

**DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

by and between

**THE CITY OF SAN DIEGO,
a California municipal corporation,**

and

[TO BE DETERMINED]

CITY OF SAN DIEGO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”), dated **[TO BE DETERMINED]**, for reference purposes only, is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation (“**City**”), and **[TO BE DETERMINED]** (“**Developer**”).

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND AGREEMENTS OF CITY AND DEVELOPER IN THIS AGREEMENT, CITY AND DEVELOPER AGREE, AS FOLLOWS:

1. **PURPOSES.** City owns that certain real property generally located at 1401 Imperial Avenue within the East Village neighborhood of downtown San Diego and more specifically defined in Section 2.87 as the “Property.” The purposes of this Agreement are for City to convey title to the Property to Developer for Developer to redevelop the Property an affordable multi-family residential rental development in which all of the residential units are affordable to low-income individuals and families, all as more specifically described in Section 2.84 defining the “Project” and the “Regulatory Agreement” (defined in Section 2.92), under the provisions of this Agreement. The conveyance of the Property to Developer and Developer’s redevelopment of the Property with the Project are all in the vital and best interests of City and the health, safety, and welfare of City residents.

2. **DEFINITIONS.** The following words, terms, or phrases indicated to be defined terms in this Agreement by initial capitalization are used in this Agreement with the following meanings:

2.1 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with a specified Person.

2.2 **Agreement.** This Disposition and Development Agreement dated **[TO BE DETERMINED]**, between City and Developer.

2.3 **Application.** Each agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for the Construction of the Project, including each application for any land use entitlement, building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument that Developer may reasonably request for the Project; or (b) to enable Developer to seek any Approval or operate the Project.

2.4 **Approval.** Each license, permit (including building, grading, demolition, alteration, use and special permits), approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete Construction of the Project or operate the Project.

2.5 Architect Contract. A current, executory agreement between Developer and a State licensed architect for preparation of the Plans.

2.6 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.7 Builder. A State licensed general contractor experienced in the Construction of improvements like the Project and having a net worth equal to or greater than the total cost of the Project.

2.8 Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

2.9 CDTFA. Defined in Section 11.8.

2.10 Certificate of Occupancy. A Certificate of Occupancy as defined in the Uniform Building Code published by the International Conference of Building Officials, as adopted by City, from time to time.

2.11 City. The City of San Diego, a California municipal corporation, and any assignee of or successor to such municipal corporation's rights, powers, or responsibilities.

2.12 City Council. The City Council of City.

2.13 City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.

2.14 City Party. Individually, City, the City Council, and each City elected official, employee, agent, or attorney.

2.15 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including consultant fees and expenses, expert fees and expenses, or investigation costs of whatever kind or nature), Legal Costs, or any judgement.

2.16 Close of Escrow. The first date on which Escrow Agent completes all the actions described in Section 10.9.

2.17 Construction. Any alteration, construction, installation, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, restoration, or other work affecting the Property, including new construction. "Construct" has the correlative meaning.

2.18 Construction Contract. A current, executory agreement between Developer and a Builder for Construction of the entire Project for a fixed or guaranteed maximum price expressly

stated in the contract, with a commercially reasonable retention amount not to be paid to the Builder until after City issuance of a Release of Construction Covenants, complying with all the provisions of this Agreement and all Approvals, and conditioned only upon: (a) the Close of Escrow; (b) Developer's receipt of all Approvals; (c) funding of the Initial Project Financing; and (d) other commercially reasonable terms and conditions.

2.19 Construction Surety. Payment and performance bonds guaranteeing the performance of the Construction Contract by the Builder and that the Construction of the Project shall be completed by the Builder or, on the Builder's default, the surety or guarantor, as required in this Agreement. Such bonds shall be in form and substance reasonably acceptable to City, for an amount not less than one hundred percent (100%) of the Construction Contract fixed or guaranteed maximum price, for the benefit of Developer, with City named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, with an underwriting limitation, under California Insurance Code Section 12090, greater than the contract amount of the bond. The bonds shall, by their express terms, remain in full force and effect and Developer shall maintain the bonds in full force and effect, until City issuance of a Release of Construction Covenants. The Construction Surety shall be in addition to all public improvement security required by Government for the Project.

2.20 Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified Person and bind the Person, whether by ownership of Equity Interests, by contract, or otherwise. "Controlling" and "Controlled" mean exercising or having Control.

2.21 County. The County of San Diego, California.

2.22 County Recorder. The Recorder of or for the County.

2.23 Deed. The deed conveying fee title to the Property from City to Developer in substantially the form of **EXHIBIT J** attached to this Agreement.

2.24 Default. Any Monetary Default, Non-Monetary Default, or Escrow Default.

2.25 Default Interest. Interest at a rate equal to the lesser of: (a) eight percent (8%) annually; or (b) the highest rate allowed by Law.

2.26 Deposit. One hundred thousand dollars (\$100,000).

2.27 Developer. [**TO BE DETERMINED**], and its permitted successors or assigns under this Agreement.

2.28 Developer Entity Documents. The organizational documents of the Developer, including all amendments, all of which Developer shall certify as accurate and update on the date of the Close of Escrow, a Certificate of Good Standing from the California Secretary of State certifying that Developer is authorized to conduct business in the State, a certification in form and substance acceptable to City by the Developer's Board of Directors, general partners, or members

authorizing Developer to enter into and perform this Agreement and designating the signer(s) to bind Developer, and all agreements between Developer and Project investors.

2.29 Developer Parties. Collectively, Developer, its shareholders, partners, members, managers, directors, officers, employees, agents, attorneys, and all owners of Equity Interests in Developer.

2.30 Developer Party. Individually, Developer, its shareholders, partners, members, managers, directors, officers, employees, agents, attorneys, or each owner of an Equity Interest in Developer.

2.31 Developer Title Policy. A standard coverage policy of title insurance issued by the Title Company, with coverage in the amount of **[TO BE DETERMINED DOLLAR AMOUNT]**, insuring title to the Property vested in Developer. If a survey is required to obtain the Developer Title Policy, the survey must be completed by Developer before the Escrow Closing Date and at Developer's sole cost and expense.

2.32 Due Diligence Investigations. Developer's due diligence investigations of the physical and economic feasibility of the Property for Developer's intended use of the Property, including investigation of the environmental and geotechnical conditions of the Property, all as determined appropriate in the reasonable discretion of Developer and all at the sole cost and expense of Developer.

2.33 Due Diligence Notice. A Notice from Developer stating either: (a) Developer's unconditional acceptance of the condition of the Property; (b) Developer's conditional acceptance of the condition of the Property, describing in reasonable detail the actions Developer reasonably believes are necessary to allow Developer to unconditionally accept the condition of the Property; or (c) Developer's rejection of the condition of the Property.

2.34 Due Diligence Period. The **[TO BE DETERMINED NUMBER]** days commencing on the day immediately following the Effective Date.

2.35 Due Diligence Response. A Notice from City in response to the Due Diligence Notice in which City either: (a) agrees to take some or all the action(s) identified in the Due Diligence Notice as necessary to allow Developer to unconditionally accept the condition of the Property or some alternate action(s); or (b) not take any action in response to the Due Diligence Notice.

2.36 Effective Date. The date on which this Agreement is approved as to form by the San Diego City Attorney, as shown on the signature page of this Agreement.

2.37 Environmental Condition. Any of the following events relating to the Property or Construction or operation of the Project or arising from the negligence of a Developer Party: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

2.38 Environmental Document. Each exemption determination, Negative Declaration (mitigated or otherwise), or Environmental Impact Report (including each addendum or amendment to, or subsequent or supplemental Environmental Impact Report) under the California

Environmental Quality Act, California Public Resources Code Sections 21000, et seq., or each categorical exclusion, exemption, environmental assessment, finding of no significant impact, or environmental impact statement under the National Environmental Policy Act, 42 U.S.C. §§4321-4370h, required or permitted by any Government to issue any discretionary Approval or approve this Agreement.

2.39 Environmental Law. Each Law regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene; (c) occupational or environmental conditions on, under, or about the Property or relating to the Construction or operation of the Project; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

2.40 Equity Interest. Each equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

2.41 Equity Interest Transfer. Each of the following actions or events, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) each sale, assignment, conveyance, pledge, hypothecation or transfer in any other mode or form, of or with respect to more than ten percent (10%) of the Equity Interests in Developer (even though Developer itself is not the transferor); or (b) each merger, consolidation, sale, lease, or the like, or a series of mergers, consolidations, sales, leases, or the like that, in the aggregate, result in a disposition of substantially all of Developer's assets.

2.42 Escrow. An escrow, as defined in California Civil Code section 1057 and California Financial Code section 17003(a), that is conducted by the Escrow Agent for the purchase and sale of the Property under this Agreement.

2.43 Escrow Agent. Chicago Title Company, a California corporation, or another Person mutually agreed upon in writing by both Parties.

2.44 Escrow Closing Date. The earlier of: (a) on or before the third (3rd) Business Day following Escrow Agent's receipt of written confirmation from each Party that all conditions precedent to the Close of Escrow for the benefit of that Party are satisfied or waived by the Party; or (b) **[DATE CERTAIN TO BE DETERMINED – NOT LATER THAN JANUARY 15, 2025]**, subject to extension under Section 10.10.

2.45 Escrow Closing Statement. A statement prepared by Escrow Agent showing, among other things, Escrow Agent's estimate of all funds to be deposited or received by City or Developer, respectively, and all charges to be paid by City or Developer, respectively, through the Escrow.

2.46 Escrow Default. The unexcused failure of a Party to submit any document or funds to the Escrow Agent as reasonably necessary to close the Escrow, after all other conditions precedent to the Close of Escrow for the benefit of the Party, excluding conditions not satisfied due to other failures of the Party to submit documents or funds to the Escrow Agent, are satisfied or waived by the Party.

2.47 Escrow Opening Date. The first date on which a copy of this Agreement signed by the respective authorized representatives of City and Developer and approved as to form by the San Diego City Attorney is deposited with Escrow Agent.

2.48 Event of Default. The occurrence of any one or more of the following:

2.48.1 *Monetary Default*. Each Monetary Default continuing for seven (7) days after Notice to the Party in Default describing the Monetary Default in reasonable detail;

2.48.2 *Escrow Default*. Each Escrow Default continuing for seven (7) days after Notice to the Party in Default describing the Escrow Default in reasonable detail;

2.48.3 *Bankruptcy or Insolvency*. A Party ceases to pay its debts as they become due, admits in writing that it is unable to pay its debts as they become due, becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all the Party's assets, including the Property or the Project, or the Party's interest in this Agreement (unless the appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days after being made);

2.48.4 *Developer Transfer*. Each occurrence of a Transfer or Equity Interest Transfer by or affecting Developer, whether made voluntarily, involuntarily, or by operation of Law, in violation of Section 16.2;

2.48.5 *Non-Monetary Default*. Each Non-Monetary Default, other than those specifically addressed in Sections 2.48.3 or 2.48.4, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after the date of the Notice of the Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure the Non-Monetary Default; (b) within thirty (30) days after the date of the Notice of the Non-Monetary Default, commence curing the Non-Monetary Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time.

2.49 Federal. Relating to or under the authority of the federal government of the United States of America.

2.50 Final Due Diligence Notice. A Notice from Developer stating either: (a) Developer's waiver of all matters conditionally accepted in the Due Diligence Notice that City did not agree to address in the Due Diligence Response; or (b) Developer's rejection of the condition of the Property.

2.51 Financing Plan. The plan for financing Developer's acquisition of the Property and Construction of the Project on the Property specifically described in **EXHIBIT H** attached to this Agreement. **[FINANCING PLAN EXPECTED TO BE CREATED BASED ON INFORMATION IN THE SELECTED PROPOSAL.]**

2.52 FIRPTA Certificate. A certification that City is not a “foreign person” within the meaning of such term under Section 1445 of the United States Internal Revenue Code.

2.53 Form 593. A California Franchise Tax Board Form 593-C.

2.54 Government. All Federal, State, County, district, City, or other governments and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any government, whether in existence on the Effective Date or subsequently established, having or claiming jurisdiction over any Party, the Property, the Project, this Agreement, or any activity this Agreement allows.

2.55 Hazardous Substance. Each flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any material, substance, or waste, including any solid, liquid, gas, odor, or any form of energy, from whatever source, that: (i) is or becomes regulated, defined, or classified as “hazardous,” “toxic,” “harmful,” or by similar terms under any Law; (ii) is subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health or safety, plant life, animal life, natural resources, property, or the enjoyment of life or property free from its presence in the environment; or (iii) is or becomes subject to any Law requiring special handling in its use, transportation, generation, collection, storage, treatment, or disposal.

2.56 Hazardous Substance Discharge. Each deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Property, or during transportation of any Hazardous Substance to or from the Property (whether on its own or contained in other material or property), or arising at any time from the use, occupancy, or operation of the Property or any activities conducted at, on, under, or from the Property, including Construction of the Project, whether or not caused by a Party or occurring before or after the Close of Escrow.

2.57 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including Legal Costs and other costs incurred in enforcing the indemnity, defense, or hold harmless obligation(s) under this Agreement relating to the Claim.

2.58 Independent Contract Consideration. One hundred dollars (\$100).

2.59 Initial Project Financing. All financing (loans, grants, subsidies, tax credits, equity contributions, etc.) to pay all of Developer’s costs of acquiring the Property and Construction of the Project identified in the Financing Plan as closing and funding at the Close of Escrow.

2.60 Institutional Lender. Any of the following Persons that is not a Prohibited Transferee: (a) a Federal or State regulated bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) savings bank (State or Federal); (f) pension, welfare, or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing mortgage loans; (i) a Federal or State regulated

investment bank; (j) a Fortune 500 company; (k) a wholly-owned subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); or (l) any Person that is an Affiliate of or is a combination of any one or more of the Persons described in clauses “(a)” through “(k)” of this Section 2.60.

2.61 Insurance Documents. Certified copies of insurance policies and endorsements showing that all insurance coverage required to be obtained by Developer under this Agreement is in effect.

2.62 Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable in any manner to any Party, the Property, the Project, any Construction on the Property, this Agreement, any Party’s rights, obligations, or remedies under this Agreement, or any Transfer or Equity Interest Transfer, whether in force on the Effective Date or passed, enacted, modified, amended, or imposed at some later time, including any retroactively applicable law, subject in all cases, however, to each applicable waiver, variance, or exemption.

2.63 Legal Costs. In reference to any Person, all reasonable costs and expenses the Person incurs in any legal proceeding (or other matter for which the Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs, and reasonable consultant and expert witness fees and expenses.

2.64 Management Agreement. A current, executory agreement between Developer and another Person with, at least, five (5) years’ experience successfully managing affordable multi-family residential rental projects like the Project for management of the Project under the provisions of this Agreement and the Regulatory Agreement and approved by City.

2.65 Mayor. The Mayor, from time to time, of City, or his or her designee or successor in function.

2.66 Monetary Default. Any failure by a Party to pay, deposit, or provide, when and as this Agreement requires, any amount of money, evidence of insurance coverage, or surety bond required to be paid, deposited, or provided under this Agreement, whether to or with a Party or a Third Person, except to the extent the failure constitutes an Escrow Default.

2.67 Monitoring Agreement. An agreement among, City, Developer, and SDHC, for SDHC to monitor Developer’s compliance with the affordable housing provisions of the Regulatory Agreement and for Developer to pay the costs of the monitoring by SDHC, among other things, in substantially the form attached to this Agreement as **EXHIBIT F**.

2.68 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default or an Escrow Default: (a) the failure of a Party to perform any one of its obligations under this Agreement; (b) the failure of a Party to comply with any covenant, condition, restriction, or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement.

2.69 Notice. Any approval, consent, demand, designation, election, notice, or request under this Agreement. All Notices must be in writing.

2.70 Notice of Completion. The notice described in and ascribed the same name in California Civil Code section 8182.

2.71 Notify. To give a Notice.

2.72 Parties. Collectively, City and Developer.

2.73 Party. Individually, either City or Developer, as applicable.

2.74 Permit Ready. An Approval that is in a position to be issued to Developer by the applicable Government upon Developer's: (a) payment of applicable fees or assessments and the posting of required bonds, the costs of which are included in the final Project Budget approved by City prior to the Close of Escrow; and (b) acquisition of title to the Property under the Deed.

2.75 Permitted Encumbrance. Each of the following: (a) each item shown in the Preliminary Report for the Developer Title Policy, as an exception to coverage under the Developer Title Policy; (b) all liens for non-delinquent property taxes or assessments; (c) all Laws applicable to the Property; (d) this Agreement; (e) the Regulatory Agreement; (f) all Permitted Security Instruments; (g) all existing improvements on the Property as of the Effective Date; (h) all Approvals relating to the Property or the Project; (i) utility easements directly related to the Project; or (j) any other document or encumbrance expressly required or allowed to be recorded against the Property or the Project under this Agreement or Law.

2.76 Permitted Lender. The holder of any Permitted Security Instrument.

2.77 Permitted Security Instrument. Any Security Instrument made or entered into by Developer: (a) encumbering only the Property or any interest in the Property; (b) held by an Institutional Lender subject to the jurisdiction of the courts of the State and not immune from suit and cannot elect to be immune from suit; (c) a copy of which is delivered to City promptly after being made, with a certification by the Institutional Lender holding the Security Instrument that the copy is accurate and stating the holder's name and Notice address; and (d) only securing repayment of the Initial Project Financing.

2.78 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.79 Plans. The plans and specifications for the Project approved by City as the governmental land use regulatory authority for the Property.

2.80 Preliminary Report. The preliminary report issued by the Title Company in contemplation of the issuance of the Developer Title Policy attached to this Agreement as **EXHIBIT B**.

2.81 Prevailing Wage Action. Each of the following events: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1782; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, including under California Labor Code section 1781 or 1782, or applicable Federal Law.

2.82 Prohibited Encumbrance. Each lien, Security Instrument, mechanic's lien, easement, property interest, or other encumbrance recorded or asserted against the Property that is not a Permitted Encumbrance.

2.83 Prohibited Transferee. Any Person: (a) with whom City is in litigation at the time a Transfer or Equity Interest Transfer to the Person is proposed, made, to be made by, or affecting Developer, exclusive of defendants in eminent domain litigation commenced by City, where the right of City to take the subject property is not challenged; (b) that City reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States; (c) identified as a specially designated national or blocked person by the United States Department of the Treasury and listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by law, rule, regulation or executive order, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (d) that is entitled to claim diplomatic immunity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

2.84 Project. The improvements described in **EXHIBIT E** attached to this Agreement.

2.85 Project Budget. The estimated budget for acquisition of the Property and Construction of the Project on the Property submitted by Developer to City and approved by City prior to the Close of Escrow under Section 10.5.1.

2.86 Project Completion Date. The date that is [**TO BE DETERMINED NUMBER**] days following the date of the Close of Escrow.

2.87 Property. That certain real property specifically described in **EXHIBIT A** attached to this Agreement.

2.88 Punchlist Work. Construction of an insubstantial nature that, if not completed, will not delay issuance of a final Certificate of Occupancy (or equivalent approval) for the Project by the City or materially interfere with use or occupancy of the Project.

2.89 Purchase Price. [**TO BE DETERMINED DOLLAR AMOUNT**].

2.90 Record, recorded, recording or recordation. Recordation of the specified document in the official records of the County Recorder.

2.91 Refinancing. Any loan secured by a Permitted Security Instrument that Developer obtains from an Institutional Lender for any of the following purposes: (1) to pay off all or a portion of an existing loan secured by a Permitted Security Instrument where the Lender providing the new loan will disburse loan proceeds to or on behalf of Developer exceeding the amount of principal and interest under the existing loan being paid plus the amount of any reasonable and customary fees and costs associated with obtaining such new loan that are actually paid by Developer and not rebated or refunded to Developer, the aggregate amount of such fees and costs not to exceed three percent (3%) of the original principal amount of the new loan; (2) disbursing funds to or on behalf of Developer without paying off all or any portion of any existing loan secured by a Permitted Security Instrument; or (3) any loan extension, modification or equivalent regarding an existing loan to Developer secured by a Permitted Security Instrument that results in the Lender of the existing loan either: (a) disbursing additional loan proceeds to or on behalf of Developer in excess of the original principal amount of the loan; (b) shortening the repayment amortization schedule for the loan; or (c) increasing the interest rate for the loan.

2.92 Regulatory Agreement. That certain “Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions Restricting Use of Property for Affordable Housing (1401 Imperial Avenue)” to be entered into by and between the Parties and recorded against the Property at the Close of Escrow, substantially in the form attached to this Agreement as **EXHIBIT I**.

2.93 Release of Construction Covenants. City’s written certification that Construction of the Project is complete in accordance with this Agreement, substantially in the form attached to this Agreement as **EXHIBIT K**.

2.94 SDHC. The San Diego Housing Commission, a public agency.

2.95 Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Property, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more security instruments are consolidated or restated as a single lien or held by the same Person, then all the security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

2.96 Senior. When referring to multiple Security Instrument(s), means the Security Instrument that is most senior in lien priority of the same type (Fee or Leasehold). Where “Senior” is used as a comparative term as against any specified Security Instrument, such term refers to any Security Instrument of the same type (Fee or Leasehold) that is senior in lien priority to such specified Security Instrument. If only one Security Instrument of a particular type exists, then it shall be deemed the “Senior” Security Instrument of such type.

2.97 State. The State of California.

2.98 Third Person. Any Person that is not a Party, an Affiliate of a Party, a City Party, or a Developer Party.

2.99 Title Company. Chicago Title Company, a California corporation, or another title insurance company mutually agreed upon in writing by both City and Developer.

2.100 Transfer. Each of the following events, whether occurring by operation of law or otherwise, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer of all or any part of Developer's legal, beneficial, or equitable interest in this Agreement, the Project, or the Property; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any Equity Interest(s) in Developer by the owner(s) of the Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the transactions described in clauses "(a)" through "(c)" of this Section 2.100. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)" of this Section 2.100, shall be considered a Transfer by Developer even though Developer is not technically the transferor. A "Transfer" shall not, however, include any transaction (provided that the other Party receives Notice of the transaction at least fifteen (15) days before the transaction is final) relating to any Equity Interest: (a) constituting a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under Federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Effective Date, holds an Equity Interest in, or is under common control with, the Person whose Equity Interest is being transferred.

2.101 Transferee. Each Person (other than a Prohibited Transferee) acquiring an Equity Interest in Developer through an Equity Interest Transfer or acquiring all or any portion of Developer's interest in this Agreement, the Project, or the Property through a Transfer. A Prohibited Transferee shall never be a "Transferee."

2.102 Unavoidable Delay. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including labor strike or other labor union activities, casualty, war, acts of terrorism, riot, Government action, regional natural disaster, or inability to obtain required materials, except: (a) delay in payment of money, unless the delay in the payment of money is due to one of the causes described above in this Section 2.102 that prevents or materially limits the ability to transfer funds by or between Federally regulated financial institutions and only to the extent the Party is actually delayed in paying by the banking disruption; or (b) delay caused by a Party's financial condition, illiquidity, or insolvency.

2.103 Use Tax. Defined in Section 11.8.

3. **EFFECTIVE DATE**. This Agreement shall only become effective on the Effective Date. If the Effective Date does not occur, this Agreement shall be of no force or effect.

4. **RESERVATIONS**. The approval of this Agreement or other action in performance of this Agreement by City shall not be binding on City, the City Council, or any other commission,

committee, board, or body of City regarding any Approval related to the Property, the Project, or Developer required by City, the City Council, or any other commission, committee, board, or body of City.

5. **DEPOSIT.** Developer shall deliver the Deposit to Escrow Agent within three (3) Business Days following the Escrow Opening Date. The Deposit shall be fully refundable to Developer, upon termination of this Agreement during the Due Diligence Period or as a result of an Event of Default by City. The Deposit shall become non-refundable to Developer, as earned compensation to City for providing the Due Diligence Period, upon the expiration of the Due Diligence Period (without Developer terminating this Agreement). At the Close of Escrow, the Deposit shall be credited to the account of Developer. City is not required to pay or earn interest on the Deposit, but, if interest is earned on the Deposit, the interest will be City's sole property even if the Deposit is returned to Developer under this Agreement.

6. **INDEPENDENT CONTRACT CONSIDERATION.** On or before the Effective Date, Developer shall deliver to City, by check, the Independent Contract Consideration. The Independent Contract Consideration amount was bargained for and agreed to between Developer and City as adequate consideration for Developer's right to purchase the Property under this Agreement, Developer's right to terminate this Agreement during the Due Diligence Period, and for City signing and delivering this Agreement to Developer. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, is nonrefundable in all circumstances, and shall not be credited in any manner to Developer at the Close of Escrow.

7. **DEVELOPER'S PROPERTY TITLE APPROVAL.** Developer approves the state of the Property title as shown in the Preliminary Report, subject to the Permitted Encumbrances and Sections 9.2, 9.6, and 9.8.

8. **DUE DILIGENCE INVESTIGATIONS.**

8.1 Due Diligence Notice. Developer shall complete all Due Diligence Investigations within the Due Diligence Period at Developer's sole cost and expense. Developer shall not conduct any intrusive or destructive testing on the Property, other than low volume soil samples, without City's prior written consent. Developer shall pay all of Developer's vendors, inspectors, surveyors, consultants, or agents engaged in any inspection or testing of the Property, such that no mechanics liens or similar liens for work performed are imposed upon the Property by any of Developer's vendors, inspectors, surveyors, consultants, or agents. Following the conduct of any Due Diligence Investigations on the Property, Developer shall restore the Property to substantially the Property's condition before the conduct of the Due Diligence Investigations. Developer shall Indemnify City against all Claims arising from or relating to Developer's Due Diligence Investigations regarding the Property. Developer shall provide City with evidence of Liability Insurance (defined in Section 1.2 of **EXHIBIT G**) before the commencement of any Due Diligence Investigations on the Property. Developer shall send a Due Diligence Notice to City during the Due Diligence Period. If Developer fails to send the Due Diligence Notice to City within the Due Diligence Period, Developer will be deemed to reject the condition of the Property.

8.2 Due Diligence Response. Within ten (10) Business Days after City's receipt of the Due Diligence Notice (if any), City shall send the Due Diligence Response to Developer. If the Due Diligence Notice does not conditionally accept the condition of the Property or Developer fails to deliver the Due Diligence Notice, City is not required to send the Due Diligence Response. If City does not send the Due Diligence Response to Developer, if necessary, within the ten (10) Business Day period provided in this Section 8.2, City shall be deemed to elect not to take any action in reference to the Due Diligence Notice. If City elects in the Due Diligence Response to take any action on matters conditionally accepted in the Due Diligence Notice, City shall complete such action, prior to the Closing Date or as otherwise specified in the Due Diligence Response.

8.3 Final Due Diligence Notice. If City elects or is deemed to have elected not to take any action on one or more matters conditionally accepted in the Due Diligence Notice to Developer's reasonable satisfaction, then within ten (10) Business Days after the earlier of: (a) Developer's receipt of the Due Diligence Response; or (b) the last date for City to deliver the Due Diligence Response under Section 8.2, Developer shall send the Final Due Diligence Notice to both City and Escrow Agent. Failure by Developer to send the Final Due Diligence Notice within the time required in this Section 8.3 will be deemed Developer's rejection of the condition of the Property.

8.4 Agreement Termination. If Developer's Due Diligence Investigations under this Section 8 result in Developer's rejection or deemed rejection of the condition of the Property, then either Party has the right, in such Party's sole and absolute discretion, to cancel the Escrow and terminate this Agreement by Notice to the other Party and Escrow Agent sent within ten (10) Business Days after the earlier of: (a) the date of City's receipt of the Final Due Diligence Notice; or (b) the last day for Developer to send the Final Due Diligence Notice under Section 8.3. After issuance of a Notice of termination of this Agreement under this Section 8.4, the Parties and the Escrow Agent shall proceed under Section 10.13. Once a Notice of termination is given under this Section 8.4, delivery of a Due Diligence Notice, Due Diligence Response, or Final Due Diligence Notice will have no effect and this Agreement will terminate consistent with the Notice of termination.

9. **PURCHASE AND SALE OF PROPERTY.**

9.1 Escrow. City shall sell the Property to Developer, and Developer shall purchase the Property from City, subject to the Permitted Encumbrances and the provisions of this Agreement. For the purposes of exchanging funds and documents to complete the sale of the Property from City to Developer and the purchase of the Property by Developer from City under the provisions of this Agreement, City and Developer agree to open the Escrow with the Escrow Agent.

9.2 "AS-IS" Acquisition. The Close of Escrow shall evidence Developer's unconditional and irrevocable acceptance of the Property in the Property's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, AS OF THE CLOSE OF ESCROW, WITHOUT WARRANTY as to character, quality, performance, condition, title, physical condition, soil conditions, the presence or absence of fill, ocean or tidal impacts, shoring or bluff stability or support, subsurface support, zoning, land use restrictions, the availability or location of utilities or services, the location of any public infrastructure on or off of the Property (active, inactive, or abandoned), the suitability of the Property for the Project or other use or the existence or absence

of Hazardous Substances affecting the Property and with full knowledge of the physical condition of the Property, the nature of City's interest in and use of the Property, all Laws applicable to the Property and all conditions, covenants, restrictions, encumbrances, and matters of record relating to the Property. Developer represents and warrants to City that: (a) Developer had ample opportunity to inspect and evaluate the Property and the feasibility of the uses and activities Developer is entitled to conduct on the Property under this Agreement; (b) Developer is experienced in real estate development; (c) Developer is relying entirely on Developer's experience, expertise and Developer's own inspection of the Property in the Property's state as of the Close of Escrow in proceeding with acquisition of the Property; (d) Developer accepts the Property in the Property's condition as of the Close of Escrow; (e) to the extent that Developer's own expertise with respect to any matter relating to the Property is insufficient to enable Developer to reach an informed conclusion about the matter, Developer engaged the services of Persons qualified to advise Developer about the matter; (f) Developer received assurances acceptable to Developer by means independent of City or City's agents of the truth of all facts material to Developer's acquisition of the Property through this Agreement; and (g) the Property is being acquired by Developer as a result of Developer's own knowledge, inspection, and investigation of the Property and not as a result of any representation made by City or City's agents relating to the condition of the Property, unless the statement or representation is expressly and specifically stated in this Agreement. City expressly and specifically disclaims all express or implied warranties regarding the Property.

9.3 Condemnation. If City receives written notice that the Property is the subject of an eminent domain proceeding before the Close of Escrow, including the filing of a notice of intended eminent domain or other proceedings in the nature of eminent domain commenced by any Government or utility, City shall Notify Developer of the proceeding. If in Developer's reasonable discretion stated in a Notice from Developer to City delivered within ten (10) days after Notice to Developer of the eminent domain proceeding, the proposed taking of the Property will prevent development of the Project on the Property, then this Agreement shall terminate on the date of the Notice from Developer to City. If this Agreement does not terminate under the immediately preceding sentence, then this Agreement shall continue in full force and effect and City shall only be obligated to convey that portion of the Property that is not subject to the eminent domain proceeding to Developer at the Close of Escrow. City shall be entitled to receive the entire condemnation award and all other compensation resulting from each eminent domain proceeding affecting the Property before the Close of Escrow.

9.4 Developer Representations and Warranties. Developer represents and warrants to City that the following facts and conditions are true or exist as of the Effective Date:

9.4.1 **Authority**. Developer has the authority to enter into and perform this Agreement and no consent of any member, partner, shareholder, creditor, investor, judicial or administrative body, Government, or other Person is required for Developer to enter into this Agreement or perform its obligations under this Agreement, except as has already been obtained or as necessary to cause the satisfaction of the conditions to the Close of Escrow under this Agreement to be satisfied by Developer.

9.4.2 **Other Agreements.** Developer's entry into this Agreement and performance of its obligations under this Agreement do not violate any agreement to which Developer is a party or is subject.

9.4.3 **No Litigation.** To Developer's knowledge, there is no existing, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Developer, any Person owning an Equity Interest in Developer, the Project, or the Property that would, if adversely determined, materially adversely affect the Property, this Agreement, or Developer's ability to purchase the Property or Construct or operate the Project on the Property under this Agreement.

9.4.4 **Court Order.** To Developer's knowledge, there is no existing court order that materially adversely affects the Project, the Property, this Agreement, or Developer's ability to purchase the Property or Construct or operate the Project on the Property under this Agreement.

9.4.5 **Good Standing.** Developer is a duly formed [TO BE DETERMINED], organized, validly existing, and in good standing under the laws of [STATE OF ORGANIZATION TO BE DETERMINED] and is qualified to do business in the State with the California Secretary of State.

9.5 Limited Survival of Representations and Warranties. The representations and warranties made by Developer in Section 9.4 shall survive the Close of Escrow until the second anniversary of the date of the Close of Escrow.

9.6 City Not to Encumber. City agrees not to place any matter of record against the Property, other than Permitted Encumbrances or any matters arising from City's issuance of, or exercise of any governmental regulatory authority related to, any Approval for the Project, before the Close of Escrow, without Developer's prior written consent.

9.7 Maintenance of Property. City agrees to continue to maintain the Property in substantially the same condition as City maintains the Property on the Effective Date until the Close of Escrow.

9.8 Delivery of Property Free of Tenants. At the Close of Escrow, City will deliver possession of the Property to Developer free and clear of all contractual rights created by or with the consent of City for any Person (other than Developer) to use or occupy the Property, except Permitted Encumbrances.

10. **JOINT ESCROW INSTRUCTIONS.**

10.1 Opening of Escrow. City and Developer shall cause the Escrow to be opened within seven (7) days following the Effective Date by delivering one or more copies of this Agreement signed by the Parties to the Escrow Agent. The provisions of this Section 10 are the joint escrow instructions of the Parties to the Escrow Agent for conducting the Escrow for the purchase and sale of the Property under this Agreement. Developer and City shall sign all further escrow instructions reasonably requested by Escrow Agent and consistent with the provisions of this Agreement. In the event of any conflict between this Agreement and any further escrow instructions requested by Escrow Agent, this Agreement shall control.

10.2 Payment of Purchase Price. At least one (1) Business Day preceding the Escrow Closing Date, Developer shall deposit into the Escrow an amount of money equal to the sum of the Purchase Price, less the amount of the Deposit.

10.3 Escrow Agent Authority. City and Developer authorize Escrow Agent to:

10.3.1 **Charges.** Pay and charge the Parties for their respective shares of the applicable fees, taxes, charges, or costs payable through the Escrow;

10.3.2 **Settlement/Closing Statements.** Release each Party's Escrow Closing Statement to the other Party;

10.3.3 **Document Recording.** File all documents delivered for recording through the Escrow with the County Recorder for recordation in the official records of the County under the joint instructions of the Parties; and.

10.3.4 **Counterpart Documents.** Utilize documents signed by City or Developer in counterparts, including attaching separate signature pages to one version of the same document.

10.4 Developer's Conditions to Close of Escrow. Provided that the failure of any of the following conditions to be satisfied is not due to a Default by Developer, Developer's obligation to purchase the Property from City on the Escrow Closing Date is subject to the satisfaction or waiver (waivers must be in writing and signed by Developer) of each of the following conditions precedent, on or before the Escrow Closing Date:

10.4.1 **Developer Title Policy.** The Title Company is prepared to issue the Developer Title Policy to Developer at the Close of Escrow upon payment of the Title Company's premium for the Developer Title Policy;

10.4.2 **Due Diligence.** Developer timely delivers its Due Diligence Notice under Section 8.1 or, if applicable, its Final Due Diligence Notice under Section 8.3, to City stating Developer's unconditional acceptance of the condition of the Property;

10.4.3 **Approvals.** Developer receives all Approvals required from each Government for Construction of the Project on the Property, the terms and conditions of the Approvals are reasonably satisfactory to Developer, and all the Approvals are Permit Ready;

10.4.4 **Environmental Documents.** Adoption, approval, or certification of the Environmental Documents by each required Government;

10.4.5 **Initial Project Financing.** The closing and funding of the Initial Project Financing concurrent with the Close of Escrow; **[NOTE TO DRAFT: ADDITIONAL FINANCING CONDITIONS MAY BE ADDED AFTER THE FINANCING PLAN IS AGREED UPON.]**

10.4.6 **City Escrow Deposits.** City deposits all the items into the Escrow required by Section 10.8;

10.4.7 Closing Statement. Developer reasonably approves Developer's Escrow Closing Statement; and

10.4.8 City Pre-Closing Obligations. City performs all material obligations required to be performed by City under this Agreement before the Close of Escrow.

10.5 City's Conditions to Close of Escrow. Provided that the failure of any of the following conditions to be satisfied is not due to a Default by City, City's obligation to sell the Property to Developer on the Escrow Closing Date is subject to the satisfaction or waiver (waivers must be in writing and signed by City) of each of the following conditions precedent, on or before the Escrow Closing Date:

10.5.1 Document Approval. City receives from Developer all the documents listed in this Section 10.5.1 completed and signed by all Persons required to make the documents operative and City approves the documents. Developer shall deliver a substantially complete draft of each document listed in this Section 10.5.1 to City at least thirty (30) days before the Escrow Closing Date. Further, Developer shall have all the documents listed in this Section 10.5.1 completed and signed by all Persons required to make the documents operative (if applicable) and shall have delivered true, accurate, complete, and legible copies or originals (as specified in this Agreement) of all the documents to City, at least three (3) Business Days before the Escrow Closing Date:

10.5.1.1 A copy of the Developer Entity Documents;

10.5.1.2 A copy of the Management Agreement;

10.5.1.3 A copy of the Construction Contract;

10.5.1.4 A copy of the Architect Contract;

10.5.1.5 A copy of the Plans;

10.5.1.6 A copy of the Project Budget;

10.5.1.7 Originals of all Insurance Documents;

10.5.1.8 An original of the Construction Surety;

10.5.1.9 A copy of all documents evidencing, creating, or securing the Initial Project Financing; and

10.5.1.10 A copy of the Monitoring Agreement;

10.5.2 Developer Title Policy. The Title Company is, upon payment of the Title Company's premium for the Developer Title Policy, irrevocably and unconditionally committed to issue the Developer Title Policy to Developer, at the Close of Escrow;

10.5.3 Due Diligence. Developer timely delivers its Due Diligence Notice under Section 8.1 or, if applicable, its Final Due Diligence Notice under Section 8.3, to City stating Developer's unconditional acceptance of the condition of the Property;

10.5.4 Initial Project Financing. The closing and funding of the Initial Project Financing concurrent with the Close of Escrow; **[NOTE TO DRAFT: ADDITIONAL FINANCING CONDITIONS MAY BE ADDED AFTER THE FINANCING PLAN IS AGREED UPON.]**

10.5.5 Approvals. Developer receives all Approvals required from each Government for Construction of the Project on the Property, the terms and conditions of the Approvals are reasonably satisfactory to City, and all the Approvals are Permit Ready;

10.5.6 No Prohibited Encumbrance. No Prohibited Encumbrance affects the Property;

10.5.7 Environmental Documents. Adoption, approval, or certification of the Environmental Documents by each required Government;

10.5.8 Developer Escrow Deposits. Developer deposits all the items into the Escrow required by Section 10.7;

10.5.9 Closing Statement. City reasonably approves City's Escrow Closing Statement;

10.5.10 Developer Representations and Warranties. All the representations and warranties of Developer in Sections 9.2, 9.4, 16.7, and 16.16 are true and correct as of the Escrow Closing Date; and

10.5.11 Developer Pre-Closing Obligations. Developer performs all its material obligations required to be performed by Developer under this Agreement before the Close of Escrow.

10.6 Failure of Conditions Not a Default. Notwithstanding any provision of this Agreement to the contrary, Developer's failure to satisfy any of the conditions in Section 10.4 shall not constitute an Escrow Default (or any other type of Default or Event of Default) by Developer, unless Developer fails to exercise reasonable efforts to satisfy the conditions. Notwithstanding any provision of this Agreement to the contrary, City's failure to satisfy any of the conditions in Section 10.5 shall not constitute an Escrow Default (or any other type of Default or Event of Default) by City, unless City fails to act reasonably regarding the conditions; provided, however, where City is entitled to act in City's sole and absolute discretion, the City Council is exercising its legislative discretion, or the City is exercising some other governmental authority, City's failure to approve a matter constituting the condition shall not be any type of Default or Event of Default. Nothing in this Agreement is intended to limit City's legislative or other governmental discretion or authority or result in the exercise of the discretion or authority being any type of Default or Event of Default.

10.7 Developer's Escrow Deposits. On or before the Escrow Closing Date scheduled by the Escrow Agent by Notice to both Parties, Developer shall deposit (or cause to be deposited) the following described funds and documents into the Escrow and, concurrently, provide a copy of each deposited document to City:

10.7.1 **Deed.** The Deed certificate of acceptance signed by the authorized representative(s) of Developer;

10.7.2 **Closing Funds.** All monetary amounts to be deposited into the Escrow by Developer as required by this Agreement or shown on Developer's approved Escrow Closing Statement, including the Purchase Price, all in immediately available funds;

10.7.3 **Financing Proceeds.** The proceeds of the Initial Project Financing; and **[NOTE TO DRAFT: ADDITIONAL FINANCING PROCEEDS MAY BE ADDED AFTER THE FINANCING PLAN IS AGREED UPON.]**

10.7.4 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of Developer in recordable form;

10.7.5 **Monitoring Agreement.** The Monitoring Agreement signed by the authorized representative(s) of Developer in recordable form;

10.7.6 **Other Reasonable Items.** All other documents or funds required to be deposited into the Escrow by Developer under this Agreement or otherwise reasonably requested by Escrow Agent or Title Company to close the Escrow that have not previously been deposited into the Escrow by Developer.

10.8 City's Escrow Deposits. On or before the Escrow Closing Date scheduled by the Escrow Agent by Notice to both Parties, City shall deposit the following described funds and documents into the Escrow and, concurrently, provide a copy of each deposited document to Developer:

10.8.1 **Deed.** The Deed signed by the authorized representative(s) of City;

10.8.2 **Closing Funds.** All monetary amounts to be deposited into the Escrow by City as required by this Agreement (if any) or shown on City's approved Escrow Closing Statement, all in immediately available funds;

10.8.3 **Regulatory Agreement.** The Regulatory Agreement signed by the authorized representative(s) of City in recordable form;

10.8.4 **Monitoring Agreement.** The Monitoring Agreement signed by the authorized representative(s) of City in recordable form;

10.8.5 **FIRPTA Certificate.** A FIRPTA Certificate signed by the authorized representative(s) of City, in the form used by the Escrow Agent;

10.8.6 **Form 593.** A Form 593 signed by the authorized representative(s) of City;
and

10.8.7 **Other Reasonable Items.** All other documents or funds required to be deposited into the Escrow by City under this Agreement or otherwise reasonably requested by Escrow Agent or Title Company to close the Escrow that have not previously been deposited into the Escrow by City.

10.9 Closing Procedure. When Escrow Agent receives Notice from both Parties that each of their respective conditions to the Close of Escrow, in Section 10.4 and Section 10.5, respectively, are satisfied or waived, Escrow Agent shall close the Escrow on or before the Escrow Closing Date by doing all the following:

10.9.1 **Recordation and Distribution of Recorded Documents.** Filing with the County Recorder for recording in the official records of the County for the Property, in the following order of priority: (a) the Deed; (b) the Regulatory Agreement **[NOTE TO DRAFT: ADDITIONAL DOCUMENTS TO BE ADDED AS APPROPRIATE.]**; and (c) all other documents to be recorded through the Escrow upon the written joint instructions of the Parties. Escrow Agent shall deliver conformed copies of all documents filed with the County Recorder for recording in the official records of the County through the Escrow to City, Developer, and each other Person designated in the written joint escrow instructions of the Parties to receive an original or conformed copy of each document. Each conformed copy of a document filed with County Recorder for recording must show all recording information. The Parties intend and agree that this Section 10.9.1 establishes the relative priorities of the documents to be recorded in the official records of the County through the Escrow, by providing for recordation of senior interests prior in time to junior interests, in the order provided in this Section 10.9.1;

10.9.2 **Distribution of Other Documents.** Delivering originals or copies of all documents to be delivered through the Escrow that are not filed with County Recorder for recording (if any) to the Parties and each other Person designated in the written joint escrow instructions of the Parties to receive an original or copy of each document;

10.9.3 **Developer Title Policy.** Obtaining and delivering the Developer Title Policy to Developer; and

10.9.4 **Funds.** Distributing all funds held by Escrow Agent as provided in the Escrow Closing Statements approved in writing by City and Developer, respectively.

10.9.5 **FIRPTA Certificate.** Filing the FIRPTA Certificate with the United States Internal Revenue Service;

10.9.6 **Form 593.** Filing the Form 593 with the California Franchise Tax Board.

10.9.7 **Report to IRS.** After the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service under applicable Federal law, if such report is required under Internal Revenue Code section 6045(e), Escrow Agent shall report the gross proceeds of the purchase and sale of the Property to the Internal Revenue Service on Form 1099-B, W-9, or such other form(s) as may be specified by the Internal Revenue Service under Internal Revenue Code section 6045(e). Concurrently with the filing of such reporting form with the Internal Revenue Service, Escrow Agent shall deliver a copy of the filed form to the Parties.

10.10 Close of Escrow. The Close of Escrow shall occur on or before the Escrow Closing Date. The Parties may mutually agree to change the Escrow Closing Date by joint written instruction to Escrow Agent. The Mayor is authorized to agree to one or more extensions of the Escrow Closing Date on behalf of City up to a maximum extension of sixty (60) days in the aggregate, in the Mayor's sole and absolute discretion. If for any reason (other than a Default or Event of Default by the Party) the Close of Escrow does not occur on or before the Escrow Closing Date, then any Party not then in Default may cancel the Escrow and terminate this Agreement by delivering Notice of termination and cancellation to both the other Party and Escrow Agent. Following a Party sending a Notice of termination of this Agreement and cancellation of the Escrow under this Section 9.10, the Parties and Escrow Agent shall proceed under Section 10.13. Without limiting the right of either Party to cancel the Escrow and terminate this Agreement under this Section 10.10, if the Escrow does not close on or before the Escrow Closing Date and neither Party exercises its contractual right to cancel the Escrow and terminate this Agreement under this Section 10.10 before the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close under this Agreement, then the Escrow shall close as soon as reasonably possible following the first date on which Escrow Agent Notifies both Parties that Escrow is in a position to close under this Agreement.

10.11 Escrow Costs. Escrow Agent shall deliver an Escrow Closing Statement to both City and Developer at least two (2) Business Days before the Escrow Closing Date. Developer shall pay all the fees and other costs as Escrow Agent may charge for conducting the Escrow, all recording fees, documentary transfer taxes, or other charges, fees, or taxes levied by Government relative to the purchase or sale of the Property through the Escrow, and the premium charged by the Title Company for the Developer Title Policy, including all endorsements or supplements to coverage under the Developer Title Policy requested by Developer.

10.12 Escrow Cancellation Charges. If the Escrow fails to close due to City's Event of Default, City shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close due to Developer's Event of Default, Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively. If the Escrow fails to close for any reason other than the Event of Default of either Developer or City, City and

Developer shall each pay one-half of the ordinary and reasonable Escrow and title order cancellation charges charged by Escrow Agent or Title Company, respectively.

10.13 Escrow Cancellation. If this Agreement is terminated under a contractual right provided to a Party in this Agreement to terminate this Agreement, the Parties shall do all the following:

10.13.1 **Cancellation Instructions**. The Parties shall, within three (3) Business Days following Escrow Agent's written request, sign all reasonable Escrow cancellation instructions requested by Escrow Agent;

10.13.2 **Return of Funds and Documents**. Within eight (8) Business Days following receipt by the Parties of a settlement statement of Escrow or title order cancellation charges from Escrow Agent (if any) or within twenty (20) days following the date of the Notice of termination, whichever is earlier: (a) Developer or Escrow Agent shall return to City all documents previously delivered by City to Developer or Escrow Agent under this Agreement or through the Escrow; (b) City or Escrow Agent shall return to Developer all documents previously delivered by Developer to City or Escrow Agent under this Agreement or through the Escrow; (c) Escrow Agent shall, unless otherwise provided in this Agreement, return to Developer all funds deposited in Escrow by Developer, less Developer's share of customary and reasonable Escrow or title order cancellation charges (if any) under Section 10.12; and (d) Escrow Agent shall, unless otherwise provided in this Agreement, return to City all funds deposited in Escrow by City, less City's share of customary and reasonable Escrow or title order cancellation charges (if any) under Section 10.12.

11. PROJECT DEVELOPMENT.

11.1 Developer's Covenant to Construct the Project. Developer covenants and agrees for the benefit of City that Developer shall commence, pursue, and complete the Construction of the Project on the Property under this Agreement. The covenants of this Section 11.1 shall run with land of the Property, until the earlier of: (a) the date of issuance of a Release of Construction Covenants for the Project; or (b) the twentieth (20th) anniversary of the date of the Close of Escrow.

11.2 Submission of Development Applications. Developer shall exercise commercially reasonable efforts to prepare, submit, and complete all required Applications, documents, fees, charges or other items (including deposits, funds, or sureties in the ordinary course) required for Construction of the Project, under all applicable Laws and Approvals, to each Government for review and approval to obtain all Approvals for Construction of the Project on the Property from each Government in a Permit Ready status, at least three (3) Business Days before the Escrow Closing Date.

11.3 Project Completion. On or before the Project Completion Date, Developer shall do all the following: (a) record a Notice of Completion for the entire Project; (b) request each applicable Government to inspect the Project, as required by all Approvals or Laws; (c) address all defects or deficiencies disclosed by each inspection conducted under clause "(b)" of this Section 11.3 to the satisfaction of the applicable Government; (d) request each applicable Government to

issue all final Certificates of Occupancy or other Approvals necessary for the occupancy and operation of the completed Project and take such other actions reasonably required to obtain all such Certificates of Occupancy or other Approvals; and (e) provide City with a certificate from the Project architect under the Architect Contract certifying that the Project is substantially complete in accordance with the Plans, except Punchlist Work.

11.4 Compliance with Laws. Construction of the Project shall comply with all Laws and Approvals.

11.5 Prevailing Wage. Developer acknowledges and agrees that Construction of the Project is subject to the requirement to pay prevailing wage rates under San Diego Municipal Code section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 for construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, all as further described in **EXHIBIT L** attached to this Agreement. Developer shall comply with California Labor Code sections 1720 through 1861 in Construction of the Project.

11.6 Federal Davis-Bacon Act Compliance. If federal funding applicable to City's use or acquisition of the Property or financing of the Project requires it, Developer acknowledges and agrees that Construction of the Project will be subject to the requirement to pay prevailing wage rates under the Federal Davis-Bacon Act (40 USC sections 3141-3144 and sections 3146-3148), as supplemented by Federal Department of Labor regulations (29 CFR Part 5), for Construction contracts in excess of \$2,000. In accordance with the Federal Davis-Bacon Act, Developer must ensure that all laborers and mechanics performing work relating to the Project are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Federal Davis-Bacon Act are imposed by State, City, or other local law, nothing in this Section 11.6 is intended to relieve Developer of the obligation to pay the higher wage rate. Developer must also ensure the use of apprentices in Construction of the Project in compliance with the Federal Davis Bacon Act.

11.7 Developer Attendance at City Meetings. Developer agrees to have one or more of its employees or consultants who are knowledgeable about this Agreement, Construction of the Project, and the financing for Construction of the Project, such that the Person(s) can meaningfully respond to City Council or City staff questions about the status of the Project, attend meetings with City staff or meetings of the City Council, when requested to do so by City staff, with reasonable advance Notice to Developer.

11.8 Business Cooperation Program. Developer agrees to exercise its right to obtain a California Department of Tax and Fee Administration ("**CDTFA**") sub-permit for the Project and allocate all eligible Bradley-Burns Uniform Local Sales and Use Tax ("**Use Tax**") to City. Developer agrees to ensure that all eligible subcontractors exercise their right to obtain a CDTFA sub-permit for the Project and allocate all eligible Use Tax to City on all taxable materials, fixtures, machinery, and equipment, as defined in CDFTA Regulation 1521, that are purchased, acquired, installed, or furnished in connection with the Project.

11.9 Property Taxes and Assessments. Developer shall pay prior to delinquency all real property taxes and assessments assessed and levied on or against the Property or the Project. Nothing in this Agreement shall be deemed to prohibit Developer from contesting the validity or amounts of any tax or assessment, nor to limit the remedies available to Developer with respect to any tax or assessment, or prevent Developer from claiming exemptions available under Law.

11.10 City Right to Inspect Project and Property. Developer agrees that City has the right of reasonable access to the Property, without the payment of charges or fees, during the normal Construction hours of the Project. All City representatives entering the Property must be accompanied by a Developer representative while on the Property. Developer must make a Developer representative available for this purpose at all times during normal Construction hours, following reasonable advance Notice from City. If in City's reasonable judgment it is necessary, Developer agrees that City has the further right, from time to time, to retain one or more consultants to inspect the Project and verify Developer's compliance with this Agreement. Developer acknowledges and agrees that all City inspections are for the sole purpose of protecting City's rights under this Agreement, are made solely for City's benefit, may be superficial and general in nature, are for the purposes of informing City of the progress of the Project and the conformity of the Project with this Agreement, and Developer may not rely on any such inspection(s) as constituting City's approval, satisfaction, or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. Developer agrees to make its own regular inspections during the Construction of the Project to determine that the progress and quality of the Project and all other requirements of the Construction of the Project are being performed in a manner satisfactory to Developer.

11.11 Release of Construction Covenants. Developer may request that City issue a Release of Construction Covenants after the occurrence of all the following events: (1) issuance of a final Certificate of Occupancy for the entire Project by City; (2) recordation of a Notice of Completion by Developer or Builder; (3) issuance of a certificate by the Project architect stating that Construction (excluding any outstanding Punchlist Work) is complete substantially in accordance with the Plans; and (4) payment, settlement, or other extinguishment, discharge, release, waiver, bonding, or insuring against all mechanic's liens recorded or stop notices delivered relating to the Project. If City determines that the Project is complete and in compliance with this Agreement, City will issue a Release of Construction Covenants to Developer. If City determines that the Project is not complete or not in compliance with this Agreement, City will send Notice to Developer, within fifteen (15) days following City's receipt of Developer's Notice requesting a Release of Construction Covenants, describing each non-conformity and City's opinion of the action(s) Developer must take to obtain a Release of Construction Covenants from City. If the reason for Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for Construction at a price reasonably acceptable to Developer or Punchlist Work, City may issue a Release of Construction Covenants upon the delivery by Developer to City of a bond, irrevocable standby letter of credit, or other security reasonably acceptable to City in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by City.

12. **PROJECT FINANCING.** Developer's acquisition of the Property and Construction of the Project on the Property must be financed as described in the Financing Plan. Developer must exercise commercially reasonable efforts to prepare and submit all required applications,

documents, fees, charges or other items (including deposits, funds, or sureties in the ordinary course) required to obtain all financing for Construction of the Project described in the Financing Plan to each financing source for review and approval for all the financing to close and fund at the Close of Escrow. Developer and City agree that City does not have any financial obligation relating to Developer's acquisition of the Property or Construction of the Project under this Agreement.

12.1 Regulatory Agreement Seniority. Developer acknowledges and agrees that City will not subordinate the Regulatory Agreement or any covenant in the Deed to any deed of trust, lien, or other instrument or document, under any circumstances.

12.2 Modifications. If an Institutional Lender requires any reasonable minor modification of this Agreement or other document to be provided under this Agreement to make a loan to Developer for acquisition of the Property or Construction of the Project that is part of the Initial Project Financing, then City, Developer, and such Institutional Lender shall negotiate in good faith regarding any reasonable minor modification of this Agreement or other document to be provided under this Agreement requested by such Institutional Lender. Notwithstanding the immediately preceding sentence, City is not obligated to negotiate regarding any modification that would change any time period for Construction of the Project, any requirement in the Regulatory Agreement, or otherwise materially adversely affect City's rights or decrease Developer's obligations under this Agreement or other document to be provided under this Agreement. If any modification of this Agreement is agreed to by City, under this Section 12.2, then City will sign the modification and deposit it in Escrow. Escrow Agent shall only release the modification upon the closing and funding of the particular Institutional Lender's loan at the Close of Escrow. Any modification to this Agreement or other document to be provided under this Agreement requested by an Institutional Lender shall be expressly subject to a condition precedent that the Institutional Lender's particular loan closes and funds at the Close of Escrow. The authority provided to the Mayor in Section 16.4 includes authority to make minor modifications to this Agreement under this Section 12.2 consistent with the City's intent in entering into this Agreement.

12.3 Prohibited Encumbrances. Developer agrees not to record or allow to be recorded against the Property any Security Instrument, lien or other encumbrance that is not a Permitted Encumbrance. Developer shall remove or cause to be removed all Prohibited Encumbrances made or recorded against the Property by Developer or shall assure the complete satisfaction of each Prohibited Encumbrance to the satisfaction of City, in City's sole and absolute discretion. The covenants of Developer in this Section 12.3 shall run with the land of the Property and bind successive owners of the Property.

12.4 Refinancing. Prior to issuance of a Release of Construction Covenants for the Project, Refinancing shall only be allowed with the prior written consent of City, which may be given, withheld, or conditioned in City's sole and absolute discretion.

12.5 City Right to Discharge Prohibited Encumbrances. After sixty (60) days' Notice to Developer of a Prohibited Encumbrance and if Developer has not caused the Prohibited Encumbrance to be removed during such sixty (60) days, or is not diligently pursuing removal of such Prohibited Encumbrance, where removal reasonably requires more than sixty (60) days, City shall have the right, but not the obligation, to satisfy or remove the Prohibited Encumbrance and receive reimbursement from Developer for all amounts paid or incurred in satisfying or removing

the Prohibited Encumbrance, upon demand. All amounts expended by City to discharge a Prohibited Encumbrance and not reimbursed to City by Developer within thirty (30) days following Notice to Developer that such amount is due shall accrue Default Interest from the date of such Notice, until paid in full. Nothing in this Section 12.5, though, shall require Developer to pay or make provisions for the payment of any tax, assessment, lien or charge that Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject all or any portion of the Property to forfeiture or sale.

12.6 Developer Responsibility for Project Costs. Developer and City acknowledge and agree that the financing or other funding sources available to Developer for acquisition of the Property or Construction of the Project may be different in type or amount from those set forth in the Financing Plan. Accordingly, Developer acknowledges and agrees that Developer is responsible for paying for acquisition of the Property and Construction of the Project even if the financing or other funding sources available to Developer for acquisition of the Property or Construction of the Project are different in type or amount from those set forth in the Financing Plan.

13. REMEDIES.

13.1 DEVELOPER'S REMEDIES.

13.1.1 ***ELECTION OF REMEDIES.*** DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY CITY, DEVELOPER SHALL BE LIMITED TO EITHER (BUT NOT BOTH) OF THE FOLLOWING REMEDIES: (1) AN ACTION AGAINST CITY FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT; OR (2) TERMINATION OF THIS AGREEMENT AND AN ACTION TO RECOVER UP TO A MAXIMUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) OF THE TOTAL AMOUNT ACTUALLY PAID BY DEVELOPER BEFORE THE DATE OF SUCH EVENT OF DEFAULT TO THIRD PERSONS DIRECTLY RELATED TO CONDUCTING DUE DILIGENCE INVESTIGATIONS OF THE PROPERTY OR OBTAINING PROJECT APPROVALS FROM CITY, BUT EXCLUSIVE OF AMOUNTS PAID OR ALLOCATED DIRECTLY OR INDIRECTLY TO INTERNAL COSTS OF DEVELOPER OR DEVELOPER'S EMPLOYEES, MEMBERS, SHAREHOLDERS, PARTNERS, AFFILIATES, OR EMPLOYEES, OR AGENTS OF ANY OF THEM. UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE TO DEVELOPER UNDER THIS AGREEMENT FOR ANY AMOUNT EXCEEDING THE DOLLAR AMOUNT STATED IN CLAUSE "(2)" OF THIS SECTION 13.1.1, ANY SPECULATIVE, CONSEQUENTIAL, COLLATERAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, OR ANY LOSS OF PROFITS SUFFERED OR CLAIMED TO HAVE BEEN SUFFERED BY DEVELOPER.

13.1.2 ***WAIVER OF RIGHTS.*** CITY AND DEVELOPER EACH ACKNOWLEDGE AND AGREE THAT CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT, IF CITY WERE TO BE LIABLE TO DEVELOPER FOR ANY MONETARY DAMAGES, MONETARY RECOVERY, OR ANY REMEDY DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY CITY, OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT OR, ALTERNATIVELY, TERMINATION OF THIS AGREEMENT AND PAYMENT OF THE SPECIFIED COSTS

UP TO THE MAXIMUM DOLLAR AMOUNT STATED IN CLAUSE “(2)” OF SECTION 13.1.1. ACCORDINGLY, CITY AND DEVELOPER AGREE THAT THE REMEDIES SPECIFICALLY PROVIDED FOR IN SECTION 13.1.1 ARE REASONABLE AND ARE DEVELOPER’S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY CITY. DEVELOPER WAIVES ALL RIGHT TO PURSUE ANY REMEDY OR DAMAGES AGAINST CITY ARISING FROM OR RELATING TO THIS AGREEMENT OTHER THAN THOSE SPECIFICALLY PROVIDED IN SECTION 13.1.1.

13.1.3 *CALIFORNIA CIVIL CODE SECTION 1542 WAIVER.* DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CALIFORNIA CIVIL CODE SECTION 1542 REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 13.1, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

13.1.4 *ACKNOWLEDGMENT.* BY INITIALING BELOW, DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 AND ALL OTHER STATUTES AND JUDICIAL DECISIONS (WHETHER STATE OR FEDERAL) OF SIMILAR EFFECT SOLELY REGARDING THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 13.1.

Initials of Authorized
Developer Representative(s)

13.1.5 *STATEMENT OF INTENT.* CALIFORNIA CIVIL CODE SECTION 1542 NOTWITHSTANDING, IT IS THE INTENTION OF DEVELOPER TO BE BOUND BY THE LIMITATIONS ON DAMAGES AND REMEDIES SET FORTH IN THIS SECTION 13.1, AND DEVELOPER RELEASES ALL CLAIMS AGAINST CITY FOR MONETARY DAMAGES, MONETARY RECOVERY, OR OTHER LEGAL OR EQUITABLE RELIEF RELATED TO ANY EVENT OF DEFAULT BY CITY, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 13.1, WHETHER OR NOT ANY SUCH RELEASED CLAIMS WERE KNOWN OR UNKNOWN TO DEVELOPER AS OF THE EFFECTIVE DATE.

13.2 LIQUIDATED DAMAGES TO CITY. IF THE CLOSE OF ESCROW DOES NOT OCCUR UNDER THIS AGREEMENT DUE TO DEVELOPER’S EVENT OF DEFAULT, THEN CITY SHALL RECEIVE THE DEPOSIT, AS LIQUIDATED DAMAGES FOR DEVELOPER’S EVENT OF DEFAULT. THE DEPOSIT AMOUNT IS THE REASONABLE ESTIMATE BY THE PARTIES OF THE DAMAGES CITY WILL SUFFER FROM DEVELOPER’S EVENT OF DEFAULT THAT RESULTS IN THE

ESCROW NOT CLOSING UNDER THIS AGREEMENT. THE PARTIES AGREE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICABLE TO FIX THE EXACT AMOUNT OF DAMAGE THAT WILL BE INCURRED BY CITY AS A RESULT OF A DEVELOPER EVENT OF DEFAULT THAT RESULTS IN THE ESCROW NOT CLOSING UNDER THIS AGREEMENT. UPON A DEVELOPER EVENT OF DEFAULT THAT RESULTS IN THE ESCROW NOT CLOSING UNDER THIS AGREEMENT, ESCROW SHALL BE CANCELED AND THE PARTIES SHALL PROCEED UNDER SECTION 10.13. ADDITIONALLY, ESCROW AGENT IS IRREVOCABLY INSTRUCTED BY DEVELOPER AND CITY TO DISBURSE THE DEPOSIT TO CITY AS LIQUIDATED DAMAGES FOR DEVELOPER'S EVENT OF DEFAULT AND FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY, UNDER CALIFORNIA CIVIL CODE SECTIONS 1671, ET. SEQ. THE PARTIES AGREE THAT THIS SECTION 13.2 IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AT THE TIME THE PARTIES ENTER INTO THIS AGREEMENT.

**Initials of Authorized Developer
Representative(s)**

**Initials of Authorized City
Representative(s)**

13.3 Legal Actions. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages, subject to the provisions of Sections 13.1 and 13.2.

13.4 Cumulative Rights and Remedies. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative and the exercise by either Party of one or more of 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 Event of Default or the same rights or remedies for any other Default or Event of Default by the other Party.

14. **INSURANCE.** Developer shall obtain and maintain, to protect the City Parties against all insurable Claims relating to this Agreement, the Property, or the Project, at the sole cost and expense of Developer, all the insurance coverage (or its then reasonably available equivalent) described in **EXHIBIT G** attached to this Agreement until City issuance of a Release of Construction Covenants.

15. INDEMNIFICATION.

15.1 Developer Indemnity Obligations. In addition to Developer's obligations to Indemnify the City Parties under other provisions of this Agreement, Developer shall Indemnify the City Parties against all Claims arising from: (a) Developer's entry onto the Property; (b) this Agreement; (c) personal injury (including death) or property damage (to property of Developer or any other Person) occurring on the Property or adjoining real property or resulting from Developer's development or operation of the Project on the Property; (d) all wrongful intentional acts or negligence of one or more of the Developer Parties; (e) strict liability relating to Developer's use or occupancy of the Property; (f) all Applications made at Developer's request;

(g) all agreements Developer (or anyone claiming by or through Developer) makes with a Third Person regarding this Agreement, the Property, or the Project; (h) services, labor, material, or equipment supplied to, for, or on behalf of Developer; (i) all workers' compensation claims by one or more employees or contractors of one or more of the Developer Parties; (j) all Prevailing Wage Determinations, except to the extent prohibited by Law, including State Labor Code sections 1773.3 or 1781; (k) all Environmental Conditions occurring on or after the Close of Escrow. Notwithstanding anything to the contrary in this Agreement, Developer's obligations to Indemnify the City Parties excludes Claims arising solely from the established active negligence or willful misconduct of a City Party.

15.2 Independence of Insurance and Indemnity Obligations. Developer's obligations to Indemnify the City Parties under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Developer's insurance or other obligations under this Agreement. Developer's obligations to Indemnify the City Parties under this Agreement are independent of Developer's insurance and other obligations under this Agreement. Developer's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Developer's obligations to Indemnify the City Parties under this Agreement and are independent of Developer's obligations to Indemnify the City Parties and other obligations under this Agreement.

15.3 Survival of Indemnification Obligations. Developer's obligations to Indemnify the City Parties under this Agreement shall survive the Close of Escrow or the expiration or termination of this Agreement, until all actual or prospective Claims subject to Developer's obligations to Indemnify the City Parties under this Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

15.4 Indemnification Procedures. Wherever this Agreement requires Developer to Indemnify the City Parties:

15.4.1 *Notice.* The affected City Parties shall Notify Developer of the Claim within a reasonable time.

15.4.2 *Selection of Counsel.* Developer shall select legal counsel reasonably acceptable to City's City Council. Even though Developer shall defend the Claim, the affected City Parties may, at their respective options, each engage separate legal counsel, at Developer's expense, to advise them regarding the Claim and their defense. The affected City Parties' separate legal counsel(s) may attend all proceedings and meetings. Developer's legal counsel shall actively

consult with the City Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations, if any.

15.4.3 *Cooperation.* The affected City Parties shall reasonably cooperate with Developer's defense of the City Parties.

15.4.4 *Settlement.* Developer may only settle a Claim against the City Parties with the prior written consent of the affected City Parties, in their respective sole and absolute discretion.

15.5 Immediate Duty to Defend. The duty to defend that is within Developer's obligations to Indemnify the City Parties under this Agreement includes Claims for which the City Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Developer or the City Parties have been determined. The duty to defend applies immediately, regardless of whether the City Parties have paid any amount of money or incurred any detriment arising out of or relating (directly or indirectly) to any Claim.

15.6 Savings Provision. Notwithstanding anything in this Agreement to the contrary, if the extent of Developer's obligations to Indemnify the City Parties under this Agreement exceeds the indemnity obligation allowed by Law, Developer's obligations to Indemnify the City Parties shall be reduced to the extent required to comply with Law.

16. GENERAL PROVISIONS.

16.1 Compliance with City Standard Contract Provisions. Developer must comply with City's standard contract provisions in **EXHIBIT D** attached to this Agreement.

16.2 Restrictions on Transfers and Equity Interest Transfers. Developer shall not make or allow a Transfer or Equity Interest Transfer before receiving a Release of Construction Covenants. Developer acknowledges and agrees that the specific identity of Developer is of material importance to City in entering into this Agreement with Developer and that, as a result and under the circumstances in which this Agreement is entered into by City and Developer, the restrictions in this Agreement on Transfers or Equity Interest Transfers are reasonable.

16.3 Developer Assumption of Risks of Legal Challenges. Developer assumes all risk of delays or damages arising from each Third Person legal action related to: (a) City's approval of this Agreement, even if an error, omission, or abuse of discretion by City is determined to have occurred; or (b) any Approvals associated with the Project. If a Third Person files a legal action for which Developer assumes the risk under this Section 16.3 before the Close of Escrow, Developer shall have the option to either: (1) cancel the Escrow and terminate this Agreement, in which case the Parties and the Escrow Agent shall proceed under Section 10.13; or (2) Indemnify City against the Third Person legal action, including all Legal Costs, monetary awards, sanctions, and the expenses of all financial or performance obligations resulting from the disposition of the legal action. If Developer fails to Notify City of Developer's election under this Section 16.3 for a Third Person legal action filed before the Close of Escrow at least fifteen (15) days before response to the legal action is required by City, Developer shall be deemed to have elected to cancel the Escrow and terminate this Agreement under clause "(1)" of this Section 16.3, without

further Notice to or action by either Party. If a Third Person files a legal action for which Developer assumes the risk under this Section 16.3 after the Close of Escrow, Developer shall Indemnify City against the Third Person legal action, including all Legal Costs, monetary awards, sanctions, and the expenses of all financial or performance obligations resulting from the disposition of the legal action. If Developer elects to Indemnify City regarding a Third Person legal action filed before the Close of Escrow that is subject to this Section 16.3, but fails to provide or stops providing Indemnification of City, then City shall have the right to immediately terminate this Agreement and cancel the Escrow by Notice to Developer and Escrow Agent. Nothing in this Section 16.3 is intended to be, nor shall be deemed or construed to be, an express or implied admission that City may be liable to Developer or any other Person for damages or other relief regarding any alleged or established failure of City to comply with any law. Any legal action that is subject to this Section 16.3 (including all appeals) shall constitute an Unavoidable Delay and the time periods for performance by either Party under this Agreement may be extended under Section 16.15.1.

16.4 Mayoral Implementation. City shall implement this Agreement through the Mayor. The Mayor is authorized by City to issue approvals, interpretations, and waivers and enter into amendments to this Agreement on behalf of City, to the extent that the action(s) does/do not materially or substantially change the Project or this Agreement. Nothing in this Section 16.4 shall restrict the submission to the City Council of any matter within the Mayor's authority under this Section 16.4, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on the matter. The specific intent of this Section 16.4 is to authorize certain actions on behalf of City by the Mayor, but not to require that the actions be taken by the Mayor, without consideration by the City Council.

16.5 Notices. All Notices submitted by one Party to another Party or Escrow Agent or by Escrow Agent to a Party under this Agreement must be in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) for delivery on the next Business Day or by registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated in **EXHIBIT C** attached to this Agreement, or to Escrow Agent at the address designated in writing by Escrow Agent. Notices may be sent in the same manner to another address or addresses as either Party or Escrow Agent may from time to time designate by Notice under this Section 16.5. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on the return receipt, on the day the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) Business Days after the Notice is deposited with the United States Postal Service as provided in this Section 16.5. Any attorney representing a Party may give any Notice on behalf of the Party.

16.6 Relationship of Parties. The Parties each intend and agree that City and Developer are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

16.7 Warranty Against Payment of Consideration for Agreement. Developer represents and warrants to City that: (a) Developer has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage,

brokerage or contingent fee, excepting bona fide employees of Developer and Third Persons to whom fees are paid for professional services related to planning, design, or Construction of the Project or documentation of this Agreement; and (b) no gratuities, in the form of entertainment, gifts, or otherwise have been or will be given by Developer or any of Developer's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions in this Agreement. If Developer breaches any representation or warranty in this Section 16.7, City may immediately terminate this Agreement and cancel the Escrow by Notice to Developer and Escrow Agent. Upon any termination of this Agreement under this Section 16.7, Developer shall immediately repay City all payments made to or on behalf of Developer by City under this Agreement or otherwise related to the Property, Approvals, Environmental Documents, or the Project, prior to the termination date.

16.8 Survival of Agreement. All the provisions of this Agreement shall be applicable to all disputes between the Parties arising from this Agreement, whether before or following expiration or termination of this Agreement, until each dispute is finally and completely resolved between the Parties, either by written settlement agreement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods. All provisions of this Agreement relating to dispute resolution and limitations on damages or remedies shall survive the expiration or termination of this Agreement.

16.9 Non-liability of City Officials and Employees. No elected official or employee of City shall be personally liable to Developer, or any successor in interest to Developer, for any Default or Event of Default by City under this Agreement or for any amount that may become due to Developer or to Developer's successor on any obligation under this Agreement.

16.10 Time Period Calculation. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months, all references to time periods in this Agreement measured in years shall be to consecutive calendar years, and all references to time periods in this Agreement measured in Business Days shall be to consecutive Business Days.

16.11 No Discrimination or Segregation. Developer covenants by and for itself and all Persons claiming under or through Developer that this Agreement is made and accepted upon and subject to the following conditions:

16.11.1 **Standards.** There shall be no discrimination against or segregation of any Person or group of Persons on account of any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property or the Project nor shall Developer or any Person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property or the Project.

16.11.2 **Interpretation.** Notwithstanding Section 16.11.1, with respect to familial status, Section 16.11.1 shall not be construed to apply to housing for older persons, as defined in section 12955.9 of the California Government Code. With respect to familial status, nothing in Section 16.11.1 shall be construed to affect sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of section 51 and section 1360 of the California Civil Code and subdivisions (n), (o), and (p) of section 12955 of the California Government Code shall apply to Section 16.11.1.

16.12 Interpretation Principles. No inference in favor of or against any Party shall be drawn from the fact that the Party drafted any part of this Agreement. The Parties both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words “include” and “including” in this Agreement shall be construed to be followed by the words: “without limitation.” Each collective noun in this Agreement shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to the document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to the document. The word “or” in this Agreement includes the word “and,” except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement refers to each requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

16.13 Inspection of Books and Records. City shall have the right at all reasonable times prior to City’s issuance of a Release of Construction Covenants, at City’s expense, to inspect the books and records of Developer pertaining to the Property or the Project.

16.14 Governing Law. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in, and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

16.15 Unavoidable Delay; Extension of Time for Performance.

16.15.1 **Notice.** Performance by either Party under this Agreement shall not be in Default, where the Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after the claiming Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay within a reasonable time.

16.15.2 Assumption of Economic Risks. EACH PARTY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND, OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET CONDITIONS OR DEMAND AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.

Initials of Authorized
City Representative(s)

Initials of Authorized
Developer Representative(s)

16.16 Real Estate Commissions. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission, finder's fee, or other compensation regarding this Agreement on account of any agreement or arrangement made by the Party; and (b) shall Indemnify the other Party against all breaches of the representations and warranties set forth in clause "(a)" of this Section 16.16.

16.17 Binding on Successors and Assigns. Subject to the limitations set forth in Section 16.2, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

16.18 No Other Representations or Warranties. Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to any other Party.

16.19 Tax Consequences. Developer acknowledges and agrees that it shall bear all responsibility, liability, costs, and expenses related to all tax consequences experienced by Developer related to this Agreement.

16.20 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any right or remedy under or because of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

16.21 Counterpart Signatures. This Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, but all of which together shall constitute one and the same document.

16.22 Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on this Agreement or documents in furtherance of the transactions contemplated in this Agreement by e-mail or electronic means (including digital signatures, e-mail of a .pdf document, or using electronic signature technology, like AdobeSign or DocuSign); and (b) that signatures delivered by e-mail or electronic means (including digital signatures, e-mail of a .pdf document, or using electronic signature technology, like AdobeSign or DocuSign) shall be binding as originals upon the Party so signing and delivering. Notwithstanding the immediately preceding sentence, all documents to be recorded in the official records of the County Recorder must be manually signed and hard copies of the signed documents delivered.

16.23 Entire Agreement. This Agreement includes thirty-six (36) pages and seven (7) exhibits constituting the entire understanding and agreement of the Parties about the purchase and sale of the Property, Construction of the Project, and the other subjects addressed in this Agreement. This Agreement integrates all the provisions mentioned in this Agreement or incidental to this Agreement and supersedes all previous negotiations or agreements between the Parties about the purchase and sale of the Property, Construction of the Project, and the other subjects addressed in this Agreement.

16.24 Time of the Essence. As to the performance of each obligation under this Agreement of which time is a component, the performance of the obligation within the time specified is of the essence of this Agreement.

16.25 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one or more occasions upon strict compliance with any provision of this Agreement shall not be deemed a waiver of the provision, nor shall any waiver or relinquishment of any right or power under this Agreement, at any one time or more times, be deemed a waiver or relinquishment of the right or power at any other time or times.

16.26 Amendments. All amendments to this Agreement must be in writing and signed by the respective authorized representative(s) of both City and Developer.

16.27 Exhibits. All the exhibits attached to this Agreement are incorporated into this Agreement by reference in this Agreement and described as follows:

EXHIBIT A Property Legal Description

EXHIBIT B	Preliminary Report
EXHIBIT C	Notice Addresses
EXHIBIT D	City Standard Contract Provisions
EXHIBIT E	Project Description
EXHIBIT F	Monitoring Agreement Form
EXHIBIT G	Insurance Requirements
EXHIBIT H	Financing Plan
EXHIBIT I	Regulatory Agreement
EXHIBIT J	Deed
EXHIBIT K	Release of Construction Covenants
EXHIBIT L	Prevailing Wage Requirements

[Remainder of page intentionally blank. Signatures appear on immediately following page.]

**SIGNATURE PAGE
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

City and Developer sign and enter into this Agreement by and through the signatures of their respective authorized representative(s) set forth below:

CITY:

The City of San Diego,
a California municipal corporation

DEVELOPER:

[TO BE DETERMINED]

By: _____
Christina Bibler
Economic Development Director

By: _____
[TO BE DETERMINED]

Approved as to form on:
_____.

MARA W. ELLIOTT,
City Attorney

By: _____
Delmar G. Williams
Deputy City Attorney

**EXHIBIT A
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

PROPERTY LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS "A" AND "B" OF BLOCK 169 OF HORTON'S ADDITION, MAP NO. 369, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING ON FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

APN: 535-614-01-00 AND 535-614-02-00

**EXHIBIT B
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

PRELIMINARY REPORT

[TO BE ATTACHED BEHIND THIS COVER PAGE]

**EXHIBIT C
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

NOTICE ADDRESSES

To Developer: **[TO BE DETERMINED]**

With a courtesy copy to: **[TO BE DETERMINED]**

To City: Christina Bibler, Director
Economic Development Department
1200 Third Avenue, Suite 1400
San Diego, CA 92101

With a courtesy copy to: Marc Frederick, Program Manager
Real Estate Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101

**EXHIBIT D
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

CITY STANDARD CONTRACT PROVISIONS

1. **CERTIFICATION OF COMPLIANCE WITH CITY REQUIREMENTS.** By signing this Agreement, Developer agrees and certifies that Developer is aware of, and will comply with, all the following requirements in performance of this Agreement:

1.1 Certification for Americans with Disabilities Act (“ADA”) and Related Laws. Developer shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (“Title 24”). When a conflict exists between the ADA and Title 24, Developer shall comply with the most restrictive requirement (i.e., that which provides the most access). Developer also shall comply with the ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Developer warrants and certifies compliance with all applicable federal and state access laws and regulations and further certifies that all subcontracts relating to this Agreement, the Site, or the Proposed Development, will contain the subcontractor’s agreement to abide by the provisions of Council Policy 100-04 and all applicable federal and California access laws and regulations.

1.2 Compliance with City’s Equal Employment Opportunity Program. Developer shall comply with City’s Equal Employment Opportunity Program, set forth in San Diego Municipal Code (“SDMC”) sections 22.2701 – 22.2708. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that its subcontractors comply with this program. Nothing in this Section 1.2 shall be interpreted to hold Developer liable for any discriminatory practice of its subcontractors.

1.3 Equal Benefits Ordinance Certification. Unless an exception applies, Developer shall comply with the “Equal Benefits Ordinance” codified in SDMC section 22.4308.

1.4 Equal Pay Ordinance. Unless an exception applies, Developer shall comply with the “Equal Pay Ordinance” codified in SDMC sections 22.4801 through 22.4809. Developer shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Developer to the same extent as it would apply to Developer. Developer shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5 Product Endorsement. Developer shall comply with Council Policy 000-41 concerning product endorsement, requiring that any advertisement referring to City as a user of a good or service must have the prior written approval of the Mayor.

1.6 Business Tax Certificate. Unless City’s City Treasurer determines in writing that Developer is exempt from the payment of business tax, Developer is required to obtain a City

business tax certificate and provide a copy of the certificate to City before commencing any activities under this Agreement.

1.7 Employment of City Staff. Under City Council Policy 300-11, if Developer employs an individual, who, within 12 months immediately preceding the employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Agreement by notice to Developer.

**EXHIBIT E
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

PROJECT DESCRIPTION

[TO BE ATTACHED BEHIND THIS COVER PAGE]

**EXHIBIT F
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

MONITORING AGREEMENT FORM

[ATTACHED BEHIND THIS COVER PAGE]

[NOTE TO DRAFT: THE MONITORING AGREEMENT FORM MAY BE UPDATED BY THE SAN DIEGO HOUSING COMMISSION AT ANY TIME BEFORE THIS AGREEMENT IS SIGNED BY THE PARTIES.]

REPORTING AND MONITORING AGREEMENT

This Reporting and Monitoring Agreement (“Agreement”) is entered into as of **[TO BE DETERMINED DATE CERTAIN]**, by and among The City of San Diego, a California municipal corporation (“City”), the San Diego Housing Commission, a public agency (“Administrator”), and **[TO BE DETERMINED]** (“Participant”), which shall, collectively, be referred to as the “Parties.”

RECITALS

A. Participant and City entered into that certain Disposition and Development Agreement, dated **[TO BE DETERMINED DATE CERTAIN]** (“DDA”), under which Participant and City entered into that certain **[INSERT TITLE OF REGULATORY AGREEMENT]**, dated **[TO BE DETERMINED DATE CERTAIN]** (“Regulatory Agreement”), relating to that certain real property generally located at 1401 Imperial Avenue, in the City of San Diego, California (“Property”), owned by City. The Regulatory Agreement is incorporated herein by this reference. The term “Regulatory Agreement” as used herein shall mean, refer to and include the Regulatory Agreement, as well as any riders, exhibits, addenda, implementation agreements, amendments, and attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not defined herein shall have the meaning ascribed to such term in the Regulatory Agreement.

B. Pursuant to the terms of the Regulatory Agreement, Participant will undertake the construction of **[TO BE DETERMINED]** on the Property (“Project”). Upon completion of the Project, **[TO BE DETERMINED]** of the units will be income restricted rental units at affordable rents (“Affordable Units”) and two units will be unrestricted manager’s units.

C. The Regulatory Agreement requires the construction of the Affordable Units and that the Affordable Units be made available to **[TO BE DETERMINED]**-Income Households, as specified in the Regulatory Agreement, for a period of not less than fifty-five (55) years from the Project Completion Date (defined in the Regulatory Agreement).

D. City desires to use the staff, skills, and facilities of Administrator to monitor Participant’s compliance with the rental restrictions for the Project set forth in the Regulatory Agreement and/or applicable law.

E. The Parties have the capability and the legal right to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

I. Purpose of Agreement. The purpose of this Agreement is to provide for the administration and monitoring of the affordable housing obligations of Participant arising under the Regulatory Agreement, in accordance with the Regulatory Agreement and/or applicable law.

II. Scope of Work.

A. Definitions.

“Affordable Units” mean the **[TO BE DETERMINED NUMBER OF RESIDENTIAL UNITS AND BEDROOM COUNTS]**, apartment units to be constructed on the Property by Participant in accordance with the Regulatory Agreement and the Project Description (Exhibit E attached to the DDA), which shall be restricted for Qualifying Households (defined in the Regulatory Agreement), at an Affordable Rent (defined in the Regulatory Agreement), in accordance with the provisions of the Regulatory Agreement.

B. Services. Administrator shall monitor Participant’s compliance with the affordable housing requirements of the Project as set forth in the Regulatory Agreement, including, without limitation: (i) establishing the eligibility criteria for renters of the Affordable Units; and (ii) monitoring ongoing compliance with the terms of the Regulatory Agreement, including an annual certification that the Affordable Units remain occupied by or Available (defined in the Regulatory Agreement) to Qualifying Households.

C. City Rights and Obligations. All rights, obligations, and/or duties of City under the Regulatory Agreement, shall remain the rights, obligations, and/or duties of City.

III. Representatives of the Parties. The representatives of the respective Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

The representative of the City shall be:

[TO BE DETERMINED]

The representative of Administrator shall be:

[TO BE DETERMINED]

The representative of Participant shall be:

[TO BE DETERMINED]

Any Party may designate another representative by providing written notice to the other Parties.

IV. Time of Performance. Services pursuant to this Agreement shall commence as of the date of the execution of this Agreement by all of the Parties and shall terminate upon the earlier of: (i) expiration of the affordable rental restriction requirements affecting the Affordable Units, as described in the Regulatory Agreement; or (ii) termination of this Agreement pursuant to Sections XI or XIV below.

V. Monitoring of Administrator by City. City may monitor Administrator’s performance of its duties under this Agreement. Administrator shall reasonably cooperate with City in connection with such monitoring.

VI. Monitoring and Reporting Requirements

A. Administrator Requirements.

- i. Administrator shall determine whether proposed applicants for occupancy of Affordable Units are income eligible to qualify as tenants for the Affordable Units.
- ii. Administrator shall monitor the following:
 1. Each Affordable Unit's occupancy by eligible tenants and/or availability for occupancy by eligible tenants; and
 2. The period of each Affordable Unit's affordability (i.e., not less than 55 years).
- iii. Administrator shall submit to City annual reports of its monitoring activities pursuant to this Agreement no later than July 31st for the prior fiscal year (July 1- June 30).
- iv. Administrator shall re-certify household income of tenants of the Project annually. Participant shall be solely responsible for any eviction of tenants. Administrator shall have no obligation to evict any person.

B. City Requirements.

- i. Annually, upon request from Administrator, provide an updated rent chart for the Project based upon the Area Median Income for San Diego County.

C. Participant Requirements.

- i. Provide complete and accurate information required by Administrator with regard to the affordable housing obligations of Participant contained in the Regulatory Agreement, immediately upon request.
- ii. Provide the Project tenants with a written notice from Participant, one (1) year prior to the expiration of an affordability restriction.
- iii. Timely pay all fees to Administrator required by this Agreement.

VII. Books and Records

- A. Complete Books. Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement and/or the Regulatory Agreement. Participant shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement and/or the Regulatory Agreement.

B. Availability. All records prepared in accordance with this Agreement shall be made available to City for copying and inspection at any time, without notice, during normal business hours.

VIII. Access to Records

A. City shall have full and free access to all books, papers, documents, and records of Administrator and/or Participant that are pertinent to the obligations of any or all of the Parties under this Agreement.

B. Administrator shall have full and free access to all books, papers, documents, and records of the City and/or Participant that are pertinent to Administrator's obligations under this Agreement.

IX. Ownership, Use and Distribution of Documents

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by Administrator in connection with providing services rendered under this Agreement, are and shall remain the exclusive property of City.

B. City and Administrator may use and distribute, in their respective sole and absolute discretion, any records, reports, books, papers, documents, computer discs or other information prepared by Administrator and/or Participant pursuant to this Agreement. Such purposes include, but are not limited to, annual reports, and responses to public information requests. City shall identify Administrator as the author of any such reports prepared by Administrator that are distributed by City. Neither City nor Administrator shall be required to secure any prior authorization, written or otherwise, from one another prior to any such distribution.

C. Upon expiration of this Agreement or in the event of termination of this Agreement by the City or Administrator, as provided in Sections XII or XV below, Administrator agrees to provide to City and Participant copies of all records, reports, books, papers, documents, computer discs or other information prepared by Administrator pursuant to this Agreement and not previously provided to City or Participant.

X. Payment of Compensation

A. Amount. In consideration for the services provided by Administrator with respect to the Affordable Units as described in this Agreement, Administrator may establish and collect an annual fee ("Annual Monitoring Fee") from Participant. The Annual Monitoring Fee shall be charged pursuant to the current Monitoring Fee Schedule attached hereto as Exhibit A, which exhibit is subject to revision annually. In no event shall the initial Annual Monitoring Fee increase.

B. Time of Payment. Concurrently with Participant's execution and delivery of this Agreement, Participant shall pay to Administrator an initial set up fee, as referenced in Exhibit A. Administrator's right to the Annual Monitoring Fee referenced in Exhibit A shall commence concurrently with the activities referenced in Section VI above. Participant shall pay to Administrator the Annual Monitoring Fee in accordance with Exhibit A, and as calculated by, Section X.A above. Participant shall pay such other fees set forth in Exhibit A as required

hereunder. Participant's failure to timely pay the initial set up fee, Annual Monitoring Fee or any other fees required hereunder shall constitute a material default under this Agreement. Such breach shall entitle Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XI below or Section XIV below.

C. Administrator Entitled to All Fees. Participant also agrees to pay additional fees as necessary to reasonably compensate Administrator in the event Administrator's monitoring results indicate a need to take additional steps to enforce the Project affordability covenants and conditions contained in the Regulatory Agreement (see Exhibit A attached hereto). Participant further agrees that failure to pay all such fees within fifteen (15) Business Days after receipt of a billing statement for such fees shall constitute a material breach of the covenants and conditions of this Agreement. Such breach shall entitle Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XI below or Section XIV below. In the event that City directs Administrator to take legal steps, including the initiation of litigation, to enforce the Project affordability covenants and conditions contained in the Regulatory Agreement, then Administrator shall be entitled to the legal costs and fees and other court costs associated with such enforcement actions, in addition to the fees set forth herein. City shall compensate Administrator for such fees and costs as incurred, and Administrator shall seek reimbursement of such fees and costs in any litigation against the Participant. City may, in lieu of requesting Administrator to enforce the Project affordability covenants and conditions contained in the Regulatory Agreement, enforce the obligations itself.

XI. Default. In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel and/or terminate this Agreement upon written notice to all other Parties and/or maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

XII. No Partnership. The Parties hereto are entering into this Agreement independently from one another and shall not be deemed officers, officials, agents, partners, or employees of one another.

XIII. Amendment or Assignment of Agreement. All amendments to this Agreement must be in writing and executed with mutual consent of Administrator, City, and Participant. This Agreement may not be assigned by any Party without the prior written approval of the remaining Parties, and such approval shall not be unreasonably withheld.

XIV. Termination. This Agreement may be terminated with or without cause by City or Administrator upon thirty (30) calendar days' prior written notice to all other Parties.

XV. Complete Agreement. This Agreement contains the full and complete agreement between the Parties concerning the matters contained herein. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall affect or modify any of the terms and conditions of this Agreement.

XVI. Limitations on Agreement. The Parties agree that this Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions, or priority of the Regulatory Agreement, nor the enforcement thereof. The Parties hereby agree that the provisions of the Regulatory Agreement shall be and remain unmodified and in full force and effect.

XVII. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

XVIII. Time of Essence. Time is expressly declared to be of the essence in this Agreement, and of each and every provision in which time is an element.

XIX. Captions. Section or paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and are not a substantive part of this Agreement.

XX. Additional Documents. The Parties each agree to sign any additional documents that are reasonably necessary to carry out this Agreement or to accomplish its intent.

XXI. Benefit and Burden. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns. This Agreement is not intended to benefit any person other than the Parties hereto.

XXII. Governing Law. This Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

XXIII. Venue. Any action that may be filed to enforce or interpret the terms of this Agreement shall be filed in a court located within the City of San Diego, California.

XXIV. Attorneys' Fees. The prevailing party in any legal action, including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret, or reform the provisions of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action from the non-prevailing parties to the action (including, but not limited to, expert fees and costs, regardless of whether recoverable as such under statute).

XXV. Waiver. No breach of any provision hereof may be waived, unless waived in writing by all of the Parties. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

XXVI. Signing Authority. The representative signing on behalf of each Party to this Agreement represents that authority has been obtained to sign on behalf of such Party.

XXVII. Exhibits and Recitals Incorporated. All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are

actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

XXVIII. Severability of Provisions. 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.

[Remainder of page intentionally left blank. Signatures on following page.]

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

CITY:

ADMINISTRATOR:

THE CITY OF SAN DIEGO,
a California municipal corporation

SAN DIEGO HOUSING COMMISSION,
a public agency

By: _____
Christina Bibler
Director
Economic Development Department

By: _____

Dated: _____

Dated: _____

Approved as to form:

Approved as to form:

MARA W. ELLIOTT
City Attorney

Christensen & Spath LLP

By: _____
Delmar G. Williams
Deputy City Attorney

By: _____
Walter F. Spath, III
General Counsel
San Diego Housing Commission

PARTICIPANT:

[TO BE DETERMINED]

By: _____
[TO BE DETERMINED]

EXHIBIT A

MONITORING FEE SCHEDULE

The Annual Monitoring Fee is an annual charge to cover costs of monitoring compliance with the Regulatory Agreement. Compliance monitoring includes developing a compliance monitoring plan, computer database program and reporting system for the Project, 1-2 trainings per year and technical assistance provided by Administrator to property owner/manager and/or representatives.

Annual Monitoring Fee

The Annual Monitoring Fee is \$150 per monitored unit. The number of monitored units is equal to the total number of units being monitored under the Regulatory Agreement. “In the event that the Property utilizes a high volume of monitoring (for example, due to repeated trainings and/or frequent contact to address inaccurate or incomplete reports) Administrator, in its sole discretion, may elect to charge an additional fee based on an hourly rate of \$100.

Adjustment of Annual Fee

Administrator reserves the right to revise the Annual Monitoring Fee annually based on the Administrator’s costs for monitoring functions. In no event shall the Annual Monitoring Fee decrease.

**EXHIBIT G
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

INSURANCE REQUIREMENTS

1. **Required Insurance Coverage.** Developer shall maintain all the following insurance policies **[NOTE: The following insurance requirements are the “minimum” and final insurance requirements are subject to City Risk Management review]:**
 - 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Developer, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
 - 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Property or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Property.
 - 1.3. *Property Insurance.* Insurance providing coverage for the Property and all improvements on or to the Property against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Property, an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal.
 - 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy, with a minimum

liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Developer.

- 1.5. *Contractors Pollution Liability Insurance.* If the Permitted Use includes sampling, testing, geotechnical boring, construction, or installation activities below the surface of the Property (collectively, “Subsurface Work”), Contractors Pollution Liability insurance against claims arising from pollution conditions or site environmental conditions, including ongoing operations performed by Developer or on Developer’s behalf, Developer’s products, Developer’s work (including Developer’s completed operations performed by Developer or on Developer’s behalf), or premises owned, leased, controlled, or used by Developer, with minimum liability limits of Two Million Dollars (\$2,000,000) for any one claim or occurrence and Four Million Dollars (\$4,000,000) aggregate per policy period of one year. All costs of defense covered by the Contractors Pollution Liability Insurance shall be outside the policy’s liability limits. The deductible for Contractors Pollution Liability Insurance may not exceed Twenty-Five Thousand Dollars (\$25,000) per claim unless and until Developer obtains City’s separate written approval of a higher deductible amount. With City’s separate prior written approval, Developer may satisfy its obligation to maintain Contractors Pollution Liability Insurance through its subcontractor that will perform the Subsurface Work maintaining Contractors Pollution Liability Insurance as required under these Insurance Requirements (defined below). When Developer requests City’s approval to use its subcontractor’s Contractors Pollution Liability Insurance, Developer shall certify to City that all Subsurface Work requiring Contractors Pollution Liability Insurance under these Insurance Requirements will be performed exclusively by the subcontractor that will maintain the Contractors Pollution Liability Insurance and provide City with a copy of its subcontractor’s Contractors Pollution Liability Insurance policy. Policies issued on a claims made basis must be issued before any work commences, be maintained for the duration of all work and include a 12-month extended claims discovery period applicable to all work or the policy or policies must be maintained for at least 12 months after completion of all the work without advancing the retroactive date.
 - 1.6. *Builder’s Risk Insurance.* Builder’s risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Property.
2. **Nature of Insurance.** The contents of this **EXHIBIT G** are sometimes referred to as the “**Insurance Requirements.**” All Liability Insurance, Automobile Liability Insurance, Property Insurance, Workers Compensation Insurance, Builder’s Risk Insurance, and Contractors Pollution Liability Insurance (if required) policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State

Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Developer may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Property, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.

3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance and Contractors Pollution Liability Insurance policies shall name the City Parties as “additional insured.” Builder’s Risk Insurance policies shall name City as a “loss payee.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Developer regarding the Property and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Developer.
 - 3.2. *Primary Coverage.* All insurance coverage maintained by Developer shall be primary to all insurance or self-insurance maintained by the City Parties and all insurance or self-insurance maintained by the City Parties shall be excess of all insurance maintained by Developer and shall not contribute with any insurance maintained by Developer.
 - 3.3. *Contractual Liability.* Liability Insurance and Contractors Pollution Liability Insurance policies shall contain contractual liability coverage for Developer’s Indemnity obligations under this Agreement. Developer’s maintaining or failing to maintain such contractual liability coverage shall not relieve Developer from nor satisfy any Indemnity obligation of Developer under this Agreement.
 - 3.4. *Deliveries to City.* Evidence of Developer’s maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. Builder’s Risk Insurance coverage shall commence at the time of Builder mobilization for the Project. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Developer shall deliver to City evidence of Developer’s maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days’ advance Notice of such action to City. Phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.
 - 3.5. *Waiver of Certain Claims.* Developer shall cause each insurance carrier providing any Liability Insurance, Builder’s Risk Insurance, Worker’s Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect

to the City Parties, if not originally in the policy. To the extent Developer obtains an insurance policy covering both the Developer Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. “**Waiver of Subrogation**” means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.

- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
 - 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements, except Contractors Pollution Liability Insurance, may be written on a claims-made basis.
 - 3.8. *Fully Paid and Non-Assessable.* All insurance maintained by Developer in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
 - 3.9. *Separation of Insured.* All Liability Insurance, Contractors Pollution Liability Insurance, and Automobile Liability Insurance shall provide for separation of insured for Developer and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
 - 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies issued in satisfaction of these Insurance Requirements shall be declared to and approved by City. Developer shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Developer fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City’s sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements shall be reimbursed to City by Developer in the same manner that insurance costs are reimbursable to City from Developer under Section 5 of these Insurance Requirements.
 - 3.11. *No Separate Insurance.* Developer shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements are independent of the Parties’ Indemnification and other obligations under this Agreement and shall not be

construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.

5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Developer to maintain any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Developer of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Developer shall not relieve Developer of any Default or Event of Default or Developer's obligation to maintain all insurance coverage required by these Insurance Requirements.

**EXHIBIT H
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

FINANCING PLAN

[TO BE ATTACHED BEHIND THIS COVER PAGE]

**EXHIBIT I
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

REGULATORY AGREEMENT

[ATTACHED BEHIND THIS COVER PAGE]

**EXHIBIT J
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

DEED

[ATTACHED BEHIND THIS COVER PAGE]

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

Attention: _____

APN: [TO BE DETERMINED]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED
([TO BE DETERMINED])

The undersigned declares:

The documentary transfer tax is: \$ _____ and is computed on:

- the full value of interest or property conveyed, or
- the full value less liens or encumbrances remaining at time of sale.

The property is located in the City of San Diego, California.

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged, THE CITY OF SAN DIEGO, a California municipal corporation (“Grantor”), grants to [TO BE DETERMINED] (“Grantee”), that certain real property located in the City of San Diego, County of San Diego, State of California described in Exhibit “1” attached to, and by this reference incorporated into, this Grant Deed (“Property”), subject to all the following:

1. Grantor excepts and reserves all existing public right of way of any street or proposed street lying outside the boundaries of the Property that might otherwise pass with a conveyance of the Property;
2. The Property is conveyed in accordance with and subject to that certain Disposition and Development Agreement entered into by and between Grantor and Grantee, dated [TO BE DETERMINED], that is a public record on file in the offices of the City Clerk of the City of San Diego; and
3. The Property is conveyed subject to that certain Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions Restricting Use of Real Property for Affordable Housing (1401 Imperial Avenue) made by and between Grantor and Grantee and recorded against the Property substantially concurrently with this Grant Deed.

Grantor:

Dated:
[TO BE DETERMINED]

The City of San Diego,
a California municipal corporation

By: _____

**EXHIBIT 1
TO
GRANT DEED
([TO BE DETERMINED])**

Property Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS "A" AND "B" OF BLOCK 169 OF HORTON'S ADDITION, MAP NO. 369, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING ON FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

APN: 535-614-01-00 AND 535-614-02-00

**EXHIBIT K
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

RELEASE OF CONSTRUCTION COVENANTS

[ATTACHED BEHIND THIS COVER PAGE]

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

Attention: _____



SPACE ABOVE FOR RECORDER'S USE ONLY

APN(s): _____

RELEASE OF CONSTRUCTION COVENANTS

**Disposition and Development Agreement
(1401 Imperial Avenue)**

In his or her capacity as an authorized representative of the City of San Diego, a California municipal corporation (“City”), the undersigned certifies that: (1) City and **[TO BE DETERMINED]** (“Developer”), entered into that certain unrecorded Disposition and Development Agreement (1401 Imperial Avenue), dated **[TO BE DETERMINED]** (“DDA”), and that certain Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions Restricting Use of Real Property for Affordable Housing (1401 Imperial Avenue), dated **[TO BE DETERMINED]**, and in the Official Records of the San Diego County Recorder’s Office on **[TO BE DETERMINED]**, as Document No. **[TO BE DETERMINED]** (“Regulatory Agreement”); and (2) the initial construction of the “Project” (defined in the DDA) required under the DDA and Regulatory Agreement on that certain real property specifically described in Exhibit 1 attached to this Release of Construction Covenants (“Property”) is complete, in accordance with the provisions of the DDA and Regulatory Agreement. The DDA is an official record of City, and a copy of the DDA may be inspected in the offices of the City Clerk located at 202 West C Street, San Diego, CA 92101, during the regular business hours of City. Unless otherwise specified, all capitalized terms in this Release of Construction Covenants are used with the meaning ascribed to them in the DDA.

This Release of Construction Covenants is only evidence of City’s conclusive determination of satisfactory completion of the initial construction of the Project on the Property under the terms of the DDA and Regulatory Agreement. The issuance and recording of this Release of Construction Covenants releases Developer from all obligations for the initial construction of the Project on the Property under the DDA and Regulatory Agreement. This Release of Construction Covenants does not: (a) constitute a Notice of Completion under California Civil Code section 8182; (b) terminate the continuing reservations, covenants, restrictions, or conditions contained in the DDA, the Regulatory Agreement, or any other instrument or document recorded against the Property, the Project, or otherwise; (c) waive or modify any term, provision, covenant, condition, restriction, or agreement contained in any other document; (d) constitute evidence of the compliance of the Project with any Laws or Approvals; or (e) evidence the satisfaction of any obligation of Developer to City under the DDA, the Regulatory Agreement, or otherwise, other

than Developer's obligation to complete the initial construction of the Project on the Property. After recordation of this Release of Construction Covenants in the Official Records of the San Diego County Recorder's Office regarding the Property, any Person then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in the Property will not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under the DDA for the initial construction of the Project on the Property, but each such Person will be bound by all other reservations, covenants, conditions, restrictions, agreements, and interests affecting the Property under the DDA, the Regulatory Agreement, or otherwise.

ISSUED as of [**TO BE DETERMINED**].

CITY:

CITY OF SAN DIEGO,
a California municipal corporation

By: _____

Christina Bibler
Director
Economic Development Department

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Diego)

On _____, before me, _____,
(insert name of notary)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT 1
TO
RELEASE OF CONSTRUCTION COVENANTS
(1401 Imperial Avenue)

Property Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS "A" AND "B" OF BLOCK 169 OF HORTON'S ADDITION, MAP NO. 369, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING ON FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

APN: 535-614-01-00 AND 535-614-02-00

**EXHIBIT L
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(1401 Imperial Avenue)**

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Developer and Developer's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **EXHIBIT L** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Developer and Developer's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Developer and Developer's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Developer and Developer's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Developer and Developer's contractors and subcontractors shall all deliver evidence of the required job site posting to City, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Agreement in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which

expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Developer and Developer's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Developer and Developer's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Developer and Developer's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Developer and Developer's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Developer is responsible for ensuring that Developer's contractors and subcontractors submit certified payroll records to City, the State Labor Commissioner, and DIR.

1.4 Apprentices. Developer and Developer's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall be held responsible for its compliance and the compliance of Developer's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Developer and Developer's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Developer shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Developer and Developer's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Agreement or any contract or subcontract, respectively, Developer and Developer's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require

every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Developer shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of State Labor Code section 1725.5.

1.8.3 By entering into this Agreement, Developer is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City.

1.9 Filing of Form PWC-100. Developer shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

1.10 Filing of Notice of Completion. Developer shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.