

FIRST IMPLEMENTATION AGREEMENT  
TO  
DISPOSITION AND DEVELOPMENT AGREEMENT

(CITY HEIGHTS SQUARE OFFICE AND RETAIL PROJECT)

THIS FIRST IMPLEMENTATION AGREEMENT to the Disposition and Development Agreement [First Implementation Agreement] is made and entered into as of this 30th day of November, 2007, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic [Agency], and PRICE CHARITIES, a California non-profit public benefit corporation, formerly named SAN DIEGO REVITALIZATION CORPORATION, a California non-profit public benefit corporation, [Developer], collectively referred to herein as the Parties, in consideration of the mutual covenants and promises set forth below, with reference to the following:

RECITALS

WHEREAS, in furtherance of the objectives of the California Community Redevelopment Law [Law], the Agency has undertaken a program for the redevelopment of certain areas within the City of San Diego, State of California, and, in this regard, has adopted the City Heights Redevelopment Project Area [Project Area] and the Redevelopment Plan for the Project Area pursuant to the Law; and

WHEREAS, in furtherance of the Redevelopment Plan, the Agency and the Developer entered into a Disposition and Development Agreement effective May 3, 2005 [DDA], attached hereto as Exhibit "D"; and

WHEREAS, the DDA provides for the redevelopment of certain real property consisting of approximately 1.40 acres and located within the Project Area at the southern portion of the block bounded by University Avenue on the South, Fairmont Avenue on the East, Polk Avenue on the North, and 43<sup>rd</sup> Street on the West [Site; See Attachment Nos. 1 (Site Map) and 2 (Legal Description) to the DDA]; and

WHEREAS, the purpose of the DDA is to effectuate the Redevelopment Plan for the Project Area by providing for the Agency's acquisition and disposition of the Acquisition Parcel (as said term is defined in the DDA) and for the Developer's development of the Site, which includes the Acquisition Parcel and the Developer's Parcels (as said terms are defined in the DDA), as a four story retail-office building, consisting of up to 95,000 square feet with approximately 23,000 square feet of ground floor retail and lobby space, three levels of office space, and/or classrooms and/or meeting rooms above, and street level and underground parking [Project]; and

WHEREAS, pursuant to and in accordance with the terms and conditions of the DDA, the Agency has agreed to acquire two parcels located at the corner of University Avenue and

DOCUMENT NO. D-04225/r04225  
FILED DEC 03 2007  
OFFICE OF THE REDEVELOPMENT AGENCY  
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Fairmont avenue [Acquisition Parcel], to relocate the existing business located thereon, to demolish the existing building located thereon, to remediate any soil contamination, and to sell the cleared property to the Developer when the Developer has satisfied certain conditions precedent and is prepared to proceed with construction of the Project; and

WHEREAS, pursuant to and in accordance with the terms and conditions of the DDA, the Developer agreed, in addition to developing the Site, to sell to the Agency a portion of property known as the Park Site (as said term is defined in the DDA) in accordance with the Agreement of Purchase and Sale and Escrow Instructions for the Park Tract, and to advance funds [Developer's Advance] whereby the Developer advances to the Agency an amount up to \$3,500,000, a portion of which shall be considered the Developer's payment of the purchase price for the Acquisition Parcel and the remaining funds shall be considered a loan from the Developer to the Agency, as more fully described in the Loan Agreement (See, Attachment No. 10 to the DDA), to fund the costs of property acquisition and site preparation; and

WHEREAS, to date, the Agency has acquired the Acquisition Parcel from the underlying property owner and purchased the Park Site from the Developer, as provided by the DDA; and

WHEREAS, the Developer has provided a portion of the Developer's Advance to the Agency, sold the Park Site to the Agency, and submitted and obtained Agency approval of the Architect, Landscape Architect and Civil Engineer and the Basic Concept/Schematic Drawings for the Project, as provided by the DDA; and

WHEREAS, certain deadlines imposed on the Developer as set forth in the Schedule of Performance (See, Attachment No. 4 to the DDA) have expired and will expire in the near future, while certain obligations of the Developer to be performed by said deadlines remain outstanding; and

WHEREAS, the Agency may pay the outstanding loan portion of the Developer's Advance to the Developer; thus, certain provisions of the Loan Agreement which the Agency desires to remain effective, would expire upon repayment of the loan; and

WHEREAS, the Developer has changed its corporate name and requests the Agency to acknowledge and approve such name change; and

WHEREAS, in light of the expired and upcoming deadlines imposed in the Schedule of Performance, the status of the Project, the corporate name change of the Developer, and the Agency's desire to amend the DDA and its Attachments to incorporate specific language of the Loan Agreement that may otherwise expire, the Agency and the Developer desire to implement the DDA, through this First Implementation Agreement, by extending certain deadlines set forth in the Schedule of Performance (Attachment No. 4 to the DDA) by an additional two years, by acknowledging and approving the corporate name change of Developer, and by making other necessary revisions to the DDA and its Attachments, in order to encourage development of the Site and to maintain the effectiveness of the DDA; and

WHEREAS, any capitalized term contained in this First Implementation Agreement that is not otherwise defined shall have the meaning attributed to such term in the DDA.

## AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and the Developer agree as follows:

### SECTION 1. PURPOSE OF FIRST IMPLEMENTATION AGREEMENT

The purpose of this First Implementation Agreement is to encourage development of the Site and to maintain the effectiveness of the DDA, attached hereto with its Attachments as Exhibit "D" and hereby incorporated herein by this reference, by amending certain provisions of the DDA as follows:

- A. Amend the Schedule of Performance attached to the DDA as Attachment No. 4 to make necessary and appropriate changes to performance deadlines for certain obligations of the Developer;
- B. Amend the definition of "Schedule of Performance" set forth in Section 102 of the DDA to include the amended Scheduled of Performance referenced above;
- C. Amend the Grant Deed attached to the DDA as Attachment No. 6 to make necessary and appropriate changes to certain obligations of the Developer;
- D. Amend the definition of "Grant Deed" set forth in Section 102 of the DDA to include the revised form of Grant Deed referenced above;
- E. Amend the Agreement Affecting Real Property attached to the DDA as Attachment No. 9 to make necessary and appropriate changes to certain obligations of the Developer;
- F. Amend the definition of "Agreement Affecting Real Property" set forth in Section 102 of the DDA to include the revised form of Agreement Affecting Real Property referenced above;
- G. Amend Subsection (b) of Section 105 of the DDA to reflect the updated mailing address for the Agency;
- H. Amend Section 106 of the DDA to change all references to the corporate name of Developer as San Diego Revitalization Corporation to reflect Developer's new name Price Charities;

- I. Amend Section 209(d) of the DDA by adding an obligation of the Developer to obtain an appraisal of the Acquisition Parcel within ninety (90) calendar days prior to Close of Escrow, and to pay the Fair Market Value of the Acquisition Parcel as determined by the re-appraisal and any legally required update to the Summary Report Pertaining to the Sale of Real Property dated April 12, 2005, pursuant to California Health and Safety Code Section 33433;
- J. Amend Section 2 of the Method of Financing attached as Attachment 3 to the DDA, to require the Developer to obtain an appraisal of the Acquisition Parcel within ninety (90) calendar days prior to Close of Escrow, and to pay the Fair Market Value of the Acquisition Parcel as determined by the re-appraisal and any legally required update to the Summary Report Pertaining to the Sale of Real Property dated April 12, 2005, pursuant to California Health and Safety Code Section 33433;
- K. Amend Section 403 of the DDA to reflect recent changes in the California Redevelopment Law relating to covenants of nondiscrimination and nonsegregation by the Developer;
- L. Amend Section 404 of the DDA to reflect recent changes in the California Redevelopment Law relating to covenants and form nondiscrimination and nonsegregation clauses; and
- M. Authorize the Agency's Executive Director or his/her designee to take such further actions as may reasonably be required to effectuate the DDA, as amended by this First Implementation Agreement.

**SECTION 2. CHANGE OF CORPORATE NAME OF DEVELOPER**

A. The Parties hereby acknowledge and approve of the official corporate name change of San Diego Revitalization Corporation to Price Charities, a California public benefit corporation.

B. Developer hereby represents, covenants, promises and agrees that, except for the name of the corporation, all corporate information and Developer formation documents provided to the Agency for its consideration and relied upon by the Agency in its determination to enter into the DDA with Developer as San Diego Revitalization Corporation do hereby remain unchanged and are the same with regard to Price Charities.

C. The Parties hereby agree that, and Price Charities hereby assumes, all rights, interests, liabilities and obligations of San Diego Revitalization Corporation under the DDA and its Attachments, as amended, and the Loan Agreement executed by and between the Agency and San Diego Revitalization Corporation, and that Price Charities hereby agrees to be bound thereby in accordance with the terms thereof.

D. All references to San Diego Revitalization Corporation in the DDA and its Attachments as the Developer are hereby changed to mean the Developer's new name Price Charities, a California nonprofit public benefit corporation.

### **SECTION 3. AMENDMENTS TO DDA**

The Parties hereby amend the DDA, attached hereto as Exhibit "D", as follows:

A. The Schedule of Performance, attached to the DDA as Attachment No. 4, is hereby amended and replaced in its entirety with the Amended Schedule of Performance, attached hereto as Exhibit "A" and incorporated herein by this reference.

B. The term "Schedule of Performance" in Section 102, Definitions, of the DDA is hereby amended in its entirety and shall read as follows:

"Schedule of Performance" shall mean the document titled "Amended Schedule of Performance" attached as Exhibit "A" to the First Implementation Agreement and incorporated herein by this reference, which replaces the Schedule of Performance attached as Attachment No. 4 to the DDA.

C. The Grant Deed, attached to the DDA as Attachment No. 6, is hereby revised and replaced in its entirety with a revised form of Grant Deed, attached hereto as Exhibit "B" and incorporated herein by this reference.

D. The term "Grant Deed" in Section 102, Definitions, of the DDA is hereby amended in its entirety and shall read as follows:

"Grant Deed" shall mean the instrument by which the Agency shall convey fee title of the Acquisition Parcel to the Developer and substantially in the form attached as Exhibit "B" to the First Implementation Agreement, which is incorporated herein by this reference and replaces the form Grant Deed attached as Attachment No. 6 to the DDA.

E. The Agreement Affecting Real Property, attached to the DDA as Attachment No. 9, is hereby revised and replaced in its entirety with a revised form of Agreement Affecting Real Property, attached hereto as Exhibit "C" and incorporated herein by this reference.

F. The term "Agreement Affecting Real Property" in Section 102, Definitions, of the DDA is hereby amended in its entirety and shall read as follows:

"Agreement Affecting Real Property" shall mean an instrument substantially in the form attached as Exhibit "C" to the First Implementation Agreement, which is incorporated herein by this reference and replaces the form Agreement Affecting Real Property attached as Attachment No. 9 to the DDA.

G. Subsection (b) of Section 105, The Agency, of the DDA is hereby amended in its entirety and shall read as follows:

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement is: Redevelopment Agency of the City of San Diego, Attn: Project Manager – City Heights Redevelopment Project Area, 1200 Third Avenue; Suite 1400, San Diego, California 92101.

H. Section 106, Developer, of the DDA is hereby amended in part as follows: All references to the corporate name of Developer as San Diego Revitalization Corporation shall be changed to reflect the Developer's new name Price Charities, a California nonprofit public benefit corporation.

I. Subsection d. of Section 209, Conditions Precedent to Close of Escrow, of the DDA is hereby amended in part to add a new Subsection 18 Appraisal of Acquisition Parcel and shall read as follows:

18. Appraisal of Acquisition Parcel.

- A. In light of the two year extension of certain deadlines in the original Schedule of Performance attached as Attachment No. 4 to the DDA, not later than ninety (90) calendar days prior to the Close of Escrow, Developer shall cause to be prepared, at its sole cost, an appraisal of the Acquisition Parcel for the purpose of obtaining the current Fair Market Value [FMV] of the Acquisition Parcel upon the date of Close of Escrow. The appraisal shall be completed by an independent certified appraiser or real estate economic consultant, the selection of which shall be subject to the reasonable approval of the Agency. At Developer's sole cost, the Agency will cause to be prepared any legally required update to the Summary Report Pertaining to the Sale of Real Property dated April 12, 2005, pursuant to California Health and Safety Code Section 33433.
- B. In accordance with the Section 2(d) of the Method of Financing as amended by this First Implementation Agreement, if the FMV of the Acquisition Parcel is determined by the completed appraisal to be greater or lesser than the original purchase price and previously determined fair market value of \$850,000 referenced in the Method of Financing (attached to the DDA as Attachment No. 3), Developer shall pay upon the Close of Escrow the total FMV of the Acquisition Parcel as established by the re-appraisal and any legally required update to the Summary Report Pertaining to the Sale of Real Property dated April 12, 2005, pursuant to California Health and Safety Code Section 33433 [New Purchase Price].

J. Section 2, Developer's Purchase Price, of the Method of Financing, Attachment No. 3 to the DDA, is hereby amended in part to add a new Subsection d. Appraisal of Acquisition Parcel and Developer's New Purchase Price and shall read as follows:

d. Appraisal of Acquisition Parcel and Developer's New Purchase Price.

- (1) In light of the two year extension of certain deadlines in the original Schedule of Performance attached as Attachment No. 4 to the DDA; not later than ninety (90) calendar days prior to the Close of Escrow, Developer shall cause to be prepared, at its sole cost, an appraisal of the Acquisition Parcel for the purpose of obtaining the current Fair Market Value [FMV] of the Acquisition Parcel upon the date of Close of Escrow. The appraisal shall be completed by an independent certified appraiser or real estate economic consultant, the selection of which shall be subject to the reasonable approval of the Agency. At Developer's sole cost, the Agency will cause to be prepared any legally required update to the Summary Report Pertaining to the Sale of Real Property dated April 12, 2005, pursuant to California Health and Safety Code Section 33433.
- (2) If the FMV of the Acquisition Parcel is determined by the completed appraisal to be greater or lesser than the original purchase price and previously determined fair market value of \$850,000 referenced in the Method of Financing (attached to the DDA as Attachment No. 3), Developer shall pay upon the Close of Escrow the total FMV of the Acquisition Parcel as established by the re-appraisal and any legally required update to the Summary Report Pertaining to the Sale of Real Property dated April 12, 2005, pursuant to California Health and Safety Code Section 33433 [New Purchase Price].
- (3) (a) The original purchase price and previously determined fair market value for the Acquisition Parcel is \$850,000, which said amount is declared as a credit to the funds advanced by Developer to the Agency [Developer's Advance] and subject to the Loan Agreement dated May 10, 2005, entered into between San Diego Revitalization Corporation and the Agency, and the Promissory Note dated May 10, 2005, executed by the Agency. In order to reconcile the existence and terms of the Loan Agreement and Promissory Note, the following subsections (b) and (c) apply to payment of the New Purchase Price:
  - (b) If the FMV of the Acquisition Parcel, as determined in

subsection (2) above, exceeds \$850,000, then that portion of the New Purchase Price in excess of \$850,000 shall be payable to the Agency by the Developer upon the Close of Escrow. Subject to the Agency's approval and any required amendments to the Loan Agreement dated May 10, 2005, entered into between San Diego Revitalization Corporation and the Agency, and the Promissory Note dated May 10, 2005, executed by the Agency, the Developer may satisfy payment of the New Purchase Price either by reducing the principal loan amount owed by the Agency to the Developer in an amount equal to the New Purchase Price in excess of \$850,000 or by increasing the amount of the one-time reduction of the principal amount of the Note, as referenced in Section 1(b) of the Note, to the greater amount equal to the New Purchase Price. If, however, the New Purchase Price exceeds the total Developer's Advance paid to the Agency, then, upon Developer's and Agency's agreement that repayment of the Developer's Advance by the Agency has been satisfied and termination of the Loan Agreement dated May 10, 2005 and the Promissory Note dated May 10, 2005, the amount equal to the difference between the New Purchase Price and the total Developer's Advance shall be payable by Developer upon the Close of Escrow.

(c) If the FMV of the Acquisition Parcel, as determined in subsection (2) above, is less than \$850,000, then that portion of \$850,000 in excess of the New Purchase Price shall be reimbursed by the Agency to the Developer upon the Close of Escrow. Subject to the Agency's approval and any required amendments to the Loan Agreement dated May 10, 2005, entered into between San Diego Revitalization Corporation and the Agency, and the Promissory Note dated May 10, 2005, executed by the Agency, the Agency may satisfy payment of reimbursement to the Developer for the amount advanced by Developer in excess of the New Purchase Price, either by increasing the principal amount of the loan amount owed by the Agency to the Developer by the amount equal to the difference between \$850,000 and the New Purchase Price or by reducing the amount of the one-time reduction of the principal amount of the Note, as referenced in Section 1(b) of the Note, to the lesser amount equal to the New Purchase Price.

K. Section 403, Obligation to Refrain from Discrimination, of the DDA is hereby amended in its entirety and shall read as follows:

The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, there shall be no discrimination against or segregation of any person or group of persons, on

account of any basis listed in Subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Site.

L. Section 404, Form of Nondiscrimination and Nonsegregation Clauses, of the DDA is hereby amended in its entirety and shall read as follows:

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

- a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."
- b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through him or her, that this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

- c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

### **SECTION 3. FURTHER CHANGES**

The Agency’s Executive Director or his/her designee is authorized to make such further changes to the forms of documents and instruments attached to the DDA and to this First Implementation Agreement as may be necessary or appropriate to effectuate the DDA, as amended by this First Implementation Agreement.

### **SECTION 4. MISCELLANEOUS PROVISIONS**

A. Effect of First Implementation Agreement; DDA and Attachments to Remain in Effect.

The Parties agree that, except as expressly provided otherwise in this First Implementation Agreement, the DDA and its attachments and any document executed or entered into pursuant to the DDA shall remain in full force and effect, enforceable in accordance with its terms and conditions, without diminution or waiver of any kind of any right or remedy of the Agency thereunder.

B. Governing Law.

This First Implementation Agreement and the legal relations between the Parties shall be governed by and construed and enforced in accordance with the laws of the State of California.

C. Attorney’s Fees.

In the event that one Party brings an action or proceeding against the other Party to enforce or interpret any of the conditions or provisions of this First Implementation Agreement, the prevailing Party shall be entitled to recover all reasonable attorney's fees and expenses, and court costs associated with such action or proceeding.

D. Counterparts.

This First Implementation Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

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EXHIBIT "A"

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AMENDED SCHEDULE OF PERFORMANCE



AMENDED  
SCHEDULE OF PERFORMANCE

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A. GENERAL PROVISIONS

1. Execution of DDA by the Agency. The Agency and City Council shall hold a joint public hearing on the DDA, and, subject to making the requisite findings, authorize execution and execute and deliver the DDA to the Developer. Within thirty five (35) calendar days after submission of executed Agreement by Developer.
2. Submission - Developer's Advance. The Developer to disburse funds to the Agency as part of the Developer's Advance. No later than ten (10) calendar days after receipt of Agency's Application for Payment pursuant to the Loan Agreement.
3. Submission - Architect, Landscape Architect and Civil Engineer. The Developer shall submit to the Agency for approval the name and qualifications of its Architect, Landscape Architect and Civil Engineer. Not later than execution of Agreement by Developer.
4. Approval - Architect, Landscape Architect and Civil Engineer. The Agency shall approve or disapprove the Architect, Landscape Architect and Civil Engineer. Concurrently with execution of Agreement by Agency.
5. Submission - Basic Concept/Schematic Drawings. The Developer shall submit to the Agency for approval the Basic Concept/Schematic Drawings and related documents. Not later than execution of Agreement by Developer.

6. Approval - Basic Concurrently with  
Concept/Schematic Drawings. execution of Agreement  
The Agency shall approve or by Agency.  
disapprove the Basic  
Concept/Schematic Drawings and  
related documents.

B. FINANCING COMMITMENTS

1. Evidence of Financing. The Not later than thirty (30)  
Developer shall submit to the calendar days prior to the  
Agency commitments for the scheduled Closing Date.  
Construction Loan, including  
Construction Loan documents,  
and/or evidence of Developer's  
Equity.
2. Approval of Financing. The Within fifteen (15)  
Agency shall approve or calendar days after Agency  
disapprove the evidence of receives each such  
financing. submission of evidence of  
financing.

C. CLOSING AND CONSTRUCTION

1. Submission - 100% Design Within one thousand two  
Development Drawings. The hundred fifteen (1,215)  
Developer shall prepare and calendar days (e.g. approx.  
submit to the Agency for 40.5 months) after Agency  
approval the 100% Design approval of the Basic  
Development Drawings. Concept/Schematic Design  
Drawings.

Note: These drawings will be  
approved in increments as they  
are submitted.

2. Approval - 100% Design Within thirty (30) calendar  
Development Drawings. The days after submittal.  
Agency shall approve or disap-  
prove the 100% Design  
Development Drawings.
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Note: These drawings will be approved in increments as they are submitted.

3. Submission - Final Within one thousand four  
Construction Drawings and hundred fifteen (1,415)  
Specifications. The Developer calendar days (i.e. approx.  
shall prepare and submit to 47 months) after Agency  
the Agency for approval the approval of the Basic  
Final Construction Drawings Concept/Schematic Design  
and Specifications. Drawings.

Note: These drawings will be submitted in normal increments as they are completed.

4. Approval - Final Construction Within thirty (30) calendar  
Drawings and Specifications. days after submittal.  
The Agency shall approve or disapprove the Final  
Construction Drawings and  
Specifications.

Note: These drawings will be approved in increments as they are submitted.

5. Opening of Escrow. The Agency At least thirty (30)  
and Developer shall open an calendar days prior to the  
escrow for conveyance of the date established herein for  
Acquisition Parcel. the Closing.

6. Possession of Acquisition Parcel. The Agency shall use its best efforts to obtain title or possession pursuant to an Order of Prejudgment Possession, with respect to the Acquisition Parcel, and provide Notice of Possession to Developer; or terminate Agreement pursuant to Section 201 and Section 508 of the Agreement. Not later than one hundred (100) calendar days after execution of the Agreement by the Agency.
7. Closing Date. Agency and Developer shall satisfy all of their respective conditions precedent to the Closing. Not later than June 1, 2009.
8. Local Hiring/Contracting Program. The Developer shall carry out the local hiring/contracting program in accordance with DDA Section 309. Prior to the commencement of construction.
9. Commencement of Construction. The Developer shall commence construction of the Improvements on the Site. Within thirty (30) calendar days after Closing.
10. Completion of Construction. The Developer shall complete construction of the Improvements on the Site. Within five hundred forty five (545) calendar days (e.g. approx. 18 months) after commencement of construction.

EXHIBIT "B"

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(REVISED)  
FORM OF GRANT DEED

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OFFICIAL BUSINESS

Document entitled to free  
recording per Government Code  
Section 6103.

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Recording Requested By:  
THE REDEVELOPMENT AGENCY OF THE CITY  
OF SAN DIEGO  
1200 Third Avenue; Suite 1400  
San Diego, California 92101  
Attention: City Heights Project Manager

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic of the State of California, herein called "Grantor," acting to carry out the Redevelopment Plan for the City Heights Redevelopment Project, herein called "Redevelopment Plan," under the Community Redevelopment Law of the State of California, hereby grants to PRICE CHARITIES, a California public benefit corporation, herein called "Grantee," the real property, hereinafter referred to as the "Property," described in the document attached hereto, labeled Exhibit "A" and incorporated herein by this reference.

1. Said Property is conveyed in accordance with and subject to the Redevelopment Plan for the City Heights Redevelopment Project which was approved and adopted on May 11, 1992, by Ordinance No. 0-17768 [New Series] of the City Council of the City of San Diego, the Disposition and Development Agreement [DDA] entered into by and between Grantor ("Agency" therein) and San Diego Revitalization Corporation ("Developer" therein) dated as of May 3, 2005, as amended by the First Implementation Agreement [First Implementation Agreement] dated as of \_\_\_\_\_, \_\_\_\_\_, pursuant to which the Grantor, among other things, acknowledged and approved the official corporate name change of San Diego Revitalization Corporation to Price Charities, a California public benefit corporation; all such documents are public records on file in the offices of the City Clerk of the City of San Diego and the Secretary of

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Grantor, and are by reference thereto incorporated herein as though fully set forth herein.

~~2. The Property is conveyed to Grantee at a purchase price herein called "Purchase Price", determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Grantee, such successors and such assigns, shall develop, maintain, and use the Property only as follows:~~

- a. During the time the Redevelopment Plan is in effect, the Property shall be devoted only to the development permitted and the uses specified in this Grant Deed and the Redevelopment Plan. No change in the use of the Property from that permitted by this Grant Deed and the Redevelopment Plan and no new construction or material exterior modification or alteration of any structure on the Property shall be permitted without the prior written approval of the Grantor. The Grantee shall use the Property (together with adjacent property described in the DDA as the "Developer's Parcels") exclusively for the construction of a four story retail-office building on University Avenue of up to 95,000 square feet, with approximately 23,000 square feet of ground floor retail and lobby space, and three levels of office space and/or classrooms and/or meeting rooms above, with street level and underground parking, all as described in the Scope of Development.
- b. The Grantee shall use the Property for such uses and purposes and in accordance with plans and specifications for the redevelopment of the Property approved by Grantor.

3. Grantee and its successors and assigns shall maintain the Improvements on the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time Grantor issues a Release of Construction Covenants pursuant to the DDA, reasonable wear and tear excepted. This standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or

deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; ~~sweeping of public sidewalks adjacent to the Property, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular basis and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order.~~ In the event Grantee, its successors or assigns, fails to maintain the Improvements in accordance with the standard for the quality of maintenance, Grantor or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to Grantee, correct any violation, and hold Grantee, or such successors or assigns, responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Property.

4. Grantee herein covenants and agrees by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property. The foregoing covenants shall run with the land.

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

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through him or her, that this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons, ~~on account of any basis listed in subdivision~~ (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

6. a. Prior to the recordation of a Release of Construction Covenants pursuant to the DDA, Grantee shall not, except as permitted by this Paragraph 6, make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property (or any portion of the "Site" defined in the DDA) or the Improvements thereon, without prior written approval of the Grantor. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or the Site, nor shall it prohibit leases for occupancy in the ordinary course of business or Permitted Transfers.

b. For purposes of this Paragraph 6, the term "Permitted Transfer" shall mean any of the following:

(i) An assignment of the DDA and all of Grantee's interests in the Site to a limited liability company in which the Grantee or another SDRC Entity (as defined in the DDA) owns majority interest and is the controlling and managing member with control over management, or a limited partnership in which the Grantee owns majority interest and is the controlling and managing partner with control over management.

(ii) Either before or after Completion, any Permitted Mortgage (as defined in the DDA), or the conveyance of title to the Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such Permitted Mortgage;

(iii) A conveyance of the Site to any SDRC Entity or any limited partnership or limited liability company in which ~~an SDRC Entity is the controlling and managing general partner or managing member, or a sale back from such partnership or limited liability company to such general partner or member, and~~ the assignment of the DDA to such Assignee, as provided in Section 106.c. of the DDA, if in the reasonable determination of the Grantor's Executive Director, the reconstituted "Developer" is comparable in all material respects (including experience and financial capability) to San Diego Revitalization Corporation;

(iv) The inclusion of equity participation by Grantee by transfer of or addition of limited partners or members to the Grantee or similar mechanism, provided the Grantee or another SDRC Entity retains majority interest and remains the controlling and managing member with control over management.

Any transfer described in clauses (i) through (iv) shall be subject to the reasonable approval of the Agency Executive Director or designee. The foregoing prohibitions shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, nor shall they be construed to prohibit leases for occupancy in the ordinary course of business or Permitted Transfers.

c. Except as permitted by Paragraph a., in the event that the Grantee does sell, transfer, convey or assign any part of the Property or buildings or structures thereon, prior to the recordation of a Release of Construction Covenants, in violation of this Grant Deed, the Grantor shall be entitled to increase the Purchase Price paid by the Grantee for the Property by the amount that the consideration payable for such sale, transfer, conveyance or assignment is in excess of the Purchase Price paid by the Grantee, plus the cost of improvements and development, including carrying charges and costs related thereto. The consideration payable for such sale, transfer, conveyance or assignment to the extent it is in excess of the amount so authorized shall belong and be paid to the Grantor and until paid the Grantor shall have a lien on the Property and any part involved for such amount. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it apply to any Permitted Mortgage permitted by the DDA for financing the development of the Property.

d. In the absence of a specific written agreement by the Grantor, and except as otherwise provided in this Paragraph 6., ~~no such sale, transfer, conveyance or assignment of the Site (or any portion thereof),~~ or approval by the Grantor of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Grantee or any other party from any obligations under the DDA.

e. The prohibitions set forth in this Paragraph 6 shall remain in effect only until the issuance of a Release of Construction Covenants.

7. Prior to the recordation of a Release of Construction Covenants to be issued by the Grantor in accordance with Section 322 of the DDA, the following shall apply:

a. Subject to the notice and cure provisions of Section 501 of the DDA, and subject to any Permitted Mortgage, in the event of an uncured default described in this Paragraph 7.a. below, Grantor shall have the right, at its option, to reenter and take possession of the Property with all improvements thereon, and to terminate and revert in Grantor the estate theretofore conveyed to Grantee:

(1) Grantee fails to commence construction of the improvements as required by the DDA for a period of ninety (90) calendar days after written notice from Grantor, provided that Grantee shall not have obtained an extension or postponement to which the Grantee may be entitled pursuant to Section 602 of the DDA; or

(2) Grantee abandons or substantially suspends construction of the Improvements for a period of ninety (90) calendar days after written notice has been given by Grantor to the Grantee, provided Grantee has not obtained an extension or postponement to which the Grantee may be entitled to pursuant to Section 602 of the DDA; or

(3) Grantee assigns or attempts to assign the DDA, or any rights therein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of the DDA, and such breach is

not cured within thirty (30) calendar days after the date of written notice thereof; or

~~(4) Grantee otherwise materially breaches the DDA, and such breach is not cured within the time provided in Section 501 of the DDA.~~

b. Such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and Grantor's rights shall be subject and subordinate to any rights or interests provided in the DDA for the protection of any Mortgagee of a Permitted Mortgage Loan.

c. Upon the revesting in Grantor of title to the Property, or any part thereof, as provided in this Section 7, Grantor shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property, as soon and in such manner as Grantor shall find feasible and consistent with the objectives of the Community Redevelopment Law and the Redevelopment Plan to a qualified and responsible party or parties (as determined by Grantor), who will assume the obligation of making or completing the Improvements, or such other improvements in their stead, as shall be satisfactory to Grantor and in accordance with the uses specified for the Property, or any part thereof, in the Redevelopment Plan. Upon such resale of the Property, or any part thereof, the proceeds thereof shall be applied:

(1) First, repayment in full of the outstanding balance of any Permitted Mortgage Loan, to the extent allocable to the Property;

(2) next, to reimburse Grantor on its own behalf or on behalf of the City of San Diego of all costs and expenses incurred by Grantor, including salaries of personnel engaged in such action, in connection with the recapture, management and resale of the Property, or any part thereof (but less any income derived by Grantor from the sale of the Property, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Property or any part thereof (or, in the event the Property, or any part thereof, is exempt from taxation or assessment or such charges during the

period of ownership, then such taxes, assessments or charges, as would have been payable if the Property, or part thereof, were not so exempt); any payments ~~made or necessary to be made to discharge or prevent~~ from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Property, or any part thereof; and any amounts otherwise owing to the Grantor by Grantee and its successor or transferee; and

(3) third, to reimburse Grantee, its successor or transferee, up to the amount equal to: the sum of the Purchase Price paid to the Grantor for the Property (or allocable to the part thereof); and the costs incurred for the development of the Property, or any part thereof, or for the construction of the agreed improvements thereon, less the Permitted Mortgage Loan, to the extent allocable to the Property.

d. Any balance remaining after such reimbursements shall be retained by Grantor as its property.

e. To the extent that the right established in this Section 7 involves a forfeiture, it must be strictly interpreted against Grantor, the party for whose benefit it is created. The rights established in this Section 7 are to be interpreted in light of the fact that Grantor will convey the Property to Grantee for development and not for speculation.

8. a. Grantee acknowledges the following:

(1) Grantor will be entitled to receive that portion of Property taxes in the City Heights Redevelopment Project Area [Project Area], referred to as "tax increments" or "tax increment revenue", which are in excess of Property taxes generated from the application of tax rates to the "base year value" of the taxable Site in the Project Area (i.e., the assessed value of the taxable Site in the Project Area as shown upon the assessment roll used in connection

with the taxation of the Site, last equalized prior to the effective date of the ordinance adopting the redevelopment plan for the Project Area), as provided in and pursuant to California Health and Safety Code Section 33670.

(2) Consequently, any reduction in the assessed value of the Site or reduction in the anticipated Property taxes relating to the Site will result in a reduction in tax increment revenue to be received by Grantor.

(3) Grantor agreed to enter into the DDA with San Diego Revitalization Corporation and to accept the obligations set forth in the DDA, in part, because of the tax increment revenue anticipated to be received by the Grantor in the Project Area with respect to the Site.

(4) Grantor would not have entered into the DDA except for the tax increment revenue anticipated to be received by the Grantor with respect to the Site.

b. Therefore, in consideration of the assistance provided by Grantor pursuant to the DDA, Grantee herein covenants and agrees by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall not apply for any tax exemption or file any Property tax assessment appeal based on a claim of exemption from tax with the County assessor or any other applicable taxing agency, or otherwise contest or appeal the obligation to pay Property taxes or the assessed value of the Site based on a claim of exemption from tax, at any time during which the Grantor is entitled to receive tax increments with respect to the Site (provided that the foregoing shall not be construed as precluding appeals based upon mathematical or procedural errors or differing views regarding valuation, rather than appeals based upon claims of exemption).

c. In the event the Site is determined to be tax exempt or the assessed value of the Site is reduced as the result of any application for tax exemption or any Property tax assessment appeal in violation of Paragraph b. above, Grantee, its successors and

assigns, or all persons claiming under or through them, shall be liable to Grantor for any reduction in the amount of tax increment revenue payable to Grantor ~~which results from such tax exemption or appeal (the~~ "Lost Revenue"), and Grantor shall be entitled to receive such Lost Revenue from Grantee, its successors and assigns, or all persons claiming under or through them.

- d. Lost Revenue shall be calculated on the basis of the amount of tax increment which the Grantor would have received in the absence of such tax exemption or appeal, out of each property tax installment that is payable by Grantee, its successors and assigns, or all persons claiming under or through them, with respect to the Site to the County or any other taxing agency, during the entire time period in which Grantor is entitled to receive tax increments with respect to the Site.
- e. Grantee, its successors and assigns, or all persons claiming under or through them, shall pay the applicable amount of Lost Revenue to the Grantor not later than the date on which the corresponding Property tax installment is due and payable to the County or other applicable taxing agency.
- f. In the event Grantee, its successors and assigns, or all persons claiming under or through them, fails to pay any Lost Revenue to Grantor when due, the delinquent amount shall bear interest, compounded, at the rate of ten percent (10%) per annum, or the highest rate of interest permitted under applicable law, whichever is less, calculated from the date that the corresponding Property tax installment was due and payable, until the Lost Revenue is paid, and the Agency shall have a lien on the Site for the full amount of the Lost Revenue that is due and payable, plus interest, until paid in full.
- g. In the event the tax increments to be paid to the Grantor are reduced as the result of any tax exemption or any Property tax assessment appeal in violation of Paragraph b. above, then as an alternative to Paragraphs d., e. and f., Grantee, its successors and

assigns, or all persons claiming under or through them, shall have the right, upon thirty (30) calendar days' prior written notice to the Agency Executive Director, to capitalize the full liability amount, and pay to the Grantor, in a lump sum, the present value of the total Lost Revenue, as reasonably determined by the Grantor, calculated for the entire time period during which Grantor is entitled to receive tax increments with respect to the Site, which payment shall satisfy in full the liability to Grantor resulting from such Property tax assessment appeal. The present value of the total Lost Revenue shall be calculated by applying to the Lost Revenue for the tax year in which the lump sum payment is due, a present value discount rate equal to the Agency's cost of capital for a tax exempt bond issue, as published by the Bond Buyer Revenue Index or similarly recognized national publication. The discount rate shall be determined using the average daily rate over a five (5) business day period beginning on, and including, the date of written notice to the Agency Executive Director. Payment of the lump sum Lost Revenue shall be made to the Agency no later than thirty (30) calendar days from the date of written notice to the Agency Executive Director.

- h. All covenants and conditions contained in this Section 8 shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency, its successors and assigns, against the Grantee, its successors, assigns, heirs, legatees, devisees, administrators, executors, and all persons claiming under or through them. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Agency shall be deemed a beneficiary of the covenants provided for in this Section 8, both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the

Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any ~~land or interest therein to which such covenants~~ relate. Grantor shall have the right, in the event of any breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition.

9. All conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, and the City of San Diego (the "City") and its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Grantor and the City shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. Grantor shall have the right, in the event of any breach of any such covenants, conditions and restrictions, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant. The covenants, conditions, and restrictions shall run in favor of the Grantor and the City, without regard to whether the Grantor or City have been, remain, or own any land or interest therein in the Site or the Redevelopment Project area. Except as provided in the preceding sentence, the covenants, conditions and restrictions contained in this Grant Deed shall not benefit nor be enforceable by any owner of any other real property within or outside the Redevelopment Project area or any person or entity having any interest in any such other real property.

10. Except as provided in this Section 10, every covenant and condition and restriction contained in this Grant Deed shall remain in effect until the expiration of the effectiveness of the Redevelopment Plan (currently scheduled for May 11, 2032).

The covenants against discrimination set forth in Section 4 and Section 5 of this Grant Deed shall remain in perpetuity. The covenants set forth in Section 2.b., Section 6 and Section 7 of this Grant Deed shall terminate upon the recordation of the Release of Construction Covenants by Grantor pursuant to Section 322 of the DDA.

11. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest in the Property; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

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IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

GRANTOR:

REDEVELOPMENT AGENCY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
ON THIS \_\_\_\_\_ day of \_\_\_\_\_.

MICHAEL J. AGUIRRE  
Agency General Counsel

By: \_\_\_\_\_  
Kendall D. Berkey,  
Deputy General Counsel

The grantee hereby accepts the written deed, subject to all of the matters hereinbefore set forth.

GRANTEE

PRICE CHARITIES,  
a California public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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3

4









Exhibit "A"

LEGAL DESCRIPTION

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ACQUISITION PARCEL



EXHIBIT "C"

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(REVISED)

FORM OF AGREEMENT AFFECTING REAL PROPERTY



OFFICIAL BUSINESS

Document entitled to free  
recording per Government  
Code Section 6103

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Recording Requested By:  
THE REDEVELOPMENT AGENCY OF THE CITY  
OF SAN DIEGO  
1200 Third Avenue; Suite 1400  
San Diego, California 92101  
Attention: City Heights Project Manager

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT AFFECTING REAL PROPERTY [Agreement] is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body corporate and politic [Agency] and PRICE CHARITIES, a California public benefit corporation, a \_\_\_\_\_ [Developer].

A. Developer owns that certain real property [Site], located in the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto and incorporated herein as Exhibit "A".

B. The Site is within the City Heights Redevelopment Project Area [Project Area] in the City of San Diego and is subject to the provisions of the Redevelopment Plan for the Project Area which was approved and adopted on May 11, 1992, by Ordinance No. 0-17768 [New Series] of the City Council of the City of San Diego.

C. San Diego Revitalization Corporation [SDRC] and Agency entered into that certain Disposition and Development Agreement dated as of May 3, 2005 [DDA], and incorporated herein by this reference, as amended by the First Implementation Agreement dated as of \_\_\_\_\_, \_\_\_\_\_, pursuant to which the Agency, among other things, acknowledged and approved the official corporate name change of San Diego Revitalization Corporation to Price Charities, a California public benefit corporation.

D. Pursuant to the DDA, as amended, the Agency acquired and conveyed to Developer that portion of the Site referred to therein as the "Acquisition Parcel". The conveyance of the City Heights Square 1

Revised AARP  
9-17-07

Acquisition Parcel to Developer is for the purpose of constructing and operating certain improvements on the Site [Improvements].

E. This Agreement is entered into and recorded in accordance with the Redevelopment Plan and the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

NOW, THEREFORE, AGENCY AND DEVELOPER AGREE AS FOLLOWS:

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

a. Developer, its successors and assigns, shall develop and use the Site only for the uses permitted in the DDA and this Agreement, specifically including a mixed-use commercial project consisting of a four story retail-office building on University Avenue of up to 95,000 square feet, with approximately 23,000 square feet of ground floor retail and lobby space, and three levels of office space, and/or classrooms and/or meeting rooms above, with street level and underground parking [Project].

b. Developer, its successors and assigns, shall maintain the Improvements on the Site in the same aesthetic and sound condition (or better) as the condition of the Site at the time the Agency issues a Release of Construction Covenants pursuant to the Agreement, reasonable wear and tear excepted. This standard for the quality of maintenance of the Site shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Site, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular basis and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; and maintaining security devices in good working order.

c. Developer covenants and agrees for itself and its successors and assigns as to any portion of the Site, that Developer and such successors and assigns shall participate, together with the other property owners on the block, in paying for the management and operations of the park to be developed on the approximately 5,348 square foot parcel of real property adjacent to the Site on the north, consisting of an approximately 49 foot by 109 foot parcel along 43<sup>rd</sup> Street, legally described as the "Park Site" in Exhibit "A", in accordance with the terms and conditions of that certain [Name of Agreement to be inserted] to be executed by and between Developer, City Heights Square, L.P., La Maestra Family Clinic [and the City of San Diego], dated \_\_\_\_\_ [Park Agreement], which is incorporated herein by this reference.

d. Developer herein covenants by and for itself, its heirs, executors, administrators, successors, and assigns, and all persons claiming under or through them, that this Agreement is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property. The foregoing covenants shall run with the land.

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

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or

segregation of, any person or group of persons on account of any basis listed in Subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, successors, assigns, and all persons claiming under or through him or her, that this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the 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 Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section

12955 of the 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 Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land."

2. a. Developer acknowledges the following:

(1) The Agency will be entitled to receive that portion of Property taxes in the City Heights Redevelopment Project Area [Project Area], referred to as "tax increments" or "tax increment revenue", which are in excess of Property taxes generated from the application of tax rates to the "base year value" of the taxable Site in the Project Area (i.e., the assessed value of the taxable Site in the Project Area as shown upon the assessment roll used in connection with the taxation of the Site, last equalized prior to the effective date of the ordinance adopting the redevelopment plan for the Project Area), as provided in and pursuant to California Health and Safety Code Section 33670.

(2) Consequently, any reduction in the assessed value of the Site or reduction in the anticipated Property taxes relating to the Site will result in a reduction in tax increment revenue to be received by the Agency.

(3) The Agency agreed to enter into the DDA with San Diego Revitalization Corporation and to accept the obligations set forth in the DDA, in part, because of the tax increment revenue anticipated to be received by the Agency in the Project Area with respect to the Site.

(4) The Agency would not have entered into the DDA except for the tax increment revenue anticipated to be received by the Agency with

respect to the Site.

b. Therefore, in consideration of the assistance provided by the Agency pursuant to the DDA, the Developer herein covenants and agrees by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall not apply for any tax exemption or file any Property tax assessment appeal based on a claim of exemption from tax with the County assessor or any other applicable taxing agency, or otherwise contest or appeal the obligation to pay Property taxes or the assessed value of the Site based on a claim of exemption from tax, at any time during which the Agency is entitled to receive tax increments with respect to the Site (provided that the foregoing shall not be construed as precluding appeals based upon mathematical or procedural errors or differing views regarding valuation, rather than appeals based upon claims of exemption).

c. In the event the Site is determined to be tax exempt or the assessed value of the Site is reduced as the result of any application for tax exemption or any Property tax assessment appeal in violation of Paragraph b. above, the Developer, its successors and assigns, or all persons claiming under or through them, shall be liable to the Agency for any reduction in the amount of tax increment revenue payable to the Agency which results from such tax exemption or appeal (the "Lost Revenue"), and the Agency shall be entitled to receive such Lost Revenue from the Developer, its successors and assigns, or all persons claiming under or through them.

d. Lost Revenue shall be calculated on the basis of the amount of tax increment which the Agency would have received in the absence of such tax exemption or appeal, out of each property tax installment that is payable by the Developer, its successors and assigns, or all persons claiming under or through them, with respect to the Site to the County or any other taxing agency, during the entire time period in which the Agency is entitled to receive tax increments with respect to the Site.

e. The Developer, its successors and assigns, and all persons claiming under or through them, shall pay the applicable amount of Lost Revenue to the Agency not later than the date on which the corresponding Property tax installment is due and payable to the County or other applicable taxing agency.

f. In the event the Developer, its successors and assigns, or all persons claiming under or through them, fails to pay any Lost Revenue to the Agency when due, the delinquent

amount shall bear interest, compounded, at the rate of ten percent (10%) per annum, or the highest rate of interest permitted under applicable law, whichever is less, calculated ~~from the date that the corresponding Property tax installment was due and payable, until the Lost Revenue is paid, and the Agency shall have a lien on the Site for the full amount of the Lost Revenue that is due and payable, plus interest, until paid in full.~~

g. In the event the tax increments to be paid to the Agency are reduced as the result of any tax exemption or any Property tax assessment appeal in violation of Paragraph b. above, then as an alternative to Paragraphs d., e. and f., the Developer, its successors and assigns, and all persons claiming under or through them, shall have the right, upon thirty (30) calendar days' prior written notice to the Agency Executive Director, to capitalize the full liability amount, and pay to the Agency, in a lump sum, the present value of the total Lost Revenue, as reasonably determined by the Agency, calculated for the entire time period during which the Agency is entitled to receive tax increments with respect to the Site, which payment shall satisfy in full the liability to the Agency resulting from such Property tax assessment appeal. The present value of the total Lost Revenue shall be calculated by applying to the Lost Revenue for the tax year in which the lump sum payment is due, a present value discount rate equal to the Agency's cost of capital for a tax exempt bond issue, as published by the Bond Buyer Revenue Index or similarly recognized national publication. The discount rate shall be determined using the average daily rate over a five (5) business day period beginning on, and including, the date of written notice to the Agency Executive Director. Payment of the lump sum Lost Revenue shall be made to the Agency no later than thirty (30) calendar days from the date of written notice to the Agency Executive Director.

h. All covenants and conditions contained in this Section 2 shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency, its successors and assigns, against the Developer, its successors, assigns, heirs, legatees, devisees, administrators, executors, and all persons claiming under or through them. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that the Agency shall be deemed a beneficiary of the covenants provided for in this Section 2, both for and in its own right and also for the purposes of protecting the interests of

the community. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency ~~for the entire period during which such covenants shall be in~~ force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. The Agency shall have the right, in the event of any breach of any such covenant or condition, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of covenant or condition.

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

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

5. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage permitted by the Agreement. This Agreement and the covenants contained herein shall be subordinate to the lien of the deed of trust securing any construction loan

and the deed of trust securing any permanent loan to which the Agency has agreed to subordinate this Agreement. Prior to the recordation of the deed of trust securing any such loan, the ~~Executive Director of the Agency or designee shall execute such~~ reasonable instruments as may be necessary to subordinate this Agreement and the covenants contained herein to the lien of the maker of such loan. Any lender to whose lien this Agreement is subordinate, who acquires title to the Site by foreclosure, deed in lieu of foreclosure, trustee's sale or similar transfer of title, and the assignees and transferees of such holder, shall not be subject to or bound by the requirements of this Agreement.

6. Except as provided in this Section 6, every covenant and condition and restriction contained in this Agreement shall remain in effect for the period of effectiveness of the Redevelopment Plan (currently scheduled to expire May 11, 2032). The covenants set forth in paragraph c. of Section 1 shall remain in effect for the term set forth in the Park Agreement. The covenants set forth in paragraphs d. and e. of Section 1 shall remain in effect in perpetuity.

7. Prior to exercising any remedies hereunder, Agency shall give Developer notice of such default. Agency shall also give notice of default to Developer's investor limited partner and to any person or entity having a security interest in the Site secured by a lien that is superior to this Agreement. If the default is reasonably capable of being cured within thirty (30) calendar days, Developer shall have such period to effect a cure prior to exercise of remedies by Agency. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and Developer (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Agency. In no event shall Agency be precluded from exercising remedies if the Site becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) calendar days after the first notice of default is given.

8. If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth in Section 7, above, Agency and its successors and assigns, without regard to whether Agency or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such

violation or attempted violation or to compel specific performance by Developer of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

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

AGENCY:

REDEVELOPMENT AGENCY  
OF THE CITY OF SAN DIEGO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
ON THIS \_\_\_\_\_ day of \_\_\_\_\_.

MICHAEL J. AGUIRRE  
Agency General Counsel

By: \_\_\_\_\_  
Kendall D. Berkey,  
Deputy General Counsel

DEVELOPER

PRICE CHARITIES,  
a California public benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_





STATE OF CALIFORNIA )

) ss.

COUNTY OF SAN DIEGO )

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

WITNESS my hand and official seal.

Signature



EXHIBIT "A"

LEGAL DESCRIPTION OF THE SITE

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ACQUISITION PARCEL

DEVELOPER'S PARCELS

PARK SITE



EXHIBIT "D"

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DISPOSITION AND DEVELOPMENT AGREEMENT



E. Authority.

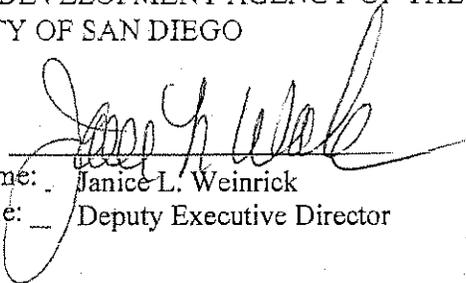
The Developer represents that the person executing this First Implementation Agreement on behalf of the Developer has the full authority to do so and to bind the Developer to perform pursuant to the terms and conditions herein.

IN WITNESS WHEREOF, the Agency and the Developer have executed this First Implementation Agreement to the DDA as of the dates set opposite their signatures below, in the City of San Diego, State of California.

AGENCY

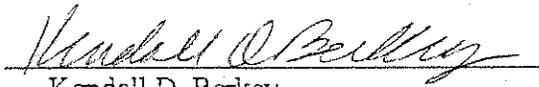
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO

Date: Nov 30, 2007

By:   
Name: Janice L. Weinrick  
Title: Deputy Executive Director

APPROVED the form and legality of this Agreement  
this 30 day of November 2007.

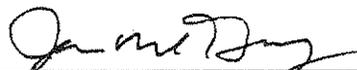
MICHAEL J. AGUIRRE  
General Counsel Redevelopment Agency

By:   
Kendall D. Berkey  
Deputy General Counsel

DEVELOPER

PRICE CHARITIES,  
a California non-profit public benefit corporation;  
Formerly named SAN DIEGO REVITALIZATION  
CORPORATION, a California non-profit public  
benefit corporation

Date: 10-8-07

By:   
Name: JACK McQuinn  
Title: EVP

DUPLICATE ORIGINAL

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,

and

SAN DIEGO REVITALIZATION CORPORATION

DOCUMENT NO. RD-300383

FILED MAY 03 2005

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

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5-3-05

DOCUMENT NO. RD-03900/rd-03900

FILED MAY 11 2005

OFFICE OF THE REDEVELOPMENT AGENCY  
SAN DIEGO, CALIF.



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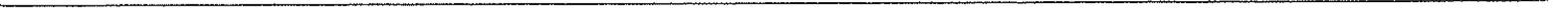
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(1)



(2)

(3)

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO (the "Agency") and SAN DIEGO REVITALIZATION CORPORATION, a California nonprofit public benefit corporation (the "Developer") as of May 3, 2005. The Agency and the Developer agree as follows:

PART 1 SUBJECT OF AGREEMENT

Section 101 Purpose of the Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the City Heights Redevelopment Project by providing for the acquisition and disposition of the hereinafter defined Acquisition Parcel and development of the hereinafter defined Site. The development of the Site pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of San Diego and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

Section 102 Definitions

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

"Acquisition Parcel" shall mean that portion of the Site to be acquired pursuant to this Agreement, described in Section 104 hereof.

"Agreement Affecting Real Property" shall mean shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 9, which is incorporated herein by this reference.

"Affiliate" shall mean an SDRC Entity or any corporation, limited liability company, limited partnership or other entity with respect to which an SDRC Entity owns a controlling interest and has control over management.

"Approved Title Conditions" shall mean title that is subject to current property taxes and assessments, the Grant Deed, easements, the Exceptions described in Section 207 and any

exceptions to title set forth in the Preliminary Report issued by Commonwealth Land Title Company dated March 30, 2005 (other than the matters referenced in Item 4 of Schedule B of Part I of said Report, which matters shall not be considered an Approved Title Condition), and exceptions that are consistent with this Agreement and approved by Developer.

"Assignee" shall mean a limited liability company which may be formed, in which San Diego Revitalization Corporation owns majority interest and is the controlling and managing member with control over management, which, it is contemplated, will, but is not required to, enter into an Assignment and Assumption Agreement with Developer, pursuant to which Developer shall assign this Agreement to such Assignee and such Assignee shall assume the obligations of the "Developer" hereunder.

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

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

"Closing" or "Close of Escrow" shall mean the point in time when the Agency conveys the Acquisition Parcel to Developer pursuant to Section 207 of this Agreement.

"Completion" shall mean the point in time when the Agency issues the Release of Construction Covenants for the Site pursuant to Section 322 of this Agreement.

"Current Owner" shall mean the owner of the Acquisition Parcel as of the date of this Agreement.

"Developer's Advance" shall mean the total of the funds deposited by Developer with Agency in the amount estimated by the Agency to be equal to all costs and expenses associated with the acquisition of the Acquisition Parcel by the Agency, including, but not limited to acquisition and relocation expenses and the fees and expenses of Agency's legal counsel, financial consultants, engineers and other experts necessary to acquire and deliver the Acquisition Parcel to the Developer, and all costs incurred in connection with the assessment and remediation of Hazardous Substances, if any, from the Acquisition Parcel in accordance with this Agreement; provided, however, that in no event shall the Developer's Advance exceed an original principal amount of \$3,500,000 (it being understood that the foregoing cap

shall not be construed as limiting the obligations of the Agency to perform its obligations in full hereunder). The Developer's Advance shall be deposited with the Agency in the manner described in the Method of Financing. Agency shall repay the Developer's Advance as provided in the Loan Agreement attached to this Agreement as Attachment No. 10.

"Developer's Parcels" shall mean that portion of the Site described as such in the Legal Description, which is currently owned by Developer.

"Escrow Agent" shall mean Commonwealth Land Title Insurance Company, or another escrow agent mutually acceptable to Agency and Developer.

"Grant Deed" shall mean the instrument by which Agency shall convey fee title to the Acquisition Parcel to Developer, Attachment No. 6 to this Agreement.

"Hazardous Substances" shall mean any hazardous substance as defined in subdivision (h) of Section 25281 of the California Health and Safety Code, including, without limitation, any petroleum hydrocarbons and any other products, materials or substances derivative of any of the foregoing.

"Improvements" shall mean the four story retail-office building to be constructed on the Site, consisting of up to 95,000 square feet, with approximately 23,000 square feet of ground floor retail and lobby space and three levels of office space, and/or classrooms and/or meeting rooms above, with street level and underground parking, all as described in the Scope of Development.

"Legal Description" shall mean the legal description of the Site attached to this Agreement as Attachment No. 2 which is incorporated herein by this reference.

"Loan Agreement" shall mean an agreement substantially in the form attached to this Agreement as Attachment No. 10.

"Loan Note" shall mean the promissory note to be executed by the Agency in favor of the Developer, substantially in the form attached to the Loan Agreement as Exhibit "A".

"Method of Financing" shall mean Attachment No. 3 to this Agreement.

"Mortgagee" shall mean any maker of a Permitted Mortgage Loan to Developer.

"Net Purchase Price" shall mean the Purchase Price minus the sum of the Developer's Advance.

"Option Agreement" shall mean an instrument substantially in the form attached to this Agreement as Attachment No. 11, which is incorporated herein by this reference, which provides the Agency the right to acquire the Developer's Parcels in the event the Agency exercises its right of re-entry as to the Acquisition Parcel pursuant to Section 511 of this Agreement. The parties agree that (a) the blanks in Recital D shall be completed to reference the respective amounts of debt and equity financing approved by the Agency in accordance with this Agreement, (b) the blank for the Escrow Agent in Section 8 may be completed with the name of an escrow agent selected by Developer, with the reasonable approval of the Agency, and (c) the blank in Section 8.c. shall be completed with the name of the construction lender for the project approved by the Agency in accordance with this Agreement.

"Park Site" shall mean the approximately 5,348 square foot parcel of real property currently owned by Developer adjacent to the Developer's Parcels on the north, consisting of an approximately 49 foot by 109 foot parcel along 43<sup>rd</sup> Street, which is described as the "Park Site" in the Legal Description as Attachment No. 1 and shown on the Site Map as the "Future Park".

"Permitted Mortgage" shall mean a conveyance of a security interest in the Site, or any portion thereof, to a Mortgagee to secure a loan to finance the acquisition and development of the Site, or any portion thereof, which has been approved by the Agency as provided in the Method of Financing, or any conveyance of a security interest in the Site to secure any refinancing to the extent it repays a Permitted Mortgage Loan.

"Permitted Mortgage Loan" shall mean the obligations secured by a Permitted Mortgage.

"Permitted Transfer" shall mean any of the following:

a. Prior to or at the time of the Closing, an assignment of this Agreement and all of Developer's interests in the Site to a limited liability company in which the Developer or another SDRC Entity owns majority interest and is the controlling and managing member with control over management, or a limited

partnership in which the Developer or another SDRC Entity owns majority interest and is the controlling and managing partner with control over management.

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b. Upon or after the Closing, either before or after Completion, any Permitted Mortgage, or the conveyance of title to the Mortgagee or its assignee in connection with a foreclosure or a deed in lieu of foreclosure of such Permitted Mortgage;

c. Upon or after the Closing, a conveyance of the Site to any SDRC Entity or any limited partnership or limited liability company in which an SDRC Entity is the controlling and managing general partner or managing member, or a sale back from such partnership or limited liability company to such general partner or member, and the assignment of this Agreement to such Assignee, as provided in Section 106.c. hereof, if in the reasonable determination of the Agency Executive Director, the reconstituted Developer is comparable in all material respects (including experience and financial capability) to San Diego Revitalization Corporation;

d. At any time, the inclusion of equity participation by Developer by transfer of or addition of limited partners or members to the Developer or similar mechanism, provided the Developer or another SDRC Entity retains majority interest and remains the controlling and managing member with control over management.

Any transfer described in clauses a. through d. shall be subject to the reasonable approval of the Agency Executive Director or designee in accordance with the standards set forth in the respective provisions of this Agreement.

"Polanco Redevelopment Act" shall mean Article 12.5 of Chapter 4 of Part 1 of the California Health and Safety Code (Health and Safety Code Sections 33459-33459.8).

"Purchase Price" shall mean the amount payable by Developer to the Agency for the Acquisition Parcel, equal to the fair market price of the Acquisition Parcel.

"Redevelopment Plan" shall mean the Redevelopment Plan for the City Heights Redevelopment Project which was approved and adopted on May 11, 1992 by the City Council of the City of San Diego by Ordinance No. 0-17768 (New Series), as amended from time-to-time.

"Release of Construction Covenants" shall mean the certificate to be issued by the Agency in accordance with Section 322 of this Agreement.

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"Schedule of Performance" shall mean the document attached to this Agreement as Attachment No. 4 which is incorporated herein by this reference.

"SDRC Entity" shall mean any wholly-owned subsidiary of San Diego Revitalization Corporation or any wholly-owned subsidiary in a chain of wholly-owned subsidiaries, or an Affiliate.

"Scope of Development" shall mean the document attached to this Agreement as Attachment No. 5 which is incorporated herein by this reference.

"Site" shall mean the real property described in Section 104 hereof.

"Site Map" shall mean the document which is attached to this Agreement as Attachment No. 1 which is incorporated herein by this reference.

"Title Company" shall mean Commonwealth Land Title Insurance Company, or another title insurance company mutually acceptable to Agency and Developer.

"Title Insurance Policy" shall mean and include an ALTA extended coverage owner's policy of title insurance in favor of Developer insuring the Developer's fee title in the Acquisition Parcel, in the liability amount of the Purchase Price (the "Owner's Title Policy").

#### Section 103 The Redevelopment Plan

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

b. Any amendments hereafter to the Redevelopment Plan which change the uses or development permitted on the Site as proposed in this Agreement, or otherwise change the restrictions or controls that apply to the Site, or otherwise affect the Developer's obligations or rights with respect to the Site, shall require the written consent of the Developer. Amendments to the

Redevelopment Plan that do not affect the Site shall not require the consent of the Developer.

Section 104     The Site

a. The "Site", which consists of the Acquisition Parcel and the Developer's Parcels, is located in the City Heights Redevelopment Project area, generally at the southern portion of the block bounded by University Avenue on the South, Fairmount Avenue on the East, Polk Avenue on the North and 43<sup>rd</sup> Street on the West. The Site is depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the Site is set forth in the Legal Description attached hereto as Attachment No. 2.

b. The Acquisition Parcel is currently owned by an owner who is not a party to this Agreement (the "Current Owner"). The legal description of the Acquisition Parcel is set forth in the Legal Description attached hereto as Attachment No. 2.

Section 105     The Agency

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

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement is 600 "B" Street, Suite 400, San Diego, California 92101.

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

Section 106     Developer

a. The Developer is San Diego Revitalization Corporation, a California nonprofit public benefit corporation. The address of Developer for purposes of receiving notices pursuant to this Agreement is: San Diego Revitalization Corporation, 4305 University Avenue, Suite 600, San Diego, CA 92105.

b. Whenever the term "Developer" is used herein, such term shall include San Diego Revitalization Corporation (the Developer as of the date hereof), or any assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

c. Agency and Developer acknowledge and agree that at or ~~prior to the Closing, Developer shall have the right to assign~~ its interests in this Agreement and the Acquisition Parcel to the Assignee, but no such assignment shall be required. In the event of such assignment, on or prior to the Closing, Agency, Developer and Assignee shall execute an Assignment and Assumption Agreement, substantially in the form attached to this Agreement as Attachment No. 7, which is incorporated herein by this reference.

Section 107 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Site and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the City and the Agency, in light of the following: (1) the importance of the redevelopment of the Site to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer, is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with the Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Prior to Completion, Developer shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Agency. Subject to review of documentation effectuating any such proposed assignment or transfer, the Agency agrees to reasonably give such approval if the assignment is a Permitted Transfer. The restrictions set forth in this Section 107.b. shall not apply to the granting of easements or permits to facilitate the development of the Site, or the leasing in the ordinary course of business of portions of the Site for occupancy purposes.

c. For the reasons cited above, the Developer represents and agrees for itself and any successor in interest that prior to Completion, and without the prior written approval of the Agency,

there shall be no significant change in the identity of the parties in control of the Developer, by any method or means, ~~except Permitted Transfers and such changes occasioned by the death or incapacity of any individual or by routine changes in board membership.~~

d. The Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of the Developer, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by the Agency if there is any significant change (voluntary or involuntary) in membership, management or control, of the Developer or its associates (other than such changes occasioned by the death or incapacity of any individual or by routine changes in board membership) prior to Completion.

e. The restrictions of this Section 107 shall terminate upon the Completion.

## PART 2 ACQUISITION AND DISPOSITION OF THE ACQUISITION PARCEL

### Section 201 Acquisition of the Acquisition Parcel by Agency

a. Subject to the terms and conditions of this Agreement, including the termination rights pursuant to Sections 508-511 of this Agreement, Agency shall acquire title to the Acquisition Parcel, and may acquire title by negotiation or by condemnation, if necessary.

b. The Agency shall use reasonable efforts to acquire the Acquisition Parcel by negotiated purchase. If the Agency is unsuccessful in acquiring the Acquisition Parcel by negotiation, the Agency shall hold a public hearing on a resolution of necessity and, after complying with all requirements of law applicable to such determination, consider whether or not to acquire the Acquisition Parcel for redevelopment purposes. If Agency determines not to acquire the Acquisition Parcel, this Agreement shall be terminated pursuant to Section 508.b. of this Agreement.

c. If, in order to provide for the redevelopment of the Site in accordance with this Agreement, and subject to the conditions and in accordance with the provisions set forth in this Section 201, the Agency acquires the Acquisition Parcel, the

Agency shall sell the Acquisition Parcel to Developer pursuant to this Agreement.

d. The obligation of the Agency to acquire the Acquisition Parcel by eminent domain pursuant to this Section 201 is subject to the condition that in the event the Agency is unable to acquire the Acquisition Parcel by negotiated sale on terms and conditions reasonably acceptable to the Agency, the Agency shall in good faith make the findings required by Section 1245.230 of the Code and adopt a resolution of necessity as provided in that section; provided, however, that nothing contained herein shall obligate the Agency to make such findings or adopt such resolution. Such determination by the Agency shall be made, if at all, within the time provided in the Schedule of Performance.

e. In the event the Agency is unable to acquire the Acquisition Parcel by negotiated sale on terms and conditions acceptable to the Agency, and the Agency files a complaint in eminent domain; the Agency shall, concurrently with such filing, apply to the court for possession prior to judgment (the "Order") pursuant to Section 1255.410 et seq. of the Code.

f. In order to facilitate the Agency's ability to acquire the Acquisition Parcel pursuant to this Agreement; Developer agrees to advance the acquisition and relocation costs to the Agency as provided in the Method of Financing attached to this Agreement as Attachment No.3, which is incorporated herein by this reference. Agency's obligation to repay the Developer's Advance shall be subject to the terms and conditions of the Loan Agreement, substantially in the form attached to this Agreement as Attachment No. 10.

Section 202      Agency Responsibilities Regarding the Acquisition Parcel

If Agency determines to acquire the Acquisition Parcel pursuant to Section 201 of this Agreement, subject to Agency's right to terminate this Agreement pursuant to Section 510 of this Agreement, Agency shall be responsible, at the sole cost and expense of Agency, for accomplishing the following prior to the Closing:

a. Subject to the terms of this Agreement, acquiring the Acquisition Parcel;

b. Relocating all tenants and occupants of the Acquisition Parcel in accordance with all applicable relocation laws and requirements;

c. Demolishing and removing the improvements existing on the Acquisition Parcel (which will include abatement of asbestos and lead based paint if required by law); and

d. Assessing and remediating any Hazardous Substances from the Acquisition Parcel as and to the extent required in Section 214 of this Agreement.

Section 203      Sale and Purchase

a. Agreement to Sell and Purchase. In accordance with and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to the Developer and the Developer agrees to purchase the Acquisition Parcel.

b. Purchase Price. Developer shall pay as the Purchase Price for the Acquisition Parcel an amount as set forth in the Method of Financing. Developer shall be entitled to a credit against the Purchase Price equal to the Developer's Advance. To the extent the Purchase Price exceeds the Developer's Advance, the Net Purchase Price, if any, shall be payable upon the Close of Escrow.

c. Developer's Advance. Developer shall disburse the Developer's Advance to the Agency in accordance with the Loan Agreement. Agency shall repay that portion of the Developer's Advance that is in excess of the Purchase Price, if any, in accordance with the terms and conditions of the Loan Agreement, substantially in the form attached to this Agreement as Attachment No. 10. The Agency and Developer shall execute the Loan Agreement concurrently with the execution of this Agreement.

Section 204      Escrow

a. The Agency agrees to open an escrow for conveyance of the Acquisition Parcel in the City of San Diego with the Title Company or such other escrow agent as may be acceptable to both the Agency and the Developer (the "Escrow Agent") as escrow agent, within thirty (30) days after the Agency makes an offer to acquire the Acquisition Parcel. Parts 1 and 2 of this Agreement constitute the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

The Agency and the Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Agent hereby is empowered to act under such instructions, and upon indicating its acceptance thereof in writing, delivered to the Agency and to the Developer within 5 days after opening of the escrow, the Escrow Agent shall carry out its duties as Escrow Agent hereunder.

b. Upon payment to the Escrow Agent of the Net Purchase Price by Developer, if any, and delivery to the Escrow Agent of the Grant Deed by the Agency, the Escrow Agent shall deliver the Net Purchase Price, if any, to Agency and record the Grant Deed in accordance with these escrow instructions, provided that title to the Acquisition Site can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix, and cancel any transfer stamps required by law. Any insurance policies governing the Acquisition Parcel are not to be transferred.

c. The Developer shall pay in escrow to the Escrow all fees, charges and costs necessary to close escrow promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges, and costs (the "Closing Costs"), but not earlier than ten (10) days prior to the scheduled date for the conveyance of the Acquisition Parcel. The Closing Costs shall include:

1. Escrow fees;
2. The premiums for the Title Insurance Policy as set forth in Section 210 of this Agreement;
3. Recording fees;
4. Notary fees, if any; and
5. Any State, County or City documentary stamps or transfer tax.

d. The Developer shall also deposit with the Escrow Agent the Net Purchase Price, if any.

e. The Agency shall timely and properly execute, acknowledge and deliver the Grant Deed conveying to the Developer title to the Acquisition Parcel in accordance with the requirements of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts

(except deposit of the Net Purchase Price), necessary to entitle the Developer to such conveyance, if such be the fact.

f. The Escrow Agent is authorized to:

1. Pay, and charge the Developer for any fees, charges and costs payable under this Section 204 of this Agreement. Before such payments are made, the Escrow Agent shall notify the Developer of the fees, charges and costs necessary to close the escrow.
2. Disburse funds and deliver the Grant Deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the Agency and the Developer. The Net Purchase Price, if any, shall not be delivered by the Escrow Agent unless and until it has recorded the Grant Deed and the Title Company has issued the Title Insurance Policy.
3. Record any instruments delivered through this escrow if necessary or proper to vest title in the Developer in accordance with the terms and provisions of this Agreement.

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

h. If this escrow is not in condition to close on or before the time for conveyance set forth in the Schedule of Performance, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return shall be recognized until 10 days after the Escrow Agent (or the party making such demand) shall have mailed copies of such demand to the other party or parties at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the 10-day period, in which event the Escrow Agent is authorized to hold all money, papers, and documents with respect to the escrow until instructed by a mutual agreement of the parties or, upon failure

thereof, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible.

i. If objections are raised as above provided for, the Escrow Agent shall not be obligated to return any such money, papers, or documents except upon the written instructions of both the Agency and the Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction. If no such objections are made within said 10-day period the Escrow Agent shall immediately return the demanded money, papers, or documents.

j. The parties understand they may be required to execute additional standard form escrow instructions required by the Escrow Agent ("General Instructions"). In the event of a conflict between this Agreement and any such General Instructions, this Agreement shall control. The parties agree, however, that they will refuse to sign General Instructions which (1) purport to relieve the Escrow Agent of liability for negligence or intentional wrong-doing; (2) excuse the Escrow Agent from strict compliance with each and all of the provisions of this document and the General Instructions; or (3) purport to authorize the Escrow Agent to follow the instructions or directive of any person not a direct signatory party to this Agreement. Any amendment to the escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

k. All communications from the Escrow Agent to the Agency or the Developer shall be directed to the addresses set forth in Sections 105 and 106 of this Agreement, and in the manner set forth in Section 601 of this Agreement for notices between the parties hereto.

l. Subject to the Loan Agreement, the Developer's Advance shall include funds for payment of the legal and professional fees and fees of other consultants incurred by both the Agency and Developer in connection with the acquisition of the Acquisition Parcel and any related relocation costs and expenses; provided that no more than \$100,000 of the loan funds may be used to pay for condemnation counsel fees and expenses.

Section 205     Conveyance of Title and Delivery of Possession

a. Subject to any mutually agreed upon extension of time, the Agency shall convey title to the Acquisition Parcel to the Developer on or before the Closing Date (so long as all conditions precedent have been satisfied), or such later date mutually agreed to in writing by the Agency and the Developer and communicated in writing to the Escrow Agent.

b. Except as otherwise provided herein, possession of the Acquisition Parcel shall be delivered to the Developer at the Close of Escrow. The Developer shall accept title and possession to the Acquisition Parcel upon the Close of Escrow.

Section 206     Form of Deed

The Agency shall convey to the Developer title to the Acquisition Parcel in the condition provided in Section 207 of this Agreement by Grant Deed in a form to be mutually agreed upon by the Agency and the Developer consistent with this Agreement and substantially in the form attached hereto and incorporated herein as Attachment No. 6. The Grant Deed shall contain covenants necessary or desirable to carry out this Agreement.

Section 207     Condition of Title

a. Subject to the terms and conditions of this Agreement, the Agency shall convey to the Developer fee simple merchantable title to the Acquisition Parcel free and clear of all liens, encumbrances, assessments, easements, leases and taxes, except to the extent of any exceptions set forth in the Grant Deed, if any, and those exceptions which are set forth in the Preliminary Report issued by Commonwealth Land Title Company dated March 30, 2005 (other than the matters referenced in Item 4 of Schedule B of Part I of said Report, which matters shall not be considered an Approved Title Condition), or are otherwise consistent with this Agreement and which are acceptable to the Developer.

b. Notwithstanding paragraph a., if on or prior to the date for conveyance of title to the Property to the Developer as set forth in the Schedule of Performance, the Agency has not obtained title to the Acquisition Parcel, but has obtained a judicial order authorizing the Agency to take possession thereof, the Agency shall convey and the Developer shall accept the Acquisition Parcel if the following conditions are met:

- (1) The Agency delivers exclusive possession of the Acquisition Parcel to the Developer by Grant Deed, ~~on or prior to the time set for conveyance thereof;~~ and
- (2) All occupants have relocated from the Property; and
- (3) The right of possession which the Developer acquires from the Agency is such that the Title Company will issue a policy or policies of title insurance as to the interest conveyed by said Grant Deed subject to only those items described in the first full paragraph of this Section 207; and
- (4) The Developer is able to secure financing reasonably satisfactory to the Developer, for acquisition of the land and construction of the development on the Site, on the basis of said title insurance policy or policies; and
- (5) In the event the Agency tenders possession of the Acquisition Parcel as herein provided, the Developer shall not terminate this Agreement under the provisions of Section 509 of this Agreement, but shall accept such right of possession and shall proceed with construction on the Site.

c. The Agency shall thereafter diligently proceed with all condemnation actions until a final judgment is rendered, and said judgment authorizes the taking, and the time for appeal has expired pursuant to law; or the Agency shall obtain title by settlement of any such condemnation actions. The Agency further shall thereafter proceed with due diligence to complete the actions required of the Agency pursuant to paragraph c. of Section 202 and paragraph d. of Section 202 of this Agreement, to the extent such actions have not been completed prior to the transfer of possession, and the Developer shall provide the Agency with reasonable access rights to complete the same.

d. All references to conveyance of title in this Agreement shall also mean delivery of possession as referred to in this Section as the context may require.

Section 208 Time and Place for Delivery of Deed

Subject to any mutually agreed-upon extension of time, the Agency shall deposit the Grant Deed with the Escrow Agent on or before the Closing Date.

Section 209 Conditions Precedent to Close of Escrow

The Close of Escrow and the obligations of the Agency and Developer hereunder are subject to the satisfaction prior to the Close of Escrow (unless otherwise provided), of the following conditions, and the obligations of the parties with respect to such conditions are as follows:

a. Title. As provided in Section 207.b. of this Agreement, Agency shall have obtained title to the Acquisition Parcel, free and clear of any and all encumbrances, except the Approved Title Conditions. All references to fee title as security for a Permitted Mortgage Loan in this Agreement shall also mean the right to possession by the Agency (and any successors in foreclosure) as referred to in this Section, as the context may require.

b. Representations, Warranties and Covenants

1. Developer shall have duly performed each and every agreement to be performed by Developer hereunder and Developer's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the close of Escrow.

2. Agency shall have duly performed each and every agreement to be performed by Agency hereunder and Agency's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the close of Escrow.

c. Deliveries.

1. Developer shall have paid the Developer's Advance and Net Purchase Price to Agency and delivered the items to be delivered by Developer, when and as required in this Agreement.

2. Agency shall have delivered the items to be delivered by Agency, when and as required by this Agreement.

d. Conditions Precedent. As of the Close of Escrow, all of ~~the following Conditions Precedent to Conveyance of Title shall~~ have been satisfied:

1. Condition of Title. Agency shall be prepared to deliver title to the Acquisition Parcel as required by this Agreement;
2. Title Insurance Policies. Title Company shall be committed to issue the Owner's Title Insurance Policy for the Acquisition Parcel;
3. Final Working Drawings. Developer shall have submitted and Agency shall have approved final working drawings for the Site;
4. Project Budget. Developer shall have delivered to the Agency a final project budget or confirmed that the Project Budget attached to this Agreement as Attachment No. 8 remains a valid estimate of all Development Costs required for the development of the Site in accordance with this Agreement, and shall demonstrate to the satisfaction of the Agency Executive Director the availability of sufficient funds to pay all the Development Costs;
5. Construction Contract. Developer shall have delivered to the Agency a general construction contract between the Developer and a licensed general contractor, covering all construction on the Site required by this Agreement and the approved final working drawings, in an amount that is consistent with the final Project Budget;
6. Construction Schedule. Developer shall have delivered to the Agency a construction schedule for the Site showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction and complete fixturing of the Project, demonstrating that construction will be completed within the time provided in the Schedule of Performance;
7. Evidence of Financing. Developer shall have submitted to the Agency evidence of all financing proposed to pay Development Costs, and the Agency

Executive Director or designee shall have approved such evidence of financing, including substantially final forms of loan and equity documents, and shall have determined that all conditions precedent to the initial disbursement of construction financing shall be satisfied as of the closing date (it being understood that subsequent disbursements of construction financing may continue to be subject to customary construction disbursement conditions);

8. Insurance. Developer shall have submitted to the Agency evidence of the Insurance Policies required by this Agreement;
9. Work Force Report/EO Plan and Report. Developer shall have prepared and delivered to the Agency its Work Force Report or Equal Opportunity Plan, and Initial Equal Opportunity Report, to the extent required by the Agency;
10. Permits. Developer shall have delivered to the Agency a list of all permits required for construction of the Project, demonstrating that all approvals for such construction have been obtained, and that all conditions for the issuance of all necessary permits for such construction have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget, and conveyance of the Acquisition Parcel, which shall occur upon the Closing);
11. Developer Formation Documents. Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status, as the case may be, of Developer (and if Developer is a limited partnership, its general partners, and if Developer is a limited liability company, its members), including, without limitation and as applicable: limited partnership agreement and any amendments thereto; articles of incorporation; State of California Limited Liability Company Articles of Incorporation (LLC-1), Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other

necessary actions taken by such entity to authorize the execution of the DDA and related documents; ~~a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County;~~

12. Relocation. The Agency shall have relocated tenants and occupants of the Acquisition Parcel.
13. Demolition. The Agency shall have demolished the improvements on the Acquisition Parcel.
14. Environmental Assessment and Remediation. The Agency shall have performed in full its obligations under Sections 201(d) and 214 of this Agreement.
15. Closing Cost Statement. Escrow shall have delivered a closing statement of costs;
16. Documents. Agency, Developer and the Assignee, or other parties, as appropriate, shall have executed all additional documents necessary or appropriate for the effectuation of this Agreement, including but not limited to:
  - A. Assignment and Assumption Agreement;
  - B. Grant Deed;
  - C. Agreement Affecting Real Property; and
  - D. Option Agreement.
17. Title Insurance. At or prior to the Close of Escrow, the Title Company shall be committed to issue the Title Insurance Policy.

e. Failure of Conditions to Close of Escrow. In the event any of the conditions precedent to the Close of Escrow are not timely satisfied or waived, for a reason other than the default of Agency or Developer, the following shall apply:

1. As provided in Section 204.h. of this Agreement, ~~either party shall have the right to terminate this Agreement, the Escrow and the rights and obligations of Agency and Developer hereunder, except as otherwise provided herein; and~~

2. Escrow Agent is hereby instructed to promptly return to Developer and Agency all funds, if any, and documents deposited by them, respectively, into Escrow which are held by Escrow Agent on the date of said termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under paragraph g.; and

3. Neither party shall have any further rights or obligations hereunder except as otherwise provided herein.

f. Cancellation Fees and Expenses.

1. In the event this Escrow is terminated because of the failure of any condition not within the control of either party, or for any reason other than as provided in clause 1 or clause 2 of this paragraph f., below, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be divided equally between Developer and Agency and all other charges shall be borne by the party incurring same.

2. In the event this escrow is terminated because of the failure of any condition within the control of the party terminating this escrow, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne by the party who terminated this Escrow, and all other charges shall be borne by the party incurring same.

3. In the event this Escrow is terminated as the result of the default of Agency or Developer under this Agreement, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne by the party in default, and all other charges shall be borne by the party incurring same.

g. Disbursements and Other Actions to be taken by the Escrow Agent. At the Close of Escrow, Escrow Agent shall promptly undertake all of the following in the manner hereinbelow indicated:

1. Pay the Net Purchase Price, if any, to Agency;

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2. Cause the Grant Deed and any other documents which the parties hereto may mutually direct, to be recorded in the Official Records of the County Recorder of San Diego County, and obtain conformed copies thereof for distribution to Agency and Developer;
3. Direct the Title Company to issue the Owner's Title Insurance Policy to Developer;
4. Prepare and distribute to Developer and Agency each, copies of both parties' escrow closing statements and a complete copy of all documents handled by Escrow.

Escrow Agent agrees that release of funds to Agency shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue the Title Policy in accordance with this Agreement.

Section 210      Title Insurance

Concurrent with recordation of the Grant Deed, the Title Company shall provide and deliver the Title Insurance Policy to the Developer. Developer shall be obligated to pay the title insurance premium for the Owner's Title Insurance Policy, including any extended coverage or special endorsements which it requests. Agency shall have no responsibility for paying the cost of the Title Insurance Policy.

Section 211      Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Acquisition Parcel shall be pro rated as of the Close of Escrow. Any taxes upon this Agreement or any rights hereunder, levied, assessed or imposed, and any taxes on the Acquisition Parcel for any period after the Close of Escrow shall be borne by the Developer.

Section 212      Occupants of the Acquisition Parcel

The Agency agrees that title to the Acquisition Parcel shall be conveyed free of any possession or right of possession except that of the Developer, unless waived by the Developer in writing.

Section 213 Land Use Requirements

It is the responsibility of the Developer, without cost to Agency, to ensure that zoning of the Site and all applicable City land use requirements will be, at the Closing, such as to permit development of the Site and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. It shall be a condition of the Close of Escrow that Developer obtain all entitlements, approvals and permits necessary for the construction of the Improvements. Nothing contained herein shall be deemed to entitle Developer to any City of San Diego permit or other City approval necessary for the development of the Site, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer; (b) supersede, nullify or amend any condition which may be imposed by the City of San Diego in connection with approval of the development described herein; (c) guarantee to Developer or any other party any profits from the development of the Site, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to Agency, Agency shall provide appropriate technical assistance to Developer in connection with Developer's obtaining all necessary entitlements, permits and approvals for the construction of the Improvements.

Section 214 Condition of the Property

a. Developer's Site Investigation. The Developer shall have the right, at its own expense, and in consultation with the Agency, to employ a qualified soils engineer, geologist, and/or environmental consultant (collectively the "Consultant") for the purpose of investigating the soil and water condition of the Acquisition Parcel, and the suitability of the Acquisition Parcel for economically feasible development thereon by the Developer in accordance with this Agreement. At the request of Developer, Agency agrees to cooperate in good faith with Developer, prior to the commencement of any actions designed to acquire the Acquisition Parcel, to obtain the written consent of the owner(s) of such parcel, or an order from the superior court, to permit Developer and its Consultant to enter upon the Acquisition Parcel to photograph, study, survey, examine, test, sound, bore, sample, appraise or to engage in similar activities reasonably related to acquisition or use of the Acquisition Parcel (the "work") pursuant to California Code of Civil Procedure Section 1245.010 et seq. The bond or cash deposit required pursuant to California

Code of Civil Procedure Section 1245.030 (if any is required) and any and all costs associated with obtaining a court order pursuant to the requirements of Code of Civil Procedure Section 1245.010 et seq., including, but not limited to, attorneys' fees and court costs, shall be the sole responsibility of the Developer. Developer shall also provide the Agency with the name(s) of the Consultant. Upon Consultant's completion of the work, a copy of the Consultant's written report(s) shall be delivered to the Agency. Developer shall have the right pursuant to Section 509 to terminate this Agreement if Developer reasonably determines, on the basis of the report, that the soils and water condition on the Property is not suitable for the economically feasible development of the Property. If the Developer does not terminate this Agreement by written notice to the Agency on or before the date that is thirty (30) days after execution of this Agreement, then this condition shall be deemed waived.

b. Remediation of the Acquisition Parcel.

(1) The Agency agrees to perform (as described below) remediation of all Hazardous Substances at the Acquisition Parcel as necessary to permit the development and use of the Site (A) as contemplated by the intended use of the Site set forth in the DDA and (B) without any requirement that the Developer undertake further actions with respect to Hazardous Substances in order to effect such development and use. The Agency intends that the clean up of the Acquisition Parcel will occur in accordance with the Polanco Redevelopment Act. Developer agrees to work with the Agency to timely provide development plans showing the location and depth of all proposed excavations, and identifying the locations and types of future uses of the Acquisition Parcel. Developer agrees to coordinate with the Agency and its environmental consultant so that all necessary information can be incorporated into all investigation and remedial action plans.

(2) Depending on the environmental contaminants known or suspected at the Acquisition Parcel, the Agency will determine which environmental regulatory agency is best suited to provide oversight for the clean up, and will pursue an oversight agreement with such environmental agency. Agency will then contract with an environmental consultant to prepare a Property Mitigation Plan ("PMP") or similar remedial action plan, which will describe the approach to the clean up of the Acquisition Parcel so as to achieve the remediation required pursuant to clause (1), above. The Agency will attempt to have this PMP prepared and approved by the appropriate regulatory agency such

that remediation efforts can begin upon completion of demolition of the improvements at the Acquisition Parcel. However, the Agency has no obligation to implement the approved PMP until Agency has obtained possession of the Acquisition Parcel and Developer has obtained a grading permit.

(3) The PMP (or similar remedial action plan) will be premised on a risk-based corrective action approach, and may involve leaving certain contamination in either the soil or groundwater beneath and/or adjacent to the Acquisition Parcel. Developer hereby acknowledges and agrees that the PMP may propose that only those soils in the excavation area be removed, so long as the failure to remove other contaminated soils shall not interfere with the development and use of the Site for the use contemplated by this Agreement. Accordingly, it is possible that some contaminated soils will remain at the Acquisition Parcel beneath and adjacent to the Improvements.

(4) Upon approval of the PMP (or similar remedial action plan) by the appropriate regulatory agency, the completion of demolition, the obtaining of a grading permit by the Agency (if necessary), and the obtaining of a grading permit by the Developer, the Agency will use its best efforts to begin the implementation of the PMP as soon thereafter as possible. At the time of this Agreement, the Agency anticipates that the likely approach to remediation will be to excavate, transport and dispose of soils impacted by Hazardous Substances. If the Agency implements such an approach to remediation, the Agency may approach the excavation by using a 1:1 or 2:1 slope so that shoring of the Acquisition Parcel to complete the necessary remediation will not be required. This will likely result in the Agency excavating, transporting and disposing of soils not impacted by Hazardous Substances simultaneous with the remediation effort. At a minimum, the PMP will require that Hazardous Substances that exist within the area required to be excavated in order to achieve the Developer's development contemplated by this Agreement (the "excavation envelope") shall be excavated and disposed of in accordance with law. Additionally, if the Agency is still removing soils impacted with Hazardous Substances and reaches the bottom of the excavation envelope, then Agency will over excavate those impacted areas approximately one foot. Developer will be responsible to inform Agency when Agency has reached the bottom of the excavation envelope. Upon turnover of the Acquisition Parcel, Developer will then be responsible to place clean fill in the over excavated area(s) and compact the soil as necessary for Developer's intended development. However, Agency and Developer agree to

cooperate during the bid process so that the same contractor selected to perform the Agency's excavation and remediation work will also perform the fill and compaction effort if Agency over excavates any area of the Acquisition Parcel. Agency and Developer will work together to prepare a separate line item for Agency's bid package describing the potential fill and compaction work, but Developer will contract separately with the selected contractor to perform the fill and compaction work so that this work can be performed as seamlessly as possible following the over excavation effort (if such over excavation occurs).

(5) Since the Developer would have had to incur costs to excavate, load, transport and dispose of all the soils at the Acquisition Parcel if there had been no contamination, the Agency shall receive a credit from Developer towards the cost to excavate, load, transport and dispose of any soils removed from the Acquisition Parcel by the Agency that would have been required to be removed notwithstanding their contaminated state in order to achieve the Developer's development contemplated by this Agreement (the "Developer's Targeted Amount of Excavation Soils"). To determine the amount of the credit owed the Agency, the Agency will prepare a bid for its proposed remediation work, and the Developer will prepare a bid for the remaining excavation work to be performed when the Agency has performed the remediation effort. The Agency and the Developer will issue their bids and select their contractors simultaneously. Upon finalizing the bid process, the Developer and Agency will be able to identify the unit cost to Developer to excavate, load, transport and dispose of clean soils at the Acquisition Parcel (the "Clean Soil Unit Excavation Cost"). Agency will be entitled to a credit equal to the product of (A) the sum (expressed in terms of the unit of measurement used for purposes of the Clean Soil Unit Excavation Cost) of the quantity of soils removed from the Acquisition Parcel by the Agency, up to the amount of the Developer's Targeted Amount of Excavation Soils, times (B) the Clean Soil Unit Excavation Cost. If the Agency and Developer cannot agree on the Clean Soil Unit Excavation Cost after good faith negotiations, Agency and Developer will select a mutually agreeable third party to review the bids and determine the appropriate Clean Soil Unit Excavation Cost.

(6) Upon completion of the remediation, the Agency's environmental consultant shall prepare a Closure Report requesting a "No Further Action" letter (or document of similar effect reasonably satisfactory to Developer) from the regulatory agency, and the Agency thereafter shall cooperate and take all steps appropriate in order to receive a "No Further Action"

letter (or document of similar effect reasonably satisfactory to Developer) which acknowledges that the remediation effort has been accomplished in accordance with Health and Safety Code Section 33459.3. The Agency's obligations with respect to remediating Hazardous Substances at the Acquisition Parcel shall terminate upon completion of the remediation as necessary for the intended use of the Site as identified in this Agreement and issuance of the No Further Action letter (or document of similar effect reasonably satisfactory to Developer). As Developer will accept the Acquisition Parcel with the potential for some residual contamination remaining after completion of the Agency work described in this Section 214 (as discussed above), the Agency shall have no liability for, and shall not indemnify the Developer for any liability resulting from any contamination left at the Acquisition Parcel upon completion of the remediation described in this Section, nor for any future contamination that may occur at the Acquisition Parcel. The Agency shall indemnify the Developer, however, for any damages, liabilities, obligations, claims, expenses or other costs arising out of the negligence, willful misconduct or failure to comply with any applicable laws by the Agency in connection with the Agency's demolition pursuant to paragraph c. of Section 202 and remediation work pursuant to this Section 214 or on account of the negligence, willful misconduct or failure to comply with any applicable laws by the Agency in connection with the export of any impacted soil from the Acquisition Parcel in connection with the Agency's remediation work pursuant to this Section 214.

(7) The Agency will turnover the Acquisition Parcel to Developer upon completion of the remediation effort as necessary to permit the development and use of the Acquisition Parcel as contemplated by this Agreement. If requested by Developer, Agency will request its environmental consultant to issue a letter stating that the consultant believes that all remediation necessary to permit the development and use of the Acquisition Parcel as contemplated by this Agreement has occurred. The Agency will use its best efforts to receive a No Further Action letter (or document with similar effect) as quickly as possible. If the Agency and Developer have not yet closed on the Acquisition Parcel, the Agency and Developer agree to execute a right of entry agreement proposed by the Agency. The Agency shall have no obligation to perform any grading or, except for the demolition described in paragraph c. of Section 202 and the remediation effort described herein, to prepare the Acquisition Parcel in any way for Developer's intended construction effort. Developer agrees to accept the Acquisition Parcel from the Agency "as is" after completion of the remediation with the anticipated future

receipt of a No Further Action letter (or document of similar effect).

(8) Developer is aware and acknowledges that remediation of the Acquisition Parcel will likely be required, and time must be incorporated into the project construction schedule to accommodate remediation to be performed by the Agency. Agency shall not be charged for any time or overhead added to Developer's schedule and construction costs due to the time needed to remediate the Acquisition Parcel during the redevelopment process, so long as the Agency prosecutes the same with reasonable diligence. To the extent the remediation to be performed by the Agency makes it infeasible for the Developer to perform Developer's obligations within the time established in the Schedule of Performance, attached hereto as attachment No. 4, the Agency and Developer hereby agree that the Developer shall be entitled to a reasonable extension of time to reflect the delay caused by compliance with the requirements of this Section 214(b). The Agency shall execute and provide documentation reasonably requested by the Developer in order to evidence the same.

c. Conveyance of Acquisition Parcel. Subject to this Section 214, and except as provided in paragraph b, the Acquisition Parcel shall be conveyed in an "as is" condition, with no warranty, express or implied by the Agency as to the condition of the soil (or water), its geology, or the presence of known or unknown faults.

Section 215 Preliminary Work by the Developer

a. Agency shall give Developer written notice promptly upon Agency's obtaining possession of the Acquisition Parcel ("Notice of Possession"). After such Notice of Possession until the Close of Escrow, representatives of the Developer shall at all reasonable times have the right of access to and entry upon the Acquisition Parcel, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement.

b. The Developer agrees to defend and hold the Agency, the City and their officers, employees, contractors and agents, harmless for any and all claims, liability and damages arising out of any work or activity of the Developer, its agents, or its employees pursuant to this Section 215, except to the extent caused by the negligence or willful misconduct of Agency, City or their officers, employees, contractors and agents. The Agency agrees to provide, or cause to be provided to the Developer all

data and information pertaining to the Acquisition Parcel that is available to the Agency when requested by the Developer.

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Section 216 Indemnity.

a. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, the Developer agrees to and shall defend, with counsel reasonably acceptable to Agency, indemnify and hold harmless the Agency, the City and their respective officers, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees, court costs and litigation costs and fees of expert witnesses) whatsoever caused to any person or the property of any person, which shall occur on the Site or in connection with any activities of the Developer or its officers, employees, contractors or agents, and which results or arises from or in any way connected with the following (provided that notwithstanding the provisions of this Section 216, in no event shall Developer be responsible for, and such indemnity shall not apply to, any such claims, liability, loss, damage, costs or expenses (a) to the extent attributable to the demolition activities undertaken by the Agency pursuant to paragraph c. of Section 202 or the remediation activities of the Agency undertaken pursuant to Section 214 of this Agreement, (b) to the extent attributable to the gross negligence or willful misconduct of the Agency, the City or their respective officers, employees, contractors or agents, or (c) pertaining to the Acquisition Parcel and arising out of actions, events or circumstances occurring or existing prior to the transfer of title or possession of the Acquisition Parcel to Developer):

1. The existence, release, presence or disposal of any Hazardous Substances from the Developer's Parcels;
2. Developer's development, marketing, sale or use of the Site in any way;
3. Any plans or designs for improvements prepared by or on behalf of Developer, including without limitation any errors or omissions with respect to such plans or designs;
4. Except as expressly provided otherwise in this Agreement, any loss or damage to Agency resulting from any inaccuracy in or breach of any

representation or warranty of Developer, or resulting from any breach or default by Developer, under this Agreement; and

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5. Any loss or damage to Agency as described in Section 310 of this Agreement.

b. To the extent permitted by law, Developer shall defend and hold harmless the Agency and City and their respective agents and employees from liability from any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City and/or the Agency. Developer further agrees that such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of the Agency or City by counsel selected by the Developer which counsel shall be reasonably acceptable to the Agency and City. Notwithstanding the foregoing, the Developer shall not be required to provide the indemnification of defense with respect to matters for which the Agency is providing indemnification pursuant to Section 214 of this Agreement.

c. The foregoing indemnities shall not terminate upon the Close of Escrow but shall survive all applicable causes of action, except if Agency exercises its rights pursuant to Section 511 of this Agreement.

### PART 3 DEVELOPMENT OF THE SITE

#### Section 301 Scope of Development

The Site shall be developed in accordance with and within the limitations established in the Scope of Development attached to this Agreement as Attachment No. 5.

#### Section 302 Basic Concept and Schematic Drawings

a. The Developer shall prepare and submit Basic Concept and Schematic Drawings and related documents for the development of the Site to the Agency for review and written approval within the time established in the Schedule of Performance. Basic Concept and Schematic Drawings shall include a site plan, elevations and sections of the improvements as they are to be developed and constructed on the Site.

b. The Site shall be developed as established in the Basic Concept and Schematic Drawings and related documents except as

changes may be mutually agreed upon between the Developer and the Agency Executive Director or designee. Any such changes shall be within the limitations of the Scope of Development.

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Section 303      Landscaping and Grading Plans

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

b. The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as the Developer's architect. Within the times established in the Schedule of Performance, the Developer shall submit to the Agency for approval the name and qualifications of its architect, landscape architect and civil engineer.

Section 304      Construction Drawings and Related Documents for the Site

a. The Developer shall prepare and submit construction drawings and related documents (collectively called the "Drawings") to the Agency for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance (Attachment No. 4). From time to time, Agency may request, and promptly upon such request Developer shall submit evidence of the expenditure of funds for architectural services demonstrating that Drawings are being prepared in a continuous effort to meet or advance the Schedule of Performance for the submission of Drawings. Such construction drawings and related documents shall be submitted as 100% Design Development Drawings and Final Construction Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.

b. Within the respective times provided therefor in the Schedule of Performance, Developer shall submit the 100% Design Development Drawings and Final Construction Drawings for the Project.

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

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

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

Section 305 Agency Approval of Plans, Drawings and Related Documents

a. Subject to the terms of this Agreement, the Agency shall have the right of review (including without limitation architectural review) of all plans and submissions, including any proposed changes therein. The Agency shall approve or disapprove the plans, drawings and related documents referred to in Sections 302, 303 and 304 of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency Executive Director or designee requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. The Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder shall revise the plans, drawings and related documents, and shall resubmit to the Agency Executive Director or designee as soon as possible after receipt of the notice of disapproval.

b. If the Developer desires to make any substantial change in the Final Construction Drawings after their approval, such

proposed change shall be submitted to the Agency Executive Director or designee for approval.

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Section 306 Cost of Construction

The cost of developing the Site and constructing the Improvements, including any offsite or onsite improvements required by the City in connection therewith, shall be the responsibility of the Developer, without any cost to Agency, subject to the terms of this Agreement.

Section 307 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Agency and Developer.

b. After the Closing, the Developer shall begin construction of the Improvements within the time provided in the Schedule of Performance, and thereafter diligently prosecute to completion the construction of the Improvements and the development thereof as provided in the Scope of Development. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance with such reasonable extensions of said dates as may be granted by the Agency.

c. During periods of construction, the Developer shall submit to the Agency a written report of the progress of construction when and as reasonably requested by the Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by the Developer.

Section 308 Insurance

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

1. All-Risk Policies: Developer shall maintain or cause to be maintained coverage of the type now known as builder's completed value risk insurance, as delineated on an All Risk Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (A) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (B) a "Replacement Cost Endorsement" in amount sufficient to prevent Developer from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Agency, and (C) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence (except that earthquake coverage, if obtained, shall carry a deductible not to exceed 25% of the policy amount, or such other deductible amount as Agency may reasonably determine is acceptable, in light of the cost of the premium for such insurance);
  
2. Liability Insurance: Developer shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of the Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer, or any person acting for Developer, or under its respective control or direction, and

also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect from Closing through Completion in the following amounts: commercial general liability in a general aggregate amount of not less than Two Million Dollars (\$2,000,000), \$2,000,000 Products and Completed Operations Aggregate, and \$2,000,000 Each Occurrence. Developer shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the Close of Escrow. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of Agency or the payment of damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible;

3. Automobile Insurance: Developer shall maintain or cause to be maintained automobile insurance, maintained in full force and effect in an amount of not less than Two Million Dollars (\$2,000,000) per accident;
4. Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons

employed by Developer in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Developer shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.

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

c. All insurance provided under this Section shall name as additional insureds the following:

"The City of San Diego, the Redevelopment Agency of the City of San Diego and their officers, employees, contractors, agents and attorneys."

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

d. If Developer fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the

right but not the obligation, at Agency's election, and upon ten (10) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by Agency shall be treated as a loan, due from Developer, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

e. The provisions of this Section 308 shall not be construed as obligating the Developer to procure insurance for the work to be performed by the Agency pursuant to paragraphs c. and d. of Section 202 of this Agreement or for the claims for which the Agency is providing indemnity pursuant to Section 214.

Section 309 Nondiscrimination and Equal Opportunity

a. 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 contractor and subcontractors comply with the City of San Diego's Equal Opportunity Program.

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

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

d. Developer has received, read and understands the Equal Opportunity Contracting Information Packet provided by the Agency.

e. Developer has submitted, and Agency acknowledges receipt of, an initial Equal Opportunity Report. Developer agrees periodically to provide updated reports as requested by the Agency.

f. Developer hereby acknowledges receipt of the City Heights Redevelopment Project Area Committee's Local Hiring/Contracting Guidelines Subcommittee Recommendations (the "Guidelines"), and agrees to use commercially reasonable efforts

to apply the Guidelines to the development of the Improvements pursuant to this Agreement.

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g. Developer and its general contractor shall comply with all applicable City of San Diego Equal Opportunity Contracting Programming requirements and Prevailing Wage requirements and reporting procedures. Prior to the Closing, the Developer shall cause the general contractor to meet with and comply with all of the applicable requirements of the City's Equal Opportunity Contracting Program staff relating to submitting all required documents and following all applicable City Equal Opportunity and Prevailing Wage procedures.

h. Developer and its general contractor shall make reasonable efforts to ensure that the services of qualified small and minority owned businesses, women's business enterprises, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of the City Heights Redevelopment Project Area are utilized whenever possible. Such efforts shall include but not be limited to the following:

- (1) Including such firms, when qualified, on solicitation mailing lists;
- (2) Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of such firms;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, and the strategies outlined below, when appropriate;
- (6) Including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and

employment for lower income residents of the Redevelopment Project Area and to award subcontracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the Redevelopment Project Area;

- (7) Requiring contracts, when subcontracting is anticipated, to take the positive steps listed in clauses (1) through (6), above;
- (8) Implementing strategies to promote local hiring, including:
  - \* Local job fairs;
  - \* Youth apprenticeship program;
  - \* Place ads in local and DBE newspapers and newsletters;
  - \* Network with local and supportive organizations, including but not limited to CHANGE, Black Contractors Association, Latino Builders Association, San Diego Community College District, San Diego Workforce Partnership, Labor Council, Union of Pan-Asian Communities (UPAC);
- (9) Set goals for local hiring percentages and require prime contractors to report regularly on their status of pursuing the goals;
- (10) Implement strategies to promote use of local subcontractors and suppliers, including:
  - Maintaining and using an updated list of local contractors and suppliers;
  - Doing outreach to local companies by direct mail, flyers and/or personal contacts;
  - Placing ads in local and DBE newspapers and newsletters;
  - Networking with local and supportive organizations, including but not limited to CHANGE, Business Improvement Districts, BID Council, City Office of Small Business and City Heights Community Development Corporation; and

- Setting goals for local contracting/supplies percentages and requiring contractors to report regularly on their status of pursuing these goals.

Section 310 Local, State and Federal Laws

a. The Developer shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards (including, without limitation, the requirement to pay state prevailing wages, if applicable).

b. Developer hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law. Developer shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, 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 Improvements, 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 Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other similar law.

c. It is agreed by the parties that, in connection with the development, construction (as defined by applicable law) and

operation of the Improvements on the Site, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, and/or any other similar law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

d. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion.

Section 311 City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Site, the Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work.

Section 312 Rights of Access

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

Section 313 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the improvements on the Site, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Site, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment

regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to ~~any third party by the Agency in connection with such matter is~~ for the public purpose of redeveloping the Site, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of construction, improvement or development of the Site.

Section 314 Taxes, Assessments, Encumbrances and Liens

Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Site subsequent to the Close of Escrow. Prior to Completion, Developer shall not place, or allow to be placed, on title to the Site or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Site (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The covenants of the Developer set forth in this Section 314, as they relate to the Site, including the Acquisition Parcel, shall remain in effect only until the issuance of a Release of Construction Covenants by the Agency.

Section 315 Prohibition against Transfer

a. Prior to Completion, the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Site or the improvements thereon, without prior written approval of the Agency. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site, nor shall it prohibit leases for occupancy in the ordinary course of business or Permitted Transfers.

b. Except as permitted by paragraph a., in the event that the Developer does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign the Site or the buildings or structures thereon prior to Completion without the approval of the Agency, subject to the notice and cure provisions

of Section 501, the Agency shall have the right to terminate this Agreement.

c. In the absence of a specific written agreement by the Agency, and except as otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this Agreement or Developer's interest in the Site (or any portion thereof), or approval by the Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

d. The prohibitions set forth in this Section 315 shall remain in effect only until the issuance of a Release of Construction Covenants.

Section 316 No Encumbrances Except Permitted Mortgages

a. Notwithstanding Section 315, upon and after the Closing, Developer shall have the right to encumber the Site with Permitted Mortgages, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, including the Acquisition Parcel, and construction of the Improvements, and other expenditures necessary and appropriate to develop the Site under this Agreement ("Permitted Financing Purposes"). Prior to Completion: (i) Developer shall not have any authority to encumber the Site for any purpose other than Permitted Financing Purposes; (ii) the Developer shall notify the Agency in advance of any proposed financing; and (iii) the Developer shall not enter into any Mortgage without the prior written approval of the Agency, which approval the Agency shall grant if it is a Permitted Mortgage. A Permitted Mortgagee of a Permitted Mortgage Loan approved by the Agency pursuant to this Section 316 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

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

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

d. The requirements of this Section 316 shall not apply following Completion.

Section 317 Permitted Mortgagee Not Obligated to  
Construct Improvements

A Mortgagee shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 318 Rights of Mortgagees

Whenever the Agency shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the Agency shall at the same time deliver to each Mortgagee of record a copy of such notice or demand. Each such Mortgagee shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Mortgagee upon obtaining possession of the Site, the right to cure within 90-days referred to above shall be satisfied if such Mortgagee seeks to obtain possession with diligence and continuity through a receiver or otherwise, and remedies or cures such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety- (90) day cure period, such Mortgagee shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity; and provided further that (for purposes of this Section 318), such Mortgagee shall not be required to remedy or cure any non-curable default of the Developer. Any Mortgagee who forecloses on its Permitted Mortgage, or is assigned or otherwise succeeds to Developer's rights under this Agreement, shall have the right (insofar as the rights of the Agency are concerned) to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the Agency by which such Mortgagee expressly assumes the Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Mortgagee properly completing such improvements shall be

entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

Section 319 Failure of Mortgagee to Complete Improvements

In the case of a default under the terms of this Agreement that remains uncured following notice and opportunity to cure as provided in this Agreement, where the Permitted Mortgagee has not taken over responsibility to construct the Improvements, the Agency shall have the right prior to a foreclosure by the Mortgagee, or a transfer by deed in lieu of foreclosure, to purchase the mortgage, deed of trust or other security interest by payment to the Mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges properly payable under the mortgage, deed of trust or other security interest. If the ownership of the Site encumbered by such Permitted Mortgagee has vested in the Mortgagee, the Agency shall have the right for sixty (60) days after such vesting to acquire the Site from the Mortgagee upon payment of an amount equal to the sum of the following:

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

Section 320      Right of the Agency to Cure Defaults

In the event of a default or breach by the Developer of a Permitted Mortgage prior to Completion, and the Mortgagee has not commenced to complete the development, the Agency may cure the default prior to completion of any foreclosure. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to Permitted Mortgages.

Section 321      Right of the Agency to Satisfy Other Liens on the Property After Closing

Prior to Completion and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Site, the Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale. In such event, the Agency shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and expenses. Any such lien shall be subordinate and subject to Permitted Mortgages.

Section 322      Release of Construction Covenants

a. Promptly after completion of the construction of the Improvements as required by this Agreement, the Agency shall deliver to the Developer a Release of Construction Covenants, upon written request therefor by the Developer. The Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement.

b. The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Office of the Recorder of San Diego County.

c. If the Agency fails to deliver the Release of Construction Covenants within five (5) days after written request from the Developer, the Agency shall provide the Developer with a written statement of its reasons (the "Statement of Reasons") within that five (5)-day period. The statement shall also set forth the steps the Developer must take to obtain the Release of Construction Covenants. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by the Agency, the Agency will issue the Release of Construction Covenants upon the posting of a bond by the Developer with the Agency in an amount representing the Agency's estimate of the cost to complete the work.

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

e. Nothing contained in this Section 322 shall authorize or permit Developer to complete less than all of the Improvements provided for in this Agreement.

Section 323 Park Site

Developer shall convey to the Agency or the City of San Diego, concurrently with the Closing, fee simple title to the Park Site, in accordance with the terms and conditions of a purchase and sale agreement relating to the Park Site to be entered into by and between Developer and Agency. The Park Site shall be developed as a public park by the City or the Agency. Prior to the Closing, Developer shall enter into an agreement with City Heights Square, L.P. (the developer of the senior housing project adjacent to the Site), La Maestra Family Clinic ("La Maestra") and the City or the Agency, as may be appropriate, to provide for the maintenance and operation of the Park Site.

PART 4 USE OF THE SITE

Section 401 Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that the Developer, its successors and

assignees shall devote the Site to the uses specified in the Redevelopment Plan, Agreement Affecting Real Property, this Agreement, including the Scope of Development, and the Grant Deed for the Acquisition Parcel. Without limiting the generality of the foregoing, Developer shall develop and operate the Improvements on the Site.

Section 402 Maintenance of the Site

Developer, its successors and assigns, shall maintain the Site as provided in the Grant Deed.

Section 403 Obligation to Refrain from Discrimination

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

Section 404 Form of Nondiscrimination and Nonsegregation Clauses

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

- a. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it,

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

- b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

- c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

Section 405 Effect and Duration of Covenants

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site or any part thereof for the benefit and in favor of the Agency, its successors and assigns, and the City. Such covenants as are to

survive the Completion shall be limited to those contained in the Grant Deed, the Agreement Affecting Real Property, the Loan Agreement, ~~Loan Note and Pledge Agreement~~ and shall remain in effect for the period specified therein.

PART 5     DEFAULTS, REMEDIES AND TERMINATION

Section 501     Defaults - General

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

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

c.     If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default.     The party in default shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d.     If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default.     If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party.     If the default is such that it is not reasonably capable of being cured within thirty (30) days, and the party in default (i) initiates

corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party. In no event shall the injured party be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default.

e. Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 502      Institution of Legal Actions

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

Section 503      Applicable Law

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

Section 504      Acceptance of Service of Process

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

b. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer

shall be made by personal service upon the Developer (or upon a general partner or officer of the Developer) and shall be valid ~~whether made within or without the State of California, or in~~ such manner as may be provided by law.

Section 505 Rights and Remedies Are Cumulative

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

Section 506 Damages

Subject to the notice and cure provisions of Section 501; if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

Section 507 Specific Performance

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

Section 508 Termination by Either Party

a. Prior to the Closing, either party shall have the right to terminate this Agreement, by providing written notice to the other party, in the event of a failure of any condition precedent to the Close of Escrow as set forth in Section 209 hereof, provided that such failure is outside the control of the party seeking to terminate this Agreement. In the event either party terminates this Agreement pursuant to this paragraph a. of this

Section 508, the following shall apply: (1) to the extent the Developer's Advance has not been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, with such interest as the Agency may have earned thereon, and neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement; and (2) to the extent the Developer's Advance has been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, within two (2) years after the termination of this Agreement, with interest as provided in the Loan Note, and neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement.

b. Prior to the Closing, either party shall have the right to terminate this Agreement, by providing notice to the other party, in the event Agency does not acquire the Acquisition Parcel, as provided in Section 201 hereof. In the event either party terminates this Agreement pursuant to this paragraph b. of this Section 508, Developer shall be entitled to the following: (1) to the extent the Developer's Advance has not been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, with such interest as the Agency may have earned thereon, and neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement; and (2) to the extent the Developer's Advance has been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, within two (2) years after the termination of this Agreement, with interest as provided in the Loan Note, and neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement.

Section 509 Termination by the Developer

a. Prior to the Closing, subject to the notice and cure provisions of Section 501, Developer shall have the right to terminate this Agreement, by providing written notice to the Agency in the event of Agency's failure to deliver title to the Acquisition Parcel when and as required by this Agreement as the result of a default by Agency hereunder; provided, however, in the event Agency exercises the Agency's discretion as described in Section 201 of this Agreement, such an exercise of discretion shall not be construed a default, but shall, for all purposes, be construed as a failure of a condition.

b. If Developer terminates this Agreement pursuant to this Section 509, Developer shall be entitled to the following: (1) to ~~the extent the Developer's Advance has not been disbursed by the~~ Agency, Developer shall be entitled to the return of the Developer's Advance, with such interest as the Agency may have earned thereon, and neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement; and (2) to the extent the Developer's Advance has been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, within two (2) years after the termination of this Agreement, with interest as provided in the Loan Note, and neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement.

Section 510 Termination by Agency

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

1. the Developer fails to submit to the Agency the evidence of financing commitments or fails to satisfy any other condition precedent to the Close of Escrow within the time established therefor in the Schedule of Performance; or
2. the Developer (or any successor in interest) assigns or attempts to assign the Agreement or any right therein, or transfers the Site (or any portion thereof or interest therein), except as permitted by this Agreement; or
3. there is substantial change in the ownership of the Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 107 hereof; or
4. the Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement therefor; or

5. the Developer fails to take title or possession under a tender of conveyance by the Agency pursuant to this Agreement; or
6. any other material default which remains uncured by Developer after notice as provided above.

In the event Agency terminates this Agreement pursuant to this Section 510, Developer shall be entitled to the following: (1) to the extent the Developer's Advance has not been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, with such interest as the Agency may have earned thereon; and (2) to the extent the Developer's Advance has been disbursed by the Agency, Developer shall be entitled to the return of the Developer's Advance, with interest as provided in the Loan Note, by level monthly payments over twenty (20) years, beginning thirty (30) days after the termination of this Agreement.

b. After the Close of Escrow but before Completion, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

1. Developer fails to commence construction of the improvements as required by this Agreement for a period of ninety (90) days after written notice from the Agency, provided that the Developer shall not have obtained an extension or postponement to which the Developer may be entitled pursuant to Section 602 hereof; or
2. Developer abandons or substantially suspends construction of the improvements for a period of ninety (90) days after written notice has been given by the Agency to the Developer, provided the Developer has not obtained an extension or postponement to which the Developer may be entitled to pursuant to Section 602 hereof; or
3. Developer assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Site, or any part thereof, in violation of this Agreement, and such breach is not cured within thirty (30) days after the date of written notice thereof; or

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

c. In the event the Agency terminates this Agreement pursuant to paragraph b. of this Section 510, the Agency shall retain its rights under Section 511, notwithstanding the termination of this Agreement.

Section 511 Right of Reentry

a. Subject to the notice and cure provisions of Section 501 and subject to any Permitted Mortgage, in the event of an uncured default described in Section 510.b., the Agency shall have the additional right, at its option, to reenter and take possession of the Acquisition Parcel (or any portion thereof) with all improvements thereon, and to terminate and revest in the Agency the estate theretofore conveyed to the Developer, subject to the terms and conditions of this Section 511.

b. Such right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit, and the Agency's rights shall be subject and subordinate to any rights or interests provided in this Agreement for the protection of any Mortgagee of a Permitted Mortgage Loan.

c. The Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right, as set forth in this Section 511 under specified circumstances prior to Completion, to reenter and take possession of the Acquisition Parcel, or any part thereof, with all improvements thereon, and to terminate and revest in the Agency the estate conveyed to the Developer.

d. Upon the revesting in the Agency of title to the Acquisition Parcel, or any part thereof, as provided in this Section 511, the Agency shall, pursuant to its responsibilities under state law, use its best efforts to resell the Acquisition Parcel, or any part thereof, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of the Community Redevelopment Law and the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency), who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Agency and in accordance with the uses specified for the Site, or any part thereof, in the

Redevelopment Plan. Upon such resale of the Acquisition Parcel, or any part thereof, the proceeds thereof shall be applied:

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1. First, repayment in full of the outstanding balance of the Permitted Mortgage Loan, to the extent it is allocable to the Acquisition Parcel;
2. next, to reimburse the Agency on its own behalf or on behalf of the City of all costs and expenses incurred by the Agency, including salaries of personnel engaged in such action, in connection with the recapture, management and resale of the Acquisition Parcel, or any part thereof (but less any income derived by the Agency from the sale of the Acquisition Parcel, or any part thereof, in connection with such management); all taxes, assessments and water and sewer charges with respect to the Acquisition Parcel or any part thereof (or, in the event the Acquisition Parcel, or any part thereof, is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges, as would have been payable if the Acquisition Parcel, or part thereof, were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Acquisition Parcel, or any part thereof; and any amounts otherwise owing to the Agency by the Developer and its successor or transferee; and
3. third, to reimburse the Developer, its successor or transferee, up to the amount equal to: (A) the sum of the Purchase Price paid to the Agency by the Developer for the Acquisition Parcel; and (B) the costs incurred for the development of the Acquisition Parcel, or any part thereof, or for the construction of the agreed improvements thereon, less (C) the Permitted Mortgage Loan, to the extent allocable to the Acquisition Parcel.

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

f. To the extent that the right established in this Section 511 involves a forfeiture, it must be strictly interpreted against the Agency, the party for whose benefit it is created. The rights established in this Section 511 are to be interpreted in light of the fact that the Agency will convey the Acquisition Parcel to the Developer for development and not for speculation.

Section 512 Agency's Option to Purchase

a. In the event of an uncured default by Developer pursuant to paragraph b. of Section 510, Agency shall have an option to purchase that portion of the Site consisting of the Developer's Parcels ("Agency's Option"), subject to the terms and conditions of this Section 512. Agency's Option shall be evidenced by the Option Agreement substantially in the form attached to this Agreement as Attachment No. 11.

b. Agency shall have the right to exercise Agency's Option only in conjunction with the exercise by Agency of its rights pursuant to Section 511.

c. Notwithstanding any provision to the contrary contained herein, Agency shall not exercise its rights pursuant to Section 511, unless Agency also exercises the Agency's Option pursuant to this Section.

d. The Agency's Option shall be subject to any Permitted Mortgage against the Site.

e. Agency shall exercise the Agency's Option by delivering written notice to Developer ("Notice of Exercise of Option").

f. Within thirty (30) days after the Notice of Exercise of Option, Agency shall open an escrow for the conveyance of title to the Developer's Parcels and cause to be performed an appraisal to determine the fair market value of the Developer's Parcels in accordance with the terms of the Determination of Fair Market Value attached to this Agreement as Attachment No. 12.

g. Agency shall close escrow within 60 days after the determination of the Fair Market Value pursuant to Attachment No. 12.

h. Developer and Agency agree to cooperate in good faith and execute such grant deeds and other instruments as may be necessary or appropriate for the implementation of this Section 512.

PART 6 GENERAL PROVISIONS

Section 601 Notices

Formal notices, demands and communications between Agency and Developer shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Developer as set forth in Sections 105 and 106 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 602 Force Majeure

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

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

Section 603 Conflict of Interest

a. No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

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

Section 604 Nonliability of Agency Officials and Employees

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

Section 605 Inspection of Books and Records

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

pertaining to the Site as pertinent to the purposes of this Agreement.

Section 606 Approvals

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

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

Section 607 Real Estate Commissions

Neither Developer nor Agency shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. Developer and Agency each represent that it has engaged no broker, agent or finder in connection with this Agreement.

Section 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of

the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, ~~this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.~~

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

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

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

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

Section 609 Time of Essence

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

Section 610 No Partnership

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

Section 611 Compliance with Law

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

Section 612 Binding Effect

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

Section 613 No Third Party Beneficiaries

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

Section 614 Authority to Sign

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

Section 615 Incorporation by Reference

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

Section 616 Counterparts

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

Part 7 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

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

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

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

Part 8 TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

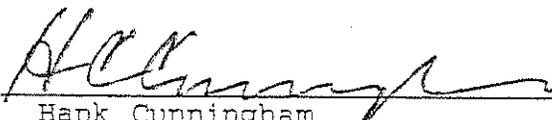
This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency within forty-five (45) days after date of signature by Developer or this Agreement may be terminated by Developer upon written notice to Agency. The effective date of this Agreement shall be the date when this Agreement has been executed by Agency.

[SIGNATURES APPEAR ON NEXT PAGE]



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

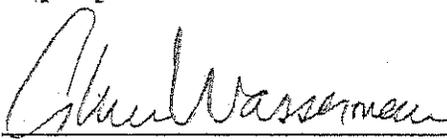
REDEVELOPMENT AGENCY OF THE  
CITY OF SAN DIEGO

By:   
Hank Cunningham  
Assistant Executive Director

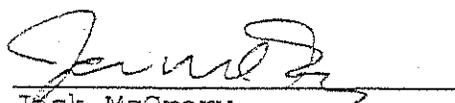
APPROVED AS TO FORM AND LEGALITY  
MICHAEL J. AGUIRRE  
Agency General Counsel

By:   
Rachel H. Witt, Deputy

KANE, BALLMER & BERKMAN  
Agency Special Counsel

By:   
Glenn F. Wasserman

SAN DIEGO REVITALIZATION CORPORATION, a  
California public benefit corporation

By:   
Jack McGrory