herein by this reference.

"Hazardous Materials" shall mean and include the following:

- a. a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;
- b. an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;
- c. a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;

- d. "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;
- e. listed or defined as a "Hazardous Waste", Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;
- f. listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.9(a) of the California Health and Safety Code;
- g. a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;
- h. any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- i. pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;
- j. asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;
- k. any radioactive material including, without limitation, any "source material", "special nuclear material", "by-product material", "low-level wastes", "high-level radioactive waste", "spent nuclear fuel" or "transuranic waste", and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 114960 et seq.;

- l. regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or
- m. regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

"Historic Core" means that portion of the Site consisting of the Civic, Arts and Cultural Center and the Mixed Use Area.

"Horizontal Improvements" shall mean the public improvements and utilities required to be constructed or installed on or in connection with the development of the Site, which, subject to Section 9.16, are set forth in Appendix I to the Reuse Plan (Infrastructure/Improvement Cost Estimates), which is incorporated herein by this reference (but not including any rehabilitation line items set forth in Appendix I which shall be included within the definition of "Vertical Improvements").

"Improvements" shall mean Vertical Improvements and Horizontal Improvements.

"Interim Lease Agreement" shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 14, which is incorporated herein by this reference.

"Lease Parcel" shall mean any Parcel in the Civic, Arts and Cultural Center to be leased by Agency to the Foundation, or any other Parcel to be leased by Agency to Master Developer pursuant to this Agreement, including all of the Parcels in the following areas, or any of them: all of Map Area 5 (with the exception of Lots 1 through 3 and 5 through 8); all of Map Area 6 (with the exception of Lots 25, 30 through 32, 34 through 37, 44 and 45); and all of Map Areas 7 and 8.

"Legal Description" shall mean the legal description of the Site attached to this Agreement as Attachment No. 2, which is incorporated herein by this reference. Upon recordation of any Final Map, the Legal Description shall be deemed amended, automatically, to conform to the recorded Final Map.

"Lender's Nondisturbance and Attornment Agreement" means an instrument substantially in the forms attached to this Agreement as Attachment No. 10-A and 10-B, as applicable, which are incorporated herein by this reference.

"Lots" shall mean the subdivided portions of Map Areas, as depicted in the Site Maps, including adjacent streets that are conveyed with such Lots.

"Map Area" shall mean any of Map Areas 1 through 8, as depicted on the Site Maps, attached hereto as Attachment No. 1, which are incorporated herein by this reference. To the extent any approved Tentative Map or recorded Final Map contains Map Area boundaries that differ from those depicted in the Site Maps, the Site Maps shall be deemed amended, automatically, to conform to the approved Tentative Map or recorded Final Map.

"Master Developer" shall mean McMillin-NTC, LLC, a Delaware limited liability company.

"Memorandum of Agreement" or "MOA" shall mean that certain "Memorandum of Agreement between the United States of America and the City of San Diego for the Economic Development Conveyance of Property on the Naval Training Center, San Diego," pursuant to which the Federal Government will convey title to the Site to the City, attached to this Agreement, together with the Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 from the Federal Government to the City, as Attachment No. 22.

"Mixed Use Area" shall mean that portion of the Historic Core consisting of Parcels in that portion of Map Area 5 corresponding to Lots 4 through 8, 12 through 18, 20, 22, 26 through 33, 35 and 36, and that portion of Map Area 6 corresponding to Lots 3, 9 through 11, 13 through 15, 21 through 37 and 42 through 45, which shall include a mix of uses that may include, but not be limited to, art and cultural uses, museums, civic activities, marketplaces and festive retail uses, restaurants, crafts, retail uses, traditional retailers, uses that combine crafts and manufacturing with retail sales, offices, small retail uses, live/work spaces and other uses, as permitted by the Precise Plan and the Development Permits.

"NTC Park Improvement Agreement" shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 12-B.

"Parcel" shall mean, for purposes of this Agreement, one or more Lots constituting the basic unit of Property to be conveyed and developed pursuant to this Agreement, and may include all or a portion of a DPU and/or a Map Area.

"Park" shall mean the public waterfront park and recreation area to be developed on property to be owned by the City of San Diego located adjacent to the Site on Map Area 6, Lots 38 through 41, inclusive, and DPU 3.4 (east).

"Park Improvements" shall mean the Improvements relating to the Park set forth in Exhibit "I" to the Reuse Plan, which shall be deemed Horizontal Improvements.

"Participation Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 7, which is incorporated herein by this reference.

"Payment and Performance Bonds" shall mean bonds issued by a surety company admitted in the State of California and regulated by the State of California Department of Insurance, Best's Rated "A" or otherwise acceptable to the Agency Executive Director, in which the City or Agency is the obligee, as their interests may appear, guaranteeing payment for and faithful performance and completion (within the respective times provided in this Agreement) of Vertical Improvements or Horizontal Improvements, as the case may be, in accordance with drawings or plans, as appropriate, that specifically describe the work to be performed on the Parcel in sufficient detail for the issuance of such Payment and Performance Bonds, and, in the case of the rehabilitation of Vertical Improvements, plans, first approved by the Agency staff, that include the square footage of the Vertical Improvements to be rehabilitated. All Payment and Performance Bonds shall be substantially in the form of one or more of the documents attached to this Agreement as Attachment No. 12-A, which documents are incorporated herein by this reference; provided, Payment and Performance Bonds for any of the Vertical Improvements to be constructed for Office and Research and Development uses in Map Area 3, shall be sufficient if they guarantee payment for and completion of shell and core Improvements (including landscaping), but not including any tenant improvements.

"Permitted Mortgage" or "Permitted Leasehold Mortgage" means a deed of trust or other conveyance of a security interest in a Sale Parcel, or a leasehold deed of trust or other conveyance of a leasehold interest in a Lease Parcel, as the case may be, to a Permitted Mortgagee or Permitted Leasehold Mortgagee, or the conveyance of such Parcel or such leasehold interest to the Permitted Mortgagee, Permitted Leasehold Mortgagee or its assignee or purchaser in connection with a foreclosure or a deed in lieu of foreclosure, which satisfies all of the criteria set forth in Section 4.3 of this Agreement.

"Permitted Mortgage Loan" or "Permitted Leasehold Mortgage Loan" means the obligations secured by a Permitted Mortgage.

"Permitted Mortgagee" or "Permitted Leasehold Mortgagee" shall mean the holder of any Permitted Mortgage or Permitted Leasehold Mortgage.

"Permitted Transfer" means, as to any particular Parcel or Parcels, any of the following:

- a. Upon or at any time after execution of this Agreement, the transfer of partnership interests, shares of stock or limited liability shares or the addition or substitution of partners, shareholders or members holding interests in Master Developer (so long as the day-to-day management and operations of the resulting entity remain in the control of Macey L. ("Corky") McMillin or his immediate family members);
- b. Upon or at any time after the satisfaction of all Phase Three Conditions Precedent applicable to a Parcel, the creation by Master Developer of a separate legal entity by the transfer of partnership interests, shares of stock or limited liability shares or the addition or substitution of partners, shareholders or members holding interests in such entity, and the assignment to such entity of Master Developer's rights and obligations under this Agreement as to one or more Parcels (so long as the day-to-day management and operations of the resulting entity remain in the control of Macey L. ("Corky") McMillin or his immediate family members);
- c. Upon or at any time after the satisfaction of all Phase Three Conditions Precedent applicable to a Parcel, an assignment of the rights and obligations of Master Developer pursuant to this Agreement in whole or in part to an Affiliate (so long as the day-to-day management and operations of such entity remain in the control of Macey L. ("Corky") McMillin or his immediate family members);
- d. Upon or at any time after the satisfaction of the Phase Three Conditions Precedent applicable to a Parcel, the assignment of Master Developer's rights and obligations under this Agreement as to one or more Parcels to be leased by the Agency to the Foundation in the Civic, Arts and Cultural Center of the Historic Core pursuant to a Lease substantially in the form attached to this Agreement as Attachment No. 20 (the "Civic, Arts and Cultural Center Lease"), in accordance with the terms of this Agreement;
- e. Upon or at any time after the satisfaction of the Phase Three Conditions Precedent applicable to a Parcel, any Permitted Mortgage or Permitted Leasehold Mortgage to be recorded against fee title as to any Sale Parcel or against leasehold title as to any Lease Parcel, provided Agency's right of

reverter shall remain senior in priority until the satisfaction of all applicable Phase Four Conditions Precedent relating to such Parcel; and

- f. Upon or at any time after the satisfaction of the Phase Four Conditions Precedent applicable to a Parcel, any conveyance by Master Developer to an Assignee of fee title as to any Sale Parcel or leasehold title as to any Lease Parcel, and a corresponding assignment of any rights or obligations of Master Developer pursuant to this Agreement to such Assignee as to such Parcel, pursuant to this Agreement; and
- g. Upon or at any time after the satisfaction of the Phase Three Conditions Precedent applicable to a Parcel, the sale for single family occupancy or use as a "bed and breakfast" of any of the Officers' Houses in Map Area 5, Lots 5 through 8, inclusive, in accordance with the terms of this Agreement.
- h. Upon or at any time after the satisfaction of the Phase Four Conditions Precedent applicable to a Parcel, the sale or leasing for occupancy of any part of the Site in accordance with the terms of this Agreement.

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

"Phase One" shall mean, with respect to any Parcel, the period of time commencing upon mutual execution of this Agreement and ending upon the acquisition of fee title to such Parcel by Agency.

"Phase Two" shall mean, with respect to any Parcel, the period of time commencing upon acquisition of fee title to such Parcel by Agency and ending upon the satisfaction of all Phase Three Conditions Precedent and conveyance of fee title or a leasehold interest, as the case may be, by Agency to Master Developer, or, in the case of the Parcels in the Civic, Arts and Cultural Center, the satisfaction of all Phase Three (Foundation) Conditions Precedent and conveyance of a leasehold interest by Agency to the Foundation.

"Phase Three" shall mean, with respect to any Parcel (not including any Parcel to be conveyed to the Foundation), the period of time commencing upon the conveyance of fee title or a leasehold interest, as the case may be, by Agency to Master Developer, and ending upon the satisfaction of all Phase Four Conditions Precedent and conveyance of fee title or a leasehold interest, as the case may be, by Master Developer to an Assignee.

"Phase Three Conditions Precedent" shall mean the conditions precedent to the Agency's obligation to convey any Parcel to Master Developer (not including Parcels to be conveyed to the Foundation), which shall include all of the following:

- a. Fee Title. The Federal Government shall have conveyed the Parcel to the City, and the City shall have conveyed the Site to Agency;
- b. Precise Plan and the Development Permits. The City shall have approved the Precise Plan and the Development Permits for the Site and the Coastal Commission shall have certified the Precise Plan as an amendment to the Local Coastal Plan;
- c. Final Map. The Final Map for the particular Parcel shall have been recorded;
- d. Subdivision Improvement Agreement. Master Developer shall have entered into a subdivision improvement agreement with the City which shall identify the Horizontal Improvements that are required to be constructed as a condition of the Vesting Tentative Map for the particular Parcel (the "Required Horizontal Improvements");
- e. Payment and Performance Bonds. Master Developer shall have provided to the Agency Payment and Performance Bonds, as defined in this Agreement, guaranteeing Completion of the following improvements within the respective time periods set forth in this Agreement: (1) the Required Horizontal Improvements for that Parcel; and (2) those Vertical Improvements in the Historic Core required to be rehabilitated in connection with the particular Parcel;
- f. Approvals and Permits. Master Developer shall have obtained all City and other governmental agency approvals and permits required for the Required Horizontal Improvements;
- g. Insurance Policies. Master Developer shall have submitted to the Agency evidence of the Insurance Policies required to be submitted pursuant to Section 6.8 of this Agreement;
- h. Evidence of Financing. Except to the extent set forth in the Subdivision Improvement Agreement, Master Developer shall have submitted to the Agency evidence of financing for the Required Horizontal Improvements, including: (1) a final project budget

relating to the Required Horizontal Improvements, consistent with Appendix I of the Reuse Plan, and the then-current budget for those Vertical Improvements in the Civic, Arts and Cultural Center of the Historic Core required to be rehabilitated in connection with the particular Parcel and the Vertical Improvements in the Educational Core required to be rehabilitated or constructed in connection with the particular Parcel, and demonstrating to the satisfaction of the Agency Executive Director or designee the availability of funds sufficient to pay all applicable Development Costs relating to the Required Horizontal Improvements; (2) a construction contract with a licensed general contractor, covering the Required Horizontal Improvements, in an amount that is consistent with the project budget; (3) a construction schedule prepared in the usual and customary form for a general contractor, demonstrating that construction of the Required Horizontal Improvements will commence within thirty (30) days after conveyance of the Parcel to Master Developer and Completion will occur within the time provided therefor in the Schedule of Outside Performance Dates; and (4) substantially final documents required for any construction loan, bridge loan or permanent loan, or for the issuance of any Community Financing District or other financing bonds, or required by any lender, guarantor or equity investor in connection with financing the Required Horizontal Improvements;

- i. Approval of Evidence of Financing. The Agency Executive Director or designee shall have approved the evidencing of financing described in paragraph h. of this definition, by determining that financing in an amount sufficient to pay the Development Costs for the Required Horizontal Improvements is available on terms and conditions that are consistent with this Agreement and that the Agency's right of reverter with respect to the Parcel to be conveyed will be senior in priority to any lien on the Parcel, until the satisfaction of all Phase Four Conditions Precedent and conveyance of the Parcel to an Assignee;
- j. Documents. Agency and Master Developer shall have executed and delivered the following documents (to the extent applicable):

- (1) Grant Deed or Ground Lease;
- (2) Agreement Affecting Real Property;
- (3) Environmental Indemnity;
- (4) Lender's Nondisturbance and Attornment Agreement; and
- (5) Tenant's Nondisturbance and Lease Recognition Agreement.

k. Civic, Arts and Cultural Foundation. The following conditions relating to the Civic, Arts and Cultural Center shall have been satisfied:

- (1) Master Developer shall cause the Foundation to be established and submit to the Agency a copy of its articles of incorporation, bylaws and other formation documents;
- (2) Master Developer shall cause the Foundation to hire or contract for appropriate management staff to manage the Civic, Arts and Cultural Center and implement the Civic, Arts and Cultural Center Implementation Plan;
- (3) Master Developer shall demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer has expended or will expend not less than \$2,000,000 to establish and capitalize the Foundation, including an itemization of how such funds have been or will be spent;
- (4) the Foundation shall submit to the Agency for its approval the Civic, Arts and Cultural Center Implementation Plan, as defined in this Agreement; and
- (5) the Foundation shall submit to the Agency for its approval a Construction Management Agreement between Master Developer or its Affiliate and the Foundation.

l. Commitment to Commence Improvements. Master Developer shall demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer will commence the Required Horizontal Improvements not later than thirty (30) days after conveyance of fee or leasehold title, as the case may be, and is committed to continuously and diligently prosecute such Required Horizontal Improvements to Completion within the time provided therefor in the Schedule of Outside Performance Dates; and

- m. Title Insurance. The Title Insurance Company shall be committed to issue the Title Insurance Policies.

"Phase Three (Foundation)" shall mean, with respect to the Parcels in Map Area 5 constituting the Civic, Arts and Cultural Center, and the Parcels in Map Area 6 constituting the Civic, Arts and Cultural Center, the period of time commencing upon the conveyance of a leasehold interest by Agency to the Foundation, and ending upon Completion with respect to such Parcels.

"Phase Three (Foundation) Conditions Precedent" shall mean the conditions precedent to the Agency's obligation to convey a leasehold in any of the Parcels in Map Area 5 constituting the Civic, Arts and Cultural Center, and any of the Parcels in Map Area 6 constituting the Civic, Arts and Cultural Center, to the Foundation, which shall include all of the following:

- a. Foundation. The following conditions relating specifically to the Civic, Arts and Cultural Center shall have been satisfied:
- (1) Master Developer shall cause the Foundation to be established and submit to the Agency a copy of its articles of incorporation, bylaws; copies of all resolutions or other necessary actions taken by such entity to authorize the execution of the Assignment and Assumption Agreement and any other documents or instruments required by this Agreement; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County; and other formation documents;
 - (2) Master Developer shall cause the Foundation to hire or contract for appropriate management staff to manage the Civic, Arts and Cultural Center and implement the Civic, Arts and Cultural Center Implementation Plan;
 - (3) Master Developer shall demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer has expended or will expend not less than \$2,000,000 to establish and capitalize the Foundation, including an itemization of how such funds have been or will be spent;

- (4) the Foundation shall submit to the Agency for its approval the Civic, Arts and Cultural Center Implementation Plan, as defined in this Agreement; and
- (5) the Foundation shall submit to the Agency for its approval a Construction Management Agreement between Master Developer or its Affiliate and the Foundation.
- b. Fee Title. The Federal Government shall have conveyed the Parcels to the City, and the City shall have conveyed the Site to Agency;
- c. Precise Plan and the Development Permits. The City shall have approved the Precise Plan and the Development Permits for the Site and the Coastal Commission shall have certified the Precise Plan as an amendment to the Local Coastal Plan;
- d. Final Map. The Final Map for the particular Parcels shall have been recorded;
- e. Subdivision Improvement Agreement. Master Developer shall have entered into a subdivision improvement agreement with the City which shall identify the Horizontal Improvements that are required to be constructed as a condition of the Vesting Tentative Map for the particular Parcels (the "Required Horizontal Improvements");
- f. Drawings or Plans. Master Developer or the Foundation, as the case may be, shall have submitted and Agency staff shall have approved drawings or plans, as appropriate, specifically describing the Stage One and other work to be performed for the rehabilitation of the Vertical Improvements on the Parcels, including square footage, in sufficient detail for the issuance of Payment and Performance Bonds as required by this Agreement, and/or such earlier stages of the plans and drawings as the City may require in the Precise Plan and the Development Permits;
- g. Entitlements and Permits. Master Developer or the Foundation, as the case may be, shall have obtained all City and other governmental agency approvals and permits required for the Required Horizontal Improvements and the rehabilitation of the Vertical Improvements to be rehabilitated on the Parcels;

- h. Payment and Performance Bonds. Master Developer shall have provided to the Agency Payment and Performance Bonds, as defined in this Agreement, guaranteeing Completion of the following improvements within the respective time periods set forth in this Agreement: (1) the Required Horizontal Improvements for those Parcels; and (2) the Stage One Vertical Improvements to be rehabilitated in connection with the particular Parcels;
- i. Insurance Policies. Master Developer or the Foundation, as the case may be, shall have submitted to the Agency evidence of the Insurance Policies required to be submitted pursuant to Section 6.8 of this Agreement;
- j. Evidence of Financing. Master Developer or Foundation, as the case may be, shall have submitted to the Agency evidence of financing for the Required Horizontal Improvements and the Vertical Improvements to be rehabilitated, including: (1) a final project budget, consistent with Appendix I of the Reuse Plan, demonstrating to the satisfaction of the Agency Executive Director or designee the availability of funds sufficient to pay all applicable Development Costs; (2) a construction contract with a licensed general contractor, in an amount that is consistent with the project budget; (3) a construction schedule prepared in the usual and customary form for a general contractor, demonstrating that construction of the Required Horizontal Improvements will commence within thirty (30) days after conveyance of the Parcel to the Foundation, that the rehabilitation of the Vertical Improvements will commence not later than promptly after completion of the Required Horizontal Improvements and Completion will occur within the time provided therefor in the Schedule of Outside Performance Dates; and (4) substantially final documents required for any construction loan, bridge loan or permanent loan, including any loan to be made by the Master Developer to the Foundation, or for the issuance of any Community Financing District or other financing bonds, or required by any lender, guarantor or equity investor in connection with financing the Required Horizontal Improvements and the Vertical Improvements.

- k. Approval of Implementation Plan and Evidence of Financing. The Agency Executive Director or designee shall have approved the Implementation Plan, and evidence of financing described in paragraph j. of this definition, by determining that financing in an amount sufficient to pay the Development Costs is available on terms and conditions that are consistent with this Agreement, and that the estimated rents to be charged to subtenants will be sufficient to pay all of the Foundation's operating costs, including debt service on any loan identified in paragraph j., including loans to be made by Master Developer. To facilitate such financing, Agency agrees to execute a subordination agreement substantially in the form attached to this Agreement as Attachment No. 23, with such reasonable modifications as may be requested by any Permitted Mortgagee, subject to Section 9.10.c. of this Agreement, to subordinate the Agency's right of reverter with respect to the Parcel to the lien of such lender; and
- l. Documents. Agency and Foundation shall have executed and delivered the following documents (to the extent applicable):
- (1) Assignment and Assumption Agreement;
 - (2) Ground Lease;
 - (3) Agreement Affecting Real Property;
 - (4) Environmental Indemnity;
 - (5) Lender's Nondisturbance and Attornment Agreement; and
 - (6) Tenant's Nondisturbance and Lease Recognition Agreement.
- m. Commitment to Commence Improvements. Master Developer and/or the Foundation shall demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer will commence the Required Horizontal Improvements and Vertical Improvements not later than thirty (30) days after conveyance of leasehold title, and is committed to continuously and diligently prosecute such Required Horizontal Improvements and Vertical Improvements to Completion within the time provided therefor in the Schedule of Outside Performance Dates; and
- n. Title Insurance. The Title Insurance Company shall be committed to issue the applicable Title Insurance Policies.

"Phase Four" shall mean, with respect to any Parcel (not including any Parcel to be conveyed to the Foundation), the period of time commencing upon the conveyance of fee title or a leasehold interest, as the case may be, by Master Developer to an Assignee, and ending upon Completion with respect to such Parcel.

"Phase Four Conditions Precedent" shall mean the conditions precedent to Master Developer's right to convey any Parcel to an Assignee (but not including any Parcel to be conveyed to the Foundation) for construction of Vertical Improvements (which may be satisfied prior to or after completion of the corresponding Horizontal Improvements), which shall include all of the following:

- a. Satisfaction of Phase Three Conditions. All applicable Phase Three Conditions Precedent shall have been satisfied.
- b. Approval of Assignee. To the extent required by this Agreement, the Agency shall have approved the proposed Assignee;
- c. Assignee Formation Documents. Any Assignee shall have delivered to the Agency documentation relating to the corporate, partnership, limited liability or other similar status, as the case may be, of the entity to which Master Developer intends to assign its rights under this Agreement as to such Parcel (and if any such entity is a limited partnership, its general partners, and if any such entity is a limited liability company, its members), including, without limitation and as applicable: limited partnership agreement and any amendments thereto; articles of incorporation; State of California Limited Liability Company Articles of Incorporation (LLC-1), Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of the Assignment and Assumption Agreement and any other documents or instruments required by this Agreement; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County;
- d. Related Improvements. (1) All Horizontal Improvements required for the reuse of the applicable Parcel, as set forth in Appendix "I" to the Reuse Plan, shall have been Completed or bonded for or insured around; (2) those Vertical Improvements in the Historic Core required to be

rehabilitated in connection with the particular Parcel shall have been Completed or bonded for or insured around; and (3) the Vertical Improvements in the Educational Core required to be rehabilitated or constructed in connection with the particular Parcel shall have been Completed or bonded for or insured around.

- e. Drawings or Plans. Master Developer or the Assignee shall have submitted and Agency staff shall have approved drawings or plans, as appropriate, specifically describing the work to be performed for the construction or rehabilitation of the Vertical Improvements on the Parcel, including, in the case of rehabilitation, square footage, in sufficient detail for the issuance of Payment and Performance Bonds as required by this Agreement, and/or such earlier stages of the plans and drawings as the City may require in the Precise Plan and the Development Permits. To the extent the Master Developer or Assignee is permitted pursuant to paragraph f. to proceed on a "fast track" basis, the level of drawings or plans required to be submitted pursuant to this paragraph e. shall be commensurate with the submittals that are required pursuant to paragraph f, below.
- f. Entitlements and Permits. Master Developer or Assignee shall have obtained all City and other governmental agency approvals and permits required for the construction of the Vertical Improvements. Alternatively, with respect to Parcels in Map Areas 1, 2, 3, 4, 7 and 8 only, McMillin or its Assignees have the right to proceed on a "fast-track" basis and shall be required only to submit evidence of the approval of permits (and the satisfaction of all conditions relating to such permits) necessary for the commencement of construction, if the Agency Executive Director or designee is reasonably satisfied that the conditions for issuance of all remaining permits necessary for the Completion of the Vertical Improvements on such Parcel have been budgeted for and are reasonably certain to be satisfied within a time frame that is consistent with the Schedule of Outside Performance Dates, and that such permits will be obtained in the ordinary course of construction;

- g. Payment and Performance Bonds. Master Developer or the Assignee shall have provided to the Agency Payment and Performance Bonds, as defined in this Agreement, guaranteeing Completion of the Vertical Improvements within the respective time periods set forth in this Agreement. In the case of the residential Vertical Improvements to be constructed in Map Areas 1 and 2, Master Developer or its Assignee shall have the right to obtain and submit to the Agency, as a Phase Four Condition Precedent, one or more Payment and Performance Bonds in phases, applicable to the number of housing units to be constructed on a particular Lot or Lots as they are conveyed by Master Developer to the homebuilder. Each such phased Payment and Performance Bond shall be released upon the Completion of the final housing unit in a particular phase.
- h. Evidence of Financing. The Assignee shall have submitted to the Agency evidence of financing for all the Vertical Improvements to be constructed on such Parcel, consistent with Part 4 of this Agreement, including: (1) a final project budget, demonstrating to the satisfaction of the Agency Executive Director or designee the availability of funds sufficient to pay all applicable Development Costs; (2) a construction contract with a licensed general contractor, covering all such Vertical Improvements, in an amount that is consistent with the project budget; (3) a construction schedule prepared in the usual and customary form for a general contractor, demonstrating that the Vertical Improvements will commence within thirty (30) days after conveyance of the Parcel to the Assignee and Completion will occur within the time provided therefor in the Schedule of Outside Performance Dates; and (4) substantially final construction loan, bridge loan and permanent loan documents required by any lender, guarantor or equity investor in connection with such financing, including, as applicable, bond indentures and other documents evidencing and securing bond financing;
- i. Approval of Evidence of Financing. The Agency Executive Director or designee shall have approved the evidence of financing described in paragraph h. of this definition, by determining that financing in an amount sufficient to pay the Development Costs for the Vertical Improvements is available on terms and conditions that are consistent with this Agreement. To facilitate such financing, Agency

agrees to execute a subordination agreement substantially in the form attached to this Agreement as Attachment No. 23, with such reasonable modifications as may be requested by any Permitted Mortgagee, subject to Section 9.10.c. of this Agreement, to subordinate the Agency's right of reverter with respect to the Parcel to the lien of such lender; and

j. Insurance Policies. The Assignee shall have submitted to the Agency evidence of the Insurance Policies required to be submitted pursuant to Section 6.8 of this Agreement;

k. Documents. Agency, Master Developer and the Assignee, or other parties, as appropriate, shall have executed and delivered the following documents (to the extent applicable):

- (1) Assignment and Assumption Agreement;
- (2) Grant Deed or Ground Lease;
- (3) Agreement Affecting Real Property;
- (4) Environmental Indemnity;
- (5) Lender's Nondisturbance and Attornment Agreement;
- (6) Tenant's Nondisturbance and Lease Recognition Agreement; and
- (7) Subordination of Agency's Right of Reverter to Permitted Mortgage (subject to conditions set forth in paragraph c. of Section 9.10).

l. Commitment to Commence Improvements. The Assignee shall demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that the Assignee will commence the Vertical Improvements not later than thirty (30) days after conveyance of fee or leasehold title, as the case may be, and is committed to continuously and diligently prosecute such Vertical Improvements to Completion within the time provided therefor in the Schedule of Outside Performance Dates; and

m. Title Insurance. The Title Insurance Company shall be committed to issue the Title Insurance Policies.

"Precise Plan" means the Naval Training Center Precise Plan, to be approved by the City Council, which shall include the required contents listed in California Government Code Section 65451, as provided in Section 122.0107 of Chapter 12 of the Land Development Code of the City of San Diego, which provides as follows: "The required contents shall be formulated into a policy element and a regulatory element. The policy element shall contain

detailed land use policies for the area covered by the specific plan and the decision process and permit type for subsequent development proposals that will implement the specific plan. The specific plan shall not establish new decision processes or permit types, but shall use Processes One through Process Five as established in Chapter 11 and the permit types described in Chapter 12. The zoning regulations shall consist of either: (1) Application of existing base zones of Chapter 13; or (2) Proposed base zones that shall be adopted into Chapter 13 as well as applied to the area covered by the specific plan. These zones shall become base zones that could be applied to other property in the City."

"Precise Plan Approval" shall mean both of the following: (1) City Council approval of the Precise Plan and all Development Permits for the Site; and (2) Coastal Commission Approval, as defined herein.

"Pre-existing Site Conditions" shall mean the existence, release, presence or disposal on, in, under, about or adjacent to the Site, of any Hazardous Materials which occurred before the delivery of possession of a Parcel to Master Developer.

"Priority One Renovation" shall mean renovation of non-historic buildings to the extent described in Attachment No. 18-B, which is incorporated herein by this reference.

"Project Budget" shall mean a series of budgets, each with reference to one or more Parcels, initially in the form attached to this Agreement as Attachment No. 4, which is incorporated herein by this reference, which shall be amended from time to time by Master Developer (subject to the reasonable approval of the Agency's Executive Director or designee), up to and including a final Project Budget for such Parcel or Parcels which shall be current as of the commencement of Phase Four with respect to such Parcel or Parcels.

"Redevelopment Plan" means the Redevelopment Plan for the Naval Training Center Redevelopment Project which was approved and adopted on May 13, 1997 by the City Council of the City of San Diego by Ordinance No. 18405.

"Redevelopment Project Area" shall mean the property within the boundaries of the Naval Training Center Redevelopment Project, which includes the Site and the following areas which are outside of the Site: the Park; the area to be developed for Navy Housing; that portion of DPU 1.4 to be used as a Metropolitan Waste Water District facility; DPU 4.1; and DPU 4.2.

"Remediation Parcels" shall mean those portions of the Site identified as Parcels III-B, VIII and X on the "Map of Disposal Parcels" attached to this Agreement as Attachment No. 1-C.

"Required Horizontal Improvements" shall mean the Horizontal Improvements (including Park Improvements) that are required to be constructed, by the terms of a subdivision improvement agreement or deferred improvement agreement between Master Developer and the City, as a condition of the Final Map for a particular Parcel, or by the terms of the NTC Park Improvement Agreement or this Agreement;

"Reuse Plan" means the Naval Training Center San Diego Reuse Plan adopted by the City Council on October 20, 1998.

"Sale Parcel" shall mean any Parcel with respect to which fee title will be conveyed to Master Developer pursuant to this Agreement, including any or all of the Parcels in Map Areas 1, 2, 3 and 4, that portion of Map Area 5 consisting of Lots 1 through 3 and 5 through 8, and that portion of Map Area 6 consisting of Lots 25, 30 through 32, 34 through 37, 44 and 45.

"Schedule of Outside Performance Dates" shall mean the document attached to this Agreement as Attachment No. 3, which is incorporated herein by this reference.

"Scope of Development" shall mean the Urban Design Guidelines attached to the Reuse Plan as Appendix "H", which is incorporated herein by this reference. To the extent that Appendix "H" is inconsistent with any provision of the Precise Plan and the Development Permits, the Precise Plan and the Development Permits shall prevail and Appendix "H" shall be deemed amended to conform to the Precise Plan and the Development Permits.

"Site" means the real property described in Section 1.4 hereof, depicted on the Site Maps and legally described in the Legal Description of the Site.

"Site Clearance Plan" shall consist of a detailed plan describing the means, methods, work practices and safety precautions to be used during the building demolition and hazardous material remediation work.

"Site Maps" means, collectively, the following: (1) the "NTC Master TM/Final Map Exhibit" attached to this Agreement as Attachment No. 1-A; (2) the "NTC Master Land Disposition Plan" attached to this Agreement as Attachment No. 1-B; and (3) the "Map of Disposal Parcels" attached to this Agreement as Attachment No. 1-C, which Site Maps are incorporated herein by this reference. To the extent any approved Tentative Map or recorded Final Map contains Map Area, Lot or Parcel boundaries that differ from those depicted in the Site Maps, the Site Maps shall be deemed amended, automatically, to conform to the approved Tentative Map or recorded Final Map.

"Stage One Rehabilitation" shall mean rehabilitation of historic buildings to the extent described in Attachment No. 18-A, which is incorporated herein by this reference.

"Subdivision Improvement Agreement" shall mean an agreement between Master Developer and the City relating to Horizontal Improvements required as a condition of approval of any subdivision map with respect to any Parcel.

"Tenant's Nondisturbance and Lease Recognition Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 11, which is incorporated herein by this reference.

"Title Company" shall mean First American Title Insurance Company or any other title insurance company mutually acceptable to Agency and Master Developer.

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

a. An owner's policy of title insurance in favor of Master Developer insuring Master Developer's fee or leasehold title in the Parcel (as applicable) or in favor of the Foundation in the case of any Parcel in the Civic, Arts and Cultural Center to be leased to the Foundation, in such amount and with such reasonable endorsements as may be requested by the insured Party (the "Owner's Title Policy");

b. A policy of title insurance in favor of Agency insuring Agency's reversionary interest in any Lease Parcel, and/or right of reverter, as applicable, with respect to any Parcel, in such amount and with such reasonable endorsements as may be requested by the insured Party (the "Agency's Title Policy"); and

c. A mortgagee's policy of title insurance in favor of the Mortgagee or Leasehold Mortgagee (as applicable), insuring the lien of a Permitted Mortgage or Leasehold Mortgage, in the amount of the Permitted Mortgage or Leasehold Mortgage with such reasonable endorsements as may be requested by the insured Party (the "Lender's Title Policy").

"Vertical Improvements" shall mean any of the buildings, structures, landscaping and other improvements to be rehabilitated, constructed or installed on or in connection with the development of the Site, consistent with the Reuse Plan, the Precise Plan and the Development Permits and Plans approved by the City staff, other than the Horizontal Improvements.

"Vesting Tentative Map" shall mean a vesting tentative map, as defined in California Government Code Section 66424.5, approved by the City for the Site or any portions thereof.

Section 1.3 The Redevelopment Plan

a. This Agreement is subject to the provisions of the Redevelopment Plan, which is incorporated herein by reference and made a part hereof as though fully set forth herein.

b. Any amendments hereafter to the Redevelopment Plan 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 Master Developer's obligations or rights with respect to the Site, shall require the written consent of Master Developer. Amendments to the Redevelopment Plan applying to other property in the Redevelopment Project Area shall not require the consent of Master Developer.

Section 1.4 The Site

a. The "Site" includes a portion of the Redevelopment Project Area consisting of the following areas:

- (1) The Residential Area, consisting of Sale Parcels in Map Areas 1 and 2;
- (2) The Educational Core, consisting of Sale Parcels in Map Area 4;
- (3) The Historic Core, consisting of the following:
 - a. The Civic, Arts and Cultural Center (as defined in Section 1.2); and
 - b. The Mixed Use Area (as defined in Section 1.2).
- (4) The Golf Course, consisting of Lease Parcels in that portion of Map Area 5 corresponding to Lots 12 and 26;

- (5) The Hotel and Conference Center Parcels, consisting of Lease Parcels in Map Areas 7 and 8 (including the portion of the Boat Channel located within such Map Areas);
- (6) The Parking Parcels, consisting of the Sale Parcels in that portion of Map Area 5 corresponding to Lots 1 through 3 and the Sale Parcels in that portion of Map Area 6 corresponding to Lot 30;
- (7) The Office and R&D Parcels, consisting of the Sale Parcels in Map Area 3; and
- (8) The Officers' Houses, consisting of the Sale Parcels in that portion of Map Area 5 corresponding to Lots 5 through 8.

The Site is depicted on the Site Maps attached hereto as Attachment No. 1. The legal description of the Site is set forth in the Legal Description attached hereto as Attachment No. 2.

b. (1) With the exception of the Remediation Parcels identified as Parcels III-B, VIII and X on the "Map of Disposal Parcels" attached to this Agreement as Attachment No. 1-C (collectively referred to herein as the "Remediation Parcels"), the Site was quitclaimed by the Federal Government to the City of San Diego pursuant to the MOA and is owned by the City. The Parties anticipate that pursuant to the MOA, the Federal Government will quitclaim the Remediation Parcels to the City in separate conveyances as described in Section 2 of the MOA, as soon as the Federal Government completes certain remedial action described in the MOA.

(2) In the event the Federal Government fails to quitclaim any of the Remediation Parcels to the City within the time provided in the MOA, Master Developer shall have the right to delete such Parcel(s) from the Site and proceed with the remainder of the Site.

c. To the extent necessary to effectuate a "Title Settlement and Exchange Agreement" to be entered into by and between the City and the State of California, the City, by grant deed, will convey to the State of California so much of the Site as lies within the Public Trust Lands (to be defined in the Title Settlement and Exchange Agreement), the State will patent to the City, free of the public trust for commerce, navigation, fisheries, water-oriented recreation and preservation (the "Public Trust") so much of the Site as lies within the Trust Termination Lands (to be defined in the Title Settlement and Exchange Agreement) and the State will patent to the City, subject to the Public Trust, so much

of the Site as lies within the Public Trust Lands (to be defined in the Title Settlement and Exchange Agreement).

d. Not later than ninety (90) days after the date of mutual execution of this Agreement by the Agency and Master Developer, the City and NTC Property Management, LLC, a Delaware limited liability company (whose sole member is McMillin-NTC, LLC) shall enter into an Interim Lease Agreement, substantially in the form attached to this Agreement as Attachment No. 14, which is incorporated herein by reference, pursuant to which NTC Property Management, LLC shall maintain, manage and operate those portions of the Site obtained pursuant to an Economic Development Conveyance from the Federal Government for the City for the term of the Interim Lease Agreement. Concurrently with the effective date of the Interim Lease Agreement, the City and NTC Property Management, LLC intend to enter into a management agreement pursuant to which NTC Property Management, LLC shall manage, on an interim basis, the property constituting the Park Parcels, the Remediation Parcels and the Boat Channel. The terms and condition of the management agreement shall be subject to the mutual approval of the City and NTC Property Management, LLC.

e. At any time after the conveyance of the Site by the Federal Government to the City (not including the Remediation Parcels), and the City-State transaction described in paragraph c., and prior to the satisfaction of the Phase Three Conditions Precedent by Master Developer (and, in the case of the Civic, Arts and Cultural Center, the Phase Three (Foundation) Conditions Precedent by the Foundation), the City will transfer its interests in the Site to the Agency pursuant to the terms and conditions of the Cooperation Agreement.

f. Subject to the terms and conditions of this Agreement, the Agency shall convey fee title or leasehold title, as the case may be, to one or more Parcels, to Master Developer subject to all terms and conditions of the MOA and Quitclaim Deed applicable to such Parcels, and shall convey leasehold title to one or more Parcels in the Civic, Arts and Cultural Center to the Foundation subject to all terms and conditions of the MOA and Quitclaim Deed applicable to such Parcels, upon the satisfaction of the Phase Three Conditions Precedent applicable to such Parcel or Parcels, and Master Developer shall have the right to convey such fee or leasehold title to its Assignees upon the satisfaction of the Phase Four Conditions Precedent applicable to such Parcel or Parcels (except that Master Developer may sell the Officers' Houses in Map Area 5, Lots 5 through 8, inclusive, upon satisfaction of the applicable Phase Three Conditions Precedent). Upon conveyance of any Parcel to Master Developer, Master Developer agrees to assume and faithfully perform any covenants set forth in the Quitclaim Deed as covenants running with the land and obligations set forth in the Quitclaim Deed as obligations to be performed by "Grantee or its successors or assigns".

Section 1.5 Agency

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

b. The address of Agency for purposes of receiving notices pursuant to this Agreement is City Administration Building, 202 C Street, San Diego, California 92101; Attention: NTC Project Manager.

c. "Agency" as used in this Agreement includes the Redevelopment Agency of the City of San Diego, California and any assignee or successor to its rights, powers and responsibilities. The governing body of the Agency shall have the right, at any time after Precise Plan Approval, in its sole and absolute discretion, to assign its rights and obligations hereunder to the City of San Diego or any agency or instrumentality of the City of San Diego and shall not otherwise assign its rights or obligations hereunder without the prior written consent of Master Developer, which consent shall not unreasonably be withheld, conditioned or delayed.

Section 1.6 Master Developer

a. Master Developer is McMillin-NTC, LLC, a Delaware limited liability company. The address of Master Developer for purposes of receiving notices pursuant to this Agreement is 2727 Hoover Avenue, National City, California 91950.

b. Whenever the term "Master Developer" is used herein, such term shall be limited to the Master Developer as of the date hereof, or, following an Assignment approved by the Agency, the Assignee.

Section 1.7 Assignments and Transfers

a. Master Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Site and not for speculation in land holding. Master Developer further recognizes that the qualifications and identity of Master Developer are of particular concern to the City and Agency, in light of the following: (1) the importance of the redevelopment of the Site to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Master Developer is for practical purposes a transfer or disposition of the property then owned by Master Developer. Master Developer further recognizes that it is because of such qualifications and identity that Agency is entering into the Agreement with Master Developer. Therefore, no voluntary or

involuntary successor in interest of Master Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Master Developer shall not assign all or any part of this Agreement, or any interest herein, and shall not assign or transfer any portion of the Site, or interest therein, except as provided in this Agreement.

c. For the reasons cited above, Master Developer represents and agrees for itself, its members and any successor in interest of itself and each member that, except as provided in the definition of "Permitted Transfer" set forth in Section 1.2, of this Agreement, prior to Completion and without the prior written approval of Agency, there shall be no significant change in the control of Master Developer or with respect to the identity of the parties in control of Master Developer or the degree of such control, by any method or means. The term "control" as used in the immediately preceding sentence, shall mean the power to direct the management. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

d. Agency approval of any Permitted Transfer, as defined in Section 1.2 hereof, shall not be unreasonably withheld, conditioned or delayed if all applicable conditions for approval thereof described in this Agreement have been satisfied. Notwithstanding any provision of this Agreement, Agency approval or disapproval of any Assignment or Transfer that is not a Permitted Transfer shall be granted or withheld in the Agency's sole and absolute discretion. To the extent Agency approval of any Assignment or Transfer is required by this Agreement (including Permitted Transfers and all other Assignments or Transfers), in granting or withholding its approval, Agency shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee. At the time of any proposed Transfer or Assignment, Master Developer shall disclose to the Agency the proposed terms of such Transfer or Assignment. Any proposed assignment of Master Developer's rights and obligations hereunder to an Assignee as to one or more Parcels shall be for the purpose of constructing the Vertical Improvements required by this Agreement and/or operating the structures and other Improvements on such Parcels, and shall be subject to the satisfaction of all Phase Four Conditions Precedent applicable to such Parcel (except for sale of the Officer's Houses in Map Area 5, Lots 5 through 8, inclusive, which shall be subject to the

satisfaction of all Phase Three Conditions, and the conveyance by the Agency of one or more leaseholds in the Civic, Arts and Cultural Center Parcels to the Foundation, which shall be subject to the satisfaction of all Phase Three (Foundation) Conditions). Master Developer shall not receive profits or revenue of any kind from or relating to the assignment, conveyance (by lease, sale or otherwise) or other transfer of any Parcel, or agreement to assign, convey or transfer such Parcel, until all Phase Four Conditions Precedent applicable to such Parcel have been satisfied in full (except for sale of the Officer's Houses), except, subject to all of the terms and conditions of the Participation Agreement, attached hereto as Attachment No. 7, Master Developer shall have the right to receive and hold monetary deposits that are provided by any potential purchaser or sublessee in the ordinary course of implementing a purchase and sale agreement or agreement to lease any portion of the Site.

e. Master Developer shall promptly notify Agency of any and all changes whatsoever in the identity of the parties in control of Master Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by Agency, subject to Section 9.1, if there is any significant change (voluntary or involuntary) in membership, management or control, of Master Developer prior to Completion.

f. Upon or at any time after satisfaction of the Phase Four Conditions Precedent applicable to a Parcel, Master Developer shall have the right, subject to the approval of the Agency, to assign its rights and obligations under this Agreement with respect to such Parcel to another Party (an "Assignee"), but no such assignment shall be required. Master Developer shall not assign such rights and obligations without the approval of the Agency, which shall not be unreasonably withheld, conditioned or delayed, subject to the satisfaction of all Phase Four Conditions Precedent applicable to such Parcel and to the provisions of this Section 1.7. Any attempted transfer of this Agreement or any Parcel, or any portion or interest therein which is not authorized by this Agreement or expressly approved in writing by Agency shall be void and of no force or effect. In the event Master Developer intends to effectuate such an assignment, not later than thirty (30) days prior to the proposed date of assignment, Master Developer shall submit to Agency a request for approval of assignment, including the name and a description of such proposed Assignee's relevant experience, a reasonably current financial statement of the proposed Assignee, an Assignment and Assumption Agreement substantially in the form attached to this Agreement as Attachment No. 16, executed by Master Developer and the proposed Assignee, a copy of any agreement between Master Developer and such proposed Assignee, and any additional information reasonably requested by Agency in connection with such proposed assignment.

g. Neither this Agreement nor any interest therein shall be assignable by operation of law (including, without limitation, the transfer of this Agreement by testacy or intestacy). Any involuntary assignment shall constitute a default by Master Developer, and Agency shall have the right to elect to terminate this Agreement immediately as to any Parcel with respect to which the Phase Four Conditions Precedent have not yet been satisfied, and take immediate possession of any Parcel previously conveyed to Master Developer (but not to an Assignee) hereunder. In such event, this Agreement shall not be treated as an asset of Master Developer. The following is a non-exclusive list of acts which shall be considered an involuntary assignment:

(1) If Master Developer is or becomes bankrupt or insolvent or if any involuntary proceeding is brought against Master Developer (unless, in the case of a petition filed against Master Developer, the same is dismissed within ninety (90) days), or Master Developer makes an assignment for the benefit of creditors, or institutes a proceeding under or otherwise seeks the protection of Federal or State bankruptcy or insolvency laws, including but not limited to the filing of a petition for voluntary bankruptcy or instituting a proceeding for reorganization or arrangement;

(2) If a writ of attachment or execution is levied on any Parcel or this Agreement, where such writ is not discharged within ninety (90) days; or

(3) If, in any proceeding or action in which Master Developer is a Party, a receiver is appointed with authority to take possession of the Parcel, where possession is not restored to Master Developer within ninety (90) days.

h. The restrictions of this Section 1.7 shall terminate as to a Sale Parcel upon the Completion of that Parcel. As to any Lease Parcel, the restrictions of this Section 1.7 shall terminate upon the Completion of that Parcel and thereupon be superseded by restrictions on transfers set forth in the applicable Ground Lease.

Section 1.8 Actions to be Taken by Master Developer

a. Prior to or Concurrently with Execution of this Agreement. Prior to or concurrently with the execution of this Agreement by Master Developer, the following shall have occurred:

(1) Master Developer, Agency and City shall have mutually executed and delivered the NTC Park Improvement Agreement;

(2) Master Developer and Agency shall have mutually executed and delivered the Participation Agreement;

(3) Master Developer shall have delivered to Agency the Deposit described in Section 9.12 of this Agreement;

(4) Master Developer shall have prepared and delivered to the Agency its Subcontracting Outreach Program as specifically described in Attachment No. 24;

(5) Master Developer shall have obtained and delivered to the Agency and City a binder or certificate evidencing the Environmental Insurance, effective upon the mutual execution of this Agreement by the Master Developer and Agency; and

(6) Master Developer shall have delivered to the Agency documentation relating to the corporate, partnership, limited liability or other similar status, as the case may be, of Master Developer's limited liability company and its members (and, if any member is a limited partnership, its general partners, and if any member is a limited liability company, its members), including, as applicable: articles of incorporation; State of California Limited Liability Company Articles of Incorporation (LLC-1) and (as to the Master Developer and its managing member only) Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of this Agreement and any other documents or instruments required by this Agreement; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County.

b. Entitlements and Closing Conditions. Following the mutual execution and delivery of this Agreement, Agency and Master Developer shall proceed diligently and in good faith to complete the entitlement process (described in Part 2) and satisfy all Phase Three Conditions Precedent relating to each Parcel when and as required by this Agreement and the Schedule of Outside Performance Dates attached hereto as Attachment No. 3.

c. Horizontal Improvements.

(1) Subject to the satisfaction of the Phase Three Conditions Precedent, Master Developer shall promptly begin and thereafter diligently prosecute to completion, on a Map Area basis, all of the Horizontal Improvements when and as required by the City of San Diego, the Reuse Plan and this Agreement.

(2) Master Developer shall not encumber any Parcel until all Phase Three Conditions Precedent applicable to such Parcel have been satisfied and the Parcel has been conveyed to Master Developer. Upon the satisfaction of all Phase Three Conditions Precedent and the conveyance of such Parcel by Agency to Master Developer, Master Developer shall have the right, subject to Agency's right of reverter, to encumber the fee title of any such Sale Parcel and the leasehold title of any such Lease Parcel, with a Permitted Mortgage, and encumber such title, but only for the purpose of obtaining financing necessary to pay Development Costs reasonably allocable to the Parcels encumbered by such financing. Notwithstanding the foregoing, upon sale of the Officers' Houses in Map Area 5, Lots 5 through 8, inclusive, the Agency shall release its right of reverter from any such sold Parcel.

(3) During Phase Two, Master Developer shall have the right to pursue formation of a Community Facilities District or other district in order to finance Horizontal Improvement Development Costs as well as the Development Costs relating to Vertical Improvements in the Historic Core, in accordance with the Cooperation Agreement and all applicable City policies and practices. To carry out this paragraph (3), Agency agrees to cooperate reasonably with Master Developer, during Phase Two, to pursue formation of such district. Provided, however, that Agency shall not be obligated to convey any Parcel to Master Developer, or any Parcel in the Civic, Arts and Cultural Center to the Foundation, without the satisfaction of all applicable Phase Three Conditions Precedent.

(4) Upon the satisfaction of all Phase Four Conditions Precedent and the conveyance of such Parcel by Master Developer to an Assignee, the Agency shall subordinate its right of reverter to any Permitted Mortgage, Community Financing District or other district formed pursuant to State law to finance the Horizontal Improvements.

(5) The Foundation shall have the right to encumber any Parcel in the Civic, Arts and Cultural Center with a Permitted Leasehold Mortgage, and encumber such title, but only for the purpose of obtaining financing necessary to pay Development Costs for Vertical Improvements directly allocable to such Parcel, when all Phase Three (Foundation) Conditions Precedent applicable to such Parcel have been satisfied and the Parcel has been conveyed to the Foundation. Subject to the conditions set forth in paragraph c. of Section 9.10 of this Agreement, Agency shall subordinate its right of reverter as to any Parcel conveyed to the Foundation.

d. Park Improvements. Master Developer shall promptly begin and thereafter diligently prosecute to completion, in phases, all of the Park Improvements when and as required by the City of San Diego pursuant to the NTC Park Improvement Agreement, which shall be executed concurrently with this Agreement.

e. Residential Area.

(1) The Parcels in Map Areas 1 and 2 shall be developed for residential purposes as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parcels in the Residential Area.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to one or more Parcels in the Residential Area, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the development of such Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) The Agency acknowledges and agrees that the housing units to be developed in Map Areas 1 and 2 may be developed in multiple phases, and agrees to cooperate in good faith with Master Developer and any Assignee to implement this Agreement so as to permit such phased development.

(5) Upon the satisfaction of all Phase Four Conditions Precedent applicable to a Parcel in the Residential Area, Master Developer shall have the right to sell such Parcel to one or more Assignees for the construction of Vertical Improvements and sale of housing units. The Gross Revenues of any such sale by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement.

(6) Upon conveyance of any Parcel in the Residential Area to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed on such Parcel, and market and sell the housing units so constructed, when and as required by this Agreement and the Schedule of Outside Performance Dates.

(7) Master Developer agrees to require any Assignee of a Parcel in the Residential Area to market any homes to be constructed on such Parcel in accordance with Master Developer's "New Home Sales Procedures", substantially as described in Attachment No. 26.

f. Educational Core.

(1) The Parcels in Map Area 4 shall be developed as an Educational Core, as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parcels in the Educational Core.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to one or more Parcels in the Educational Core, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the development of such Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) Upon the satisfaction of all Phase Four Conditions Precedent applicable to a Parcel in the Educational Core, Master Developer shall have the right to convey such Parcel to one or more Assignees for the construction or rehabilitation of Vertical Improvements and/or the operation of such Improvements. The Gross Revenues from any such conveyance by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement. Provided, however, that the disposition of Lot 1 shall be subject to paragraph (6), below.

(5) Upon conveyance of any Parcel in the Educational Core to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed or rehabilitated on such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

(6) The following shall apply to Lot 1 of Map Area 4:

(a) Master Developer shall reserve Building 83 located on Lot 1 of Map Area 4, which shall be conveyed to an educational institution to be selected by the Agency (the "Designated Institution"). Agency shall use its best efforts to

select the Designated Institution not later than twenty-four (24) months after recordation of the Final Map for Map Area 4 by Master Developer. Upon the satisfaction of all Phase Four Conditions Precedent applicable to Lot 1 of Map Area 4, and upon execution of an Assignment and Assumption Agreement substantially in the form of Attachment No. 16-A, Master Developer shall sell or lease such space to the Designated Institution, as is, at no cost to the Designated Institution (except to the extent such space is leased on a "triple net" basis), provided: (i) the rehabilitation and reuse of Building 83 shall be subject to this Agreement, the Precise Plan and the Development Permits and the Reuse Plan; (ii) the Designated Institution agrees it shall participate in and pay its proportional share of capital and maintenance cost pursuant to districts or mechanisms generally applicable to tenants and owners of property in the Site to the extent reasonably allocable to such Lot; and (iii) the Designated Institution agrees to perform its obligations in a timely fashion, and subject to the following schedule of outside compliance dates:

(A) The Designated Institution shall satisfy all Phase Four Conditions Precedent and start Vertical Improvements: Not later than forty-eight (48) months after recordation of the Final Map; and

(B) The Designated Institution shall complete Vertical Improvements: Not later than twenty-four (24) months after commencement.

Failure by the Designated Institution to satisfy the requirements within the time periods set forth in clauses (A) and (B) shall not be a default by Master Developer except to the extent such failure is caused by the acts or omissions of Master Developer.

(b) At the request of the Designated Institution, Master Developer shall advance to or for the benefit of the Designated Institution sufficient funding for the completion of Priority One Renovation of such reserved space, provided: (i) the Designated Institution satisfies reasonable creditworthiness standards; and (ii) such advance shall be repaid to Master Developer by the Designated Institution, subject to reasonable commercial loan terms and security in accordance with the terms and conditions of a separate agreement to be entered into by and between the Master Developer and the Designated Institution. To the extent the Designated Institution finances the completion of Priority One Renovation of such space without an advance of funds from Master Developer, Master Developer shall be relieved of its obligation to advance such funds.

(c) When Agency selects the Designated Institution pursuant to this Section 1.8.f., Agency shall have the right to substitute one or more alternate buildings in the Educational Core for Building 83, subject to all of the same conditions set forth in this Section 1.8.f., so long as such substitution is mutually agreeable to Agency and Master Developer. Following such substitution, Master Developer shall have no obligation to reserve any additional space in the Educational Core pursuant to this Agreement.

(d) The foregoing subparagraphs f.(6)(a) and (b) shall be of no further force or effect in the event the Agency fails to select the Designated Institution within the 24-month period described in paragraph (a), above.

g. Civic, Arts and Cultural Center of Historic Core.

(1) The Civic, Arts and Cultural Center shall be rehabilitated and operated in accordance with: (a) this Agreement; (b) a Construction Management Agreement between Master Developer or its Affiliate and the Foundation; and (c) the Foundation's Civic, Arts and Cultural Center Implementation Plan.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parcels in the Civic, Arts and Cultural Center of the Historic Core, including:

(a) Master Developer shall cause the Foundation to be established as a Section 501(c)(3) nonprofit public benefit corporation, and submit to the Agency a copy of its articles of incorporation, bylaws and other formation documents;

(b) Master Developer shall cause the Foundation to hire or contract for appropriate management staff to manage the Civic, Arts and Cultural Center and implement the Civic, Arts and Cultural Center Implementation Plan;

(c) Master Developer shall demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer has expended or will expend not less than \$2,000,000 to establish and capitalize the Foundation, including an itemization of how such funds have been or will be spent;

(d) the Foundation shall submit to the Agency Executive Director or designee for approval, which shall not be unreasonably withheld, the Civic, Arts and Cultural Center Implementation Plan (as defined in this Agreement); and

(e) Master Developer shall submit to the Agency Executive Director or designee for approval, which shall not be unreasonably withheld, a Construction Management Agreement between Master Developer or its Affiliate and the Foundation, which shall require the completion of the Stage One Rehabilitation of the Civic, Arts and Cultural Center in accordance with this Agreement.

(3) Upon the satisfaction of all Phase Three (Foundation) Conditions Precedent applicable to the Parcels in the Civic, Arts and Cultural Center in Map Area 5, and upon execution of an Assignment and Assumption Agreement substantially in the form of Attachment No. 16-B, the Agency shall lease such Parcels to the Foundation pursuant to the Historic Core Lease substantially in the form of Attachment No. 20 attached hereto. Upon the satisfaction of all Phase Three (Foundation) Conditions Precedent applicable to the Parcels in the Civic, Arts and Cultural Center in Map Area 6, and upon execution of an Assignment and Assumption Agreement substantially in the form of Attachment No. 16-B, the Agency shall lease such Parcels to the Foundation pursuant to the Historic Core Lease substantially in the form of Attachment No. 20 attached hereto. Agency shall have the right, but not the obligation, to lease any and all of the Parcels in Map Area 5 and Map Area 6 to the Foundation in multiple phases, or on a Map Area basis, as determined by the Agency in its discretion.

(4) The City of San Diego shall have the right, without cost or expense to Agency or City except as provided in this paragraph (4), to execute a sublease from the Foundation for and to occupy not more than 10,000 square feet of space, which shall be used and occupied by City departments, at a commercially viable rent that does not exceed the reasonable cost of amortizing the Stage One Rehabilitation Costs for such space (provided that the City shall have the right, in its sole discretion, to pay for Stage One Rehabilitation Costs directly, in which case such space shall be rented rent-free to City), but subject to the following conditions: (i) the rehabilitation and reuse of such space shall be subject to this Agreement, the Precise Plan and the Development Permits and the Reuse Plan; (ii) the City shall participate in and pay its proportional share of capital and maintenance cost pursuant to districts or mechanisms generally applicable to tenants and owners of property in the Site to the extent reasonably allocable to such Lot; (iii) the City shall perform its obligations in a timely fashion; (iv) the City shall use such space for municipal, non-commercial uses; (v) the City shall be responsible for the Stage One Rehabilitation Costs for such space, by payment of rent as described above; and (vi) the Stage One Rehabilitation for such space shall be consistent with other comparable spaces in the Civic, Arts and Cultural Center. To implement this paragraph (4), the Foundation shall propose, as part of the Civic, Arts and

Cultural Center Implementation Plan, the location of approximately 10,000 square feet of ground-floor space appropriate for the City's needs, to be provided to the City pursuant to this provision, and all essential terms of a proposed sublease of such space to the City. Any such sublease shall be "triple net" and be for the term of the Agency's Lease to the Foundation, and shall bind the Foundation and all successors and assigns. Within 30 days after receipt of such proposal, the City shall either accept the Foundation's proposal or make a counter-proposal, including any alternative location and all essential terms of the proposed sublease. Prior to the City's approval of the Implementation Plan, the City and Foundation shall promptly and diligently negotiate in good faith to reach agreement on the location of such space and the essential terms and conditions of the sublease. When the City and Foundation have agreed upon the location of the 10,000 square feet and the City has approved the Implementation Plan, the City and Foundation shall thereafter diligently and in good faith negotiate and enter into such a sublease, and during the negotiations thereof (but for not longer than six (6) months after the date of approval of the Implementation Plan), the Foundation shall not sublease any of the designated space to any other person or entity.

(5) Following the conveyance of Parcels to the Foundation, Master Developer or its Affiliate (pursuant to the Construction Management Agreement) shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements and Vertical Improvements to be constructed or rehabilitated with respect to such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

(6) Notwithstanding any provision in this Agreement to the contrary, in the event the Foundation fails to perform in a timely and satisfactory manner all of its obligations which are necessary for the satisfaction of the Phase Three (Foundation) Conditions Precedent, or if Agency disapproves any of the Phase Three (Foundation) Conditions Precedent that are under the control of the Foundation, or in the event of an uncured default under the Foundation Ground Lease, or if the Master Developer forecloses on any Permitted Leasehold Mortgage securing a loan by Master Developer to the Foundation, Master Developer, subject to the reasonable approval of the Agency, shall replace the Foundation with another nonprofit organization qualified to perform the obligations of the Foundation pursuant to this Agreement. After the Phase Three (Foundation) Conditions Precedent have been satisfied, the foregoing sentence shall apply only for so long as Master Developer is a Leasehold Mortgagee with respect to any of the Foundation Parcels. To the extent reasonably feasible, Master Developer shall take such steps as may be required to replace the Foundation pursuant to this paragraph (6) so that the Phase Three (Foundation) Conditions Precedent may be satisfied not later than the date provided in the Schedule of Outside Performance Dates (Attachment No. 3) for satisfaction of all Phase Three (Foundation)

Conditions Precedent for Map Area 5, but in any case within twelve (12) months after replacing the Foundation.

h. Mixed Use Area of the Historic Core.

(1) The Mixed Use Area of the Historic Core is intended to be leased to Master Developer to be operated on a commercial basis, as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parcels in the Mixed Use Area of the Historic Core.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to one or more Parcels in the Mixed Use Area of the Historic Core, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the development of such Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) Upon the satisfaction of all Phase Four Conditions Precedent applicable to a Parcel in the Mixed Use Area of the Historic Core, Master Developer shall have the right to sublease such Parcel to one or more Assignees for the construction or rehabilitation of Vertical Improvements and/or the operation of such Improvements. The Gross Revenues from any such sublease by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement.

(5) Upon conveyance of any Parcel in the Mixed Use Area of the Historic Core to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed or rehabilitated on such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

i. Golf Course.

(1) That portion of Map Area 5 corresponding to Lots 12 and 26 is intended to be leased to Master Developer to be operated on a commercial basis as a golf course, as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to the Golf Course Parcels.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to the Golf Course Parcels, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the improvement of the Golf Course Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) Upon the satisfaction of all Phase Four Conditions Precedent applicable to the Golf Course Parcels, Master Developer shall have the right to (a) construct or rehabilitate the Golf Course Improvements, and (b) sublease the Golf Course Parcels to an Assignee for construction or rehabilitation of the Golf Course Improvements and/or operation of the Golf Course. The Gross Revenues from any such sublease by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement.

(5) Upon conveyance of any Golf Course Parcel to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed or rehabilitated on such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

j. Hotel and Conference Center Parcels.

(1) The Parcels in Map Areas 7 and 8 (including the adjacent portions of the Boat Channel) are intended to be leased to Master Developer to be subleased on an economic basis, subject to the public trust for commerce, navigation, fisheries, water-oriented recreation and preservation, for the construction and operation of one or more hotels and conference centers, as provided in the Reuse Plan and the Precise Plan and the Development Permits. Master Developer and its Assignee as to Map Area 7 shall address the U.S.S. Recruit, a historic structure within the Historic District, as required by the Entitlements.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parcels in Map Areas 7 and 8.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to one or more Parcels in Map Areas 7 and 8, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the development of hotels on such Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) Upon the satisfaction of all Phase Four Conditions Precedent applicable to a Parcel in Map Areas 7 and 8, Master Developer shall have the right to sublease such Parcel to one or more Assignees for the construction of Vertical Improvements and/or the operation of such Improvements. The Gross Revenues from any such sublease by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement.

(5) Upon conveyance of any Parcel in Map Areas 7 and 8 to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed on such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

(6) The Vertical Improvements to be developed in Map Areas 7 and 8 shall be limited to two or more hotels, containing not more than 1,000 guest rooms in the aggregate. The hotel(s) in Map Area 8 shall contain between 500-650 guest rooms, and shall be comparable in quality to the Sheraton Harbor Island Hotel, Hilton Mission Bay Hotel, or better. The hotel(s) in Map Area 7 shall contain between 200-350 guest rooms, and shall be comparable in quality to the Paradise Point Hotel, or better.

(7) Master Developer shall include in any sublease with an Assignee relating to any hotel development on the Site, a provision that, in the event the hotel operator receives compensation for the use of guest rooms on a "time share" or similar basis such that transient occupancy tax is not payable under applicable law, such hotel operator shall nevertheless pay to the Master Developer an amount equivalent to the transient occupancy tax which would otherwise have been payable if such guest rooms had been used as hotel rooms, and Master Developer shall remit such funds to the Agency as "additional rent" pursuant to the applicable ground lease.

k. Parking Parcels.

(1) The Parking Parcels, consisting of the Sale Parcels in that portion of Map Area 5 corresponding to Lots 1 through 3 and the Lease Parcels in that portion of Map Area 6 corresponding to Lot 30, are intended to be conveyed to Master

Developer to be re-conveyed on an economic basis for the construction and operation of one or more parking structures or surface parking lots, as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parking Parcels.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to one or more of the Parking Parcels, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the development of parking uses on such Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) Upon the satisfaction of all Phase Four Conditions Precedent applicable to a Parking Parcel, Master Developer shall have the right to re-convey such Parking Parcel to one or more Assignees for the construction of Vertical Improvements and/or the operation of parking on such Parcel. The Gross Revenues from any such reconveyance by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement.

(5) Upon conveyance of any Parking Parcel to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed on such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

1. Office and Research and Development Uses in Map Area 3.

(1) The Parcels in Map Area 3 shall be developed for office and research and development purposes as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to all the Parcels in Map Area 3.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to one or more Parcels in Map Area 3, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all Horizontal Improvements necessary for the development of such Parcels, and promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Four Conditions Precedent applicable to such Parcels.

(4) The Agency acknowledges and agrees that the office and research and development structures to be constructed in Map Area 3 may be developed in multiple phases, and agrees to cooperate in good faith with Master Developer and any Assignee to implement this Agreement so as to permit such phased development.

(5) Upon the satisfaction of all Phase Four Conditions Precedent applicable to a Parcel in Map Area 3, Master Developer shall have the right to sell such Parcel to one or more Assignees for the construction of Vertical Improvements. The Gross Revenues from any such sale by Master Developer to an Assignee shall be allocated as provided in the Participation Agreement.

(6) Upon conveyance of any Parcel in the Map Area 3 to an Assignee, such Assignee shall promptly begin and thereafter diligently and continuously prosecute to completion all Vertical Improvements to be constructed on such Parcel, when and as required by this Agreement and the Schedule of Outside Performance Dates.

m. Officers' Houses.

(1) The Parcels constituting Lots 5 through 8, inclusive, of Map Area 5, including the Officers' houses currently located thereon, are intended to be sold to Master Developer for resale, without further rehabilitation or development, to purchasers for single family occupancy or as use as a "bed and breakfast", as provided in the Reuse Plan and the Precise Plan and the Development Permits.

(2) During Phase Two, Master Developer shall promptly begin and thereafter diligently and continuously prosecute to completion all actions to be taken by Master Developer for the satisfaction of the Phase Three Conditions Precedent applicable to the Officers' Houses.

(3) Upon the satisfaction of all Phase Three Conditions Precedent applicable to the Parcels containing the Officers' Houses, the Agency shall convey fee title to such Parcels to Master Developer who, in turn, shall place them on the market to be sold for their fair market value. The Gross Revenues from any such sale by Master Developer shall be allocated as provided in the Participation Agreement.

n. Schedule of Outside Performance Dates. Master Developer and any Assignee shall begin and complete all rehabilitation, construction and development within the respective times specified therefor in the Schedule of Outside Performance Dates. The Parties acknowledge that the times of performance set forth in the Schedule of Outside Performance Dates represent outside dates, and agree to act promptly and diligently and to use their best efforts to perform their respective obligations in the shortest feasible time, but in any event within the outside dates required by the Schedule of Outside Performance Dates. Except for de minimus changes approved in writing by the Master Developer and the Agency Executive Director or designee, the Schedule of Outside Performance Dates shall not be amended except by amendment to this Agreement, first approved by the Master Developer and the governing body of the Agency.

o. Sales and Subleases. In the event Master Developer sells or subleases any Parcel (not including the lease of the Parcels in the Civic, Arts and Cultural Center by the Agency to the Foundation or the sale or lease of Lot 1 of Map Area 4 in the Educational Core to the Designated Institution for less than the fair market value of such Parcel), the fair market value of such Parcel shall be imputed as provided in the Participation Agreement in order to calculate the Agency's share of Cash Available for Distribution.

Section 1.9 Federal Requirements Applicable to NTC

a. The parties acknowledge and agree that this Agreement is entered into as part of an Economic Development Conveyance of the Site to the City pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXXIX of Public Law 101-510; 10 U.S.C. § 2687 note), as amended (the "Base Closure Law"); and pursuant to a Memorandum of Agreement ("MOA") entered into by and between the City and the Federal Government in conjunction therewith; and a Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 ("Quitclaim Deed") from the Federal Government to the City, which has been recorded, consistent with the MOA. Pursuant to the Cooperation Agreement (described in Section 1.10, below), the City has agreed to transfer the Site to Agency in order to effectuate this Agreement. The forms of the MOA and the Quitclaim Deed are attached to this Agreement as Attachment No. 22, and are incorporated herein by this reference.

b. Notwithstanding any provision to the contrary contained herein, this Agreement is and shall be subject to the terms and conditions of the MOA and the Quitclaim Deed, and the rights, obligations and remedies of the Federal Government thereunder, and nothing contained in this Agreement shall be construed in a manner that is inconsistent with the rights, obligations and remedies of the Federal Government thereunder.

c. Notwithstanding anything in this Agreement to the contrary, if any provision of this Agreement tends to contradict, modify or in any way change the terms of the MOA or the Quitclaim Deed, the terms of the MOA and Quitclaim Deed shall prevail and govern; or if any provision of this Agreement in any way tends to limit the Federal Government in its administration of the Base Closure Law, this Agreement shall be deemed amended so as to comply with the MOA, the Quitclaim Deed and the Base Closure Law.

Section 1.10 Cooperation Agreement.

Concurrently with the execution of this Agreement, Agency and City have entered into a Cooperation Agreement, a copy of which is attached to this Agreement as Attachment No. 21, and incorporated herein by this reference.

PART 2 ENTITLEMENTS

Section 2.1 City Approvals

a. Subject to Section 9.16, it is the responsibility of Master Developer, without cost to Agency, to obtain all Entitlements and ensure that the development of the Site and construction or rehabilitation of the Improvements, as the case may be, and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement, are permitted by zoning and all applicable City land use requirements. Nothing contained herein shall be deemed to entitle Master Developer to any City of San Diego permit or other City approval necessary for the development of the Site, or waive any applicable City requirements relating thereto. This Agreement does not (1) grant any land use entitlement to Master Developer, (2) supersede, nullify or amend any condition which may be imposed by the City of San Diego in connection with approval of the development described herein, (3) guarantee to Master Developer or any other Party any profits from the development of the Site, or (4) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Reference is hereby made to that certain Cooperation Agreement dated on or about the date hereof, between the Agency and the City, wherein the Agency and City have agreed to cooperate in good faith, within applicable legal constraints and consistent with applicable City and Agency policies, and to take such actions as may be necessary or appropriate to effectuate and carry out this Agreement in a timely and commercially reasonable manner. Consistent with the Cooperation Agreement, the Agency agrees, without cost to Agency, to support Master Developer's efforts to obtain the Entitlements required for the full implementation of this Agreement.

b. This Agreement shall be subject to the Precise Plan and the Development Permits and the requirements of all Development Permits issued by the City for the Parcels to be developed pursuant to this Agreement.

Section 2.2 Other Approvals (State Lands Commission, Coastal Commission)

a. State Lands Commission. Reference is hereby made to the "Title Settlement and Exchange Agreement" to be entered into by and between the City and the State of California State Lands Commission. The Parties hereto contemplate that the Title Settlement and Exchange Agreement will describe certain portions of the Site as "Public Trust Lands" and "Trust Termination Lands" as those terms will be defined therein. The Parties to this Agreement acknowledge and agree that pursuant to the terms of the Title Settlement and Exchange Agreement, upon conveyance of the Site to the City from the Federal Government, it is anticipated that the City will convey to the State of California that portion of the Site which is described as the Public Trust Lands, and the State of California will immediately reconvey to the City that portion of the Site lying within the Trust Termination Lands, free of the public trust for commerce, navigation and fisheries, and that portion of the Site lying within the Public Trust Lands, subject to the public trust for commerce, navigation and fisheries (the "Tidelands Trust Parcels"). Attached to this Agreement as Attachment No. 15 is a map of the Site designating the proposed boundaries of the Tidelands Trust Parcels. The Agency's obligation to convey any of the Tidelands Trust Parcels to Master Developer is expressly made subject to the following conditions:

(1) The conveyance and reconveyance of the Tidelands Trust Parcels described in this Section 2.2.a. shall have occurred such that the Tidelands Trust Parcels shall be impressed with and subject to the public trust for commerce, navigation and fisheries;

(2) Any Tidelands Trust Parcel to be conveyed pursuant to this Agreement shall be conveyed by ground lease and not by grant in fee; and

(3) Agency shall obtain such approvals as may be required from the State of California State Lands Commission (and, to the extent required, amendments to applicable State law) for the disposition and development of the Tidelands Trust Parcels as provided in this Agreement, including the proposed term of any ground lease.

b. Coastal Commission. This Agreement shall be subject to any suggested modifications to the Precise Plan and the Development Permits as may be necessary or required to obtain Coastal Commission Approval. Within the time provided in the Schedule of Outside Performance Dates, the Agency and Master Developer shall take such steps as may be required to obtain Coastal Commission Approval.

PART 3 DISPOSITION OF PROPERTY

Section 3.1 Intentionally Omitted

Section 3.2 Agreement to Convey Property for Redevelopment; Consideration Payable to Agency

a. In accordance with and subject to all the terms, covenants, and conditions of this Agreement, Agency agrees to acquire from the City and convey to Master Developer the Parcels constituting the Site, and Master Developer, on behalf of itself, its successors and its Assignees, agrees to accept the conveyance of such Parcels from Agency for the redevelopment required by this Agreement, and to pay the consideration therefor to Agency, as provided in the Participation Agreement.

b. Agency shall convey fee title to the Sale Parcels to Master Developer pursuant to a grant deed substantially in the form attached to this Agreement as Attachment No. 5 ("Grant Deed"), with such reasonable modifications to such form as may be necessary or appropriate for the conveyance of a particular Parcel, which modifications shall be approved by the Agency's Executive Director or designee.

c. Agency shall convey a leasehold to the Lease Parcels to Master Developer pursuant to a lease substantially in the form attached to this Agreement as Attachment No. 6 ("Ground Lease"), with such reasonable modifications to such form as may be necessary or appropriate for the conveyance of a leasehold in a particular Parcel, which modifications shall be approved by the Agency's Executive Director or designee. Agency shall convey a leasehold to the Parcels in the Civic, Arts and Cultural Center to the Foundation pursuant to a lease substantially in the form attached to this Agreement as Attachment No. 20 ("Foundation Ground Lease"), with such reasonable modifications to such form as may be necessary or appropriate for the conveyance of a leasehold in a particular Parcel, which modifications shall be approved by the Agency's Executive Director or designee.

d. Prior to the conveyance of a Parcel to Master Developer (or Foundation, as the case may be), or the re-conveyance of a Parcel by Master Developer to an Assignee, the parties may make such nonsubstantive modifications to the form of the Grant Deed or Ground Lease or Foundation Ground Lease, as the case may be, as the Agency Executive Director or his designee and Master Developer or Assignee, as the case may be, may determine to be appropriate, including such reasonable nonsubstantive modifications as may be requested by any Permitted Mortgagee; provided that nothing contained herein shall obligate Agency to agree to any change to the form of the Grant Deed or Ground Lease which is attached to this Agreement which would have the effect of altering the substantive rights of Agency therein.

e. The purchase price payable by Master Developer for any Sale Parcel shall be the sum of: (i) the nominal amount of \$1.00, payable upon the Close of Escrow, plus (ii) that portion of the "Cash Available for Distribution" (defined in the Participation Agreement) actually distributed to Agency pursuant to the Participation Agreement which is attributed by Agency to the Parcel.

f. The rent payable for any Lease Parcel shall be the sum of: (i) the nominal amount of \$1.00, payable in advance, upon the Close of Escrow, plus (ii) that portion of the "Cash Available for Distribution" (defined in the Participation Agreement) actually distributed to Agency pursuant to the Participation Agreement, which is attributed by Agency to the Parcel.

g. In consideration of this Agreement, Master Developer agrees to pay to Agency the Agency's share of Cash Available for Distribution, pursuant to the terms and conditions of the Participation Agreement which is attached to this Agreement as Attachment No. 7, which is incorporated herein by this reference. The Participation Agreement shall survive the termination of this Agreement and continue in effect until the Agency has received its full share of the Cash Available for Distribution.

Section 3.3 Conditions Precedent to Conveyance of Property

a. The Close of Escrow for any Parcel to be sold or leased by the Agency to the Master Developer pursuant to this Agreement is conditioned upon all of the Phase Three Conditions Precedent applicable to such Parcel occurring prior to the time for the Closing of such Parcel set forth in the Schedule of Outside Performance Dates.

b. The Close of Escrow for any Parcel in the Civic, Arts and Cultural Center to be leased by Agency to the Foundation pursuant to this Agreement is conditioned upon all of the Phase Three (Foundation) Conditions Precedent applicable to such Parcel

occurring prior to the time for the Closing of such Parcel set forth in the Schedule of Outside Performance Dates.

c. The Close of Escrow for any Parcel in Lots 5 through 8, inclusive of Map Area 5 to be sold by Master Developer pursuant to this Agreement is conditioned upon all of the Phase Three Conditions Precedent applicable to such Parcel occurring prior to the time for the Closing of such Parcel set forth in the Schedule of Outside Performance Dates.

d. Except as provided in paragraphs b. and c. of this Section 3.3, the Close of Escrow for any Parcel to be sold or subleased by the Master Developer to an Assignee pursuant to this Agreement is conditioned upon all of the Phase Four Conditions Precedent applicable to such Parcel occurring prior to or concurrent with the time for the Closing of such Parcel set forth in the Schedule of Outside Performance Dates.

e. In addition to the provisions of paragraphs a. through d. of this Section 3.3, the Close of Escrow for any Parcel (both from Agency to Master Developer or Foundation, and from Master Developer to an Assignee) shall be conditioned upon the following:

- (1) Closing Cost Statement. Escrow shall have delivered closing statement of costs.
- (2) Supplementary Escrow Instructions. Agency and/or Master Developer and/or Assignee, as the case may be, shall have prepared such Supplemental Escrow Instructions as may be needed.
- (3) Closing Certificate. Agency shall submit to the Escrow Agent a certificate stating that all conditions precedent to close of escrow have been satisfied or waived.

Section 3.4 Procedures for Conveyance of Property

Section 3.4.1 From Agency to Master Developer

a. With respect to the conveyance of Parcels from Agency to Master Developer (or Foundation, as the case may be), Agency and Master Developer (or Foundation, as the case may be) shall open an escrow for conveyance of one or more Parcels by delivering into escrow a fully executed copy of this Agreement not later than thirty (30) days prior to the scheduled date for Closing. Agency and Master Developer (or Foundation, as the case may be) shall also execute and deliver to the Escrow Agent any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and close the

transaction contemplated hereby. Agency and Master Developer (or Foundation, as the case may be) shall also deposit with the Escrow Agent all instruments, documents, and other items (1) identified in the Escrow instructions, and (2) reasonably required by the Escrow Agent to close the transaction on the Closing Date.

b. In the case of any Lease Parcel, upon delivery of a copy of the fully executed Ground Lease to the Escrow Agent, the Escrow Agent shall record a Memorandum of Lease, Agreement Affecting Real Property and such other instruments to be recorded in accordance with the escrow instructions, provided that leasehold title to the Parcel can be vested in Master Developer (or Foundation, as the case may be) in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any insurance policies governing the Parcel are not to be transferred.

c. In the case of any Sale Parcel, upon delivery of the fully executed Grant Deed to the Escrow Agent, the Escrow Agent shall record the Grant Deed and Agreement Affecting Real Property and such other instruments to be recorded in accordance with the escrow instructions, provided that fee title to the Parcel can be vested in Master Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any insurance policies governing the Parcel are not to be transferred.

d. Master Developer (or Foundation, as the case may be) shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Master Developer of the amount of such fees, charges and costs, at least two (2) days prior to the scheduled date for the Closing:

- (1) One half of the escrow fee;
- (2) The portion of the premium for the title insurance policy to be paid by Master Developer as set forth in Section 3.9 of this Agreement.

e. Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Agency of the amount of such fees, charges and costs, at least two (2) days prior to the scheduled date for the Closing:

- (1) One half of the escrow fee;
- (2) The portion of the premium for the title insurance policy to be paid by Agency as set forth in Section 3.9 of this Agreement;

- (3) Costs necessary to place title to the Parcel in the condition for conveyance required by the provisions of this Agreement;
- (4) Recording fees, if any;
- (5) Notary fees;
- (6) Ad valorem taxes, if any, upon the Parcel or upon this Agreement or any rights hereunder, prior to the conveyance of leasehold title or possession; and
- (7) Any State, County or City documentary stamps or transfer tax.

f. Agency shall timely and properly execute, acknowledge and deliver the Grant Deed or Ground Lease, as applicable, together with an estoppel certificate certifying that Master Developer (or Foundation, as the case may be) has completed all acts necessary to entitle Master Developer (or Foundation, as the case may be) to such conveyance, if such be the fact.

g. The Escrow Agent is authorized to:

- (1) Pay, and charge Agency and Master Developer, respectively, for any fees, charges and costs payable under this Section 3.4.1. Before such payments are made, the Escrow Agent shall notify Agency and Master Developer of the fees, charges and costs necessary to clear title and close the escrow.
- (2) Disburse funds and deliver the executed Grant Deed or Ground Lease, as applicable, and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by Agency and Master Developer (or Foundation, as the case may be). The escrow shall not close unless and until the Escrow Agent has recorded the Grant Deed or Memorandum of Lease, as applicable, and the other instruments to be recorded pursuant to the Escrow Instructions, and the Title Company is committed to issue the Title Insurance Policies.
- (3) Record any instruments delivered through escrow if necessary or proper to vest title in Master Developer in accordance with the terms and provisions of this Agreement.

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

i. If an escrow is not in condition to close on or before the scheduled time for the Closing, either Party who then shall have fully performed the acts to be performed before the Close of Escrow may, in writing, demand the return of its money, papers or documents from the Escrow Agent. Such demand for return shall be without prejudice to any rights such demanding Party may have against the other, if the event which gives rise to such demand constitutes a breach of this agreement by the other Party. No demand for return shall be recognized until ten (10) days after the Escrow Agent (or the Party making such demand) shall have mailed copies of such demand to the other Party or parties at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other Party within the ten- (10) day period, in which event the Escrow Agent is authorized to hold all money, papers and documents with respect to the Parcel until instructed by a mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible.

j. If objections are raised as above-provided for, the Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both Agency and Master Developer, or until the Party entitled thereto has been determined by arbitration (as provided in Part 12 hereof). If no such objections are made within said ten- (10) day period, the Escrow Agent shall immediately return the demanded money, papers or documents.

k. Any amendment to the escrow instructions shall be in writing and signed by both Agency and Master Developer (or Foundation, as the case may be). At the time of any amendment the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment. Agency and Master Developer agree to act promptly in providing all documents reasonably necessary to close escrow.

l. All communications from the Escrow Agent shall be directed to the addresses and in the manner established in Section 10.1 of this Agreement for notices, demands and communications between the parties.

Section 3.4.2 From Master Developer to Assignee

With respect to the conveyance of Parcels from Master Developer to any Assignee, Master Developer shall open an escrow for conveyance of one or more Parcels by delivering into escrow a fully executed copy of this Agreement prior to the scheduled date for Closing. Master Developer and Assignee shall also execute and deliver to the Escrow Agent, with a written copy to be delivered concurrently to the Agency, any additional or supplemental customary and usual instructions consistent with this Agreement as may be mutually desired by Master Developer and Assignee which are necessary or convenient to implement the terms of this Agreement and close the transaction contemplated hereby. Master Developer and Assignee shall also deposit with the Escrow Agent all funds and instruments, documents, and other items identified in the Escrow instructions, and reasonably required by the Escrow Agent to close the transaction on the Closing Date.

Section 3.5 Form of Conveyancing Instrument

a. In the case of any Sale Parcel, Agency shall convey to Master Developer fee title to the Parcel by grant deed consistent with this Agreement and substantially in the form of the Grant Deed attached hereto as Attachment No. 5. The Grant Deed shall contain such covenants necessary or desirable to carry out this Agreement and for the development of the Parcel as part of the Site.

b. In the case of any Lease Parcel, Agency shall convey to Master Developer leasehold title to the Parcel by ground lease consistent with this Agreement and substantially in the form of the Ground Lease attached hereto as Attachment No. 6. The Ground Lease shall contain such covenants necessary or desirable to carry out this Agreement and for the development of the Parcel as part of the Site.

c. In the case of any Lease Parcel in the Civic, Arts and Cultural Center, Agency shall convey to Foundation leasehold title to the Parcel by ground lease consistent with this Agreement and substantially in the form of the Ground Lease attached hereto as Attachment No. 20. The Ground Lease shall contain such covenants necessary or desirable to carry out this Agreement and for the development of the Parcel as part of the Site.

Section 3.6 Condition of Title

a. In the case of any Sale Parcel, Agency shall convey fee title, and in the case of any Lease Parcel, Agency shall convey a leasehold in the Parcel free and clear of all liens, encumbrances, assessments, easements, leases and taxes, except:

- (1) all taxes for the period subsequent to the Close of Escrow;
- (2) any assessments which may be levied after the Close of Escrow for street lighting, maintenance or other similar obligations of property owners, which shall be the responsibility of Master Developer;
- (3) title exceptions set forth in the Preliminary Report issued by First American Title Insurance Company, dated March 14, 2000 ("Approved Title Conditions"), a copy of which is attached to this Agreement as Attachment No. 17;
- (4) covenants, conditions and restrictions and title exceptions set forth in the MOA and Quitclaim Deed from the Federal Government, without any modification or change; and
- (5) covenants, conditions and restrictions and title exceptions impressed on the property by the State of California State Lands Commission relating to the public trust for commerce, navigation and fisheries; and
- (6) any other exceptions which are otherwise consistent with this Agreement and which are accepted in writing by Master Developer.

b. To effectuate this Agreement, Agency agrees to take the following actions:

- (1) Agency shall take such actions as may reasonably be necessary, without cost or expense to Agency or City, to enable a title settlement and exchange agreement with the State Lands Commission with respect to the Site;
- (2) Agency shall take such actions as may reasonably be necessary, without cost or expense to Agency or City, to seek to remove from title to the Site any mineral rights reserved by the State of California, and/or any surface entry rights in connection therewith;

- (3) Agency shall take such actions as may reasonably be necessary, without cost or expense to Agency or City, to cause the City's interests in the Site to merge upon acquisition of title of the Site by the City; and
- (4) Developer and Agency shall cooperate in order to take such actions as may reasonably be necessary to clear title of any purported reservations of private property interests of record (the "Property Interests"). All such actions shall be taken without cost or expense to the City or Agency and Master Developer shall reimburse the Agency or City for all costs and expenses incurred in connection with clearing the Property Interests from title. The actions taken to clear title of the Property Interests may include, but are not limited to: (A) the filing and prosecution of a quiet title action by Master Developer or Agency; (B) efforts on the part of Master Developer or Agency to acquire the Property Interests in negotiated transactions; or (C) the Agency may exercise its powers pursuant to the California Community Redevelopment Law and the Redevelopment Plan to eliminate or acquire any such purported Property Interests, including, but not limited to, the exercise of the power of eminent domain in accordance with the California Eminent Domain Law, Section 1230.010 et seq. of the California Code of Civil Procedure (the "Code"). The decision of the Agency to eliminate or acquire any such Property Interest by eminent domain pursuant to this Section 3.6.b.(4) is subject to the condition that in the event the Agency is unable to eliminate or acquire any such purported Property Interests on terms and conditions acceptable to the Agency, the Agency must in good faith be able to make the findings required by Section 1245.230 of the Code and adopt a resolution of necessity as provided in that section. The requirements of this Section 3.6.b.(4) shall be deemed deleted and of no further force or effect in the event the Agency is unable to make such findings and adopt such resolution of necessity. Master Developer shall advance sufficient funds to Agency or reimburse Agency for payment of any condemnation award or settlement, and all costs or expenses, including, without

limitation, the costs and fees of special condemnation counsel, appraisers, court costs and other such costs and expenses, reasonably incurred by Agency to carry out this Section 3.6.b.(4).

Section 3.7 Site Conditions; Hazardous Substances

a. The Parcels shall be conveyed in an "as is" condition, with no warranty, express or implied by Agency as to the condition of the soil (or water), its geology, the condition of any existing structures, the presence of known or unknown faults or the existence of any Hazardous Substances in, on or in connection with the Site (collectively, the "Conditions"). Master Developer has investigated the Site and may perform such further investigations as Master Developer may deem necessary or appropriate. Agency shall have no obligation to Master Developer or any other person to remediate any Site Conditions or provide for the Site to be suitable for the development required by this Agreement.

b. Representatives of Master Developer shall at all reasonable times have the right of access to and entry upon the Parcel for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Master Developer agrees to defend and hold Agency, the City and their officers, employees, contractors and agents, harmless for any and all claims, liability and damages arising out of any work or activity of the Master Developer, its agents, or its employees permitted pursuant to this Section 3.7, except to the extent caused by the negligence or willful misconduct of Agency, City or their officers, employees, contractors and agents. Agency agrees to provide, or cause to be provided to Master Developer all data and information pertaining to the Site that is available to the Agency when requested by Master Developer.

Section 3.8 Close of Escrow

When all conditions precedent to the Close of Escrow for a Parcel have occurred, and the Title Company is prepared to issue the applicable Title Insurance Policies, the Escrow Agent shall be instructed to close escrow (the "Close of Escrow"), by recording the Grant Deed or Memorandum of Lease (as the case may be) and the other instruments described in the Escrow Instructions. The Interim Lease Agreement shall terminate as to any Parcel upon the Close of Escrow for such Parcel.

Section 3.9 Title Insurance

a. Concurrent with the Close of Escrow for a Parcel, the Title Company shall provide and deliver to the respective beneficiaries, the Owner's Title Policy, the Lender's Title Policy and the Agency's Title Policy.

b. Concurrent with the issuance of the Title Insurance Policies, the Title Company shall provide such endorsements as may be requested by the respective insured parties.

c. Agency shall pay the premium for the Agency's Title Policy and that portion of the Owner's Title Policy premium which will enable Master Developer (or Foundation, as the case may be) to obtain a standard CLTA title insurance policy in an amount reasonably determined by Agency, in consultation with Master Developer, to be fair market land value of the Parcel (without Improvements). Master Developer shall pay for all additional premiums, including those for any extended coverage or special endorsements which it requests, and shall pay all premiums for Lender's Title Insurance and Agency's Title Insurance (other than endorsements).

Section 3.10 Prorations

a. General. Rentals, revenues, and other income, if any, from a Parcel, and operating expenses, if any, affecting the Parcel shall be prorated as of 11:59 P.M. on the day preceding the Close of Escrow. For purposes of calculating prorations, Agency shall be deemed to be in title to the Parcel, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Close of Escrow occurs.

b. Taxes and Assessments. All non-delinquent real estate taxes on a Parcel shall be prorated as of the Close of Escrow based on the actual current tax bill, but if such tax bill has not yet been received by Agency by the Close of Escrow then current year's taxes shall be deemed to be one hundred two percent (102%) of the amount of the previous year's tax bill, adjusted in accordance with paragraph d., below. All delinquent taxes and all assessments, if any, on the Parcel shall be paid at the Close of Escrow by Agency.

c. Operating Expenses. Any other expenses incurred in operating the Parcel that Agency customarily pays, and any other costs incurred in the ordinary course of business or the management and operation of the Parcel shall be prorated on an accrual basis. Agency shall pay all such expenses that accrue prior to the Close of Escrow and Master Developer shall pay all such expenses accruing on the Close of Escrow and thereafter.

d. Method of Proration. All prorations shall be made in accordance with customary practice in San Diego County, except as expressly provided herein. Agency and Master Developer agree to cause their accountants or agents to prepare a schedule of tentative prorations prior to the Closing Date. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid into Escrow by the respective parties. Any such prorations not determined or not agreed upon as of the Close

of Escrow shall be paid by Agency to Master Developer, or by Master Developer to Agency, as the case may be, in cash as soon as practical following the Close of Escrow. A copy of the schedule of prorations as agreed upon by Agency and Master Developer shall be delivered to Escrow Agent at least three (3) business days prior to the Closing Date.

e. Payment of Fees. Except as provided in Section 4.3 of this Agreement, Agency and Master Developer shall each pay their legal and professional fees and fees of other consultants incurred by Agency and Master Developer, respectively.

Section 3.11 Use of the Site Prior to Conveyance

a. During Phase Two, Master Developer, and Foundation, as applicable, shall at all reasonable times have the right of access to and entry upon any portion of the Site owned by the City or the Agency or of which the City or Agency has the right of possession, for the sole purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. As to buildings and spaces that are not occupied by tenants, Agency shall cause City to provide to Master Developer or Foundation, as applicable, the keys to any buildings or spaces to effectuate this provision. As to buildings or spaces that are occupied by tenants, Master Developer and Foundation and their representatives shall have a right of access and entry for the purposes of this paragraph a., upon reasonable advance notice, and consistent with the rights of such tenants pursuant to applicable subleases or rental agreements.

b. Not later than 90 days after the mutual execution of this Agreement by the Master Developer and the Agency, Master Developer (or Affiliate) shall assume the obligation to maintain, manage and operate those portions of the Site obtained by the City from the Federal Government pursuant to an Economic Development Conveyance, in accordance with the Interim Lease Agreement substantially in the form attached to this Agreement as Attachment No. 14. To implement this paragraph b., Agency shall cause the City to assign to Master Developer all leases affecting the Site, concurrently with the effective date of the Interim Lease. Concurrently with the effective date of the Interim Lease, Master Developer (or Affiliate) shall assume the obligation to maintain, manage and operate the property constituting the Park pursuant to a sublease between the City, as sublandlord, and Master Developer (or Affiliate) as subtenant, which sublease shall be subject to mutual approval of the City and Master Developer.

c. Master Developer agrees to defend and hold the Agency, the City and their officers, employees, contractors and agents, harmless for any and all claims, liability and damages arising out of any entry onto the Site by Master Developer, its agents, or its employees permitted pursuant to this Section 3.11,

except to the extent caused by the negligence or willful misconduct of Agency, City or their officers, employees, contractors and agents. The Agency agrees to provide, or cause to be provided to Master Developer all data and information pertaining to the Site that is in the possession of the Agency, upon request by Master Developer.

PART 4 FINANCING

Section 4.1 Method of Financing

a. Financing Horizontal Improvements.

(1) Master Developer intends to finance the Development Cost of the Horizontal Improvements with a combination of debt (including, to the extent approved by the City, Community Facilities District bonds as described in paragraph c.(3) of Section 1.8 of this Agreement) and Master Developer's equity.

(2) Not later than 30 days prior to the time provided in the Schedule of Outside Performance Dates for commencement of construction of the Horizontal Improvements, Master Developer shall submit to the Agency Executive Director or designee evidence of financing for the construction and installation of the Horizontal Improvements, including, at a minimum, the items set forth in clauses (1) through (4) of paragraph h. of the definition of "Phase Three Conditions Precedent" in Section 1.2, which, in summary, include: a final project budget; a construction contract; a construction schedule; and substantially final financing documents.

(3) Agency shall approve or disapprove such evidence of financing within thirty (30) days after receipt. Agency shall not unreasonably withhold, condition or delay approval. If Agency shall disapprove any such evidence of financing, Agency shall do so by written notice to Master Developer stating the reasons for such disapproval.

b. Financing Vertical Improvements

(1) Within the respective times provided therefor in the Schedule of Outside Performance Dates, Master Developer or its Assignee shall submit to the Agency Executive Director or designee, for each Parcel to be conveyed, a proposed method by which Master Developer or its Assignee intends to finance the construction or rehabilitation of the Vertical Improvements on the Parcel.

(2) Such method of financing shall include, at a minimum, a budget of all Development Costs relating to such construction or rehabilitation (consistent with the Project Budget described in Section 4.2, below) and identification of sources of funds to pay such costs.

(3) Agency shall approve or disapprove such method of financing within thirty (30) days after receipt. Agency shall not unreasonably withhold, condition or delay approval. If Agency shall disapprove any such proposed method of financing, Agency shall do so by written notice to Master Developer stating the reasons for such disapproval.

(4) Within the respective times established therefor in the Schedule of Outside Performance Dates for the satisfaction of Phase Four Conditions Precedent for a Parcel, Master Developer or its Assignee as to a Parcel shall submit to Agency evidence satisfactory to the Agency Executive Director or designee that Master Developer has obtained the financing necessary for the construction or rehabilitation of Vertical Improvements on the Parcel in accordance with this Agreement. Such evidence of financing shall include, at a minimum, the items set forth in clauses (i) through (iv) of paragraph h. of the definition of "Phase Four Conditions Precedent" in Section 1.2.

(5) Agency shall approve or disapprove such evidence of financing within thirty (30) days after submission of complete information. Agency shall not unreasonably withhold, condition or delay approval. If Agency shall disapprove any such evidence of financing, Agency shall do so by written notice to Master Developer stating the reasons for such disapproval.

c. Financing Civic, Arts and Cultural Center Improvements

(1) Agency and Master Developer anticipate that the Foundation will finance the Stage One Rehabilitation of the Civic, Arts and Cultural Center by obtaining grants, donations, loans or other funds from individuals, private organizations and public agencies other than the City of San Diego or the Agency. The Parties hereto acknowledge and agree that neither the Agency nor the City shall have any obligation to provide any funding to the Foundation or any of its sublessees. To the extent the Foundation is unable to obtain grants, donations, loans or other funds to pay for the Stage One Rehabilitation of the Civic, Arts and Cultural Center, Master Developer shall advance the shortfall to Foundation, or assist the Foundation to obtain conventional financing. To the extent Master Developer advances such funds, Agency understands that Master Developer intends to obligate the Foundation to repay such funds, as a loan, secured by a deed of trust in the Foundation's leasehold interest in the Civic, Arts and Cultural Center parcels or portion thereof; provided, however, that Master

Developer shall not have the right to assign any portion of its rights as mortgagee under such leasehold deed of trust to a third Party. Master Developer shall have the right to include in its loan documents a requirement that the Foundation's revenues must at all times be sufficient to pay all of the Foundation's operating expenses and debt service on loans, including loans made by the Master Developer. To this end, Master Developer may reserve the right, in its loan documents, to approve all subleases proposed to be entered into by the Foundation, to assure that sublease rents, in the aggregate, will be sufficient to pay all of the Foundation's operating expenses and debt service on loans, including loans made by the Master Developer.

(2) Within the time provided therefor in the Schedule of Outside Performance Dates for the satisfaction of the Phase Three (Foundation) Conditions Precedent, Master Developer or Foundation, as the case may be, shall submit to the Agency Executive Director or designee evidence of financing for the Required Horizontal Improvements for each Parcel to be conveyed to the Foundation and the Vertical Improvements to be rehabilitated on such Parcel, including:

(a) a final project budget, consistent with Appendix I of the Reuse Plan, demonstrating to the satisfaction of the Agency Executive Director or designee the availability of funds sufficient to pay all applicable Development Costs;

(b) a construction contract with a licensed general contractor, in an amount that is consistent with the project budget;

(c) a construction schedule prepared in the usual and customary form for a general contractor, demonstrating that construction of the Required Horizontal Improvements will commence within thirty (30) days after conveyance of the Parcel to the Foundation, that the rehabilitation of the Vertical Improvements will commence not later than promptly after completion of the Required Horizontal Improvements and Completion will occur within the time provided therefor in the Schedule of Outside Performance Dates; and

(d) substantially final documents required for any construction loan, bridge loan or permanent loan, or for the issuance of any Community Financing District or other financing bonds, or required by any lender, guarantor or equity investor in connection with financing the Required Horizontal Improvements and the Vertical Improvements.

(3) The Agency Executive Director or designee shall approve or disapprove such evidence of financing within thirty (30) days after receipt. Agency shall not unreasonably withhold, condition or delay approval. If Agency shall disapprove any such proposed evidence of financing, Agency shall do so by written notice stating the reasons for such disapproval.

(4) To facilitate such financing, Agency agrees to execute a subordination agreement substantially in the form attached to this Agreement as Attachment No. 23, with such reasonable modifications as may be requested by any Permitted Mortgagee, subject to Section 9.10.c. of this Agreement, to subordinate the Agency's right of reverter with respect to the Parcel to the lien of such lender.

d. No Further Agency Approvals. Following Agency approval of any matter pursuant to this Section 4.1, no further Agency approval shall be required except to the extent of any material changes to the matter theretofore approved.

Section 4.2 Project Budget

The parties anticipate that all Development Costs shall be as set forth in the Project Budget (Sources and Uses of Funds) attached to this Agreement as Attachment No. 4 (the "Project Budget"), incorporated herein by this reference, which shall be deemed approved by the Agency upon approval of this Agreement. Subsequent changes to the Project Budget shall not require Agency approval, except: (a) material changes to the Project Budget shall be subject to review and approval by the Agency Executive Director or designee as part of the review and approval of Phase Three Conditions; and (b) changes to the Project Budget shall be subject to review and approval by the Agency Executive Director or designee as part of the review and approval of Phase Four Conditions; and (c) in the event of any significant changes to the Project requiring an amendment to this Agreement, or implementation agreement amending this Agreement (but not including interim changes in cost or revenue budget estimates), the Agency shall have the right to review and approve any changes to the Project Budget as of the date of such amendment or implementation agreement. Upon approval by the Agency, the Project Budget shall be replaced by the approved revised Project Budget.

Section 4.3 Payment of Site Management Costs and Agency Administrative Costs

Subject to a maximum liability cap of \$4,200,000, Master Developer shall pay, and shall reimburse Agency and/or City for: (1) that portion of the cost of operating and managing the Site and the Park ("Site Management Costs") which are incurred by Master Developer (or its Affiliate) pursuant to the Interim Lease Agreement (or, as to the Park, a sublease between City and Master

Developer or its Affiliate), or by Agency or City, to the extent such costs are not recovered from rents ("Net Site Management Costs"), for the period commencing upon the mutual execution and delivery of this Agreement and terminating upon conveyance of fee or leasehold title in a Parcel to Master Developer or the Foundation, as the case may be (or, as to the Park, terminating upon the commencement of construction of Park Improvements); and (2) the Agency's administrative costs and expenses in administering the NTC Project and this Agreement ("Agency Administrative Costs"), including salaries and fringe benefits of City and Agency employees, out-of-pocket expenses and the costs and fees of consultants and attorneys equal to the actual amounts paid by Agency for such expenses, costs and fees, commencing upon the mutual execution of this Agreement and terminating upon termination of the Participation Agreement. Master Developer's obligation pursuant to this Section 4.3 shall be limited to paying for actual Net Site Management Costs and/or reimbursing the Agency for Agency Administrative Costs, not to exceed a total sum of \$4,200,000. Payments to the Agency shall be subject to the terms of the Participation Agreement.

Section 4.4 No Encumbrances Except Permitted Mortgages

The following provisions shall be applicable to each Parcel until its Completion:

a. From and after the satisfaction of the Phase Three Conditions Precedent applicable to a Parcel, Master Developer shall have the right to encumber any Sale Parcel or Master Developer's Leasehold Interest in any Lease Parcel with a Permitted Mortgage or Permitted Leasehold Mortgage, which shall be subject and subordinate to Agency's right of reverter, but only for the purpose of securing a loan of funds to be used for financing Development Costs for Horizontal Improvements.

b. From and after the satisfaction of the Phase Four Conditions Precedent applicable to a Parcel, Master Developer and any Assignee shall have the right to encumber any Sale Parcel or Master Developer's leasehold interest or the Assignee's subleasehold interest in any Lease Parcel with a Permitted Mortgage or Permitted Leasehold Mortgage, which shall be senior in priority to Agency's right of reverter, but only for the purpose of securing a loan of funds to be used for financing Development Costs allocable to such Parcel. This paragraph b. shall also apply upon satisfaction of all Phase Three (Foundation) Conditions Precedent, to any Parcel conveyed by Agency to the Foundation.

c. The purposes described in paragraphs a. and b. shall be deemed "Permitted Financing Purposes".

d. Neither Master Developer nor any Assignee shall have any authority to encumber any Sale Parcel or Master Developer's or such Assignee's leasehold or subleasehold interest in any Lease Parcel for any purpose other than Permitted Financing Purposes. Master Developer and any Assignee shall notify Agency in advance of any proposed financing. Neither Master Developer nor any Assignee shall have the right to enter into any agreement to mortgage or encumber a Parcel or any interest therein without the prior written approval of Agency, which approval Agency shall grant if it is a Permitted Mortgage or Permitted Leasehold Mortgage. The holder of any Permitted Mortgage or Permitted Leasehold Mortgage approved by Agency pursuant to this Section 4.4 shall not be bound by any amendment, implementation agreement or modification to this Agreement as to the Parcel encumbered by the Permitted Mortgage or Permitted Leasehold Mortgage subsequent to its approval without such lender giving its prior written consent.

e. In any event, Master Developer and any Assignee shall promptly notify Agency of any mortgage or leasehold mortgage created or attached to Master Developer's or such Assignee's interests in any Parcel whether by voluntary act of Master Developer or Assignee or otherwise.

f. Upon request, Agency shall execute a Lender's Nondisturbance and Attornment Agreement, substantially in the form of the instrument attached to this Agreement as Attachment No. 10, for the benefit of any Permitted Mortgagee or Permitted Leasehold Mortgagee, and a Tenant's Nondisturbance and Lease Recognition Agreement, substantially in the form of the instrument attached to this Agreement as Attachment No. 11, for the benefit of any tenant or subtenant.

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

Section 4.5 Criteria for Approval of Mortgages

At any time from and after the Close of Escrow with respect to a Parcel, and from time to time, Master Developer and any Assignee shall have the right to encumber its interests in such Parcel with a deed of trust or mortgage or other security instrument (referred to herein as a "Mortgage") upon and subject to each and all of the following terms and conditions, subject to the consent of Agency, which Agency shall grant provided the proposed Mortgage satisfies all of the following conditions. Any Mortgage meeting all of the criteria set forth in this Section 4.5 shall be referred to herein as a "Permitted Mortgage".

a. The Mortgage shall contain an aggregate principal amount which, when combined with the principal balance of all other Permitted Mortgages then outstanding on the Parcel, shall not exceed eighty-five percent (85%) of the fair market value of Master Developer's or Assignee's interest in the Parcel, as developed. The fair market value shall be determined by an appraisal conducted on behalf of the Mortgagee by a disinterested real estate appraiser having the qualifications for appraisers required by the Leasehold Mortgagee's underwriting criteria.

b. The Mortgage shall encumber Master Developer's or Assignee's interest in the Parcel and/or such Party's interests in other Parcels in the Site and, without the prior express consent of Agency, shall cover no interest in any other real property.

c. With respect to any Lease Parcel, any Leasehold Mortgage shall be without subordination of the fee simple title of the Parcel. The term of any Leasehold Mortgage shall expire prior to the expiration of the term of the applicable Lease.

d. No such Mortgage shall be binding upon Agency in the enforcement of its rights and remedies herein, unless and until Master Developer or Assignee delivers or causes to be delivered to Agency a certified copy of the fully executed original Mortgage bearing the date and recording information and a certified copy of the original note secured by the Mortgage, together with written notice of the address of the Mortgagee to which notices may be sent; and in the event of an assignment of such Mortgage, such assignment shall not be binding upon Agency unless and until a certified copy thereof, bearing the date and recording information together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to Agency.

e. No Mortgage permitted by this Agreement shall cover more than one indebtedness (except for indebtedness incurred exclusively on Improvements in the Site); that is, there shall be no cross-collateralization permitted, except to the extent of the borrower's interests in other Parcels in the Site.

f. A Mortgage is to be originated only by a Qualified Lender. For the purposes hereof, the term "Qualified Lender" shall consist of:

(i) the mortgagee of any purchase money financing of a Permitted Transfer or other Transfer approved by Agency; or

(ii) any one or a combination of the following lending institutions authorized under applicable California law to make mortgage loans and not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, and having a net worth in the amount of not less than Twenty-Five Million Dollars (\$25,000,000), increased by

the percentage increase, if any, in the Consumer Price Index from the date of this Agreement to the date of anniversary thereof most recently preceding the date of calculation, and is regularly engaged in business in the State of California: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; or

(iii) any company engaged in the ordinary course of business as a lender with a net worth of not less than Twenty-Five Million Dollars (\$25,000,000), increased by the percentage increase, if any, in the Consumer Price Index from the date of this Agreement to the date of anniversary thereof most recently preceding the date of calculation, which is duly licensed or registered (if legally required) with any regulatory agency having jurisdiction over its operation, and is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender, including, without limitation, the following: a real estate investment trust; a pension, retirement or welfare fund; an endowment fund or foundation authorized to make loans in the State of California; or

(iv) any other person or company who is generally accepted as a lender or provider of capital in the financing and capital markets, subject to the approval by the Agency Executive Director or designee, which approval shall not unreasonably be withheld.

To effectuate this paragraph f, Master Developer shall timely submit to the Agency Executive Director or designee reasonable information concerning the identity of any proposed lender. Agency acknowledges that the identity and nature of lending institutions changes over time, and agrees that Agency's approval of any proposed mortgage lender that is not a "Qualified Lender" as defined in this paragraph f. shall not be unreasonably withheld, conditioned or delayed. Subject to review and approval of the terms and conditions of any loan proposed to be made by Master Developer to the Foundation to finance Development Costs of the Foundation as provided in paragraph c. of Section 4.1 of this Agreement, Agency hereby agrees that Master Developer is a "Qualified Lender" to the Foundation for purposes of this paragraph f.

g. All rights acquired by the Mortgagee under the Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Agreement, and to all rights of Agency hereunder. Agency shall not be deemed to waive any covenants, conditions and restrictions contained in this Agreement by reason of Master Developer's grant of a Mortgage. Subject to Section 6.15 of this Agreement, notwithstanding any foreclosure of any Mortgage, Master Developer shall remain liable for the performance of all of the terms, covenants and conditions

of this Agreement which by the terms hereof are to be carried out and performed by Master Developer.

h. Any extension, modification, change or amendment to a Mortgage that would make such Mortgage no longer meet the requirements of paragraphs a. through g., above (other than assignments or participation in the ordinary course of business) shall not be effective, or binding upon Agency, unless and until approved by Agency.

Section 4.6 Rights of Permitted Mortgagees

If Master Developer and/or Master Developer's successors and assigns (including, but not limited to, any sublessee of a Lease Parcel) shall mortgage its interest in a Parcel, or any part or parts thereof as permitted by this Part 4, the following provisions shall apply:

a. No Amendment. There shall be no amendment, cancellation, termination, surrender or modification of this Agreement by joint action of Agency and Master Developer or its Assignee without the prior consent in writing of any Permitted Mortgagee.

b. Right to Notice of Default. Agency shall, upon serving Master Developer or its Assignee, as the case may be, with any notice of default, simultaneously serve a copy of the notice of default upon any Permitted Mortgagee.

c. Right to Cure. Any Permitted Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Agreement, to pay all amounts due hereunder, to effect any insurance, to pay any taxes or assessments, to perform any obligations required of Master Developer or its Assignee hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Agreement as to the Parcel. Any Permitted Mortgagee and its agents and contractors shall have full access to the Parcel for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Permitted Mortgagee shall be as effective to prevent a termination of this Agreement as the same would have been if done by Master Developer or its Assignee.

d. Additional Cure Period. Anything contained in this Agreement notwithstanding, if any default shall occur which, pursuant to any provision of this Agreement, purportedly entitles Agency to terminate this Agreement, Agency shall not be entitled to terminate this Agreement as to any Permitted Mortgagee or Permitted Leasehold Mortgagee, and the notice shall be rendered void as to such Party, if the Permitted Mortgagee or Permitted Leasehold Mortgagee, within sixty (60) days after expiration of the period

within which Master Developer or its Assignee was permitted to cure the default (but in no event later than ninety (90) days after receipt by the Permitted Mortgagee or Permitted Leasehold Mortgagee of the notice of default), shall both:

(1) either (A) cure the default if the same can be cured by the expenditure of money, or (B) if the default or breach is not so curable, commence, or cause any trustee under the mortgage to commence, and thereafter to diligently pursue to completion steps and proceedings to foreclose on the interests covered by the mortgage; and

(2) perform or cause the performance of all of the covenants and conditions of this Agreement requiring the expenditure of money by Master Developer or its Assignee until such time as the Parcel or leasehold interest therein shall be sold upon foreclosure pursuant to the Mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure or by deed or assignment in lieu of foreclosure.

e. Condition of Termination. All right of Agency to terminate this Agreement as the result of the occurrence of any default shall be subject to, and conditioned upon, Agency having first given to each Permitted Mortgagee or Permitted Leasehold Mortgagee written notice of the default as required under Section 4.6.b., above, and each Permitted Mortgagee or Permitted Leasehold Mortgagee having failed to remedy such default or acquire Master Developer or its Assignee's estate hereunder or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in Section 4.6.d.(2), above.

f. Suspension of Cure Period. If any Permitted Mortgagee or Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Master Developer or Assignee, the times specified in paragraph d. above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, so long as the Permitted Mortgagee or Permitted Leasehold Mortgagee shall have fully cured any default in the payment of any monetary obligations of Master Developer or its Assignee under this Agreement and shall continue to pay currently those monetary obligations as and when the same fall due, subject to any applicable notice and grace periods.

g. Loss Payable Endorsement. Agency and Master Developer agree that the name of the Permitted Mortgagee or Permitted Leasehold Mortgagee shall, at its request, be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Master Developer or its Assignee under this Agreement on condition that the insurance proceeds are to be applied in the manner specified in this Agreement.

h. No Consent to Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the Sale Parcel or leasehold estate hereunder from Master Developer or an Assignee to any Permitted Mortgagee or Permitted Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Agency or constitute a breach of any provision of or a default under this Agreement, and upon such foreclosure, sale or conveyance, Agency shall recognize in writing the purchaser or other transferee referred to in the preceding sentence in connection therewith as the developer (as to the applicable Parcel) hereunder. Further, following such foreclosure or conveyance, any assignment or subleasing by the foreclosing lender, purchaser or other transferee shall not require the consent of Agency, despite any other provisions of this Agreement to the contrary.

i. Proceeds of Insurance and Condemnation. The proceeds from any insurance policies or arising from a condemnation award to Master Developer or an Assignee shall be paid to and held by the Permitted Mortgagee or Permitted Leasehold Mortgagee of highest priority and used to repair or restore the Property and the Vertical Improvements, except that the Permitted Mortgagee or Permitted Leasehold Mortgagee may reserve the right to apply to the mortgagee debt (in the order of priority) all, or any part, of the proceeds not used to repair or restore the Property and the Vertical Improvements.

j. Notice of Proceedings. The parties hereto shall give to any Permitted Mortgagee or Permitted Leasehold Mortgagee notice of any arbitration proceedings or condemnation proceedings involving Master Developer or Assignee's interest in a Parcel, or of any pending adjustment of insurance claims, and any Permitted Mortgagee or Permitted Leasehold Mortgagee shall have the right to intervene therein and shall be made a Party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Permitted Mortgagee or Permitted Leasehold Mortgagee shall not elect to intervene or become a Party to the proceedings, that Permitted Mortgagee or Permitted Leasehold Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

k. Further Protections. Agency and Master Developer, and all Assignees, shall cooperate in including in this Agreement, by suitable amendment from time to time, any provision which may be reasonably requested by any proposed Permitted Mortgagee or Permitted Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Section 4.6 and allowing that Permitted Mortgagee or Permitted Leasehold Mortgagee reasonable means to protect or preserve the lien of its Permitted Mortgage or Permitted Leasehold Mortgage upon the occurrence of a default under the terms of this Agreement. Agency and Master Developer each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that no such amendment shall in any material respect adversely affect any rights of Agency under this Agreement.

l. Additional Agreement. Agency shall, upon request, execute, acknowledge and deliver to each Permitted Mortgagee or Permitted Leasehold Mortgagee, an agreement prepared by a Permitted Mortgagee or Permitted Leasehold Mortgagee and reviewed by Agency at the sole cost and expense of Master Developer or its Assignee, in form satisfactory to the Permitted Mortgagee or Permitted Leasehold Mortgagee, between Agency, Master Developer or its Assignee and the Permitted Mortgagee or Permitted Leasehold Mortgagee, agreeing to all of the provisions of this Agreement.

Section 4.7 Rights of Agency Prior to Completion

In the event of a default or breach by Master Developer or any Assignee under any Permitted Mortgage prior to the Completion of the applicable Parcel, Agency shall have the right to cure the default provided such cure is completed at least five (5) business days before the date of foreclosure. In such event, Agency shall be entitled to reimbursement by Master Developer or such Assignee of all costs and expenses incurred by Agency in curing the default, with interest at the highest rate permitted by law (collectively, "Agency's Cure Payments").

PART 5 DEMOLITION AND CLEARANCE; HORIZONTAL IMPROVEMENTS

Section 5.1 Obligation to Clear Certain Parcels and Provide Horizontal Improvements

a.. Upon conveyance of a Parcel to Master Developer, and on a Parcel-by-Parcel basis, Master Developer shall be responsible, at its expense, as part of its obligation concerning the Horizontal Improvements, for the demolition, disposal and clearance of all above- and below-ground structures and improvements, underground storage tanks, debris, contaminated soil and other structures and obstructions on, under or in those portions of the Site as identified in Appendix "I" to the Reuse Plan ("Site Clearance"), to

the extent such costs are not paid by the Federal Government. In addition, if required by applicable Governmental Requirements, Master Developer shall also remove an underground storage tank identified in Lot 3 of Map Area 4, at its expense. Nothing contained herein shall modify or restrict in any way Master Developer's rights or remedies against the Federal Government relating to Site conditions. Nothing contained in this paragraph a. shall be construed to limit or modify in any way the obligations of the Federal Government under the MOA and Quitclaim Deed.

b. Within the time provided in the Schedule of Outside Performance Dates, Master Developer shall propose the means and methods and prepare and submit plans and specifications in accordance with all applicable State and Federal regulations and guidelines for the Site Clearance, including removal of asbestos and lead-based paint, to Agency (the "Site Clearance Plans"). Agency shall have thirty (30) days from receipt of the Site Clearance Plans to approve or disapprove the proposed Site Clearance Plans, which approval shall not be unreasonably withheld.

c. Upon conveyance to Master Developer of any Parcel, Master Developer shall commence and complete the Site Clearance as to such Parcel in accordance with the Site Clearance Plans. Master Developer shall carry out the Site Clearance in conformity with all applicable laws and Governmental Requirements, including all applicable federal and state labor laws and requirements.

d. Prior to commencement of any Site Clearance, Master Developer agrees to procure, or cause its contractor to procure, Payment and Performance Bonds covering the Site Clearance in accordance with the Site Clearance Plans, substantially in the form attached to this Agreement as Attachment No. 12.

Section 5.2 Removal of Asbestos and Lead-Based Paint

a. Upon conveyance of a Parcel to Master Developer, and on a Parcel-by-Parcel basis, Master Developer shall be responsible at its expense for compliance with all applicable Governmental Requirements in the removal of asbestos and lead-based paint as part of the Site Clearance, to the extent such costs are not paid by the Federal Government.

b. Master Developer agrees to and shall defend, indemnify and hold harmless Agency, the City and their respective officers, employees and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of Master Developer's removal from the Site or remediation of any asbestos or lead-based paint, or Master Developer's failure to remove from the Site or remediate any asbestos or lead-based paint required to be removed or remediated pursuant to any applicable laws and Governmental Requirements. Master Developer shall not be

responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Agency, the City or their respective officers, employees or agents.

c. To the extent legally permitted, Agency hereby assigns to Master Developer all rights and causes of action the Agency may have against the Federal Government or any other Party with respect to claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from, or as a result of, the presence on the Site, removal from the Site or remediation of any Hazardous Materials, including, but not limited to asbestos or lead-based paint and all other Pre-Existing Conditions.

PART 6 REHABILITATION AND DEVELOPMENT

Section 6.1 Standards and Requirements for Rehabilitation and Development

The Parcels constituting the Site shall be developed in accordance with and within the limitations established in the Reuse Plan, including the Scope of Development (Appendix "H"), the Precise Plan, the Entitlements and any Plans and Development Permits required by the Precise Plan and the Entitlements.

Section 6.2 Basic Concept and Schematic Drawings

a. Master Developer shall prepare and submit to the City staff for review and approval such basic concept and schematic drawings and related documents for the development of the Site as may be required by the Precise Plan and the Development Permits.

b. Concurrently with the submission of basic concept and schematic drawings to the City, Master Developer shall submit to the Agency Executive Director for reasonable approval the name and qualifications of all architects and other planning and design consultants proposed for the initial design of the Project and each component thereof. Thereafter, Master Developer and any Assignee shall submit to the Agency Executive Director for reasonable approval the name and qualifications of all subsequent architects and other planning and design consultants proposed for the design of the Project and each component thereof.

c. The Site shall be developed as established in the basic concept and schematic drawings and related documents except as changes may be mutually agreed upon between Master Developer and the applicable City staff. Any such changes shall be within the limitations of the Reuse Plan, Precise Plan and all applicable Development Permits.

Section 6.3 Construction Drawings and Related Documents for the Site

a. To the extent required by the Precise Plan and the Development Permits, Master Developer shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the City staff for review (including but not limited to architectural review) and approval.

b. During the preparation of all drawings and plans, the Agency Executive Director or designee and Master Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by the City staff. The Agency Executive Director or designee and Master Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City staff can receive prompt and speedy consideration.

d. If any revisions or corrections of plans approved by the City staff shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Site, Master Developer and Agency shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

Section 6.4 Intentionally Omitted

Section 6.5 Obligation for Payment of Development Costs

All Development Costs (including any cost overruns), including, without limitation, all hard costs, soft costs, the cost of services, wages required to be paid to any person employed by Master Developer, any Assignee, contractor or subcontractor, shall be the responsibility of Master Developer or its Assignee as to any Parcel, without any cost or liability to Agency, except as provided in Section 9.15.

Section 6.6 Rehabilitation/Construction Schedule

a. Following satisfaction of all Phase Four Conditions Precedent applicable to a Parcel and the conveyance of such Parcel to an Assignee, such Assignee shall promptly begin and thereafter diligently prosecute to completion the construction of the Vertical Improvements on such Parcel as provided in the Reuse Plan, Precise Plan and all applicable Development Permits. Each Assignee shall begin and complete all construction and rehabilitation within the times specified in the Schedule of Outside Performance Dates.

b. During Phase Four, each Assignee shall submit to Agency a written progress report when and as reasonably requested by Agency, in such form and detail as may be reasonably required by Agency, which shall include a reasonable number of construction photographs (if requested) taken since the last report by Master Developer or the Assignee.

c. Following satisfaction of all Phase Three (Foundation) Conditions Precedent applicable to a Parcel and the conveyance of such Parcel to the Foundation, the Foundation shall promptly begin and thereafter diligently prosecute to completion the rehabilitation of the Vertical Improvements on such Parcel as provided in the Reuse Plan, Precise Plan and all applicable Development Permits. The Foundation shall begin and complete all construction and rehabilitation within the times specified in the Schedule of Outside Performance Dates.

d. During Phase Three (Foundation), the Foundation shall submit to Agency a written progress report when and as reasonably requested by Agency, in such form and detail as may be reasonably required by Agency, which shall include a reasonable number of construction photographs (if requested) taken since the last report by Master Developer or the Foundation.

Section 6.7 Indemnification

a. Master Developer's Indemnification. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Master Developer shall indemnify, protect, defend and hold harmless the Agency, the City and their respective officers, employees, contractors and agents (collectively referred to as the "Indemnified Parties"), with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following, provided Master Developer shall not be responsible for (and such indemnity shall not apply to) the negligence or willful misconduct of the Indemnified Parties:

- (1) effective upon the Close of Escrow as to any particular portion or portions of the Site, the existence, release, presence or disposal on, in, under, about or adjacent to such portion or portions of the Site at any time after the delivery of possession and conveyance of such Parcel to Master Developer, of any Hazardous Materials, except to the extent of (and in no event shall Master Developer be responsible for) any loss, liability, damage, claim, cost or expense caused by: (a) Pre-existing Site Conditions;

and (b) the negligence or willful misconduct of any Indemnified Party or any Assignee or any tenant or subtenant of the City prior to the effective date of the Interim Lease.

- (2) Master Developer's marketing, sale or use of the Site in any way;
- (3) Any other activities of Master Developer;
- (4) Any plans or designs for improvements prepared by or on behalf of Master Developer, including without limitation any errors or omissions with respect to such plans or designs;
- (5) Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of Master Developer, or resulting from any breach or default by Master Developer, under this Agreement; and
- (6) Any development or construction or rehabilitation of any Horizontal Improvements by Master Developer, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Site, any person furnishing the same, or otherwise.

b. Assignee's Indemnification. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, each Assignee shall indemnify, protect, defend and hold harmless the Indemnified Parties, with counsel reasonably acceptable to Agency, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following, provided no Assignee shall be responsible for (and such indemnity shall not apply to) any the negligence or willful misconduct of the Indemnified Parties:

- (1) the existence, release, presence or disposal on, in, under, about or adjacent to the Site, at any time, of any Hazardous Materials caused by such Assignee, its employees, contractors or agents;

- (2) Such Assignee's marketing, sale or use of the Site in any way;
- (3) Any other activities of such Assignee;
- (4) Any plans or designs for improvements prepared by or on behalf of such Assignee, including without limitation any errors or omissions with respect to such plans or designs;
- (5) Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of such Assignee, or resulting from any breach or default by such Assignee under this Agreement; and
- (6) Any development or construction or rehabilitation of the Vertical Improvements by such Assignee, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Site, any person furnishing the same, or otherwise.

c. Environmental Indemnity. To effectuate the indemnity set forth in paragraph a.(1) with respect to each Parcel conveyed to Master Developer, Master Developer shall deliver to Agency an Environmental Indemnity, substantially in the form attached to this Agreement as Attachment No. 9-A, each Assignee shall deliver to Agency an Environmental Indemnity, substantially in the form attached to this Agreement as Attachment No. 9-B, in connection with the conveyance to such Assignee of such Parcel, and the Foundation shall deliver to Agency an Environmental Indemnity, substantially in the form attached to this Agreement as Attachment No. 9-C, in connection with the conveyance to the Foundation of any leasehold interests in the Civic, Arts and Cultural Center.

d. Agency's Indemnification. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Agency shall indemnify, protect, defend and hold harmless Master Developer and its Assignees, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to the indemnified Party, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected with the following:

- (1) any negligence or intentional misconduct of the Agency, the City or their respective officers, employees, contractors, agents or sublessees which relate to the maintenance,

management or operation of the Site during the period commencing upon the effective date of the master lease between the Federal Government and the City for the Site and ending upon the conveyance of fee or leasehold title, as the case may be, or execution of the Interim Lease, whichever occurs first, provided the Agency shall not be responsible for (and such indemnity shall not apply to) the negligence or willful misconduct of Master Developer, any Assignee or their respective officers, employees, contractors or agents;

- (2) any contracts relating to the Site entered into by the City or Agency, or claims by third parties that the City or Agency has entered into such contracts, during the period commencing upon the effective date of the master lease between the Federal Government and the City for the Site and ending upon the conveyance of fee or leasehold title, as the case may be, or execution of the Interim Lease, whichever occurs first; and
- (3) any representations or warranties relating to the Site made by the City or Agency, or claims by third parties that the City or Agency has made such representations or warranties, during the period commencing upon the effective date of the master lease between the Federal Government and the City for the Site and ending upon the conveyance of fee or leasehold title, as the case may be, or execution of the Interim Lease, whichever occurs first.

e. Duration of Indemnities. The foregoing indemnities shall continue after the Close of Escrow and survive the termination of this Agreement.

Section 6.8 Insurance

a. Master Developer or Foundation, as the case may be, shall maintain, at its own cost and expense, and furnish or cause to be furnished to the Agency evidence of the following policies of insurance, naming Master Developer as insured and, except for automobile insurance and Workers' Compensation insurance, the Agency and the City as additional insureds. All such insurance shall be kept in force with respect to a Sale Parcel until the Completion with respect to such Parcel, and with respect to a Lease Parcel, for the term of the applicable Lease.

(1) Fire Policies: Commencing upon conveyance of a Parcel to Master Developer or its Assignee, Master Developer shall maintain or cause to be maintained for all buildings except those to be demolished, a policy or policies of insurance against loss or damage to the Site and the Improvements thereon and all property of an insurable nature located upon the Site, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in special causes of loss property coverage form policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements on a Parcel, as defined in this Section 6.8 below, in paragraph c.

(2) Liability Insurance: Commencing upon the first to occur of the conveyance of a Parcel to Master Developer or its Assignee, or the entry onto the Site by Master Developer pursuant to the Interim Lease Agreement, Master Developer shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Site and the business of the Master Developer on the Site, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Master Developer or its sublessees, or any person acting for Master Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Site, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Master Developer or its tenants, or any person acting for Master Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), and not less than \$2,000,000 General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence, which minimum amounts shall be increased every five years after the execution of this Agreement by an additional One Million Dollars (\$1,000,000), so that the minimum amounts of commercial general liability insurance at the end of the fifth year after execution of this Agreement shall be not less than Three Million Dollars (\$3,000,000), and, at the end of the tenth year, Four Million Dollars (\$4,000,000). Master Developer shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to commencement of the alterations. Master Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Master Developer may be held responsible for the indemnification of Agency or the payment of damages to

persons or property resulting from Master Developer's activities, activities of its tenants or the activities of any other person or persons for which Master Developer is otherwise responsible.

(3) Automobile Insurance: Commencing upon the first to occur of the conveyance of a Parcel to Master Developer or its Assignee, or the entry onto the Site by Master Developer pursuant to the Interim Lease Agreement, Master Developer shall maintain or cause to be maintained automobile insurance, maintained in full force and effect during the Term in an amount of not less than One Million Dollars (\$1,000,000) per accident (subject to adjustment as provided in paragraph (2), above).

(4) Workers' Compensation Insurance: Commencing upon conveyance of a Parcel to Master Developer or its Assignee, Master Developer shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Master Developer in connection with the Site and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Site or the operation thereof by Master Developer. Notwithstanding the foregoing, Master Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Lessee shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.

(5) Environmental Insurance: Commencing upon mutual execution of this Agreement, Master Developer shall maintain a policy of Commercial Property Redevelopment Pollution insurance, subject to the following:

- (a) The policy shall be written by Indian Harbor Insurance Company, a subsidiary of Excel Financial Company.
- (b) The policy shall provide \$50,000,000 in coverage to Master Developer, Agency and City (as named insureds), subject to a \$100,000 deductible per claim, to protect against claims and loss from liability relating to known and unknown conditions on the Site, third-party environmental liability (including coverage for below ground asbestos insulated steam piping

that is left in place and subsequently required to be removed), governmental changes, construction events including wrongful disposal, and consultants' errors and omissions, relating to the entire Site (including the Boat Channel - except such insurance shall not cover the City for potential liability for its historic releases of storm water from areas outside the Site and to the Boat Channel - and all Remediation Parcels upon receipt of a "no further action" letter), for a 10-year term with an extended 5-year reporting period, in form and content acceptable to the Agency Executive Director or designee.

- (c) In the event the limit of liability insurance provided is or may be impaired by claims, to the extent the Agency and Master Developer elect to reinstate all or a portion of such limit, the cost of the premium for such reinstated coverage shall be allocated between the Agency and Master Developer in accordance with the percentage of the policy liability limit which has been used or impaired to pay attorneys' fees and costs, settlements and judgments of the Agency and City or Master Developer, respectively.
- (d) Except as provided in subparagraph (e), below, prior to conveyance of fee or leasehold title of any Parcel to Master Developer or the Foundation, any deductibles shall be the responsibility of the Agency or City. After conveyance of such fee or leasehold title of any Parcel, any deductibles shall be paid by the party (Master Developer or the Foundation), against whom the claim is made; if the claim is made against multiple parties, then the deductible shall be divided pro rata. In no event shall Agency be liable for any portion of a deductible after conveyance of fee or leasehold title as to any Parcel with respect to which a claim is made.

(e) Notwithstanding any provision to the contrary contained herein, to the extent a claim arises as the result of any surveys, tests or other activities undertaken by Master Developer or its agents, contractors or consultants prior to conveyance of title pursuant to Section 3.11(a) of this Agreement, or as the result of any activities undertaken by Master Developer or its agents, contractors, consultants or subtenants after the effective date of the Interim Lease (as to any Parcel conveyed to City by the Federal Government as part of the Economic Development Conveyance) or sublease from the City to Master Developer or its affiliate (as to any portion of the Park), Master Developer shall be responsible for payment of any applicable deductible.

b. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) days prior written notice to Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Agency and Master Developer as insureds, additional insureds, and/or loss payable parties as their interests may appear. The City and Agency shall be named insureds on the Environmental Insurance policy.

c. The term "full insurable value" as used in this Section 6.8 shall mean the cost determined by mutual agreement of Agency and Master Developer (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of providing similar Improvements of equal size and providing the same habitability as the Improvements immediately before such casualty or other loss, but using readily-available contemporary components, including the cost of construction, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Master Developer shall cause the full insurable value to be determined from time to time by appraisal by the insurer, by agreement between Master Developer and Agency or by an appraiser mutually acceptable to Agency and Master Developer, not less often than once every three years.

d. All insurance provided under this Section 6.8 shall be for the benefit of Master Developer (or Foundation, as the case may be), Agency and City. Master Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements

necessary for the maintenance of such insurance. Master Developer agrees to submit binders or certificates evidencing such insurance, except Environmental Insurance, to Agency prior to the Closing; binders or certificates evidencing the Environmental Insurance shall be submitted prior to Agency approval of this Agreement. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Agency. All insurance herein provided for under this Section 6.8 shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

e. If Master Developer fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the right, at Agency's election, and upon ten (10) days prior notice to Master Developer, to procure and maintain such insurance. The premiums paid by Agency shall be treated as a loan, due from Master Developer, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

Section 6.9 Nondiscrimination, Equal Opportunity and Subcontracting Outreach

a. Master Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Master Developer shall provide equal opportunity in all employment practices.

b. Master Developer has received, read, understands and agrees to be bound by City of San Diego Municipal Code Division 27 (Equal Opportunity Program) and the City Manager's Policies and Procedures implementing that Program, contained in the Equal Opportunity Packet provided by Agency.

c. Master Developer has submitted, and Agency acknowledges receipt of a Work Force Report, as required by Section 22.2705 of the City of San Diego Municipal Code.

d. Although this Agreement does not qualify as a City-funded construction contract of \$100,000 or more subject to the Subcontracting Outreach Program, Master Developer and Agency mutually acknowledge that redevelopment of NTC represents a unique opportunity to provide contracting and employment opportunities to a broad base of San Diego companies. Therefore, Master Developer has agreed to implement a Subcontracting Outreach Program as specifically described in Attachment No. 24.

Section 6.10 Local, State and Federal Laws

Master Developer shall carry out the construction and rehabilitation of all Improvements in conformity with all applicable laws and Governmental Requirements, including all applicable federal and state labor laws and requirements.

Section 6.11 Permits and Bonds Required

a. Subdivision Maps. Before commencement of construction or rehabilitation of any buildings, structures or other work of improvement upon any portion of the Site, Master Developer shall, at its own expense, obtain any and all permits which may be required by the City in connection with the approval of any subdivision map.

b. Phase Three Conditions Precedent. As part of the Phase Three Conditions Precedent (including Phase Three (Foundation) Conditions Precedent), Master Developer shall obtain Payment and Performance Bonds, naming City or Agency as Obligee, as their interests may appear, covering labor, materials and faithful performance of the construction or rehabilitation of (i) all Horizontal Improvements, to be constructed in stages, as provided in paragraph d. of this Section 6.11, (ii) Stage One Rehabilitation of the Historic Core, to be completed in stages as provided in the Schedule of Outside Performance Dates, and (iii) Completion of the Vertical Improvements to be constructed or rehabilitated in the Educational Core, to be completed in stages as provided in the Schedule of Outside Performance Dates, in accordance with the plans approved by the City staff therefor. Each such bond shall be in the amount equal to one hundred percent (100%) of the construction price in a construction or rehabilitation contract between Master Developer or an Assignee and such Party's contractor, which shall have been approved by Agency, and shall be substantially in the form attached to this Agreement as Attachment No. 12-A.

c. Phase Four Conditions Precedent. As part of the Phase Four Conditions Precedent and Phase Three (Foundation) Conditions Precedent, Master Developer or Assignee shall obtain Payment and Performance Bonds, naming City or Agency as Obligee, as their interests may appear, covering labor, materials and faithful performance of the construction or rehabilitation of all Vertical Improvements to be constructed on the applicable Parcel, in accordance with the plans approved by the City staff therefor. Each such bond shall be in the amount equal to one hundred percent (100%) of the construction price in a construction or rehabilitation contract between such Assignee and its contractor, which shall have been approved by Agency, and shall be substantially in the form attached to this Agreement as Attachment No. 12-A. Master Developer shall, as part of the Phase Four Conditions Precedent, and Foundation shall, as part of the Phase Three (Foundation) Conditions Precedent, deliver to the Agency a

certificate or certificates from the bonding company(s) issuing such bonds. In the case of the residential Vertical Improvements to be constructed in Map Areas 1 and 2, Master Developer or its Assignee shall have the right to obtain and submit to the Agency, as a Phase Four Condition Precedent, one or more Payment and Performance Bonds in phases, applicable to the number of housing units to be constructed on a particular Lot or Lots as they are conveyed by Master Developer to the homebuilder. Each such phased Payment and Performance Bond shall be released upon the Completion of the final housing unit in a particular phase.

d. Schedule for Delivery of Payment and Performance Bonds. In addition to the Bonds required by paragraph c., Master Developer shall provide to the Agency or the City, as their interests may appear, Payment and Performance Bonds in the following incremental amounts:

- (1) Bonds for all demolition and all Horizontal Improvements (except Park Improvements) for each Map Area, to be provided upon the recordation of the Final Map for such Map Area.
- (2) Bonds for all offsite road improvements, to be provided upon the recordation of the Final Maps for Map Areas 1, 2 and 3, in such incremental amounts as may be required by the City in connection with such Maps (provided Master Developer has delivered Payment and Performance Bonds covering 100% of the offsite road improvements by the time of the recordation of the last to be recorded of such Final Maps).
- (3) \$5,000,000 for Park Improvements and \$8,000,000 for Historic Core Vertical Improvements, to be provided upon the first to occur of:
 - (a) recordation of the Final Map for any of Map Areas 1, 2, 3 or 5; or
 - (b) twenty-one (21) months after Precise Plan Approval.
- (4) A total of \$16,000,000 (i.e., an additional \$8,000,000) for Historic Core Vertical Improvements, to be provided upon the first to occur of:

- (a) issuance of building permits for more than 59 housing units (single family or rental) in Map Area 1 or Map Area 2; or
 - (b) issuance of a building permit for the first or second office or research and development building to be constructed in Map Area 3; or
 - (c) issuance of a building permit for the first hotel to be constructed in Map Area 7 or Map Area 8; or
 - (d) eighteen (18) months after the recordation of the Final Map for Map Area 1, 2, 3 or 5, whichever occurs first; or
 - (e) thirty-nine (39) months after Precise Plan Approval.
- (5) A total of \$10,000,000 (i.e., an additional \$5,000,000) for Park Improvements and a total of \$24,000,000 (i.e., an additional \$8,000,000) for Historic Core Vertical Improvements, to be provided upon the first to occur of:
- (a) approval of building permits for more than 119 housing units (single family or rental) in Map Area 1 or Map Area 2; or
 - (b) issuance of a building permit for the third or fourth office or research and development building to be constructed in Map Area 3; or
 - (d) twenty-seven (27) months after the recordation of the Final Map for Map Area 1, 2, 3 or 5, whichever occurs first; or
 - (e) forty-eight (48) months after Precise Plan Approval.
- (6) A total of \$14,779,800 (i.e., an additional \$4,779,800) for Park Improvements, to be provided upon the first to occur of:
- (a) approval of building permits for more than 179 housing units (single family or rental) in Map Area 1 or Map Area 2; or

- (b) issuance of a building permit for the fifth or sixth office or research and development building to be constructed in Map Area 3; or
 - (c) issuance of a building permit for the second hotel to be constructed in Map Area 7 or Map Area 8; or
 - (d) thirty-six (36) months after the recordation of the Final Map for Map Area 1, 2, 3 or 5, whichever occurs first; or
 - (e) fifty-seven (57) months after Precise Plan Approval.
- (7) Payment and Performance Bonds for Priority One Renovation of the Educational Core Vertical Improvements in accordance with the following schedule:
- (a) Payment and Performance Bonds covering Completion of 24,000 square feet within the Educational Core: twenty-four (24) months after the recordation of the Final Map for any Map Area, or thirty-six (36) months after Precise Plan Approval, whichever occurs first;
 - (b) Payment and Performance Bonds covering Completion of an additional 113,688 square feet within the Educational Core (for a total of 137,688 square feet): thirty-six (36) months after the recordation of the Final Map for any Map Area, or forty-eight (48) months after Precise Plan Approval, whichever occurs first;
 - (c) Payment and Performance Bonds covering Completion of an additional 29,000 square feet within the Educational Core (for a total of 166,688 square feet): forty-eight (48) months after the recordation of the Final Map for any Map Area, or sixty (60) months after Precise Plan Approval, whichever occurs first;
 - (d) Payment and Performance Bonds covering Completion of an additional 25,000 square feet within the Educational Core (for a total of 191,688 square feet): sixty (60)

months after the recordation of the Final Map for any Map Area, or seventy-two (72) months after Precise Plan Approval, whichever occurs first; and

- (e) Payment and Performance Bonds covering Completion of an additional 55,979 square feet within the Educational Core (for a total of 247,667 square feet): seventy-two (72) months after the recordation of the Final Map for any Map Area, or eighty-four (84) months after Precise Plan Approval, whichever occurs first.

e. Obligations Guaranteed by Payment and Performance Bonds. The Payment and Performance Bonds shall guarantee Completion of the respective Improvements, subject to a liability cap in each case that has been mutually approved by Master Developer and Agency, within the time periods set forth in Section 8.2 of this Agreement.

Section 6.12 Agency Rights of Access

Representatives of Agency and the City shall have the reasonable right of access to all portions of the Site after conveyance to Master Developer, 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 or rehabilitating the Improvements. Such representatives of Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. Agency agrees to defend and hold Master Developer harmless for any and all claims, liability and damages arising out of any inspection or other activity on the Site by Agency or City, or their respective agents, employees or contractors permitted pursuant to this Section 6.12, except to the extent caused by the negligence or willful misconduct of Master Developer.

Section 6.13 Disclaimer of Responsibility by Agency

Agency neither undertakes nor assumes nor will have any responsibility or duty to Master Developer or to any Assignee or to any other third Party to review, inspect, supervise, pass judgment upon or inform Master Developer, Assignee or any third Party of any matter in connection with the development or construction or rehabilitation of Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Site, any person furnishing the same, or otherwise. Master Developer, any Assignee and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or

information supplied to Master Developer, Assignee or to any third Party by Agency in connection with such matter is for the public purpose of redeveloping the Site, and neither Master Developer nor any Assignee (except for the purposes set forth in this Agreement) nor any third Party is entitled to rely thereon. Agency shall not be responsible for any of the work of construction, rehabilitation, improvement or development of the Site.

Section 6.14 Taxes, Assessments, Encumbrances and Liens

Master Developer shall pay when due all real estate taxes and assessments assessed and levied on or against all portions of the Site subsequent to the conveyance of fee or leasehold title. Master Developer shall not place, or allow to be placed, on its interests in any Parcel or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. Master Developer shall remove, or shall have removed, any levy or attachment made on its interests in any Parcel (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to foreclosure sale. Nothing herein contained shall be deemed to prohibit Master Developer from contesting the validity or amount of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Master Developer in respect thereto. The covenants of Master Developer set forth in this Section 6.14 relating to the placement of any unauthorized mortgage, trust deed, encumbrance or lien, shall remain in effect only until an Agency Certificate of Completion has been recorded with respect to such Parcel.

Section 6.15 Agency Certificate of Completion

a. Promptly after Completion with respect to a Parcel as required by this Agreement, Agency shall deliver to Master Developer or Assignee, as the case may be, an Agency Certificate of Completion for such Parcel, upon written request therefor by Master Developer or Assignee, as the case may be. Agency shall not unreasonably withhold any such Agency Certificate of Completion. Such Agency Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction or rehabilitation of such Parcel required by this Agreement. Upon issuance of the applicable Agency Certificate of Completion, Agency shall release any Payment and Performance Bonds for the Improvements covered by such Agency Certificate of Completion.

b. The Agency 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.

c. If Agency fails to deliver the Agency Certificate of Completion for a Parcel within ten (10) days after written request from Master Developer, then within such ten (10) day period, Agency shall provide Master Developer with a written statement of its reasons for not delivering the Agency Certificate of Completion. The statement shall also set forth the steps Master Developer must take to obtain the Agency Certificate of Completion. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by Agency, Agency will issue the Agency Certificate of Completion for a Parcel upon the posting of a bond by Master Developer with Agency in an amount representing Agency's estimate of the cost to complete the work on such Parcel.

d. Such Agency Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Master Developer to any Leasehold Mortgagee, or any insurer of a mortgage securing money loaned to finance the Vertical Improvements, nor any part thereof. Such Agency Certificate of Completion is not notice of completion as referred to in Section 3093 of the California Civil Code.

e. After issuance of an Agency Certificate of Completion, the provisions of this Agreement shall no longer apply to the Parcel covered by such Agency Certificate of Completion, with the exception of any of the following documents or instruments executed in connection with this Agreement: the applicable Grant Deed or Ground Lease for such Parcel, as the case may be; the Participation Agreement; any applicable Agreement Affecting Real Property; any applicable Environmental Indemnity; any applicable Lender's Nondisturbance and Attornment Agreement; any applicable Tenant's Nondisturbance and Lease Recognition Agreement; and any applicable Subordination Agreement.

PART 7 USE OF THE SITE

Section 7.1 Permitted Uses

Master Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Master Developer, its successors and assigns shall use the Site only for those uses specified in the following documents: the Redevelopment Plan; the Reuse Plan, including the Scope of Development attached as Appendix "H"; the Precise Plan and all applicable Development Permits; the Entitlements; the applicable Grant Deed or Ground Lease for such Parcel, as the case may be; the Participation Agreement; and any applicable Agreement Affecting Real Property.

Section 7.2 Maintenance

Commencing upon conveyance of a Parcel, Master Developer, its successors and assigns, shall maintain the Vertical Improvements on such Parcel in the same aesthetic and sound condition (or better) as the condition of such Improvements at the time Agency issues an Agency Certificate of Completion pursuant to this Agreement, reasonable wear and tear excepted. Prior to the issuance of the Agency Certificate of Completion for a Parcel, Master Developer and its successors and assigns shall reasonably maintain the Vertical Improvements on such Parcel consistent with best construction industry practice. The standard for the quality of maintenance of the Vertical Improvements required by this Section 7.2 shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Vertical Improvements, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Master Developer, its successors or assigns fails to maintain the Vertical Improvements in accordance with the standard for the quality of maintenance, Agency or its designee shall have the right but not the obligation to enter the Site upon reasonable notice to Master Developer or its successor or assigns, correct any violation, and hold Master Developer, or such successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the applicable Parcel. Master Developer shall have the right to assign the maintenance responsibilities contained herein to the subsequent purchasers or sublessees of a Parcel, or individual buildings thereon, or to any homeowners association to be created, through appropriate covenants, conditions and restrictions to be recorded against one or more Parcels, upon which assignment Master Developer shall have no further liability under this Section 7.2.

Section 7.3 Obligation to Refrain from Discrimination

Master Developer 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 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 Site nor shall Master Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site.

Section 7.4 Form of Nondiscrimination and Nonsegregation Clauses

Master Developer shall refrain from restricting the rental, sale or lease of the property on the basis of the race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- a. In deeds: "The grantee herein covenants by and for 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."
- b. 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, 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."

- c. 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."

Section 7.5 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on Master Developer and any successor in interest to the Site or any part thereof for the benefit and in favor of Agency, its successors and assigns, and the City. Such covenants as are to survive the issuance of the Agency Certificate of Completion by Agency shall be contained in the Ground Lease or Agreement Affecting Real Property, and shall remain in effect for the period specified therein.

Section 7.6 Deed Restrictions/Covenants Running With the Land

a. The obligations of the Master Developer, any Assignee and all subsequent purchasers of any Sale Parcel (or any portion thereof) or lessees or sublessees of any Lease Parcel (or portion thereof) shall be covenants running with the land.

b. To effectuate this Section 7.6 with respect to any Lease Parcel, Master Developer and Agency shall execute the Ground Lease substantially in the form attached to this Agreement as Attachment No. 6, which is incorporated herein by this reference, and execute and record an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 8, which is incorporated herein by this reference, which set forth such continuing controls and restrictions as Agency may deem necessary or appropriate to carry out this Agreement.

c. To effectuate this Section 7.6 with respect to any Lease Parcel in the Civic, Arts and Cultural Center, Foundation and Agency shall execute the Ground Lease substantially in the form attached to this Agreement as Attachment No. 20, which is incorporated herein by this reference, and execute and record an Agreement Affecting Real Property substantially in the form

attached to this Agreement as Attachment No. 8, which set forth such continuing controls and restrictions as Agency may deem necessary or appropriate to carry out this Agreement.

d. To effectuate this Section 7.6 with respect to any Sale Parcel, concurrently with and as a condition of the Closing with respect to such Sale Parcel, Master Developer and Agency shall execute and cause the recordation of an Agreement Affecting Real Property substantially in the form attached to this Agreement as Attachment No. 8, which is incorporated herein by this reference, which sets forth such continuing controls and restrictions or covenants running with the land sold for private use as Agency may deem necessary or appropriate to carry out this Agreement.

PART 8 ASSURANCE OF COMPLETION OF HISTORIC CORE, EDUCATIONAL CORE AND PARK IMPROVEMENTS

Section 8.1 Special Significance of Historic Core and Educational Core Components.

Subject to the satisfaction of all Phase Three Conditions (except those within the control of Master Developer), Master Developer hereby commits to provide for the Stage One Rehabilitation and Priority One Renovation of the Historic Core Improvements and Educational Core Improvements to a level that permits occupancy of the buildings and acknowledges that such commitment constitutes a material inducement to Agency in entering into this Agreement. The definitions of the terms "Stage One" and "Priority One" are set forth in Attachments No. 18-A and 18-B, respectively. The purpose of this Part is to provide a mechanism by which the Completion of the Historic Core and Educational Core Improvements may be assured without interfering with Master Developer's ability to sell or sublease and assign its rights in other portions of the Property under this Agreement.

Section 8.2 Schedule for Completion

a. Master Developer shall complete the construction or rehabilitation of the Historic Core (Map Areas 5 and 6) and the Educational Core (Map Area 4) in accordance with the Schedule of Outside Performance Dates attached to this Agreement as Attachment No. 3. Provided, however, that for purposes of Items 5.A. and 6.A. of the Schedule of Outside Performance Dates only, recordation of the Final Map for Map Area 5 or Map Area 6 shall not be a Phase Three Condition Precedent, so long as: (1) Master Developer has satisfied all requirements and has made all submittals requested by the appropriate City staff for the recordation of the Map for Map Area 5 or Map Area 6; (2) Master Developer is making diligent and continuous efforts towards the recordation of such Map; and (3) Master Developer has also satisfied all requirements for the recordation of the Final Map for any of Map Areas 1, 2, 3, 4, 7 or 8.

b. Subject to approval of a General Development Plan for the Park, and in accordance with the NTC Park Improvement Agreement between City and Master Developer executed concurrently with this Agreement, Master Developer shall commence and diligently complete the construction of the Park Improvements in accordance with the following schedule, or sooner if required by the Precise Plan and the Development Permits or any condition of Map approval (with "Year 1" signifying the end of the 12-month period following the date Master Developer satisfies all Phase Three Conditions with respect to either Map Area 5 or Map Area 6, whichever occurs first, provided, however, that for purposes of this Section 8.2 only, recordation of the Final Map for Map Area 5 or Map Area 6 shall not be required, so long as: (1) Master Developer has satisfied all requirements and has made all submittals requested by the appropriate City staff for the recordation of the Map for Map Area 5 or Map Area 6; (2) Master Developer is making diligent and continuous efforts towards the recordation of such Map; and (3) Master Developer has also satisfied all requirements for the recordation of the Final Map for any of Map Areas 1, 2, 3, 4, 7 or 8):

| <u>Area of Park</u> | <u>Commence</u> | <u>Complete</u> | | | |
|---------------------|-----------------|--|--|--|--|
| 14 acres | Year 2 | Thirty-six (36) months after Commencement | | | |
| 13 acres | Year 4 | Thirty-six (36) months after Commencement | | | |
| 13 acres | Year 6 | Thirty-six (36) months after Commencement. | | | |

c. The surety company issuing the Payment and Performance Bonds shall be obligated to complete the construction or rehabilitation of the corresponding square footage of building areas of the Historic Core, the Educational Core and the Park Improvements, to the extent Master Developer fails to complete such work by the end of the corresponding 12-month period.

d. The Agency shall promptly release any Payment and Performance Bonds upon delivery of substitute Payment and Performance Bonds which satisfy all applicable requirements of this Agreement, and upon Completion of the Improvements to which such Payment and Performance Bonds apply.

Section 8.3 Stage One Rehabilitation/Priority One Renovation

a. Subject to the terms and conditions of this Agreement, Master Developer shall rehabilitate all of the historic buildings in the Historic Core to the standard of Stage One Rehabilitation set forth in Attachment No. 18-A, and shall renovate

all of the non-historic buildings in the Educational Core to the standard of Priority One Renovation set forth in Attachment No. 18-B. Master Developer and Agency shall use their mutual best efforts to ensure that the rehabilitation work required by this Agreement may be completed for a reasonable cost, which the Parties have estimated to be, and which Master Developer has budgeted as \$24,100,000 in the case of the Historic Core, and \$8,100,000 in the case of the Educational Core (the "Budgeted Amounts").

b. To the extent Master Developer is able to complete the rehabilitation work required by this Agreement for a total cost that is less than the Budgeted Amounts, Master Developer shall make available the unexpended portion to pay Development Costs, including any Additional City-Imposed Costs and any other costs in excess of budgeted amounts which may result from unforeseen circumstances.

c. To the extent Master Developer, despite its best efforts, is unable to complete the rehabilitation work required by this Agreement for the Budgeted Amounts, Agency and Master Developer shall meet and confer as soon as possible after any potential problem has been identified, to consider in good faith all the circumstances and all potential solutions and alternatives, including, without limitation, reducing the scope of the Project and/or reducing the number of buildings required to be rehabilitated. Any proposed solution requiring an amendment to this Agreement shall be subject to the approval of the Master Developer and the governing body of the Agency.

PART 9 DEFAULTS, REMEDIES AND TERMINATION

Section 9.1 Defaults - General

a. Subject to Force Majeure Delays, 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 within the respective time provided for herein.

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

maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured Party shall give the Party in default written notice of such default. The Party in default shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured Party. Notwithstanding the foregoing, if any payment is not received by the injured Party within seven (7) calendar days following the due date thereof, then in addition to the remedies conferred upon such Party pursuant to this Agreement, a late charge of ten percent (10%) of the amount due and unpaid will be added to the delinquent amount to compensate the injured Party for the expense of handling the delinquency, computed from the date on which the amount was due and payable until paid. Without prejudice to the rights of either Party hereunder, the Party in default shall indemnify the injured Party against, and shall pay such Party on demand, any expense or loss which it may sustain or incur as a result of the failure by the Party in default to pay when due any amounts payable to the injured Party under this Agreement, to the extent that any such expense or loss is not recovered pursuant to such foregoing provisions.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured Party shall give the Party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the Party in default shall have such period to effect a cure prior to exercise of remedies by the injured Party. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the Party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured Party. In no event shall the injured Party be precluded from exercising remedies in order to preclude an imminent foreclosure on any security interest in a Parcel by any Person or if the default is not cured within ninety (90) days after the first notice of default is given.

e. Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided that if such transmission is given after 5:00 p.m. it shall be deemed given on the next business day; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed

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

f. Notwithstanding paragraph a. of this Section 9.1, the failure of any Phase Three Condition Precedent or any Phase Four Condition Precedent which is not caused by the acts or omissions of Master Developer or an Assignee and which is not within the control of Master Developer or an Assignee, shall not, solely by reason of the failure of such condition, be a default by Master Developer, provided:

- (1) Agency shall have no obligation to convey to Master Developer or any other Person any Parcel with respect to which a Phase Three Condition Precedent has not been satisfied, and shall have the right to terminate this Agreement as to such Parcel in accordance with Section 9.9 of this Agreement;
- (2) Agency shall have no obligation to subordinate its right of reverter as to any Parcel with respect to which a Phase Four Condition Precedent has not been satisfied;
- (3) Developer shall not convey to any Person or entity any Parcel with respect to which a Phase Four Condition Precedent has not been satisfied;
- (4) Agency shall have the right to terminate this Agreement as to any Parcel with respect to which a Phase Four Condition Precedent has not been satisfied in accordance with Section 9.9 of this Agreement, and to exercise its right of reverter in accordance with Section 9.10 of this Agreement;
- (5) The following Phase Three Conditions Precedent, and the failure of such conditions, are deemed, for purposes of this Agreement, to be within the control of Master Developer:
 - A. Condition e. (Failure to provide Payment and Performance Bonds as required by such Condition);
 - B. Condition g. (Failure to submit Insurance Policies as required by such Condition);

- C. Condition h. (Failure to submit Evidence of Financing as required by such Condition);
- D. Condition j. (Failure to execute documents as required by such Condition);
- E. Condition k.(1) through (4): (Failure to satisfy requirements relating to the Foundation as required by such Condition); and
- F. Condition l. (Failure to demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer will commence Improvements as required by such Condition).

Provided, however, that the Conditions described in paragraphs A., C. and (to the extent caused by the Conditions described in paragraphs A. or C.) paragraph F. of this Section 9.1.f.(5) shall not be deemed to be within the control of Master Developer if Master Developer reasonably demonstrates to the Agency Executive Director or his or her designee that (i) Master Developer was unable to obtain such Payment and Performance Bonds and/or financing despite making commercial best efforts to do so, and (ii) such Payment and Performance Bonds and financing are unavailable on terms which are commercially feasible because of generally applicable economic conditions affecting the credit market which then exist and which are worse than the conditions which prevail as of the date of this Agreement.

- (6) The following Phase Four Conditions Precedent, and the failure of such conditions, are deemed, for purposes of this Agreement, to be within the control of Master Developer or an Assignee:
 - A. Condition c. (Failure to submit Assignee Formation Documents as required by such Condition);
 - B. Condition d. (Failure to complete or bond for or insure around all Related Improvements, as required by such Condition); and

- C. Condition e. (Failure to submit final working drawings for Vertical Improvements, as required by such Condition).
- D. Condition g. (Failure to provide the Payment and Performance Bonds for Vertical Improvements, as required by such Condition);
- E. Condition h. (Failure to submit Evidence of Financing, as required by such Condition);
- F. Condition j. (Failure to submit evidence of Insurance Policies, as required by such Condition);
- G. Condition k. (Failure to execute documents as required by such Condition); and
- H. Condition l. (Failure to demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that the Assignee will commence Improvements as required by such Condition).

g. Notwithstanding paragraph a. of this Section 9.1, the failure of any Phase Three (Foundation) Condition Precedent which is not caused by the acts or omissions of Master Developer or the Foundation and which is not within the control of Master Developer or the Foundation, shall not, solely by reason of the failure of such condition, be a default by Master Developer or Foundation, provided:

- (1) Agency shall have no obligation to convey to Master Developer or the Foundation any Parcel with respect to which a Phase Three (Foundation) Condition Precedent has not been satisfied, and shall have the right to terminate this Agreement as to such Parcel in accordance with Section 9.9 of this Agreement;
- (2) Agency shall have no obligation to subordinate its right of reverter as to any Parcel with respect to which a Phase Three (Foundation) Condition Precedent has not been satisfied;

- (3) Agency shall have the right to terminate this Agreement as to any Parcel with respect to which a Phase Three (Foundation) Condition Precedent has not been satisfied in accordance with Section 9.9 of this Agreement, and to exercise its right of reverter in accordance with Section 9.10 of this Agreement;
- (4) The following Phase Three (Foundation) Conditions Precedent, and the failure of such conditions, are deemed, for purposes of this Agreement, to be within the control of Master Developer or Foundation:
- A. Condition a. (Conditions relating specifically to the Foundation), including but not limited to Condition a.(4) (submission of Implementation Plan);
 - B. Condition f. (Failure to submit final working drawings for Vertical Improvements, as required by such Condition).
 - C. Condition h. (Failure to provide Payment and Performance Bonds, as required by such Condition);
 - D. Condition i. (Failure to submit Insurance Policies as required by such Condition);
 - E. Condition j. (Failure to submit Implementation Plan and Evidence of Financing as required by such Condition);
 - F. Condition l. (Failure to execute documents as required by such Condition);
 - G. Condition m. (Failure to demonstrate to the reasonable satisfaction of the Agency Executive Director or designee that Master Developer will commence Improvements as required by such Condition).

Provided, however, that the Conditions described in paragraphs C., E. and (to the extent caused by the Conditions described in paragraphs C. or E.) paragraph G. of this Section 9.1.g.(5) shall not be deemed to be within the control of Master Developer or Foundation if Master Developer or Foundation

reasonably demonstrates to the Agency Executive Director or his or her designee that (i) Master Developer and Foundation were unable to obtain such Payment and Performance Bonds and/or financing despite making commercial best efforts to do so, and (ii) such Payment and Performance Bonds and financing are unavailable on terms which are commercially feasible because of generally applicable economic conditions affecting the credit market which then exist and which are worse than the conditions which prevail as of the date of this Agreement.

Section 9.2 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement subject to Section 9.7. Such legal actions must be instituted in the Municipal or Superior Court of the County of San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

Section 9.3 Applicable Law

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

Section 9.4 Acceptance of Service of Process

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

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

Section 9.5 Rights and Remedies Are Cumulative

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

Section 9.6 Damages

Subject to the notice and cure provisions of Section 9.1, if either Party defaults with regard to any of the provisions of this Agreement, the non-defaulting Party shall serve written notice of such default upon the defaulting Party. If the default is not cured within the time provided in Section 9.1, the defaulting Party shall be liable to the non-defaulting Party for any damages caused by such default, and the non-defaulting Party may thereafter (but not before) commence an action for damages against the defaulting Party with respect to such default.

Section 9.7 Specific Performance

Subject to the notice and cure provisions of Section 9.1, if either Party defaults with regard to any of the provisions of this Agreement, the non-defaulting Party shall serve written notice of such default upon the defaulting Party. If the default is not cured within the time provided in Section 9.1, the non-defaulting Party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default; provided, no specific performance shall be available for Master Developer's failure to close.

Section 9.8 Termination by Master Developer

Subject to the notice and cure provisions of Section 9.1, and subject to Force Majeure Delay, Master Developer shall have the right to terminate this Agreement as provided in Section 9.14.

Section 9.9 Termination by Agency

a. Subject to the notice and cure provisions of Section 9.1, and subject to Force Majeure Delay, Agency shall have the right to terminate this Agreement as to any Parcel with respect to which Master Developer has not satisfied all of the Phase Three Conditions Precedent within the respective time provided therefor in the Schedule of Outside Performance Dates, or Phase Four Conditions Precedent within the respective time provided therefor in the Schedule of Outside Performance Dates, by providing written notice to Developer, in the event of any of the following (each of which shall be referred to as a "Event of Termination"): (1) any uncured default by Master Developer; (2) any uncured failure to perform any material obligation required to be performed by Master Developer in the manner and by the date provided in this Agreement, or (3) any uncured failure of a condition set forth in this Agreement as a Phase Three Condition Precedent or Phase Four Condition Precedent except to the extent such condition is in the control of Agency or City.

b. Except as otherwise provided in Section 9.12 or 9.14, in the event Agency terminates this Agreement pursuant to this Section 9.9 or Section 9.10, then this Agreement and any rights of Master Developer, or any Assignee or transferee, in this Agreement, or arising herefrom with respect to Agency, shall be terminated, and neither Agency nor Master Developer nor any Assignee shall have any further rights against or liability to the other under this Agreement.

Section 9.10 Right of Reverter

a. General. After the Closing but before the issuance of the Agency Certificate of Completion for the Vertical Improvements to be constructed or rehabilitated on any Parcel, Agency shall have the right to terminate this Agreement as to (i) such Parcel and (ii) any other Parcel with respect to which Master Developer has not satisfied all of the Phase Four Conditions Precedent (or, in the case of Parcels to be conveyed to the Foundation, satisfaction of Phase Three (Foundation) Conditions Precedent), and re-enter the Parcel and revest in the Agency the title or leasehold interest in the Parcel conveyed to Master Developer or its Assignee, as provided in California Health and Safety Code Section 33437, in the event any of the following defaults shall occur as to such Parcel:

(1) Master Developer or Assignee fails to commence construction of any Improvements as required by this Agreement for a period of ninety (90) days after written notice from Agency, which shall be subject to force majeure delay; or

(2) Master Developer or Assignee abandons or substantially suspends construction of any Improvements for a period of ninety (90) days after written notice from Agency, which shall be subject to force majeure delay; or

(3) Master Developer or Assignee assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Parcel or such Party's interest in the Parcel, or any part thereof, in violation of this Agreement, and such breach is not cured within thirty (30) days after the date of written notice thereof; or

(4) Master Developer or Assignee otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 9.1 of this Agreement.

The Agency Executive Director shall not exercise the Agency's right of reverter without first providing Master Developer or its Assignee a reasonable opportunity to address the governing body of the Agency at a public meeting.

b. Prior to Satisfaction of Phase Four Conditions Precedent. Prior to the satisfaction of all Phase Four Conditions Precedent applicable to a Parcel, the Agency's right of reverter established in this Section 9.10 shall be senior in priority to any lien, including Permitted Mortgages and Permitted Leasehold Mortgages, such that if Agency exercises its right of reverter, all such liens, mortgages and leasehold mortgages will be extinguished and the Agency will be revested of title to the Parcel free and clear of all such liens, mortgages and leasehold mortgages.

c. Conditions of Subordination to Senior Obligations. Subject to this paragraph c., following satisfaction in full of all Phase Four Conditions Precedent applicable to a Parcel (or, in the case of Parcels to be conveyed to the Foundation, satisfaction of all Phase Three (Foundation) Conditions Precedent), the Agency shall subordinate its right of reverter to the lien of any Community Financing District or other financing bonds issued with respect to such Parcel and the lien of any Permitted Mortgagee or Permitted Leasehold Mortgagee (collectively, a "Senior Obligation"). The Agency's agreement to subordinate its right of reverter to Senior Obligations is subject to the holder of any Senior Obligation to which the Agency's right of reverter is to be subordinated, shall agree, in writing, to provide to the Agency the following rights:

(1) Upon the occurrence of an event of default under any of the Senior Obligation documents, the holder of the Senior Obligation shall promptly notify Agency of the occurrence of such event of default, which notification shall be provided to Agency contemporaneously with the delivery to Master Developer or Assignee of any notice of default under any of the Senior Obligation documents;

(2) The Agency shall have the right, during the cure periods which apply to the Master Developer or Assignee pursuant to the Senior Obligation documents and any cure period which may apply to the Agency under applicable law, to cure Master Developer or Assignee's default relative to the Senior Obligation; and

(3) After a default on any of the Senior Obligation documents but prior to a foreclosure sale or deed in lieu assignment of the Parcel, the Agency shall have the right to take title to the Parcel and cure the default relative to the Senior Obligation documents, without the holder of the Senior Obligation exercising any right it might otherwise have to accelerate the Senior Obligation by reason of such title transfer, so long as Agency promptly cures any such default upon taking title to the Parcel.

d. Following Satisfaction of Phase Four Conditions Precedent. Upon and after the satisfaction of all Phase Four Conditions Precedent (or, in the case of any Parcel to be conveyed to the Foundation, satisfaction of all Phase Three (Foundation) Conditions Precedent), such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and Agency's rights shall be subject and subordinate to any rights or interests provided in the DDA for the protection of any Mortgagee of a Permitted Mortgage Loan. To carry out this paragraph d, subject to the conditions set forth in paragraph c. of this Section 9.10, the Agency shall execute such reasonable subordination agreements as may be requested by Master Developer, Foundation or the maker of any Permitted Mortgage Loan or Permitted Leasehold Mortgage Loan.

e. Disposition of Property Following Reversion. If such reversion occurs following the satisfaction of all Phase Four Conditions Precedent and subordination of the Agency's Right of Reverter to the lien of a Permitted Mortgage Loan or Permitted Leasehold Mortgage Loan, upon the reversioning in Agency of title to the Parcel, or any part thereof, as provided in this Section 9.10, Agency shall, pursuant to its responsibilities under state law, use its best efforts to resell the Parcel, or any part thereof, as soon and in such manner as Agency shall find feasible and consistent with the objectives of the Community Redevelopment Law, the Reuse Plan and the Redevelopment Plan to a qualified and responsible Party or parties (as determined by Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to Agency and in accordance with the uses specified for the Parcel, or any part thereof, in the Redevelopment Plan. Upon such resale of the Parcel, or any part thereof, the proceeds thereof, if any, shall be applied:

(1) First (but only if such reversion occurs following the satisfaction of all Phase Four Conditions Precedent and subordination of the Agency's Right of Reverter to the lien of any Permitted Mortgage Loan or Permitted Leasehold

Mortgage Loan), repayment in full of the outstanding balance of any Permitted Mortgage Loan;

(2) next, to reimburse Agency on its own behalf or on behalf of the City of San Diego of all costs and expenses incurred by Agency, including salaries of personnel engaged in such action, in connection with the recapture, management and resale of the Parcel, or any part thereof (but less any income derived by Agency from the sale of the Parcel, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Parcel or any part thereof (or, in the event the Parcel, or any part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges, as would have been payable if the Parcel, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Parcel, or any part thereof; and any amounts otherwise owing to the Agency by Grantee and its successor or transferee; and

(3) Third, to reimburse Grantee, its successor or transferee, up to the amount equal to: the sum of the Purchase Price paid to the Agency for the Parcel (or allocable to the part thereof) and the costs incurred for the development of the Parcel, or any part thereof, or for the construction of the agreed improvements thereon, less (subject to the satisfaction of all Phase Four Conditions Precedent) the Permitted Mortgage Loan.

(4) Any balance remaining after such reimbursements shall be retained by Agency as its property.

f. Rules of Interpretation. To the extent that the right established in this Section 9.10 involves a forfeiture, it must be strictly interpreted against Agency, the Party for whose benefit it is created. The rights established in this Section 9.10 are to be interpreted in light of the fact that Agency will convey the Parcel to Grantee for development and not for speculation.

g. Statutory Basis for Right of Reverter. The parties acknowledge that Agency's right of reverter pursuant to this Section 9.10 is authorized by and is in furtherance of California Health and Safety Code Section 33437.

h. Expiration of Right of Reverter. The rights established in this Section 9.10 shall not apply to any Parcel after the recordation of the Agency Certificate of Completion with respect to such Parcel.

Section 9.11 Release of Right of Reverter (Single Family Houses)

In connection with every grant deed from the Agency conveying to Master Developer (or its Assignee) a Parcel on which single family houses are to be constructed, Agency shall direct the Escrow Company to extinguish and release Agency's right of reverter (described in Section 9.10) as to such Parcel, upon the occurrence of all of the following: (1) issuance of a permanent certificate of occupancy for Vertical Improvements on such Parcel by the City of San Diego; (2) recordation of a Notice of Completion relating to such Vertical Improvements by Master Developer, its Assignee or such Party's contractor; and (3) any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against

Section 9.12 Master Developer's Deposit

a. Prior to the execution of this Agreement, Master Developer has delivered to Agency a deposit in the amount of One Million Dollars (\$1,000,000) (the "Deposit"), receipt of which is hereby acknowledged. The Parties acknowledge and agree that the amount and timing of delivery of the Deposit have been negotiated and determined in light of Master Developer's agreement to deliver to the Agency, at the respective times provided in this Agreement, Payment and Performance Bonds as security for the performance of certain specified obligations, limited to the completion of specified Horizontal Improvements and Vertical Improvements, and the Deposit is not intended to provide security for the obligations secured by any such Payment and Performance Bonds.

b. The Deposit shall be security for the performance of Master Developer's obligations hereunder that are not otherwise secured by a Payment and Performance Bond and is intended to compensate Agency for costs and damages, such as land holding costs, administrative costs of selecting a new developer, increased financing costs to the Agency, and similar increased costs to Agency, that cannot be remedied by mere completion of Improvements.

c. The Deposit, or any substitute therefor, shall be in the form of (i) cash; or (ii) cashier's or certified check; or (iii) an unconditional irrevocable letter of credit issued by a federal or state bank, in favor of Agency, any of which is subject to obtaining the prior written approval of the Agency Executive Director or his designee. If the Deposit, or substitute, is in the form of a letter of credit, the term shall be at least one year, and Agency shall have the right to draw on the letter of credit if it is not renewed at least thirty days before its expiration, and hold the proceeds as the Deposit pursuant to this Section 9.12.

d. Agency shall be under no obligation to pay or earn interest on the Deposit, but, if interest shall accrue or be payable thereon, such interest (when received by Agency) shall be accumulated by Agency and added and held as part of the Deposit.

e. The Agency shall refund the Deposit, in whole or in part, in the event this Agreement is terminated by Master Developer under the circumstances described in Section 9.14, below.

f. If this Agreement has not been terminated and the Deposit has not previously been disposed of pursuant to Section 9.13, then the Deposit shall be released by Agency upon the Completion of all Vertical Improvements required by this Agreement.

Section 9.13 Return or Retention of the Deposit; Liquidated Damages

a. In the event that this Agreement is terminated by Agency pursuant to Section 9.9 or Section 9.10, but not including termination for failure of Phase Three Condition Precedent or Phase Four Condition Precedent which is not caused by the acts or omissions of Master Developer or an Assignee and which is not within the control of Master Developer or an Assignee, as provided in paragraph f. of Section 9.1, then the entire Deposit shall be retained by Agency as liquidated damages to which Agency shall be entitled. The retention of the Deposit shall entitle and permit Agency (without any prerequisite approvals or actions) to draw on or cash the letter of credit or other form of security instrument provided by Master Developer pursuant to Section 9.11. Notwithstanding any provision of this Section 9.13, Agency's right to retain and enforce any Payment and Performance Bonds delivered pursuant to this Agreement shall survive termination of this Agreement by Agency, except if specifically provided otherwise in Section 9.14, below.

AGENCY AND MASTER DEVELOPER, BY THIS AGREEMENT, MUTUALLY AGREE THAT IF MASTER DEVELOPER FAILS TO PERFORM THE OBLIGATIONS REQUIRED OF IT UNDER THIS AGREEMENT, THEN THE RESULTING DAMAGES TO AGENCY WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. BECAUSE OF THIS DIFFICULTY IN DETERMINING THE DAMAGES THAT WILL RESULT FROM MASTER DEVELOPER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS

AGREEMENT, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH BREACH, MASTER DEVELOPER MUST PAY THE SUM OF ONE MILLION DOLLARS (\$1,000,000) TO THE AGENCY AS LIQUIDATED DAMAGES, WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER AND AGENCY SHALL BE ENTITLED TO SUCH LIQUIDATED DAMAGES IN ADDITION TO PERFORMANCE PURSUANT TO ANY PAYMENT AND PERFORMANCE BONDS THERETOFORE DELIVERED TO AGENCY.

AGENCY _____

MASTER DEVELOPER W K

Section 9.14 Return of Deposit and Reimbursement to Master Developer under Certain Circumstances

Master Developer shall be entitled to the return of all or a portion of its Deposit, and reimbursement for all or a portion of its Costs, as defined, under the following circumstances:

a. Intentionally Omitted.

b. Intentionally Omitted.

c. Coastal Commission. In the event the Coastal Commission disapproves the Precise Plan, or fails to take action on the Precise Plan (by deeming the application incomplete or otherwise), or Coastal Commission Approval is conditioned on terms that are materially different than the terms set forth in this Agreement, Master Developer shall be entitled, upon ninety (90) days' prior written notice to Agency, to terminate this Agreement, whereupon Agency shall return the Deposit to Master Developer but Master Developer shall have no right to be reimbursed for Reimbursable Costs.

d. State Lands Commission. In the event any approvals of the State Lands Commission required by this Agreement are not granted or are granted subject to conditions that are materially different than the terms set forth in this Agreement, Master Developer shall be entitled, upon ninety (90) days' prior written notice to Agency, to terminate this Agreement, whereupon Agency shall return the Deposit to Master Developer, but Master Developer shall have no right to be reimbursed for Reimbursable Costs.

e. Disapproval of Precise Plan. In the event the City disapproves or fails to adopt the Precise Plan for the Site within one year after the date of this Agreement, or approves the Precise Plan subject to conditions that are materially different than the terms set forth in this Agreement, either the Agency or Master Developer shall have the right to terminate this Agreement upon not less than ninety (90) days' prior written notice, whereupon Agency shall return Deposit to Master Developer and reimburse Master Developer for Reimbursable Costs.

f. Disapproval or Conditions to Other Entitlements. In the event, after approval of the Precise Plan, the City disapproves any other entitlements necessary to carry out this Agreement as to any Parcel, or approves such entitlements subject to conditions that are not consistent with this Agreement and have a material adverse effect on Master Developer's ability to carry out this Agreement, Agency and Master Developer agree to cooperate in good faith and meet and confer regarding the appropriate reduction of the acreage of the Site resulting from such City action, and Master Developer shall have the right, upon ninety (90) days' prior written notice, to delete such Parcel(s) from the Site and proceed with the remainder of the Site. In that event, Agency and Master Developer agree to cooperate in good faith to modify this Agreement to reflect the reduction of the acreage of the Site, and may take any or all of the following actions, as they may determine are appropriate in light of the circumstances: amend the terms of this Agreement to defer or reduce, to the extent warranted, any obligations of the Master Developer; return a portion of the Deposit; reimburse Master Developer for a portion of its Reimbursable Costs; and release a portion of Payment and Performance Bonds previously provided by Master Developer.

g. Agency Default. In the event Master Developer is not in default and the Agency fails to convey to Master Developer fee title to any Sale Parcel or leasehold title to any Lease Parcel, as the case may be, or fails to convey leasehold title to one or more Parcels in the Civic, Arts and Cultural Center to the Foundation, as required by this Agreement, upon the satisfaction of the applicable Phase Three Conditions Precedent or Phase Three (Foundation) Conditions Precedent, as applicable, or fails to pay to Master Developer any sum specifically required to be paid by the Agency pursuant to this Agreement, and fails to cure such default within the time provided in Section 9.1, Agency and Master Developer agree to cooperate in good faith and meet and confer regarding such default, and Master Developer shall have the right, upon ninety (90) days' prior written notice, to terminate this Agreement as to any Parcel for which any Phase Three Conditions Precedent have not been satisfied, whereupon Agency shall return the full amount of Master Developer's Deposit, reimburse Master Developer for Reimbursable Costs and release any Payment and Performance Bonds previously provided by Master Developer to the extent such Payment and Performance Bonds apply to any Parcel for which any Phase Three Conditions Precedent have not been satisfied.

h. Master Developer Default. In the event Agency terminates this Agreement as the result of an uncured default by Master Developer, Agency shall have the right to retain the full amount of the Deposit, and shall have no obligation to reimburse Master Developer for any Reimbursable Costs or to release any Payment and Performance Bonds.

i. Failure of Conditions. In the event the Agency terminates this Agreement as to any Parcel or Parcels as the result of the failure of any Condition Precedent which is not caused by the acts or omissions of Master Developer or an Assignee and which is not within the control of Master Developer or an Assignee (as described in Section 9.1.f. of this Agreement), Agency and Master Developer agree to cooperate in good faith and meet and confer regarding the appropriate reduction of the acreage of the Site resulting from such failure, and Agency shall return to Master Developer that portion of the Deposit reflecting the proportion of the Site (based on acreage) represented by the Parcel or Parcels as to which Agency has terminated this Agreement, and Agency shall release a portion of the Payment and Performance Bonds reflecting the proportion of the Site (based on acreage) represented by the Parcel or Parcels as to which Agency has terminated this Agreement, but Master Developer shall not be entitled to a reimbursement for Reimbursable Costs.

j. Remediation Parcels. In the event the Federal Government fails to quitclaim any of the Remediation Parcels to the City within the time provided in the MOA, and Master Developer deletes such Parcel(s) from the Site and proceed with the remainder of the Site, Agency and Master Developer agree to cooperate in good faith and meet and confer to reflect the reduction of the acreage of the Site, and may take any or all of the following actions, as they may determine are appropriate in light of the circumstances: amend the terms of this Agreement to defer or reduce, to the extent warranted, any obligations of the Master Developer; return a portion of the Deposit; reimburse Master Developer for a portion of its Reimbursable Costs; and release a portion of Payment and Performance Bonds previously provided by Master Developer.

k. Outcome of Litigation. In the event a final decision in any litigation brought by a third Party results in the inability of the Agency to convey the Site to Master Developer, or of Master Developer to perform its material obligations hereunder, Developer shall have the right, upon ninety (90) days' prior written notice to Agency, to terminate this Agreement and receive a refund of the Deposit.

l. Extended Litigation. In the event litigation brought by a third Party is pending for more than one year after the date of this Agreement, and has resulted in the inability of the Agency to convey the Site to Master Developer, or in the event the Agency Executive Director or designee reasonably determines that such litigation is the cause of Master Developer or any Assignee's inability to perform its material obligations hereunder despite the best efforts of such Party to do so, Developer shall have the right, upon ninety (90) days' prior written notice to Agency, to terminate this Agreement and receive a refund of the Deposit.

m. Referendum or Initiative. In the event of the passage of a referendum or initiative that results in the inability of Agency to convey the Site to Master Developer or the inability of Master Developer or any Assignee to perform its material obligations hereunder, Developer shall have the right, upon ninety (90) days' prior written notice to Agency, to terminate this Agreement and receive a refund of the Deposit and Agency shall release any Payment and Performance Bonds.

n. Reimbursable Costs. For purposes of this Section 9.14, Master Developer's Reimbursable Costs shall have the same meaning as "Development Costs" as defined in the Participation Agreement attached to this Agreement as Attachment No. 7, and shall consist of the sum of the following: (1) all documented Development Costs incurred by Master Developer after the mutual execution of this Agreement until paid in accordance with this Section 9.14, including any portion of the \$4,200,000 advanced by Master Developer pursuant to Section 4.3 of this Agreement; plus (2) documented Development Costs in excess of \$1,500,000 incurred by Master Developer between July 16, 1999 and the mutual execution of this Agreement.

Section 9.15 Additional City-Imposed Requirements

a. For purposes of this Agreement, the term "Additional City-Imposed Requirement" shall mean any term, condition or requirement of approval of the tentative subdivision map, Precise Plan or other discretionary action by the City of San Diego or Agency (including any action by the City or Agency that is taken in response to the requirements of the State Coastal Commission), which is imposed upon Master Developer by the City or the Agency and which is attributable to an increase in the estimated budget and cost to complete the Park Improvements to an amount which will exceed \$14,779,800, or, subject to Section 9.16, below, does both of the following:

- (1) materially changes the type, extent, quantity, intensity or quality of any of the Horizontal Improvements described in Appendix "I" to the Reuse Plan, or requires rehabilitation to the buildings in the Historic Core or Educational Core above and beyond Stage One Rehabilitation (except to the extent required by law or for health and safety reasons); and
- (2) results in an increase in the cost of Horizontal Improvements over the baseline assumptions set forth in Appendix "I" to the Reuse Plan.

b. For purposes of this Section 9.15, the term "Additional City-Imposed Costs" shall mean the increased Development Costs, if any, resulting from any Additional City-Imposed Requirements. Subject to Section 9.16, below, Additional City-Imposed Costs shall not include any increase in Development Costs above and beyond the amounts reasonably assumed on the basis of the requirements of the Reuse Plan (including Appendix "I" to the Reuse Plan), the Agency's Request for Proposals and the Exclusive Negotiation Agreement, except to the extent such increase is caused by Additional City-Imposed Requirements. Agency and Master Developer agree that to the extent State law is changed to permit the City to impose any requirement to provide school facilities or to charge school impact fees on Master Developer in addition to or in excess of statutory requirements, such City-imposed requirements or fees shall be deemed to be Additional City-Imposed Costs.

c. Subject to the terms and conditions of this Section 9.15 and Section 9.16, below, to the extent any term, condition or requirement of approval of a tentative subdivision map, the Precise Plan or any other discretionary action of the City of San Diego or the Agency imposes any Additional City-Imposed Requirements on Master Developer subsequent to the execution of this Agreement, Agency shall be responsible for the resulting Additional City-Imposed Costs.

d. Agency's obligation to pay (or reimburse Master Developer for) Additional City-Imposed Costs shall be special, limited obligations of the Agency, payable solely and exclusively from the following sources: (1) tax increment revenues and/or bonds or other indebtedness secured by tax increment revenues derived from the NTC Redevelopment Project; and (2) the Agency's share of Cash Available for Distribution pursuant to the Participation Agreement and/or bonds or other indebtedness secured thereby. The City shall have no liability for any Additional City-Imposed Costs. To carry out this Section 9.15, Agency agrees not to expend, commit or encumber for other purposes any NTC Redevelopment Project tax increment revenues or any portion of the Agency's share of Cash Available for Distribution to the extent the Agency Executive Director reasonably anticipates that there is or will be a need for such funds to pay or reimburse Master Developer for Additional City-Imposed Requirements.

e. Prior to incurring any Additional City-Imposed Costs described in paragraph a. or paragraph c. of this Section 9.15, Master Developer shall give the notice required by Section 9.16, below, and negotiate in good faith with Agency with respect to the terms and conditions under which Master Developer would advance funds for payment of Additional City-Imposed Costs. In the event Agency is unable to finance any such Additional City-Imposed Costs upon terms and conditions (including the rate of interest to be paid) that are reasonably acceptable to Agency, Master Developer

and Agency shall consider in good faith having Master Developer advance its funds to pay for such Additional City-Imposed Costs, to be repaid by Agency pursuant to paragraph d., over a reasonable term upon a reasonable commercial rate of interest.

f. In the event Agency is unable to finance any Additional City-Imposed Costs described in paragraph c. of this Section 9.15, upon terms and conditions that are reasonable acceptable to Agency, Agency shall modify or rescind, or use its best efforts to cause the City to modify or rescind, the corresponding Additional City-Imposed Requirement.

g. Except as provided in this paragraph g., below, Master Developer shall be responsible for any additional costs that are imposed by any governmental body or entity except the Agency or the City (referred to herein as "Other Governmental Requirements"). In the event any additional costs made necessary by any Other Governmental Requirements materially and adversely affects the development of any of the residential, office, or research and development structures contemplated by this Agreement, Agency and Master Developer shall cooperate in good faith to renegotiate the terms of this Agreement to the extent necessary to address such Other Governmental Requirements. Any resulting proposed amendment to the terms of this Agreement shall be subject to the approval of the Agency's governing body.

h. Notwithstanding any provision to the contrary contained herein, Master Developer's obligation to advance funds to pay Additional City-Imposed Costs in connection with the Park Improvements shall be subject to the limitations set forth in the NTC Park Improvement Agreement, attached hereto as Attachment No. 12-B.

Section 9.16 Resolution of Certain Disputes

a. The Parties recognize that over the course of development of the Site, reasonable disagreements may arise between the Parties concerning whether a particular Development Cost that is required to be incurred by Master Developer, which exceeds the cost estimates set forth in Appendix "I" to the Reuse Plan, is the responsibility of Master Developer or qualifies as an "Additional City-Imposed Cost" for which Agency reimbursement is required pursuant to Section 9.15. The Parties agree, notwithstanding any provision to the contrary in this Agreement, that it is not an Additional City-Imposed Requirement if, after the mutual execution of this Agreement, the City or Agency imposes requirements that relate to Horizontal Improvements, which result in costs which exceed the cost estimates set forth in Appendix "I" to the Reuse Plan, if:

- (1) the increase in cost over the costs estimated in Appendix "I" results from inflation or fluctuations in quantity or unit cost of improvements; or
- (2) (A) the requirements are limited to minimum standards generally imposed by the City or Agency on development projects, or are required by good construction practice generally applied in the industry; and

(B) the requirements are consistent with the Reuse Plan (with the exception of Appendix "I"), including the development concepts embodied in the Reuse Plan.

b. The purpose of this Section is to provide a procedure for the expeditious resolution of any such dispute.

c. Prior to incurring any Additional City-Imposed Costs, described in paragraph a. or paragraph c. of Section 9.15, Master Developer shall submit a written notice to the Agency Executive Director, claiming that a City-Imposed Additional Requirement (as defined in Section 9.15) will result in an Additional City-Imposed Cost (as defined in Section 9.15). Not later than ten (10) business days after receipt of such notice, the Agency Executive Director or designee shall notify Master Developer in writing whether the Agency concurs that the specified cost is a City-Imposed Additional Cost. If the Agency Executive Director or designee does not concur, or fails to respond within such ten-day period, Master Developer shall have the right to require Agency to meet and confer to attempt to resolve the issue. Within five (5) business days after receipt of a notice requiring that the Agency meet and confer, the Agency Executive Director or designee and a senior representative of the Master Developer shall meet and confer to attempt to resolve the issue. The representatives of the Parties shall act in good faith and use best efforts to reach a decision within five (5) business days. If either Party determines at the end of such five-day period that the Parties will not be able to resolve the matter, either Party shall have the right to refer to arbitration the question whether the particular Horizontal Improvement Development Cost at issue (but not including any Park Improvement or any cost relating to the rehabilitation of the Historic Core or Educational Core) is the responsibility of Master Developer or qualifies as an "Additional City-Imposed Cost" for which Agency reimbursement is required pursuant to Section 9.15 and this Section 9.16.

d. Matters For Arbitration

ANY DISPUTE WHICH ARISING UNDER THIS SECTION 9.16 SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE TERMS OF THIS SECTION. ANY CONTROVERSY REGARDING WHETHER A DISPUTE IS AN ARBITRABLE DISPUTE SHALL BE DETERMINED BY THE ARBITRATOR.

e. ARBITRATOR.

EITHER PARTY MAY INITIATE THE ARBITRATION PROCEDURE BY DELIVERING A WRITTEN NOTICE OF DEMAND FOR ARBITRATION TO THE OTHER PARTY. WITHIN TEN (10) BUSINESS DAYS AFTER THE OTHER PARTY'S RECEIPT OF THE WRITTEN NOTICE OF DEMAND FOR ARBITRATION, THE PARTIES SHALL ATTEMPT TO SELECT A QUALIFIED ARBITRATOR WHO IS ACCEPTABLE TO BOTH PARTIES. IF THE PARTIES ARE UNABLE TO AGREE UPON AN ARBITRATOR WHO IS ACCEPTABLE TO BOTH PARTIES, EITHER PARTY MAY REQUEST THE AMERICAN ARBITRATION ASSOCIATION ("AAA") TO APPOINT THE ARBITRATOR IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES. THE ARBITRATION SHALL BE CONDUCTED BY A SINGLE NEUTRAL ARBITRATOR HAVING EXPERIENCE IN LAND USE PLANNING AND CONSTRUCTION. THERE SHALL BE ONLY ONE ARBITRATOR WHO SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES, FAILING WHICH THE SELECTION SHALL BE MADE BY THE AAA, IF APPROPRIATE. THE ARBITRATOR SHALL HAVE NO PRIOR AFFILIATION WITH EITHER PARTY, INCLUDING HAVING BEEN THE ARBITRATOR ON ANY OTHER MATTER INVOLVING EITHER PARTY. THE PARTIES FURTHER AGREE IRREVOCABLY TO SUBMIT THEMSELVES, IN ANY SUIT TO CONFIRM THE JUDGMENT OR FINDING OF SUCH ARBITRATOR, TO THE JURISDICTION OF THE CALIFORNIA SUPERIOR COURT LOCATED IN SAN DIEGO COUNTY AND WAIVE ANY AND ALL OBJECTIONS TO JURISDICTION THAT THEY MAY HAVE UNDER THE LAWS OF THE STATE OF CALIFORNIA OR THE UNITED STATES.

f. Rules of Arbitration.

THE RULES TO BE FOLLOWED IN THE ARBITRATION ARE AS FOLLOWS: CLAIMS COMPRISING THE DEMAND FOR ARBITRATION SHALL BE SUBMITTED IN THE FORM OF A COMPLAINT, PREPARED IN CONFORMANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 420 ET SEQ., PERSONALLY SERVED ON ALL RESPONDING PARTIES. THE RESPONDENT SHALL HAVE THIRTY (30) DAYS TO SERVE A RESPONSE WHICH SHALL TAKE THE FORM OF AN ANSWER, PREPARED IN COMPLIANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 431.30. DEMURRERS, MOTIONS TO STRIKE, AND OTHER PRETRIAL MOTIONS SHALL BE PERMITTED. THE MATTERS AT ISSUE SHALL BE SET FOR HEARING BY THE ARBITRATOR. WITHIN TWENTY (20) DAYS AFTER THE FILING OF THE RESPONSE TO THE CLAIM THE ARBITRATOR SHALL SCHEDULE, UPON MUTUAL AGREEMENT OF THE PARTIES, A PRE-HEARING CONFERENCE, DISCOVERY AND HEARING DATES. IF THE PARTIES ARE UNABLE TO AGREE, THE ARBITRATOR SHALL SET THE APPROPRIATE DATES; PROVIDED, HOWEVER, THE ENTIRE ARBITRATION PROCEEDING MAY NOT TAKE MORE THAN THREE (3) MONTHS. THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1283.05 OR ITS SUCCESSOR SECTION(S) ARE INCORPORATED IN AND MADE A PART OF THIS AGREEMENT. DEPOSITIONS MAY BE TAKEN AND DISCOVERY MAY BE OBTAINED IN ANY ARBITRATION UNDER

THIS AGREEMENT IN ACCORDANCE WITH SAID SECTION(S). ANY DISPUTES CONCERNING DISCOVERY SHALL BE SUBMITTED TO THE ARBITRATOR. ARBITRATION HEARING(S) SHALL BE CONDUCTED IN SAN DIEGO COUNTY, CALIFORNIA. THE ARBITRATOR SHALL APPLY CALIFORNIA LAW RELATING TO PRIVILEGES AND WORK PRODUCT, AT THE ARBITRATION HEARING, ORDER OF PROOF SHALL BE GOVERNED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE. ADMISSIBILITY SHALL BE GOVERNED BY THE CALIFORNIA EVIDENCE CODE. EXCEPT AS OTHERWISE PROVIDED, THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE THEN EXISTING COMMERCIAL ARBITRATION RULES OF THE AAA.

g. Decision of the Arbitrator.

THE ARBITRATOR SHALL COMPLY WITH, AND THE DECISION OF THE ARBITRATOR SHALL BE RENDERED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES AGREE TO BE BOUND BY THE DECISION OF THE ARBITRATOR, WHICH SHALL BE FINAL, SHALL NOT BE APPEALABLE, AND WHICH SHALL NOT PERMIT TRIAL DE NOVO ON THE SAME ISSUES. THE ARBITRATOR'S DECISION SHALL BE RENDERED WITHIN THIRTY (30) DAYS FOLLOWING SUBMISSION OF THE MATTER AT ISSUE, BUT THE FAILURE TO COMPLY WITH THIS PROVISION SHALL IN NO WAY INVALIDATE ANY DECISION AS MAY BE RENDERED MORE THAN THIRTY (30) DAYS AFTER SUBMISSION. IN RENDERING HIS OR HER DECISION, THE ARBITRATOR SHALL SET FORTH THE REASONS FOR HIS OR HER DECISION. THE FEES AND EXPENSES OF THE ARBITRATOR SHALL BE PAID IN THE MANNER ALLOCATED BY THE ARBITRATOR. THE ARBITRATOR SHALL AWARD REASONABLE LEGAL FEES, DISBURSEMENTS AND OTHER EXPENSES TO THE PREVAILING PARTY FOR SUCH AMOUNTS AS DETERMINED BY THE ARBITRATOR TO BE APPROPRIATE. THE JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE UNDER THE PREVAILING ARBITRATION LAW. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

h. Notice.

BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THIS SECTION 9.16 DECIDED BY A NEUTRAL ARBITRATOR AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 9.16. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO
SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN SECTION 9.16
TO BINDING ARBITRATION IN ACCORDANCE WITH THIS SECTION 9.16.

AGENCY'S INITIALS

MASTER DEVELOPER'S
INITIALS

Uth Ke

PART 10 GENERAL PROVISIONS

Section 10.1 Notices, Demands and Communications between
the Parties

Formal notices, demands and communications between Agency and Master Developer shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Master Developer as set forth in Sections 1.5 and 1.6 hereof. Notices, demands and communications to the Foundation or any other Assignee shall be directed to the respective address for such Party set forth in the applicable Assignment and Assumption Agreement. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission, provided that if such transmission is delivered after 5:00 p.m., notice shall be deemed given on the next business day; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 10.2 Force Majeure Delay

a. Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation brought by a third Party (but only to the extent performance is enjoined by a court of competent jurisdiction as the result of such

litigation), unusually severe weather, reasonably unforeseeable Site Conditions including the presence of Hazardous Materials, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other Party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the Party claiming an extension of time to perform. Provided, however, in the event the Master Developer reasonably determines (and the Agency Executive Director or designee concurs with such determination, which concurrence shall not be unreasonably withheld) that litigation brought by a third Party is the cause of Master Developer or any Assignee's inability to obtain necessary entitlements or financing despite the best efforts of such Party to do so, the failure to timely perform any obligation hereunder as the result of such litigation shall not be a default so long as Master Developer or Assignee continues to perform its obligations to the maximum extent possible.

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

c. Notwithstanding any provision of this Agreement, Agency agrees that in the event Master Developer fails to perform any obligation to be performed by Master Developer hereunder as the result of adverse changes in market conditions affecting the development, sale or lease of any part of the Site, the Agency Executive Director shall not terminate this Agreement or exercise the Agency's right of reverter without first providing Master Developer a reasonable opportunity to address the governing body of the Agency at a public meeting.

Section 10.3 Conflict of Interest

a. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal

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

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

Section 10.4 Nonliability of Agency Officials and Employees

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

Section 10.5 Inspection of Books and Records

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

Section 10.6 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Agency or Master Developer in this Agreement, including the attachments hereto, shall not be unreasonably withheld, conditioned or delayed.

b. Any matter required by this Agreement to be submitted to the Agency shall be deemed submitted upon the submittal to the Agency's Executive Director or designee.

c. Except where the terms of this Agreement expressly require the approval of a matter or the taking of any action by the Agency's governing body, any matter to be approved by the Agency shall be deemed approved, and any matter to be taken by the Agency shall be deemed taken, upon the written approval by the Agency's Executive Director or designee.

Section 10.7 Real Estate Commissions

Agency shall not be liable for any real estate commissions, brokerage fees or finders fees which may arise from this Agreement. Agency represents that it has engaged no broker, agent, or finder in connection with this transaction. Master Developer represents that it has engaged no broker, agent or finder in connection with this transaction.

Section 10.8 Construction and Interpretation of Agreement

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

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

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

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

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

Section 10.9 Time of Essence

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

Section 10.10 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other relationship between the parties hereto other than purchaser and seller and landlord and tenant according to the provisions contained herein, or cause Agency to be responsible in any way for the debts or obligations of Master Developer, or any other Party.

Section 10.11 Compliance with Law

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

Section 10.12 Binding Effect

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

Section 10.13 No Third Party Beneficiaries

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

Section 10.14 Authority to Sign

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

Section 10.15 Incorporation by Reference

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

Section 10.16 Counterparts

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

Section 10.17 Entire Agreement, Waivers and Amendments

a. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original.

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

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency or Master Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Master Developer. Any amendment to the Agreement shall require the approval of the governing body of the Agency.

Section 10.18 Approval Procedures

This Agreement, when executed by Master Developer and delivered to Agency, will then be scheduled for a public hearing before the governing body of the Agency and the City Council. This Agreement must be authorized, executed and delivered by Agency within sixty (60) days after date of signature by Master Developer or Master Developer shall have the authority to withdraw its offer to enter into this Agreement upon written notice to Agency. The effective date of this Agreement shall be the date when this Agreement has been executed by Agency and delivered to Master Developer.

IN WITNESS WHEREOF, Agency and Master Developer have signed this Agreement as of the date first set forth above.

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

By: _____
Hank Cunningham
Deputy Executive Director

APPROVED AS TO FORM AND LEGALITY
Casey Gwinn
Agency General Counsel

By: _____
Richard A. Duvernay

KANE, BALLMER & BERKMAN
Agency Special Counsel

By:  _____
Glenn F. Wasserman

[signatures continue on next page]

McMILLIN-NTC, LLC, a Delaware
limited liability company

By: McMillin Companies, LLC, a
Delaware limited liability
company, its managing member

By: Walter H. J.

By: Kimberly K. Elliott

APPROVED AS TO FORM AND LEGALITY:

SELTZER CAPLAN WILKINS VITEK
Counsel to the Master Developer

By: Brian F. Seltzer