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REPORT TO THE PLANNING COMMISSION

DATE ISSUED: August 19, 2005

ATTENTION: Planning Commission, Agenda of August 25, 2005

SUBJECT: BALLPARK VILLAGE AFFORDABLE HOUSING PROGRAM
PROCESS FIVE

**OWNER/
APPLICANT:** Ballpark Village LLC

SUMMARY

Issue: Should the Planning Commission recommend to the City Council that it approve a variance to the City's Inclusionary Housing Ordinance in the form of the Affordable Housing Agreement by and among the San Diego Housing Commission, Redevelopment Agency of the City of San Diego and Ballpark Village LLC?

Staff Recommendation: Recommend that the City Council approve a variance to the standards of the Inclusionary Housing Ordinance to provide for the development of 100,000 gross square feet (approximately 100 units) of for-sale affordable housing located adjacent to Petco Park at the intersection of Park Boulevard and Imperial Avenue in the Centre City Community Planning Area.

Community Planning Group Recommendation: On May 18, 2005, the Centre City Advisory Committee voted 22 in favor and 1 recused and the Project Area Committee voted 20 in favor of recommending that the Redevelopment Agency (the "Agency") approve an Owner Participation Agreement ("OPA") with Ballpark Village, LLC based on the Master Plan dated May 19, 2005, including the terms of the Affordable Housing Agreement (the "Agreement").

Centre City Development Corporation ("CCDC") Recommendation: On May 25, 2005, the CCDC Board of Directors voted 4 in favor and 2 opposed (1absent) to recommend that the Agency and City Council approve the OPA and Master Plan, including the terms of the Agreement.

Environmental Review: Under the applicable provisions of CEQA, CCDC, as agent for the Agency, has prepared an Addendum to Final Subsequent Environmental Impact Report to the Final Master Environmental Impact Report for Centre City Redevelopment Project and Addressing the Community Plan and Related Documents for the Proposed Ballpark and Ancillary Development Projects, and Associated Plan Amendments (the “Addendum”). The Addendum addresses the OPA and its attachments, including the Master Plan and the Agreement, and makes findings that the revisions to the project will not result in any new significant impacts not discussed within the SEIR, nor any substantial increase in the severity of impacts identified within the SEIR. In addition, no new information of substantial importance has become available since the SEIR was prepared regarding new significant impacts, or feasibility of mitigation measures or alternatives.

Fiscal Impact Statement: None with this action.

Code Enforcement Impact: None with this action.

Affordable Housing Impact Statement: As proposed, Ballpark Village would include 100,000 gross square feet of for-sale housing for occupancy, and at prices affordable to, households earning no more than 100% area median income (“AMI”) (\$63,400 for a family of four). The affordable housing will be restricted in perpetuity.

Future Related Action: The Agreement, together with the proposed OPA, Master Plan for Ballpark Village and the Addendum, will be considered by the City Council and Agency at subsequent joint and concurrent public hearings. The Planning Commission will not be making a recommendation on the OPA, or the Master Plan.

BACKGROUND

The OPA provides for the development of 7.1 acres located adjacent to Petco Park on the northeast and southeast corners of Park Boulevard and Imperial Avenue (the “Site”) in conformance with the Centre City Planned District Ordinance (“CCPDO”). This highly visible site presents a major gateway to downtown approaching from the south and creates a critical frontage along the Park-to-Bay link of Park Boulevard. The Site is also directly adjacent to the proposed new main library and the 12th and Imperial trolley station.

The OPA provides as attachments a Master Plan meeting the requirements of the CCPDO and the Agreement providing for a variance as described herein to the City’s Inclusionary Housing Ordinance (the “Ordinance”).

At build out the OPA/Master Plan for the Site proposes up to 3.212 million square feet of above-grade development. The development will include a minimum of 300,000 square feet of office, between 115,000 and 150,000 square feet of retail, and 100,000 gross square feet of affordable for-sale housing. Additional office, retail, market rate housing and potentially a hotel are proposed for the remainder of the Site.

The Ballpark Village project is subject to the Ordinance. Housing Commission and CCDC staff have been working with the developer to create a proposal for including affordable housing in the project. The Agreement complies with the requirements of Redevelopment Law and is consistent with the policy objectives of the Ordinance.

DISCUSSION

The Proposed Project:

The developer of Ballpark Village is Ballpark Village LLC, which is composed of JMI Realty and Lennar Homes.

The OPA and the Agreement require the developer to build 100,000 gross square feet of affordable, for-sale housing as part of the Ballpark Village project. The required for-sale housing will be occupancy restricted and affordable to households earning no more than 100% AMI (\$63,400 for a family of four). The affordable units will be located on-site within the podium level (floors two through six) of one building constructed on that portion of the Site north of Imperial Avenue.

Sales of the affordable units will be restricted in perpetuity. As a result, upon each and every resale, a restricted unit must be sold at an affordable price to a purchaser who is income eligible.

Typically, Housing Commission procedures and/or state and local housing laws require that the market and affordable components of a project be comparable. Given that the Ballpark Village project is still being planned and the exact bedroom mix has not been determined, the Agreement will require the following minimum thresholds:

Unit Type	Minimum Unit Size (square feet)	Percentage of Affordable Units
Studio	500	10% (maximum)
One-bedroom	750	40% (maximum)
Two-bedroom	900	40% (minimum)
Three-bedroom	1,100	10% (minimum)

The Housing Commission, CCDC, and the developer believe that these minimum thresholds are consistent with downtown residential standards and are a reasonable approximation of the development expected to occur as part of the Ballpark Village project.

The development of the 100,000 gross square feet of affordable housing will partially satisfy the developer's obligations under the Ordinance. In addition, the developer will pay an in-lieu fee to meet the remainder of its obligations under the Ordinance. The in-lieu fee will be due prior to the receipt of the first residential building permit for any building within the proposed project.

At that time, the developer will pay the then current in-lieu fee prorated for the amount of affordable housing contained within the subject building. Further, CCDC has required that the in-lieu fee to be paid shall not be less than \$7.00 per square foot or the then-existing in-lieu fee, whichever is greater. Based upon the current estimates, it is anticipated that the project will eventually pay an in-lieu fee in excess of \$5.2 million.

As security for the obligation to construct the required affordable housing, upon the issuance of the first residential building permit for a building, the developer will post an unconditional, irrevocable letter of credit in an amount equal to the sum of the in-lieu fee that would have been due upon the issuance of the subject building permit, reduced by in-lieu fees actually paid. The Housing Commission and/or CCDC will draw upon the letter of credit to the extent that the developer fails to provide the required affordable housing.

In addition, a deed of trust and declaration of covenants, conditions, and restrictions will be recorded against those parcels that include affordable housing units. The Agreement provides that a building permit may not be issued for any improvements (other than for the construction of affordable housing units and a subterranean parking garage) on three of the six sub-parcels of Ballpark Village until financing has been secured for the affordable housing units, and building permits have been issued and construction has commenced on the building in which the affordable housing units are located.

The Housing Commission will set the sales prices and qualify eligible purchasers for the affordable units. The Housing Commission will also perform these functions for all future resales.

Project-Related Issues:

Deviations from the Inclusionary Housing Ordinance:

Several elements of the proposed project do not meet the technical requirements of the Ordinance. The following table summarizes these deviations:

Ballpark Village---Summary of Proposed Deviations

Provision	Inclusionary Requirement	Proposed
Term of Affordable Restrictions	15 years or until the first resale	In perpetuity
Location of Affordable Units	Dispersed throughout the development	In first 2-6 floors of one building
Phasing of Affordable Units	Prior to or concurrent with development of market rate units	Prior to or concurrent with commencement of development on three of six sub-parcels which constitute the Site

With respect to the first deviation, the affordable units will be restricted in perpetuity for occupancy by, and at prices affordable to, households earning no more than 100% AMI. In comparison, the Ordinance requires that the units be restricted until the time of the first resale and it requires equity sharing over 15 years with a recapture of the subsidy provided by the developer to the original homebuyer (calculated as the difference between the initial market value and restricted price of a given affordable unit). Thus, the proposed affordability restrictions “in perpetuity” will preclude the City’s ability to recapture the original subsidy or share in any potential equity over the first 15 years of ownership. However, the units will remain in the affordable housing inventory forever, and the City will not need to identify future resources or sites to replace the units as would be necessary for units provided under the Ordinance.

With respect to the second deviation, although the Ordinance requires that the affordable units be dispersed throughout the development, the affordable units proposed for Ballpark Village will be located only within the podium level of a high-rise, Type I building within the project. This methodology is similar to the type of inclusionary housing that has been built in the City’s North City Future Urbanizing Area whereby affordable units are built within each master planned community, but are not equally dispersed within each neighborhood. The integration of the affordable housing into a mixed-use high-rise market-rate residential building is considered highly desirable compared to a separate affordable housing structure on the Site.

With respect to the third deviation, the Ordinance requires that the market and affordable units be built and occupied at the same time. The phasing for the proposed project anticipates that retail, office, and market rate housing on three sub-parcels will precede the development of the affordable housing. Housing Commission and CCDC staff believe that the developer has provided adequate security to assure the construction and occupancy of the affordable units. In addition, development on three sub-parcels will be restricted until the affordable units are financed and under

construction. Prior to that time, a building permit on the three restricted sub-parcels may only be issued for a subterranean parking garage and for the affordable units themselves. The construction of the affordable units will be further secured because the affordable units will be built in a single building that will also include market rate development.

Deviations from the requirements of the Ordinance can be granted through a variance described under §142.1304 (c) of the Ordinance. As a Process Four development review, a variance typically requires approval by the Planning Commission. However, since the OPA and environmental document for this project must be approved by the Agency and City Council, the San Diego Municipal Code further requires that the variance for the proposed project be approved by the City Council with a recommendation on the variance by the Planning Commission. Pursuant to Section 142.1304(c) of the Ordinance, a variance may be granted as follows:

A development located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance from the requirements of this Division upon an express finding that the development is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area.

The Ballpark Village project is located within the Centre City redevelopment project area and once approved by the Agency, the project will be subject to the terms and conditions of an OPA and Master Plan.

In addition, the Agency's July 2004-June 2009 Plan for the Centre City Redevelopment Project, within which the affordable housing would be located, was approved by the Agency by Resolution No. R-03771 on June 15, 2004. The "stated objective" of the Five Year Plan being met by the Affordable Housing Agreement is "Creation of viable housing options within Centre City that span a range of incomes" which is listed on page 4 of the Plan under "Specific Goals and Objectives of the Agency for the Project Areas for the Period July 2004 - June 2009."

The Agreement provides for at least 100,000 gross square feet of for-sale housing for occupancy by, and at prices affordable to, households earning no more than 100% AMI. CCDC staff states that through FY 2004, within the Centre City and Horton Plaza Redevelopment Projects, 2,300 housing units have been completed which are restricted to occupancy by, and at rents affordable to, low and moderate income households. Of the 2,300 units, 565 units have been restricted to moderate income (81-120% of AMI), 420 units to low income (51-80% AMI) and 1,315 to very low income (at or below 50% AMI). None of the low and moderate income housing provided through FY 2004 has been for-sale housing. The Agreement would provide an estimated 100 units of for-sale moderate income housing, supplementing the moderate income category of housing and bringing to the affordable housing inventory a market segment not yet addressed,

thereby expressly meeting the objective of the “creation of viable housing options within Centre City that span a range of incomes.”

Conclusion:

The Housing Commission and CCDC believe that the affordable housing units to be produced as part of the Ballpark Village project justify the requested deviations from the Ordinance. The deviations are appropriate for a master planned development of this type and will result in approximately 100 units of affordable for-sale housing in a highly desirable location. The affordable units will also be restricted in perpetuity. In addition, no public subsidy will be provided to build the affordable units. The developer is providing these units on-site rather than paying that portion of the in-lieu fee otherwise required and will incur much greater expense in providing the units on-site than in paying the in-lieu fee.

ALTERNATIVE

Do not recommend approval of a variance to the standards of the Inclusionary Housing Ordinance in the form of the Affordable Housing Agreement by and among the San Diego Housing Commission, Redevelopment Agency of the City of San Diego and Ballpark Village LLC. This would jeopardize the affordable housing proposed as part of the project and may compel the developer to comply with the Ordinance by paying an in-lieu fee.

Respectfully submitted,

Approved by,

Cissy Fisher
Director of Housing Finance & Development

Elizabeth C. Morris
President & Chief Executive Officer

Attachment:

1. Affordable Housing Agreement

AFFORDABLE HOUSING AGREEMENT
(Ballpark Village)

This Affordable Housing Agreement (this "Agreement") is entered into as of _____, 2005 by and among **Ballpark Village LLC**, a Delaware limited liability company (the "Participant"), **The Redevelopment Agency of the City of San Diego** (the "Agency") and the **San Diego Housing Commission** (the "Commission"). The Agency, the Participant and the Commission agree as follows:

1. The Participant and the Agency are parties to that certain Owner Participation Agreement dated as of _____ (the "OPA") with regard to certain real property (the "Site") more particularly described on Exhibit A attached hereto and incorporated herein by this reference. The Participant intends to subdivide the Site by lot line adjustment into the parcels (each, a "Parcel" and collectively, the "Parcels") shown and named on Exhibit B attached hereto. Capitalized terms used in this Agreement but not defined herein have the meanings given such terms in the OPA.

2. Pursuant to the recommendation of the Commission and the Planning Commission of the City of San Diego, the City Council of the City of San Diego (the "Council"), at a Concurrent Public Hearing with the Joint Public Hearing of the Council/Agency on the OPA and that certain Master Plan attached thereto, by Resolution No. _____ (the "Resolution"), approved that certain redevelopment variance (the "Variance") pursuant to Section 142.1304(c) of the City of San Diego's (the "City") Inclusionary Housing Ordinance (City of San Diego Municipal Code Section 142.1301 et seq.) (the "Ordinance"), which confirms that the requirements set forth in the OPA, the Resolution and this Agreement shall govern the Site's compliance with the Ordinance in effect at the time the Resolution is passed. The Council further approved the Variance in the form of this Agreement and authorized the President and Chief Executive Officer of the Commission to execute this Agreement. Pursuant to Resolution No. _____, the Agency also approved and authorized its Executive Director to execute this Agreement. Accordingly, to the extent the Participant's obligations set forth in this Agreement conflict with or do not meet the Ordinance's requirements regarding affordable housing, the provisions of this Agreement shall control as to the Site, and the Participant's compliance with its obligations hereunder shall be deemed to also constitute full compliance with the Ordinance. With the exception of the Variance granted above pursuant to Section 142.1304(c), the OPA and Resolution do not address nor intend to qualify, revise, rescind or waive any ordinances of the City with respect to affordable housing, such as housing linkage fees or other fees (as and if otherwise applicable to the Site). The parties acknowledge that this Agreement shall become effective upon the Council's approval of the Resolution, the Agency's and the Participant's execution of the OPA and the parties' execution of this Agreement.

3. The OPA and Resolution require that not less than 100,000 gross square feet of for-sale dwelling units (each, a "Restricted Unit") which are affordable to Eligible Households (as defined below) be constructed on the Site. Such 100,000 gross square feet shall include areas of the Building in which the Restricted Units are located which are necessary to access the Restricted Units, such as hallways, stairs and elevators, but such square footage shall not include any areas on the ground floor of the Building which are shared by other uses (such as market-rate

residential units, retail or office uses) within the Building or the Project, such as, for example, a shared lobby.

4. The Participant shall construct Restricted Units in the following sizes, types and amounts:

<u>Percentage of Restricted Units</u>	<u>Type of Unit</u>	<u>Minimum Size (in Square Feet)</u>
Not More Than 10%	Studio	500
Not More Than 40%	One Bedroom	750
Not Less Than 40%	Two Bedrooms	900
Not Less Than 10%	Three Bedrooms	1100

The Participant shall provide at least one parking space within the Site for each Restricted Unit. The size, configuration and quality of interior and exterior finishes of each Restricted Unit shall comply with the requirements of the Ordinance.

5. Households eligible to purchase a Restricted Unit (each, an “Eligible Household”), shall mean persons and families earning income within, but not more than, the limits applicable to the household size in question, as set forth in either: (a) that certain chart labeled “2004 Maximum Income - 100% Area Median Income,” within the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual (the “Manual”), which is attached hereto as Exhibit C (as such maximum income limits may be updated by the Commission from time to time to accommodate changes in Area Median Income [as defined below]), or (b) the definition of “persons and families of moderate income” set forth in California Health and Safety Code Section 50093. In the event of any conflict between the two standards set forth in clauses (a) and (b) of the preceding sentence, the more restrictive standard (i.e., the standard requiring persons and families to fall within the lower income to qualify) shall be used to determine “Eligible Households.” Households must also meet any additional requirements set forth in the Declaration of Covenants, Conditions and Restrictions and Right of First Refusal (each, an “Individual Declaration”) signed by the Owner (as defined below) of each Restricted Unit, to constitute “Eligible Households.” The form of Individual Declaration that Owners will be required to sign is attached hereto as Exhibit D. For purposes of this Agreement, the term “Area Median Income” means the area median income, as adjusted for family size, for the San Diego Metropolitan Area as promulgated by the California Department of Housing and Community Development (“HCD”). In the event HCD ceases to publish an established Area Median Income as aforesaid, the Commission may, in its sole discretion, use any other reasonably comparable method of computing Area Median Income.

6. The maximum sales price of a Restricted Unit (“Maximum Sales Price”) means the maximum sales price applicable to the unit size in question, as set forth in either: (a) that certain chart labeled “2004 Sales Price Restrictions - 100% Area Median Income,” within the Manual (as such maximum sales price may be updated by the Commission from time to time to accommodate changes in Area Median Income), or (b) regulations promulgated pursuant to California Health and Safety Code Section 50052.5(e) to determine the sales price that will make housing available to moderate-income households at an “affordable housing cost,” as defined in California Health and Safety Code Section 50052.5(b)(4). In the event of any conflict between

the two standards set forth in clauses (a) and (b) of the preceding sentence, the more restrictive standard (i.e., the standard resulting in a lower maximum sales price) shall be used to determine the “Maximum Sales Price.”

7. The Participant and any subsequent seller of a Restricted Unit (any such subsequent seller is referred to as an “Owner”) shall only sell such Restricted Unit to an Eligible Household for a total consideration (“Actual Sales Price”) not to exceed the Maximum Sales Price.

8. Beginning with the initial sale of a Restricted Unit and continuing with each sale thereafter in perpetuity, an Owner shall meet the following criteria (“Occupancy Criteria”):

8.1 The Owner shall occupy the Restricted Unit as his/her only residence. The Owner shall be considered as occupying the Restricted Unit as the Owner’s only place of residence if the Owner is living in the Restricted Unit for at least ten (10) months out of each calendar year. Owner shall not lease or rent the Restricted Unit for more than thirty (30) days per calendar year. Notwithstanding the foregoing:

8.1.1 If the Owner is deceased, then the Owner’s heir may take title to the Restricted Unit, provided such heir qualifies as an Eligible Household at the time of taking title, which shall in no event be more than one-year from the Owner’s date of death. If more than one heir is proposed to take title to the Restricted Unit, all such heirs must qualify as an Eligible Household.

8.1.2 If the Owner’s failure to occupy the Restricted Unit as set forth in Section 8.1, above, is the result of a medical necessity, then the Owner shall be given a grace period, not to exceed one-year from the date the Owner ceased occupancy of the Restricted Unit. At the end of such one-year grace period, the Owner shall be required to either occupy the Restricted Unit or to sell such Restricted Unit to an Eligible Household for a total consideration that does not exceed the Maximum Sales Price.

8.2 If the Owner is not a natural person, the Owner shall not sell, convey or transfer a beneficial interest in Owner to any person, except to an Eligible Household.

8.3 The Owner shall not refinance all or any part of the Restricted Unit unless either: (i) the principal balance of Owner’s loan after the refinancing does not exceed the principal balance of Owner’s loan before the refinancing, plus reasonable closing costs; or (ii) all of the following conditions are met: (A) the Owner receives cash from such refinancing, which does not exceed ten percent (10%) of the principal balance of Owner’s loan before the refinancing; (B) such cash is borrowed for the purpose of and is used for improvements to the Restricted Unit, which improvements are preapproved by the Commission prior to Owner’s obtaining the refinancing; and (C) the Commission provides advance written consent of the refinancing to the Owner.

8.4 No part of the Restricted Unit shall be transferred to the Owner’s spouse after, or as part of, a divorce, unless immediately prior to such transfer (i) such spouse is an Owner of the Restricted Unit; or (ii) such spouse qualifies as an Eligible Household.

9. The Commission shall monitor, at no cost to the Participant other than as provided in Section 11, the occupancy of each Restricted Unit, at such times and using such methodologies as determined by the Commission in the Commission's sole discretion, to determine whether the Owner meets the Occupancy Criteria. Upon a determination by the Commission that the Occupancy Criteria have not been, or are not being, met the Owner shall sell the Restricted Unit to an Eligible Household for a total consideration that does not exceed the Maximum Sales Price. The Commission shall also perform all required monitoring of the Restricted Units with respect to the affordability requirements of this Agreement, the Master Declaration (as defined in Section 14 below) and the Individual Declarations, at such times and using such methodologies as determined by the Commission in the Commission's sole discretion, including, without limitation: (a) determining whether prospective purchasers of Restricted Units constitute Eligible Households; and (b) calculating the Maximum Sales Price for Restricted Units.

10. Neither the Participant nor any Owner shall sell or transfer any Restricted Unit without the approval of the Commission, and the Commission's verification that the requirements of the Master Declaration (or, if the Participant has sold such Restricted Unit to an Owner, the Individual Declaration applicable to such Restricted Unit) have been satisfied, including without limitation the Commission's verification that a purchaser or transferee is an Eligible Household and that the Actual Sales Price does not exceed the Maximum Sales Price.

11. As payment for the Commission's services referenced in Section 9 above, (i) the Participant shall pay, upon the initial sale of each Restricted Unit, a fee to the Commission in the amount of .75% of the Actual Sales Price, and (ii) upon the sale of each Restricted Unit thereafter in perpetuity, the seller thereof shall pay a fee to the Commission in the amount of .2% of the Actual Sales Price. Under no circumstances shall the Commission be liable for any fees or costs incurred by any party with respect to the sale or transfer of a Restricted Unit, including without limitation any reconveyance fees, recordation fees and subordination fees.

12. The Participant shall construct or cause the construction of all Restricted Units within the podium level of one building (the "Building") to be constructed on that portion of the Site north of Imperial Avenue. The Participant shall ensure that all Restricted Units shall be constructed pursuant to plans and permits approved by the Centre City Development Corporation ("CCDC") in consultation with the Commission.

13. The Participant intends, and has agreed pursuant to Section 401 of the OPA, and hereby agrees to construct at least 100,000 gross square feet ("Restricted Unit Area") of Restricted Units upon the Site (the "Affordable Housing Requirement"). Such construction will reduce, but not extinguish, the Participant's obligation to pay the in-lieu fee that would otherwise be required to be paid at the time of submission of a building permit application for any Parcel pursuant to the Ordinance if no Restricted Units were to be constructed upon such Parcel (the "Full In-Lieu Fee"). The exact location of the Restricted Units to be constructed in the Restricted Unit Area will comply with Section 12 above but will likely not be located upon all Parcels. For the purpose of determining the in-lieu fee that must be paid pursuant to the Ordinance, the following definitions shall apply:

R = Number of Restricted Units that will be constructed within the Restricted Unit Area.

X = Number of Restricted Units required to be constructed within the Site to fully comply with Section 142.1306(a) of the Ordinance.

L = Full In-Lieu Fee then being charged per square foot but in no event less than \$7

Upon the issuance of a building permit for any Parcel or portion of a Parcel, Participant shall pay an in-lieu fee to the Commission for each square foot of gross floor area of residential use within such Parcel or portion of a Parcel determined as follows:

$$\text{In-lieu fee per square foot} = L (1-R/X)$$

An example of the foregoing calculation is set forth below:

Assume: R = 100 Units
 X = 140 Units
 L = \$7

Then In-lieu fee per square foot = \$7 x (1-100/140) = \$2

The parties understand and acknowledge that, on the date of this Agreement, the exact number of market-rate and affordable housing units to be constructed on the Site is unknown. Therefore, the values used in determining R and X shall be based upon assumptions agreed upon by the parties and reviewed and updated at each Compliance Review (as defined below).

13.1 As security for the Participant's obligation to construct Restricted Units in satisfaction of the Affordable Housing Requirement, the Participant shall, upon the issuance of each building permit for a Parcel, post an unconditional, irrevocable letter of credit in form and content satisfactory to, and in favor of, the Agency and the Commission (or, once the first letter of credit for a Parcel is posted, amend such letter of credit as necessary to include subsequent Parcels), in an amount equal to the sum of the Full In-Lieu Fee that would have been due upon the issuance of the subject building permit plus the Full In-Lieu Fees that would have been due on the issuance of all building permits previously issued with respect to the Site pursuant to the Ordinance if no Restricted Units were to be constructed on the Site, reduced by the amount of in-lieu fees actually paid. Any letter(s) of credit shall be for a term of not less than one (1) year and shall allow either beneficiary (i.e., the Agency or the Commission) to draw upon the letter of credit if: (1) the Participant fails to construct Restricted Units in satisfaction of the Affordable Housing Requirement and in accordance with the terms and conditions of the OPA, the Master Plan, and this Agreement, (2) the Participant does not renew or replace such letter of credit by a date not later than thirty (30) days before the stated expiration thereof, or (3) the Participant fails to pay any amounts owed upon the issuance of a certificate of occupancy for the Restricted Units, as described below. Should the drawdown of the letter of credit be exercised, the

principal amount of the letter of credit shall be returned to the Participant, less reasonable costs incurred by the Commission and the Agency to enforce their rights and the Participant's obligation to satisfy the Affordable Housing Requirement, at the time a certificate of occupancy is issued for the 100,000 gross square feet of Restricted Units. In no event shall the payment of in-lieu fees or the drawdown of any letter of credit relieve the Participant of its obligation to satisfy the Affordable Housing Requirement in accordance with the OPA, the Master Plan and this Agreement.

13.1.1 The Participant shall cause the amount of the letter(s) of credit to be increased to account for increases in the in-lieu fees being charged from time to time pursuant to the Ordinance.

13.1.2 Upon the issuance of a certificate of occupancy for the Restricted Units, the Commission shall determine the Full In-Lieu Fees due for market-rate residential housing constructed upon the Site as of the date of issuance of the certificate of occupancy for the Restricted Units, minus the amount of in-lieu fees actually paid up to and as of such date. If the Participant owes any further fees, the Participant shall either deliver such amounts owed in cash or, if the Participant does not deliver such amounts within fifteen (15) days after the parties' determination of the amounts owed, either the Agency or the Commission may draw upon the letter(s) of credit in the amounts owed. If the full amounts of the letter(s) of credit have not been drawn upon at such point, the letter(s) of credit will be released. Thereafter, the Participant shall pay any in-lieu fees owed in connection with market-rate residential housing subsequently constructed on the Site in accordance with the formula stated above.

13.2 As further security for the Participant's obligation to construct Restricted Units in satisfaction of the Affordable Housing Requirement, building permits will not be issued for any improvements on Parcels C1, C3 or C4, or any portion thereof (other than a building permit for Restricted Units) unless and until: (a) the Participant obtains the Agency's and the Commission's approval of Evidence of Financing (as defined below) for the Restricted Units; (b) the Master Declaration and Deed of Trust referenced in Section 14 below are recorded and constitute a valid lien against the Restricted Units, and (c) the Participant commences construction of the Building in which the Restricted Units will be located pursuant to a building permit or permits issued by the City of San Diego; provided, however, the foregoing shall not prohibit the Participant from applying for and obtaining, prior to the satisfaction of the conditions set forth in clauses (a) and (c) of this sentence, a building permit for a subterranean parking garage that spans more than one Parcel and includes the Parcel or Parcels upon which the Restricted Units will be located. In addition, the Participant shall not seek any certificates of occupancy, nor shall any certificates of occupancy be issued (other than for retail uses and the aforesaid subterranean parking garage), for Parcels C1, C3 or C4, or any portion thereof, unless and until the City of San Diego issues a certificate of occupancy for the Restricted Units.

13.3 For purposes of this Section 13, the term "Evidence of Financing" shall mean all of the following, satisfactory to the Agency and the Commission in their reasonable discretions:

- (1) A copy of the commitment or commitments for the mortgage loan or loans obtained or to be obtained (both for interim construction

financing and take out financing if a condition of funding the construction loan) to assist in financing the construction of the Restricted Units on the Site, certified by the Participant to be a true and correct copy or copies thereof;

(2) A copy of the contract between the Participant and the general contractor for the construction of the Restricted Units on the Site, certified by the Participant to be a true and correct copy thereof;

(3) A copy of all construction and, if applicable, permanent loan documents (e.g., notes, trust deeds, indentures, loan agreements, etc.) pertaining to the financing for the construction of the Restricted Units; and

(4) Evidence satisfactory to the Agency of sources of equity capital sufficient to demonstrate that the Participant has adequate funds legally committed to cover the difference, if any, between the construction cost for the Restricted Units minus financing authorized by mortgage loans.

The Agency and the Commission shall approve or disapprove of such Evidence of Financing within thirty (30) days after the Participant's submission of all documents described in Sections 13.3(1) through (4) above. Each such approval shall not be unreasonably withheld. Failure of the Agency or the Commission to timely approve or disapprove of any Evidence of Financing submitted by the Participant shall constitute such party's approval of such submission. If the Agency or the Commission disapproves any submitted Evidence of Financing, such party shall do so by written notice to the Participant stating its reasons for such disapproval.

14. Upon the full execution of the OPA by the parties thereto, an Agreement to be Recorded Affecting Real Property which effects the requirements of the OPA shall be recorded against the Site. Additionally, a Master Declaration of Covenants, Conditions and Restrictions (the "Master Declaration") by the Participant in favor of the Commission, in form and of content as set forth on Exhibit E attached hereto, shall be recorded against the Restricted Units prior to the issuance of a building permit for Parcel C-1, C-3 or C-4, or any portion thereof (including, without limitation, the subterranean parking garage referenced in Section 13.2 above). The Participant's compliance with the provisions of such Master Declaration shall be secured by the recordation of a Deed of Trust (the "Deed of Trust") in favor of the Commission against the Restricted Units, in form and of content as set forth on Exhibit F attached hereto. The Deed of Trust will be subordinate to any liens securing financing for the Restricted Units, but the recorded Master Declaration shall be senior to any such liens and shall not be extinguished by foreclosure, a deed in lieu of foreclosure or power of sale, or sale. Participant shall cause to be delivered to the Commission a standard form CLTA lender's policy of title insurance in the amount of \$100,000, insuring that each of the Master Declaration and Deed of Trust are valid encumbrances with lien priorities as set forth in this Section 14.

15. The parties shall meet and confer every six (6) months (each, a "Compliance Review") after execution of this Agreement to update the Participant's estimate of the number of market-rate units to be developed on the Site, the progress of plans and permits for the Restricted Units, and the construction, marketing and sales of the Restricted Units, and to reconcile in-lieu

fee payments made and letters of credit posted pursuant to Section 13 above; provided that, notwithstanding any such updates and reconciliations, all such elements and payments shall at all times be in compliance with the requirements of the OPA, the Resolution, the Master Declaration, this Agreement and the State Community Redevelopment Law, to the extent applicable. If, as a result of any Compliance Review, the parties determine any amounts are owed by any party to the other party or parties hereto, such payment shall be made within thirty (30) days after such determination.

16. The Participant shall comply with the marketing requirements set forth in the Manual, including without limitation, by submitting an affirmative marketing plan that complies with City Council Policy 600-20 to the City Manager for approval. Without limiting the foregoing, the Participant shall use diligent and good-faith efforts to market the Restricted Units in substantially the same manner as it markets market-rate units within the Building. The Participant agrees that neither it nor its agents shall discriminate against any prospective purchaser or any actual purchaser of a Restricted Unit on the basis of sexual orientation, marital status, race, color, creed, religion, sex, national origin or ancestry, age, physical handicap, or the fact that a prospective or actual purchaser has a child or children.

17. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall collectively constitute one instrument.

18. The parties hereto agree to take such actions and execute such additional documents as are reasonably necessary to carry out the provisions of this Agreement.

19. The prevailing party in any action, including without limitation, 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 reasonable attorneys' fees and costs (including, but not limited to, experts' fees and costs), incurred in connection with such action.

20. (a) Participant shall be responsible for all injuries to persons and/or all damages to real or personal property of Commission or others, caused by or resulting from the negligence and/or breach of this Agreement, by itself, its employees, subcontractors and/or its agents during the construction of or arising out of the construction of the Project and/or the breach of this Agreement. Participant shall defend and hold harmless and indemnify the Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC, and all of their respective officers, employees, contractors and agents from all costs, damages, judgments, expenses and claims to any third party resulting from the negligence, breach of this Agreement, or construction of the Project by Participant, its employees, subcontractors and/or its agents, except to the extent arising from the sole negligence or willful misconduct of Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC, or any of their respective officers, employees, contractors and agents. It is the intent of the parties that this indemnity agreement be construed and interpreted as a Type I Indemnity Agreement in favor of Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC, and each of them, as defined in the California cases entitled *McDonald & Kruse, Inc. v. San Jose Steel Company, Inc.* (1972) 29 Cal.App.3d 413, and *CI Engineering & Construction v. Johnson* (1983) 140 Cal.App.3d 1011, 1015.

(b) Participant agrees and promises to protect, defend, indemnify, and hold harmless the Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC, and their respective officers, agents, contractors, employees, or representatives, from any and all liabilities, losses, damages, costs or claims in any way arising from this Agreement and/or the Site and/or Participant's ownership or operation of the Site, including but not limited to, claims for injury or death to any person occurring on the Site, contracts executed by Participant and any losses from the Site, including losses from negative cash flows. Notwithstanding the foregoing, Participant shall not be required to indemnify, protect, hold harmless or defend any party for any liabilities, costs, losses or claims arising from such party's negligence or willful misconduct and/or breach of this Agreement.

(c) During the period commencing with the Effective Date and ending on the date when a Release of Construction Covenants has been issued with respect to the entire Site, the Participant shall furnish or cause to be furnished to the Commission and the Agency, duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least Three Million Dollars (\$3,000,000) combined single limit naming the Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC, and their respective officers, employees, contractors and agents as additional insureds.

(d) It is expressly understood that Participant is solely and exclusively responsible for any and all problems, claims, work, clean-up efforts and the like associated with any alleged Hazardous Materials, as defined below, on the Site. Neither the Commission, nor the Housing Authority of the City of San Diego, has any obligation or liability whatsoever regarding toxic contamination or Hazardous Materials on the Site. This obligation is and shall remain even after completion of the construction and timely filing of certificates of occupancy. The Participant agrees to and shall defend, indemnify and hold the Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC, and their respective officers, employees, contractors and agents harmless from and against all claims, liability, loss, judgments, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the presence or discharge or remediation of Hazardous Materials by the Participant. "Hazardous Materials" means and includes any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. §9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §6901, *et seq.*), and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

(e) Participant shall indemnify, protect, defend and hold harmless the Commission, the Housing Authority of the City of San Diego, the Agency, the City, CCDC and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to such indemnified parties, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Site, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Participant of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, any requirement to pay state prevailing wages, if applicable); (2) the implementation of the Applicable Labor Code Provisions, as defined in the OPA; (3) failure by Participant to provide any required disclosure or identification as required by the Applicable Labor Code Provisions; (4) failure by Participant to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Applicable Labor Code Provisions; and/or (5) failure by the Participant to obligate any party as may be required by the Applicable Labor Code Provisions. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and operation of the improvements, including, without limitation, any and all public works (as defined by applicable law), Participant shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of the Applicable Labor Code Provisions. “Increased costs” as used in this Section shall have the meaning ascribed to it in the Applicable Labor Code Provisions. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the development of the Site. Nothing herein contained shall prohibit or limit the Participant from contesting the validity or applicability of any statute, ordinance or regulation pertaining to the subject matter of this Section, including but not limited to any provision of the Labor Code or any regulation adopted pursuant thereto.

21. The Participant shall not assign all or any part of this Agreement without the prior written approval of the Commission and the Agency, which approvals shall not be unreasonably withheld. The Commission and the Agency agree to approve such an assignment to an “Affiliate” of the Participant. For purposes of this Agreement, “Affiliate” means an entity that is under the control or common control with the Participant or either of Participant’s managing members.

22. This Agreement and the relationship created herein shall terminate upon full satisfaction of all of Participant’s obligations under this Agreement. The obligations of Participant include, but are not limited to, those obligations arising under the Master Declaration, the provisions of which shall survive termination of this Agreement.

23. (a) This Agreement, its performance, and all suits and special proceedings under this Agreement, shall be interpreted in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under or because of this Agreement, the laws of the State of California shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

(b) Participant expressly agrees and declares that Commission, the Agency, the Housing Authority of the City of San Diego, and any successors shall be the proper parties and shall have standing to initiate and pursue any and all actions or proceedings, at law or in equity, including but not limited to foreclosure under any Deed of Trust, to enforce the provisions hereof and/or to recover damages for any default hereunder, notwithstanding the fact that such damages or the detriment arising from such a default may have actually been suffered by some other person or by the public at large. Further, Participant expressly agrees that receivership, injunctive relief and specific performance are proper pre-trial and/or post-trial remedies hereunder, and that, upon any default, a receiver may be appointed by the court to take control of the Site and to assure compliance with this Agreement. Nothing in this subparagraph, and no recovery by the Commission, the Agency, the City, CCDC, or the Housing Authority of the City of San Diego shall restrict or limit the rights or remedies of persons or entities other than such recovering parties against Participant in connection with the same or related acts by Participant. The remedies set forth in this Section are cumulative and not mutually exclusive, except the extent that their award is specifically determined to be duplicative by final order of a court of competent jurisdiction.

24. Participant represents and warrants that no member, officer, or employee of the Participant, no member of the governing body of the locality in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to this Agreement, shall, during his or her tenure, or for one year thereafter, have any interest direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section may, at the option of the Commission, result in unilateral and immediate termination of this Agreement by the Commission.

25. Notices under this Agreement shall be deemed given: (a) upon actual personal delivery to the notified party, (b) upon the expiration of three (3) days from the insertion of the notice, properly addressed and certified mail, return-receipt requested, postage prepaid, in a U.S. mail depository within California, or upon the expiration of seven (7) days from the insertion of the notice, properly addressed and via certified mail, return receipt requested, postage prepaid, in a U.S. mail depository outside of California, or (c) the next business day after delivery to any overnight express carrier . Notices shall be sent to the addresses for the Parties as set forth below or as changed by either Party from time to time by written notice to the other Party.

Commission: San Diego Housing Commission
ATTENTION: Loan Management
1625 Newton Avenue
San Diego, CA 92113

Copy to: Christensen Schwerdtfeger & Spath LLP
444 West C Street, Suite 200
San Diego, CA 92101

If to Agency: Redevelopment Agency of the City of San Diego
City Administration Building

202 C Street
San Diego, California 92101

Copy to: Centre City Development Corporation
225 Broadway, Suite 1100
San Diego, CA 92101

If to Participant: Ballpark Village LLC
12680 High Bluff Drive, Suite 200
San Diego, California 92130

26. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect.

27. This Agreement contains the entire understanding between the parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed and/or referred to herein. 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.

28. The provisions contained in this Agreement shall not be construed in favor of or against any party but shall be construed as if all parties contributed equally to its preparation. This Agreement shall be construed in accordance with the laws of the State of California.

29. Neither the Commission nor the Agency shall in any way be liable for any acts or omissions of Participant, any agent or contractor employed by Participant, or any person furnishing labor and/or materials used in or related to the construction of the Restricted Units.

30. Time is of the essence of this Agreement and of each and every provision hereof. The waiver by the Agency or the Commission of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

[signatures on following pages]

PARTICIPANT:

BALLPARK VILLAGE LLC,
a Delaware limited liability company

By: Lennar Homes of California, Inc,
a California corporation

Date: _____

By: _____
Its: _____

By: JMIR-Ballpark Village LLC,
a Delaware limited liability company

By: JMIR Project Manager, LLC
a Delaware limited liability company

Date: _____

By: _____
Its: _____

[signatures continue on following page]

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO

Date: _____

By: _____

Its: _____

Name: _____

APPROVED AS TO FORM AND LEGALITY
ON THIS __ day of _____, 20__.

MICHAEL AGUIRRE
Agency General Counsel

By: _____

APPROVED:

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____
Murray O. Kane

COMMISSION:

SAN DIEGO HOUSING COMMISSION

By: _____

Its: _____

Name: _____

APPROVED:

CHRISTENSEN SCHWERDTFEGER
& SPATH LLP
Commission General Counsel

By: _____
Walter Spath

EXHIBIT A

SITE

LOTS 7, 8, 10, 12, AND 13 THROUGH 16, INCLUSIVE, OF PARCEL MAP NO. 18855 FILED ON DECEMBER 7, 2001 AS FILE NO. 2001-0900838 IN THE OFFICIAL RECORDS OF THE SAN DIEGO COUNTY RECORDER.

EXHIBIT B

DEPICTION OF PARCELS

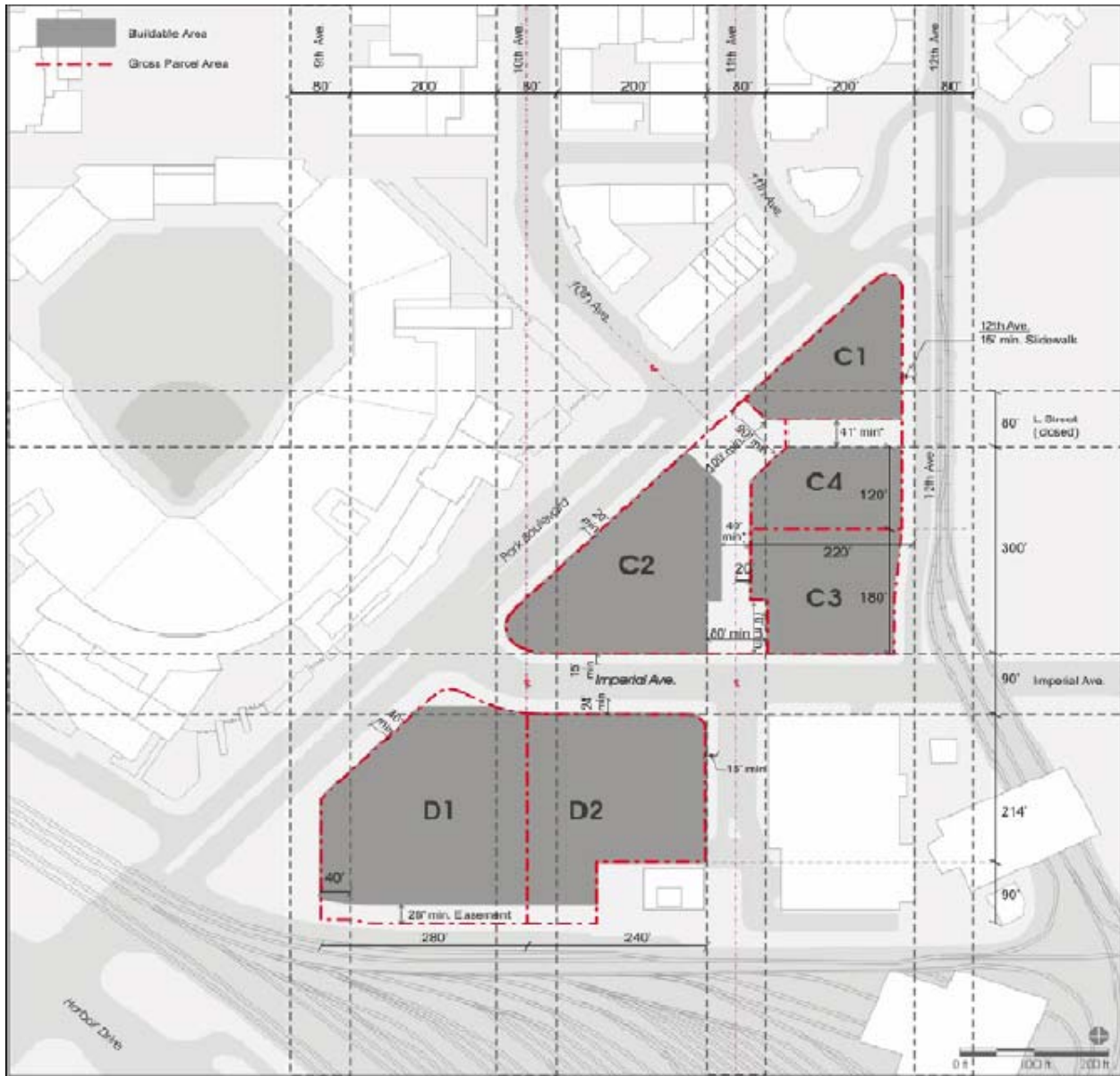


EXHIBIT C

2004 MAXIMUM INCOME – 100% AREA MEDIAN INCOME

EXHIBIT D

INDIVIDUAL DECLARATION

EXHIBIT E
MASTER DECLARATION

EXHIBIT F
DEED OF TRUST