A G E N D A

CITY OF IMPERIAL BEACH
CITY COUNCIL
PLANNING COMMISSION
PUBLIC FINANCING AUTHORITY
HOUSING AUTHORITY
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

AUGUST 15, 2012

Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

CLOSED SESSION MEETING – 5:30 P.M.
REGULAR MEETING – 6:00 P.M.

THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH PLANNING COMMISSION, PUBLIC FINANCING AUTHORITY, HOUSING AUTHORITY AND IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

CLOSED SESSION CALL TO ORDER

ROLL CALL BY CITY CLERK

CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION (2 CASES)**
   Significant exposure to litigation pursuant to Govt. Code Section GC 54956.9(b)(1)(C).

RECONVENE AND ANNOUNCE ACTION (IF APPROPRIATE)

REGULAR MEETING CALL TO ORDER

ROLL CALL BY CITY CLERK

PLEDGE OF ALLEGIANCE

AGENDA CHANGES

MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/ REPORTS ON ASSIGNMENTS AND COMMITTEES

COMMUNICATIONS FROM CITY STAFF

PUBLIC COMMENT - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

PRESENTATIONS (1)

None.

Any writings or documents provided to a majority of the City Council/Planning Commission/Public Financing Authority/Housing Authority/I.B. Redevelopment Agency Successor Agency regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

CONSENT CALENDAR (2.1-2.4) - *All matters listed under Consent Calendar are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items, unless a Councilmember or member of the public requests that particular item(s) be removed from the Consent Calendar and considered separately. Those items removed from the Consent Calendar will be discussed at the end of the Agenda.*

2.1 MINUTES.

City Manager's Recommendation: Approve the minutes of the Special Workshop Meeting of March 14, 2012.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

City Manager's Recommendation: Ratify the following registers: Accounts Payable Numbers 80903 through 80990 with a subtotal amount of $332,351.28 and Payroll Checks/Direct Deposit 44782 through 44815 for a subtotal amount of $157,483.31 for a total amount of $489,834.59.

2.3 RESOLUTION NO. 2012-7241 AUTHORIZING THE SALE OR TRANSFER OF SURPLUS PROPERTY AND COMMUNITY GROUP POLICY. (0380-45)

City Manager's Recommendation: Adopt resolution.

2.4 RATIFICATION OF NAVAL BASE CORONADO (NBC) COASTAL CAMPUS ENVIRONMENTAL IMPACT STATEMENT (EIS) SCOPING COMMENTS. (0620-80)

City Manager's Recommendation: Ratify letter.

ORDINANCES – INTRODUCTION/FIRST READING (3)

None.

ORDINANCES – SECOND READING & ADOPTION/PUBLIC HEARING (4.1)

4.1 ORDINANCE NO. 2012-1130 AND PUBLIC HEARING / ADOPTION OF RESOLUTION NO. 2012-7236: THE CITY OF IMPERIAL BEACH: LOCAL COASTAL PROGRAM AMENDMENT (LCPA) / ZONING CODE AMENDMENT (ZCA) 100057 FOR THE COMMERCIAL ZONING AMENDMENT PROJECT. MF 935. (0610-95)

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report and entertain testimony;
3. Close the public hearing;
4. Mayor calls for the second reading of the title of Ordinance No. 2012-1130 approving the proposed Zoning Code Amendment (ZCA 100057);
5. City Clerk to read Ordinance 2012-1130 by title only; and
6. Motion to waive further reading of Ordinance No. 2012-1130 and adopt Ordinance No. 2012-1130.

PUBLIC HEARINGS (5.1)

5.1 RESOLUTION NO. 2012-7229 OPPOSING AN INCREASED STATE ROUTE 75 SPEED LIMIT FROM 40 MILES PER HOUR TO 45 MILES PER HOUR EAST OF DELAWARE STREET TO THE WESTERN CITY LIMITS IN BOTH DIRECTIONS. (0740-10 & 0750-60)

City Manager's Recommendation:

1. Open the Public Hearing;
2. Receive comments from the public;
3. Close the Public Hearing;
4. Discuss the implications of the proposed increase in the posted speed west of 9th Street; and
5. Adopt Resolution No. 2012-7229 opposing the increase in posted speed on S.R. 75 east of Delaware Street to western City limits based on the following:
   a. The high number of traffic accidents as found in the Sheriff Department data.
   b. The conflict with the bicycle crossing at 7th Street.
   c. The conflict with the mobile home park entrance at Rainbow Drive.
   d. The conflict with the stated "Complete Streets" objective adopted by CALTRANS.
   e. Increasing the speed limit on any section of Palm Avenue would be contrary to the stated objectives of the Palm Avenue Master Plan and CALTRANS's Main Streets Manual both of which emphasize pedestrian safety, traffic calming and speed reduction along Palm Avenue/S.R. 75.

REPORTS (6.1-6.7)

6.1 RESOLUTION APPROVING STREET IMPROVEMENTS PHASE 4/5 (CIP S11-105) PROJECT CHANGE ORDERS 4, 5, 6 AND 7 WITH SOUTHLAND PAVING, INC. AND ALLOCATING AN ADDITIONAL $70,000 TO THE PROJECT BUDGET. (0720-25)

City Manager's Recommendation:

1. Receive report;
2. Adopt Resolution 2012-7242 approving Change Orders No. 4, 5, 6 and 7 for a total cost of $145,475.86 and transferring an additional $70,000 from the $2,000,000 Council approved Cooperative Agreement currently earmarked for the Street Improvements RDA Phase 3B Project (S04-108), authorizing the City Manager to sign change orders no. 4, 5, 6 and 7, and authorizing the City Manager to transfer $70,000 of Cooperative Agreement funds from Street Improvements RDA Phase 3B (S04-108) to Street Improvements RDA Phase 4/5 (S11-105).

6.2 REVIEW OF AND DIRECTION FOR THE DESIGN AND CONSTRUCTION OF A REVISED DRIVEWAY EXIT AT SPORTS PARK. (0750-30 & 0920-40)

City Manager's Recommendation:

1. Receive report and staff presentation and
2. Direct staff to proceed with the Staff design or as otherwise directed.

6.3 TIJUANA RIVER BACTERIA SOURCE IDENTIFICATION STUDY FINAL UPDATE. (0230-70)

City Manager's Recommendation: Receive report and comment on presentation from Chris Helmer, Environmental Program Manager.

6.4 FATS, OILS, AND GREASE (FOG) CONTROL PROGRAM UPDATE. (0830-95)

City Manager's Recommendation:

1. Receive report and
2. Comment or provide direction on the draft Ordinance Elements.

Continued on Next Page

REPORTS (Continued)

6.5 LEAGUE RESOLUTIONS FOR THE SEPTEMBER ANNUAL CONFERENCE. (0140-10)

City Manager's Recommendation:

1. Provide direction to your voting delegate, Councilmember Bragg, to make her best judgment on the resolutions and vote as she deems in the best interest of Imperial Beach and other California cities; **OR**
2. Provide specific directions to Councilmember Bragg on whether she should support or oppose one or more of the resolutions under consideration by the League.

Given our inability to know all the arguments that may arise at the conference and given the nature of the resolutions, we recommend option 1, above, especially if Council does not feel very strongly about the resolutions.

6.6 VISUAL SIMULATIONS FOR SEACOAST DRIVE. (0600-90 & 0720-60)

City Manager's Recommendation: Receive the report and provide comment and input as necessary.

6.7 ACTIONS TO PROMOTE ECONOMIC DEVELOPMENT. (0620-20)

City Manager's Recommendation:

1. Review and comment upon the work plan actions; and
2. Amend and/or approve actions to be carried out by staff.

I.B. REDEVELOPMENT AGENCY SUCCESSOR AGENCY REPORTS/CITY COUNCIL (7.1)

7.1 (1) SUCCESSOR AGENCY ADOPTION OF RESOLUTION NO. SA-12-15 APPROVING THE TERMS OF THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF IMPERIAL BEACH (CITY) AND SUDBERRY-PALM AVENUE LLC AND APPROVING THE TRANSFER OF OWNERSHIP OF REAL PROPERTY AND THE RETENTION AND OWNERSHIP OF CERTAIN PUBLIC IMPROVEMENTS; AND

(2) CITY COUNCIL ADOPTION OF RESOLUTION NO. 2012-7243 APPROVING, SUBJECT TO CONDITIONS PRECEDENT, THE CITY'S TRANSFER TO THE SUCCESSOR AGENCY OF THE RESIDUAL PROCEEDS RECEIVED FROM THE SALE OF THE PROPERTY PURSUANT TO THE DDA. (0418-50 & 0640-10)

City Manager's Recommendation:

1. That the Imperial Beach Redevelopment Agency Successor Agency adopt Resolution No. SA-12-15 and
2. That the City Council of the City of Imperial Beach adopt Resolution No. 2012-7243.

ITEMS PULLED FROM THE CONSENT CALENDAR (IF ANY)

ADJOURNMENT

The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City's decision-making process.

FOR YOUR CONVENIENCE, A COPY OF THE AGENDA AND COUNCIL MEETING PACKET MAY BE VIEWED IN THE OFFICE OF THE CITY CLERK AT CITY HALL OR ON OUR WEBSITE AT www.cityofib.com.

/s/

Jacqueline M. Hald, MMC
City Clerk

DRAFT

ITEM NO. 2.1

SPECIAL WORKSHOP MEETING

IMPERIAL BEACH CITY COUNCIL

MARCH 14, 2012

6:00 P.M.

Community Room
(Behind City Hall)
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

SPECIAL WORKSHOP MEETING CALL TO ORDER BY MAYOR
MAYOR JANNEY called the Special Workshop Meeting to order at 6:00 p.m.

ROLL CALL BY CITY CLERK

Councilmembers present:	Bilbray, King, Bragg
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	Spriggs (arrived at 6:05 p.m.)
Staff present:	City Manager Brown, Deputy City Attorney Foster, City Clerk Hald, Assistant City Manager Wade, Finance Director McGrane, Public Safety Director Clark, Public Works Director Levien, Human Resources Manager Leichtle

PUBLIC COMMENTS
DAVID GARCIAS, President of SEIU Local 221, read a letter from a fellow employee requesting City Council to consider long-term and revenue generating solutions to help the City become financially stable.

KRISTINE WEISMAN, City employee, asked the Mayor and City Council to consider revenue enhancing options and long-term solutions.

REPORTS
City Council, along with senior management staff, conducted a discussion on the following items.

1. DISCUSSION ON LONG-TERM VISION AND ACTIONS TO STIMULATE LOCAL ECONOMY AND PROVIDE FOR PUBLIC IMPROVEMENTS. (0100-10)

2. BUDGET UPDATE. (0100-10 & 0330-30)

FINANCE DIRECTOR MCGRANE gave a Power Point presentation on the budget. He reviewed the financial impacts as a result of the elimination of RDA.

Don Spicer, President of the IB Little League, stated that the League is interested in maintaining the ball fields at no cost to the City.

CITY MANAGER BROWN reported on potential revenue and cost potentials to balance the budget.

FINANCE DIRECTOR MCGRANE spoke about staffing and a voluntary separation program to create vacancies.

CITY MANAGER BROWN and PUBLIC SAFETY DIRECTOR CLARK reported on public safety costs.

CITY MANAGER BROWN stated that staff will return at future City Council meeting with further information on revenue generating ideas.

City Council expressed interest in pursuing lighted signs for revenue generation, contracting out some of the City's services, pursuing the volunteer separation program, streamlining the development process, creating a model on starting up new businesses, developing a vision on increasing revenues, and looking at the services that should be provided to the citizens of Imperial Beach and the costs associated with the services.

ADJOURNMENT
MAYOR JANNEY adjourned the Special meeting at 8:45 p.m.

James C. Janney, Mayor

Jacqueline M. Hald, MMC
City Clerk

AGENDA ITEM NO. 2.2

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**August 15, 2012**
ORIGINATING DEPT.:	**Michael McGrane** MM **INTERIM FINANCE DIRECTOR/CITY TREASURER**
SUBJECT:	**RATIFICATION OF WARRANT REGISTER**

BACKGROUND:
None

DISCUSSION:

As of April 7, 2004, all large warrants above $100,000 will be separately highlighted and explained on the staff report.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

The following registers are submitted for Council ratification.

WARRANT #	DATE	AMOUNT
Accounts Payable		
80903-80906	07/24/12	$ 5,201.58
80907-80955	07/26/12	241,758.32
80956-80990	08/03/12	85,391.38
	Sub-Total	$ 332,351.28

PAYROLL CHECKS/DIRECT DEPOSIT:

44782-44815	**P.P.E. 07/26/12**	**$**	**157,483.31**
		$	**157,483.31**
	TOTAL	**$**	**489,834.59**

FISCAL IMPACT:

Warrants are issued from budgeted funds.

DEPARTMENT RECOMMENDATION:

It is respectfully requested that the City Council ratify the warrant register.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments:
1. Warrant Registers

ATTACHMENT 1

CHECK DATE	CHECK NUMBER	VENDOR NAME / VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
07/24/2012	80903	DELTACARE USA 2420				688.41
101-0000-209.01-12	07/05/2012	PR AP PE 6/28/2012	20120705		01/2013	362.95
101-0000-209.01-12	07/19/2012	PR AP PE 7/12/2012	20120719		01/2013	344.12
101-0000-209.01-12	07/01/2012	JUL 2012 - DENTAL HMO	4796578		01/2013	18.66-
07/24/2012	80904	PREFERRED BENEFIT INS ADMIN IN 37				1,828.70
101-0000-209.01-12	07/05/2012	PR AP PE 6/28/2012	20120705		01/2013	1,025.30
101-0000-209.01-12	07/19/2012	PR AP PE 7/12/2012	20120719		01/2013	933.73
101-0000-209.01-12	07/01/2012	JUL 2012 - DENTAL	EIA5820		01/2013	130.33-
07/24/2012	80905	RICOH USA, INC. 2392				2,475.44
101-1110-412.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.63
101-1210-413.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.63
101-1230-413.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.63
101-3020-422.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.63
101-3030-423.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.64
101-5020-432.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.64
101-6010-451.28-01	07/04/2012	JUL 2012	87272342	130133	01/2013	353.64
07/24/2012	80906	VISION PLAN OF AMERICA 785				209.03
101-0000-209.01-18	07/05/2012	PR AP PE 6/28/2012	20120705		01/2013	99.59
101-0000-209.01-18	07/19/2012	PR AP PE 7/12/2012	20120719		01/2013	99.59
101-1920-419.29-04	07/01/2012	AUG 2012 - VISION	07-01-2012		01/2013	9.85
07/26/2012	80907	AIRGAS WEST 129				414.70
601-5060-436.30-02	06/26/2012	SAFETY GLASSES	9006734180	120003	12/2012	33.91
601-5060-436.30-02	07/09/2012	TYVEK PANTS	9006964275	120003	12/2012	380.79
07/26/2012	80908	AT&T TELECONFERENCE SERVICES 1827				390.44
101-1110-412.28-04	07/01/2012	JUNE 2012 CONF CALL FEES	07-01-2012	120487	12/2012	390.44
07/26/2012	80909	AZTEC LANDSCAPING INC 310				1,540.00
101-5010-431.21-04	06/30/2012	JUNE 2012	0023545-IN	120093	12/2012	1,540.00
07/26/2012	80910	BDS ENGINEERING INC 372				1,075.00
202-5016-531.20-06	04/04/2012	MAR 2012 ST IMPRVMNTS	11-19E	111151	12/2012	1,075.00
07/26/2012	80911	CALIFORNIA AMERICAN WATER 612				7,051.44
601-5060-436.27-02	07/11/2012	05-0101092-0 05/07-07/06	07-30-2012		12/2012	43.03
101-5020-432.27-02	07/11/2012	05-0102217-2 05/07-07/06	07-30-2012		12/2012	189.56
101-6020-452.27-02	07/11/2012	05-0102503-5 05/07-07/06	07-30-2012		12/2012	623.59
101-6020-452.27-02	07/11/2012	05-0102504-3 05/07-07/06	07-30-2012		12/2012	13.65
101-5010-431.27-02	07/11/2012	05-0102729-6 05/07-07/06	07-30-2012		12/2012	638.41
101-6020-452.27-02	07/12/2012	05-0106225-1 05/08-07/09	07-31-2012		12/2012	120.23
101-6020-452.27-02	07/12/2012	05-0106249-1 05/08-07/09	07-31-2012		12/2012	13.65
101-6020-452.27-02	07/12/2012	05-0106336-6 05/08-07/09	07-31-2012		12/2012	17.32
101-6020-452.27-02	07/12/2012	05-0106337-4 05/08-07/09	07-31-2012		12/2012	17.32
101-6020-452.27-02	07/13/2012	05-0109756-2 05/09-07/10	08-01-2012		12/2012	756.19
215-6026-452.27-02	07/09/2012	05-0402959-6 05/02-07/03	07-30-2012		12/2012	49.97

CHECK DATE	CHECK NUMBER	VENDOR NAME / VENDOR #	CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION / INVOICE / PO # / PER/YEAR	TRN AMOUNT
405-1260-413.27-02	07/23/2012	05-0546597-1 05/16-07/18 / 08-13-2012 / 12/2012	24.98
101-6020-452.27-02	07/23/2012	05-0114612-0 05/15-07/17 / 08-13-2012 / 12/2012	77.14
101-5010-431.27-02	07/17/2012	05-0114717-7 05/14-07/12 / 08-06-2012 / 12/2012	9.97
101-5010-431.27-02	07/17/2012	05-0115202-9 05/14-07/12 / 08-06-2012 / 12/2012	9.97
101-6020-452.27-02	07/17/2012	05-0115205-2 05/14-07/12 / 08-06-2012 / 12/2012	3,258.10
101-1910-419.27-02	07/17/2012	05-0115206-0 05/14-07/12 / 08-06-2012 / 12/2012	741.48
101-1910-419.27-02	07/17/2012	05-0115208-6 05/14-07/12 / 08-06-2012 / 12/2012	157.13
101-1910-419.27-02	07/17/2012	05-0115210-2 05/14-07/12 / 08-06-2012 / 12/2012	28.66
101-3020-422.27-02	07/17/2012	05-0115211-0 05/14-07/12 / 08-06-2012 / 12/2012	164.49
101-5010-431.27-02	07/17/2012	05-0115214-4 05/14-07/12 / 08-06-2012 / 12/2012	13.65
601-5060-436.27-02	07/17/2012	05-0115249-0 05/14-07/12 / 08-06-2012 / 12/2012	9.97
101-5010-431.27-02	07/23/2012	05-0115949-5 05/15-07/17 / 08-13-2012 / 12/2012	13.65
101-5010-431.27-02	07/23/2012	05-0115950-3 05/15-07/17 / 08-13-2012 / 12/2012	21.00
101-5010-431.27-02	07/23/2012	05-0116368-7 05/15-07/17 / 08-13-2012 / 12/2012	28.36
101-6020-452.27-02	07/23/2012	05-0117419-7 05/15-07/17 / 08-13-2012 / 12/2012	9.97
07/26/2012	80912	CVA SECURITY 797	30.00
101-1910-419.20-23	07/01/2012	JUL 2012 SPORTS PARK / 22550 / 130100 / 01/2013	30.00
07/26/2012	80913	COUNTY OF SAN DIEGO 1055	2,919.30
101-3010-421.21-04	06/30/2012	JUN 2012 PARKING PENALTY / 06/12 / 12/2012	2,919.30
07/26/2012	80914	COUNTY OF SAN DIEGO RCS 1065	3,650.50
101-3010-421.21-25	07/01/2012	JUN 2012 PS RADIOS / 12CTFIBN12 / 120368 / 12/2012	2,325.50
101-3020-422.21-25	07/01/2012	JUN 2012 PS RADIOS / 12CTFIBN12 / 120368 / 12/2012	53.00
101-3030-423.20-06	07/01/2012	JUN 2012 PS RADIOS / 12CTFIBN12 / 120368 / 12/2012	1,272.00
07/26/2012	80915	COUNTY RECORDER 1818	2.56
101-1230-413.21-04	07/11/2012	2011/2012 ELECTRONIC MAPS / 12428 / 12/2012	2.56
07/26/2012	80916	CSAC EXCESS INSURANCE AUTHORTI 406	46,199.00
502-1922-419.28-02	07/01/2012	FY 12/13 EXCESS W/C / 1310096-IN / 130134 / 01/2013	46,199.00
07/26/2012	80917	D.A.R. CONTRACTORS 1122	347.00
101-3050-425.20-06	07/02/2012	JUN 2012 / 0601229 / 120252 / 12/2012	347.00
07/26/2012	80918	DATAQUICK 1134	92.00
101-1210-413.21-04	07/02/2012	JUN 2012 / B1-2053913 / 120189 / 12/2012	17.00
101-3020-422.21-04	07/02/2012	JUN 2012 / B1-2053913 / 120189 / 12/2012	4.00
101-3070-427.21-04	07/02/2012	JUN 2012 / B1-2053913 / 120189 / 12/2012	71.00
07/26/2012	80919	DEPARTMENT OF JUSTICE 1155	228.00
101-1130-412.21-04	06/30/2012	JUN 2012 / 917856 / 120112 / 12/2012	228.00
07/26/2012	80920	ENVIRONMENTAL SYSTEMS RESEARCH 1413	3,565.19
503-1923-419.20-25	07/11/2012	2012/2013 SOFTWARE MAINT / 92514327 / 130105 / 01/2013	3,565.19
07/26/2012	80921	FORTIFIED ACCESS 2440	3,550.00
601-5060-436.21-04	07/12/2012	PS#8 DOORS/INSTALLATION / 228 / 121024 / 12/2012	3,550.00
07/26/2012	80922	GOOGLE, INC. 2009	73.50
503-1923-419.20-06	07/05/2012	JUN/JUL 2012 / 2549409 / 130104 / 01/2013	73.50

CHECK DATE	CHECK NUMBER	VENDOR NAME / VENDOR #					CHECK AMOUNT
ACCOUNT #		TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
07/26/2012	80923	GRAINGER	1051				1,492.75
601-5060-436.28-01		07/10/2012	PS#2 ELECTRIC MOTOR	9872319133	130011	01/2013	1,048.41
101-1910-419.30-02		06/25/2012	SOAP DISPENSERS/ZIPPER BG	9861339563	120020	12/2012	122.81
101-1910-419.30-02		06/26/2012	METAL HALIDE LAMP	9861931948	120020	12/2012	205.37
101-1910-419.30-02		06/28/2012	ABRASIVE CUTOFF WHEEL	9864974641	120020	12/2012	13.25
601-5060-436.28-01		07/12/2012	PS#8 FAN UFD CABINET	9875078009	130011	01/2013	102.91
07/26/2012	80924	HUDSON SAFE-T LITE RENTALS	2382				1,018.00
101-3060-426.30-02		07/04/2012	PARKING BARRICADES	00010687	121050	12/2012	1,018.00
07/26/2012	80925	JOBS AVAILABLE	528				385.00
101-1130-412.28-07		07/03/2012	EMPLOYMENT LISTING	1214012	130080	01/2013	385.00
07/26/2012	80926	LINDA STALLINGS	4				5,000.00
101-0000-221.01-05		06/07/2012	960 11TH ST-REFUND SECURI	MF 719		12/2012	5,000.00
07/26/2012	80927	MASON'S ALIGNMENT, BRAKES	921				1,895.75
502-1922-419.28-17		07/13/2012	VEHILE #63 ACCIDENT REPRS	21092	130081	01/2013	1,895.75
07/26/2012	80928	MCDOUGAL LOVE ECKIS &	962				31,271.66
101-1220-413.20-01		06/30/2012	JUNE 2012	06-30-2012		12/2012	1,583.91
101-1220-413.21-04		06/30/2012	JUNE 2012	06-30-2012		12/2012	91.21
101-1220-413.21-04		06/30/2012	JUNE 2012	06-30-2012		12/2012	447.96
101-1220-413.21-04		06/30/2012	JUNE 2012	06-30-2012		12/2012	8,532.85
101-1220-413.20-01		06/30/2012	JUNE 2012	06-30-2012		12/2012	6,359.36
101-1220-413.20-01		06/30/2012	JUNE 2012	06-30-2012		12/2012	3,998.85
101-1220-413.20-01		06/30/2012	JUNE 2012	06-30-2012		12/2012	57.80
405-1260-413.20-01		06/30/2012	JUNE 2012	06-30-2012		12/2012	773.37
405-1260-413.20-01		06/30/2012	JUNE 2012	06-30-2012		12/2012	28.90
101-1220-413.20-02		06/30/2012	JUNE 2012 RETAINER	81898	120240	12/2012	8,227.00
405-1260-513.20-06		06/30/2012	JUNE 2012 - SUDBERRY	06-30-2012		12/2012	260.10
216-1240-413.20-01		06/30/2012	JUNE 2012 -	06-30-2012		12/2012	664.70
216-5000-532.20-01		06/30/2012	JUNE 2012 -	06-30-2012		12/2012	245.65
07/26/2012	80929	MANAGED HEALTH NETWORK	2432				442.40
101-1130-412.20-06		06/16/2012	JULY 2012	3200038874	130072	01/2013	442.40
07/26/2012	80930	NASLAND ENGINEERING	1656				3,556.25
402-5000-532.20-06		06/30/2012	JUN 2012 ST IMPRVMNTS P3	92097	071139	12/2012	3,556.25
07/26/2012	80931	OFFICE DEPOT, INC	1262				1,061.54
101-5020-432.30-01		06/20/2012	STORAGE BOXES/FILE FOLDER	613912983001	120001	12/2012	139.34
101-1210-413.30-01		07/09/2012	BANKERS BOXES/COPY PAPER	615904204001	130002	01/2013	66.37
101-1010-411.29-04		07/11/2012	OFFICE/MEETING SUPPLIES	616575138001	130002	01/2013	24.51
101-1110-412.30-01		07/11/2012	OFFICE/MEETING SUPPLIES	616575138001	130002	01/2013	40.43
101-3020-422.30-01		07/10/2012	TONER CARTRIDGE	616428500001	130002	01/2013	187.40
101-5020-432.30-01		07/12/2012	TIME RECORDER	616699794001	130002	01/2013	427.17
101-5020-432.30-01		07/13/2012	TONER/CARTRIDGE	616857967001	130002	01/2013	176.32
07/26/2012	80932	OFFICETEAM	1266				2,026.62
101-1020-411.21-01		07/16/2012	ARMENDARIZ,E W/E 07/13/12	35915624	130127	01/2013	631.02

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ACCOUNT #		TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-1130-412.21-01		07/16/2012	ARMENDARIZ,E W/E 07/13/12	35915624	130127	01/2013	145.62
101-1110-412.21-01		07/16/2012	VEA,E WE 07/13/2012	35925783	130127	01/2013	1,249.98
07/26/2012	80933	ONE SOURCE DISTRIBUTORS	1071				537.88
601-5060-436.28-01		07/03/2012	HONEYWELL SWITCH	S3807241.001	120023	12/2012	537.88
07/26/2012	80934	PADRE JANITORIAL SUPPLIES	1430				868.15
101-1910-419.30-02		07/06/2012	JANITORIAL SUPPLIES	331257	130025	01/2013	162.09
101-1910-419.30-02		06/29/2012	JANITORIAL SUPPLIES	331004	120034	12/2012	534.43
101-1910-419.30-02		06/26/2012	JANITORIAL DISINFECTANT	330762	120034	12/2012	171.63
07/26/2012	80935	PARS	2425				400.00
101-6040-454.20-06		07/10/2012	MAY 2012	23358		12/2012	80.00
101-1920-419.20-06		07/10/2012	MAY 2012	23358		12/2012	80.00
101-3020-422.20-06		07/10/2012	MAY 2012	23358		12/2012	80.00
101-3030-423.20-06		07/10/2012	MAY 2012	23358		12/2012	80.00
101-6010-451.20-06		07/10/2012	MAY 2012	23358		12/2012	80.00
07/26/2012	80936	PARTNERSHIP WITH INDUSTRY	1302				2,309.27
101-6040-454.21-04		07/02/2012	P/E 06/30/2012	GS04285	120012	12/2012	1,077.06
101-6040-454.21-04		06/01/2012	P/E 05/31/2012	GS04238		12/2012	1,232.21
07/26/2012	80937	PITNEY BOWES	1369				2,518.99
101-1920-419.28-09		07/06/2012	POSTAGE MACHINE REFILL	07-06-2012	130121	01/2013	2,518.99
07/26/2012	80938	PRAXAIR DISTRIBUTION INC	1652				19.68
101-5010-431.28-01		06/28/2012	SUPPLIES-ACETYLENE TORCH	43371396	120002	12/2012	19.68
07/26/2012	80939	PROTECTION ONE ALARM MONITORIN	69				286.97
601-5060-436.20-23		06/20/2012	JULY 2012	88551848	130087	01/2013	286.97
07/26/2012	80940	PRUDENTIAL OVERALL SUPPLY	72				803.41
101-5020-432.25-03		06/27/2012	06/27/12 PW UNIFORMS	30269611	120092	12/2012	210.50
101-5020-432.25-03		07/04/2012	07/04/12 JUNE PW UNIFORMS	30271075	120092	12/2012	146.31
101-5020-432.25-03		07/11/2012	07/11/12 PW UNIFORMS	30272603	130090	01/2013	152.70
101-5020-432.25-03		07/18/2012	07/18/12 PW UNIFORMS	30274125	130090	01/2013	150.80
101-5020-432.25-03		07/25/2012	07/25/12 PW UNIFORMS	30275649	130090	01/2013	143.10
07/26/2012	80941	RANCHO AUTO & TRUCK PARTS	1685				368.25
501-1921-419.28-16		06/28/2012	OIL/AIR FILTERS	7693-124494	120028	12/2012	38.43
501-1921-419.28-16		07/02/2012	U-CLAMP	7693-124800	130019	01/2013	7.56
501-1921-419.28-16		07/11/2012	OIL/AIR FILTERS	7693-125764	130019	01/2013	26.40
501-1921-419.28-16		07/17/2012	#612 DRUMS & ROTORS	7693-126288	130019	01/2013	90.76
501-1921-419.28-16		07/17/2012	#612 DRUMS & ROTORS	7693-126357	130019	01/2013	34.14
501-1921-419.28-16		07/17/2012	CR DRUMS & ROTORS #612	7693-126400	130019	01/2013	34.14-
501-1921-419.28-16		07/18/2012	#602 ALTERNATOR	7693-126416	130019	01/2013	164.50
501-1921-419.28-16		07/18/2012	CR CORE RETURN #602	7693-126441	130019	01/2013	53.88-
501-1921-419.28-16		07/18/2012	OIL FILTERS/MICRO V BELT	7693-126464	130019	01/2013	94.48
07/26/2012	80942	REC SOLAR INC.	1968				1,000.00
248-1920-519.20-06		07/08/2012	C&G-1361 EAST LANE	226299	130093	01/2013	1,000.00

CHECK DATE / ACCOUNT #	CHECK NUMBER	VENDOR NAME / TRN DATE	VENDOR # / DESCRIPTION	INVOICE	PO #	PER/YEAR	CHECK AMOUNT / TRN AMOUNT
07/26/2012	80943	SAN DIEGO ASSOCIATION OF GOVER	254				9,330.00
101-1920-419.29-04		07/02/2012	FY 12/13 AGENCY ASSMNT	AR166710	130132	01/2013	9,330.00
07/26/2012	80944	SAN DIEGO COUNTY ASSESSOR	2120				125.00
101-1920-419.29-04		07/11/2012	APR-JUN 2012	2011278	120125	12/2012	125.00
07/26/2012	80945	SKS INC.	412				7,322.31
501-1921-419.28-15		07/05/2012	1,100.9 G REG FUEL	1249132-IN	130049	01/2013	3,788.24
501-1921-419.28-15		07/19/2012	995.7 GAL REG FUEL	1249464-IN	130049	01/2013	3,534.07
07/26/2012	80946	SLOAN ELECTRIC COMPANY	417				6,314.00
601-5060-436.28-01		06/29/2012	VFD PURCHASE/INSTALL PS8	0060768	121048	12/2012	6,314.00
07/26/2012	80947	STANDARD ELECTRONICS	504				127.50
101-1910-419.20-23		06/29/2012	06/26/12 SP PARK LABOR	17059	120080	12/2012	127.50
07/26/2012	80948	SUNGARD PUBLIC SECTOR INC.	1370				61,173.39
503-1923-419.20-25		06/25/2012	FY 12/13 SOFTWARE MAINT	52270	130103	01/2013	61,173.39
07/26/2012	80949	THYSSENKRUPP ELEVATOR	663				737.68
101-3030-423.20-06		07/01/2012	JUL-SEP 2012	1037071026	130125	01/2013	737.68
07/26/2012	80950	TRANSWORLD SYSTEMS INC.	2160				224.36
101-1910-419.21-04		06/30/2012	JUN 2012 BL COLLECTIONS	535296		12/2012	374.36
101-0000-344.76-03		06/30/2012	JUN 2012 BL COLLECTIONS	535296		12/2012	30.00-
101-0000-323.71-03		06/30/2012	JUN 2012 BL COLLECTIONS	535296		12/2012	60.00-
101-0000-321.72-10		06/30/2012	JUN 2012 BL COLLECTIONS	535296		12/2012	60.00-
07/26/2012	80951	VERIZON WIRELESS	2317				1,751.95
101-5020-432.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	556.12
101-3040-424.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	56.94
101-3020-422.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	148.05
101-3030-423.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	273.92
101-3070-427.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	87.57
101-1230-413.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	102.21
503-1923-419.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	517.45
503-1923-419.27-05		07/08/2012	06/09/2012-07/08/2012	1099829555		01/2013	9.69
07/26/2012	80952	WALKSANDIEGO	1551				3,608.00
101-5020-432.20-06		06/30/2012	JUN 2012	131-16	110859	12/2012	3,608.00
07/26/2012	80953	WEST COAST ARBORISTS	820				22,449.84
101-5010-431.21-04		06/30/2012	2012 PALM TREE PRUNING	81187	120949	12/2012	19,504.17
101-6040-454.21-04		06/30/2012	2012 TIDELANDS TREE PRUNI	81188	120949	12/2012	2,945.67
07/26/2012	80954	WEST GROUP CTR	826				124.44
101-1020-411.28-14		07/01/2012	JUN 2012	825204962	120204	12/2012	124.44
07/26/2012	80955	WHITE CAP CONSTRUCTION SUPPLY	1434				78.65
101-1910-419.30-02		06/21/2012	CR FREIGHT CHG 15076412-0	15066433-00	120027	12/2012	48.00-

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ACCOUNT #		TRN DATE					
101-5010-431.30-02		07/05/2012	TARP STRAP	3279790-00	130018	01/2013	9.48
601-5060-436.28-01		07/18/2012	#142 TOOLBOX GAS SPRINGS	2173039-01	130018	01/2013	117.17
VOIDED CHECKS 80956-80960							
08/03/2012	80961	U.S. BANK	1873				25,707.52
101-6020-452.30-02		01/03/2012	BALANCE-BACKPACK SPRAYER	055114/7191641		12/2012	.30
101-3030-423.28-04		03/29/2012	CPR CARD PROCESSING	CCAC032412	121085	12/2012	35.00
101-3030-423.28-04		05/23/2012	CPR CARD PROCESSING	CCAC051712	121085	12/2012	105.00
101-3035-423.30-02		05/25/2012	OFFICE SUPPLIES	899	121086	12/2012	14.54
101-3030-423.28-04		06/07/2012	CPR CARD PROCESSING	CCAC05172012	121085	12/2012	70.00
101-3030-423.30-02		06/08/2012	FINGERTIP PULSE OXIMETER	601797	121085	12/2012	729.30
101-3030-423.28-04		06/11/2012	ARC CARD PROCESSING	CCAC032412	121085	12/2012	80.00
101-3030-423.28-04		06/11/2012	ARC CARD PROCESSING	CCAC042012	121085	12/2012	160.00
101-3030-423.28-04		06/11/2012	ARC CARD PROCESSING	CCAC051712	121085	12/2012	160.00
101-3035-423.25-03		06/01/2012	UNIFORM SWIM TRUNKS	0679	121086	12/2012	679.63
101-3035-423.28-04		06/01/2012	POOL RENTAL JG TRYOUTS	21020166	121086	12/2012	150.00
101-3035-423.28-04		06/07/2012	JG MANUALS	1455	121086	12/2012	603.83
101-3035-423.30-02		06/08/2012	REPORT COVERS	3716	121086	12/2012	33.02
101-3035-423.30-02		06/14/2012	9X12 ENVELOPES	8407	121086	12/2012	23.69
101-3020-422.30-01		05/21/2012	SHOP RAGS	122223	121083	12/2012	25.84
402-5000-532.20-06		05/23/2012	CONCRETE PULL BOXES W/LID	0172751	121110	12/2012	457.59
402-5000-532.20-06		05/24/2012	CONCRETE PULL BOXES W/LID	0172776	121110	12/2012	466.26
501-1921-419.28-16		05/22/2012	#100 HEADLAMPS	3980-115195	121114	12/2012	36.61
501-1921-419.30-02		05/23/2012	FUEL CLEANER	RP 3980-115339	121114	12/2012	31.96
501-1921-419.28-01		05/25/2012	SEAT REPAR (CAR)	05-25-2012	121114	12/2012	85.00
501-1921-419.28-01		05/29/2012	SEAT REPARI (CAR)	05-29-2012	121114	12/2012	85.00
101-3020-422.30-02		06/03/2012	STATION SUPPLIES	061761	121083	12/2012	114.67
101-5010-431.30-02		06/07/2012	UTILITY BLADES/FILE/PINS/	060753/1594469	121110	12/2012	53.64
101-5010-431.30-02		06/19/2012	BROOMS/GALVANIZING SPRAY	025643/9564451	121110	12/2012	136.02
101-5010-431.30-02		06/21/2012	ASPHALT SEALANT	2299280	121110	12/2012	310.28
601-5060-436.28-01		06/14/2012	#117 PARTS	PD-18728	121114	12/2012	266.94
101-3030-423.30-02		06/21/2012	LG VEHICLE SETUP PARTS	1-170608	121114	12/2012	22.92
501-1921-419.28-16		06/21/2012	TOGGLE SWITCHES	1-170609	121114	12/2012	10.28
501-1921-419.30-02		06/21/2012	TOGGLE SWITCHES	1-170609	121114	12/2012	8.65
101-1110-412.28-04		05/22/2012	VEA,E-2012 LEAGUE CONF	05-22-2012	121074	12/2012	475.00
101-6020-452.30-02		05/21/2012	RAKES/SHOVELS	32262	121096	12/2012	136.55
101-1130-412.28-07		06/19/2012	EMPLOYMENT POSTING-CSMFO	3469	121078	12/2012	275.00
101-1130-412.28-07		06/19/2012	EMPOLYMENT LISTING	55	121078	12/2012	150.00
101-6020-452.30-02		06/07/2012	CHAINSAW OIL/TRASH BAGS	031453/1130279	121096	12/2012	31.06
101-6020-452.30-02		06/07/2012	SOCCER NETS	272289	121096	12/2012	89.80
101-6020-452.30-02		06/07/2012	PARKS FLAGS	53131	121096	12/2012	220.40
101-6020-452.28-01		06/11/2012	SWING SEATS	061112-1	121096	12/2012	999.49
101-1910-419.21-04		06/13/2012	BEE REMOVAL	003045	121096	12/2012	175.00
101-5030-433.30-02		06/13/2012	FLOOR PAINT & SUPPLIES	044963/5020268		12/2012	345.76
101-5030-433.30-02		06/19/2012	PRESSURE WASHER NOZZLE	9115893566	121096	12/2012	122.73
101-6020-452.28-01		06/20/2012	LIGHT BULBS/OIL/RAKES	055527/8583774	121096	12/2012	63.11
101-6020-452.28-01		06/20/2012	PLYGRND RINGS PWDRCOATING	108367	121096	12/2012	144.00
101-6020-452.28-01		06/20/2012	PLYGRND RINGS PWDRCOATING	108374	121096	12/2012	72.00
101-6020-452.30-02		06/20/2012	SUNSCREEN	3577	121096	12/2012	57.00
101-6020-452.28-01		06/25/2012	SWING HARDWARE	1400165695	121096	12/2012	966.88
101-1230-413.30-01		05/17/2012	ENVELOPES	610425839	121068	12/2012	75.41

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101-1230-413.30-01	05/30/2012	FLASH DRIVES	611678884-001	121068	12/2012	34.26
101-1230-413.30-01	05/30/2012	STRING TAGS	611679091-001	121068	12/2012	7.14
101-1010-411.28-04	05/25/2012	KING,J-LEAGUE CONF REG	07-06-2012	121076	12/2012	475.00
101-1010-411.28-04	05/29/2012	KING,J-CONF PARTIAL REFND	05-29-2012	121076	12/2012	225.00-
101-3030-423.28-01	05/22/2012	LG DIVE SUPPLIES	3368-2	121088	12/2012	500.00
101-3030-423.28-01	05/22/2012	BINOCULAR REPAIR/OVERHAUL	65082	121088	12/2012	544.03
101-3030-423.30-02	05/31/2012	BEACH WARNING FLAGS	57815	121088	12/2012	614.10
101-3030-423.25-03	05/31/2012	UNIFORM SHOES	8088	121088	12/2012	81.88
101-1020-411.28-11	06/06/2012	PLAN COPIES(RCRDS RQST)	34714	121068	12/2012	11.64
101-3040-424.30-01	06/06/2012	LABELS/ENVELOPES/TAPE	613505899	121068	12/2012	57.17
101-1230-413.30-01	06/11/2012	REPORT COVERS	613986873	121068	12/2012	24.05
101-3040-424.28-11	06/13/2012	BLDG INSPECTION CARDS	1488	121068	12/2012	263.98
101-3030-423.30-02	06/07/2012	RE-KEY DOOR LG OFFICE	9654	121088	12/2012	176.76
101-3030-423.30-02	06/15/2012	LG LOGO STICKERS	1491	121088	12/2012	210.11
101-5010-431.30-02	05/23/2012	1YD CONCRETE MIX	102940486-001	121095	12/2012	177.79
101-6040-454.30-02	05/29/2012	PLANTS/PLANTER BEDS	1-666940	121104	12/2012	80.72
101-6040-454.30-02	05/29/2012	ICE PLANT	1-666949	121104	12/2012	279.93
101-6040-454.30-02	05/29/2012	TRI-FLOW LUBRICANT	135674-00	121104	12/2012	25.64
101-6040-454.30-02	05/27/2012	FLEX COUPLING/UTILTY KNIF	020075/2593287	121105	12/2012	12.02
501-1921-419.28-16	05/24/2012	#127 AIR FILTERS	P30459	121113	12/2012	91.26
101-5010-431.30-02	06/21/2012	CRACK SEALANT	2299280	121095	12/2012	500.00
101-6040-454.30-02	06/06/2012	PLAZA UMBRELLAS	J5974845	121104	12/2012	824.84
101-6040-454.30-02	06/06/2012	TRASH CAN LINERS	S10721S	121104	12/2012	547.80
101-1910-419.30-02	06/06/2012	SANDPAPER/FLAG CLIPS	030815/2571899	121104	12/2012	7.90
101-6040-454.30-02	06/06/2012	SANDPAPER/FLAG CLIPS	030815/2571899	121104	12/2012	41.99
101-6040-454.30-02	06/06/2012	TIDELANDS TSHIRTS	59361	121104	12/2012	672.36
101-6040-454.30-02	06/06/2012	TIDELANDS HATS/CAPS	59362	121104	12/2012	336.18
101-6020-452.30-02	06/12/2012	PLANTS	030851/6202673	121104	12/2012	94.74
101-6040-454.30-02	06/12/2012	PLANTS	030851/6202673	121104	12/2012	25.11
101-6040-454.30-02	06/12/2012	PLYWOOD & CLIPS -SHELVES	046992/6190072	121104	12/2012	42.25
101-6040-454.30-02	06/12/2012	PLANTS-PIER PLAZA	084115/6202679	121104	12/2012	7.18
101-6040-454.30-02	06/19/2012	PIER PLAZA PLANTS	007779/9191496	121104	12/2012	126.86
101-6040-454.30-02	06/21/2012	LG TOWER LOCK BARS	331766	121104	12/2012	29.04
101-6040-454.30-02	06/01/2012	KEMPH,J-WORK BOOTS	024978	121105	12/2012	150.00
101-5010-431.30-02	05/21/2012	SPRAY PAINT	024593/8575315	121111	12/2012	4.18
101-5010-431.30-02	05/25/2012	1/2 YARD CONCRETE	102984111-001	121111	12/2012	139.00
101-3030-423.30-02	06/04/2012	CR RETURNED EQUIP	002-7153961-824	121087	12/2012	19.34-
101-3030-423.30-02	06/04/2012	WD40/BATTERIES/SOAP	054266/4193601	121087	12/2012	41.19
101-3030-423.30-02	06/06/2012	JANITORIAL SUPPLIES	329926	121087	12/2012	323.26
101-3030-423.30-02	06/07/2012	LG HQ KEYS	06-07-2012	121087	12/2012	58.01
101-3030-423.30-02	06/07/2012	PADDLE BOARD FINS	889379	121087	12/2012	48.38
101-3030-423.30-02	06/13/2012	FIRST AID SUPPLIES	602260	121087	12/2012	325.01
101-3030-423.30-02	06/18/2012	LOCKER KEYS	092583	121087	12/2012	3.21
101-3030-423.30-02	06/18/2012	SHIPPING	309248	121087	12/2012	17.35
101-3030-423.30-02	06/19/2012	BEACH TOWER LOCK BARS	060871	121087	12/2012	48.64
101-3030-423.30-02	06/19/2012	TRAINING MATERIAL SUPPLIE	1510	121087	12/2012	42.96
101-3030-423.30-02	06/19/2012	BEACHTOWER LOCK BARS	331611	121087	12/2012	40.68
101-3030-423.30-02	06/20/2012	JANITORIAL SUPPLIES	330513	121087	12/2012	187.52
101-3030-423.30-02	06/20/2012	LAUNDRY SOAP	5957	121087	12/2012	47.39
501-1921-419.29-04	06/19/2012	CITY VEHICLE CAR WASH	083911	121102	12/2012	10.00

CHECK DATE / ACCOUNT #	CHECK NUMBER	VENDOR NAME / TRN DATE	VENDOR # / DESCRIPTION	INVOICE	PO #	PER/YEAR	CHECK AMOUNT / TRN AMOUNT
101-5010-431.30-02		06/05/2012	STD-BTR	090802/3032711	121111	12/2012	83.06
101-5010-431.30-02		06/13/2012	PROPANE TANK EXCHANGE	023646/5190282	121111	12/2012	38.40
101-1210-413.28-04		06/05/2012	BUANGAN,E-GAAFR 2012 PUBL	2699367	121089	12/2012	159.00
101-1210-413.28-04		06/05/2012	BUANGAN,E-GFOA CLASS REG	2699626	121089	12/2012	42.50
101-1210-413.28-04		06/21/2012	BUNAGAN,E-SANDAG PARKING	179980	121089	12/2012	8.00
101-6020-452.30-02		06/07/2012	IRRIGATION & SHOP SUPPLIE	061911/1194096	121092	12/2012	44.85
601-5060-436.30-02		06/06/2012	SHOP SUPPIES	087046/2014990	121093	12/2012	145.57
101-5020-432.28-04		06/07/2012	CASAS,M-CONF LODGING DEP	CR25H	121093	12/2012	38.08
101-5020-432.28-04		06/07/2012	BENNETT,E-CONF LODGING DE	L225H	121093	12/2012	38.08
101-5020-432.28-04		06/14/2012	BENNETT,E-CONF LODGING CR	VZYYH	121093	12/2012	38.08-
101-5020-432.28-04		06/19/2012	CASAS,J -SEMINAR REGISTRA	06-19-2012	121093	12/2012	95.00
601-5060-436.28-13		05/24/2012	RAMOS,J-CWEA EXAM FEES	190771	121093	12/2012	155.00
601-5060-436.28-13		05/24/2012	BENNETT,E CWEA EXAM FEE	190773	121093	12/2012	140.00
101-5030-433.28-01		06/14/2012	PRESSURE WASHER PARTS	SR12-428		12/2012	258.10
101-5030-433.30-02		06/11/2012	GRAFFITI SUPPLIES	070656/7194849		12/2012	48.94
101-5030-433.30-02		06/14/2012	SAFETY FLAG VESTS	15066144		12/2012	45.22
101-5030-433.30-02		06/18/2012	GRAFFITI SUPPLIES	026522/0202887		12/2012	40.59
101-5030-433.28-01		05/24/2012	HOSE REPAIR	35992		12/2012	17.54
601-5060-436.30-02		06/15/2012	50LB BAG LIME	038606/3562767	121100	12/2012	9.96
101-1910-419.30-02		06/13/2012	TABANOU,M-SAFETY BOOTS	3/1147/68965	121112	12/2012	150.00
101-1910-419.30-02		06/18/2012	FACILITY KEYS	082292	121112	12/2012	30.04
601-5060-436.30-02		06/08/2012	HAND TOOLS	013585623511	121109	12/2012	285.43
101-5010-431.30-02		05/23/2012	SAW BLADES	010758/6022066	121094	12/2012	32.26
101-6040-454.30-02		05/23/2012	SPRAY PAINT	077297/6561393	121106	12/2012	4.29
101-1910-419.30-02		05/24/2012	SPRAY PAINT	021724/5593001	121106	12/2012	8.58
101-6040-454.30-02		05/31/2012	PVC ADAPTER	032436/8562321	121106	12/2012	1.05
101-1020-411.28-04		06/22/2012	HALD,J-CC CONF WRKSHP REG	2012 CC CONF	121059	12/2012	100.00
101-1020-411.28-14		06/19/2012	GUIDE TO PUBLIC RECORDS	105-9832739-963	121060	12/2012	74.32
101-1010-411.28-04		06/20/2012	06/20/12 COUNCIL DINNER	024132	121060	12/2012	30.21
101-1230-413.28-04		06/14/2012	WADE,G-PARKING FEES-MTG	100-046	121064	12/2012	4.00
101-1920-419.30-02		06/01/2012	JUN/JUL 2012 AUTO ATTNDT	28519	121071	12/2012	300.00
101-1010-411.30-02		06/06/2012	JUNE 2012 E-NEWSPAPER	06-06-2012	121071	12/2012	7.92
101-5010-431.30-02		06/11/2012	PROPANE TANK EXCHANGE	067303/7194967	121094	12/2012	19.20
101-6040-454.30-02		06/01/2012	CARTIER,J-SAFETY BOOTS	097377	121106	12/2012	150.00
101-6040-454.30-02		06/15/2012	HOSE/GLOVES	028652/3583166	121106	12/2012	58.31
101-6040-454.30-02		06/16/2012	DUST PAN	050429/2564142	121106	12/2012	18.31
101-1010-411.28-04		05/22/2012	SPRIGGS,E-2012 LEAGUE CON	2012 SPRIGGS	121070	12/2012	475.00
101-6010-451.30-02		05/25/2012	SPORTS PARK CAFE STOCK	248105809	121075	12/2012	262.11
101-1010-411.28-04		05/22/2012	BRAGG,L 2012 LEAGUE CONF	2012 BRAGG	121079	12/2012	475.00
503-1923-419.20-06		05/23/2012	MICROSOFT SUPPORT	6002286003	121090	12/2012	259.00
503-1923-419.28-04		05/31/2012	LOPEZ,H-MEAL WORK LATE	039598	121090	12/2012	10.42
503-1923-419.28-04		05/31/2012	LOPEZ,H-MEAL WORK LATE	067546	121090	12/2012	3.22
101-6010-451.30-02		06/07/2012	SPORTS PARK CAFE STOCK	248906112-#578	121075	12/2012	325.34
101-6010-451.30-02		06/11/2012	CR RETURNED ITEM	100051439	121075	12/2012	21.61-
101-6010-451.30-02		06/12/2012	CR RETURNED ITEM	100051495	121075	12/2012	15.51-
101-6010-451.30-02		06/20/2012	SPORTS PARK CAFE STOCK	249602903	121075	12/2012	174.50
101-6010-451.30-02		06/20/2012	SPORTS PK CAFE WATER	3621	121075	12/2012	15.57
101-6010-451.30-02		06/21/2012	SPORTS PK CAFE CLEANING	100052441	121075	12/2012	95.11
101-3035-423.30-02		06/01/2012	JG EQUIPMENT	066469	121084	12/2012	113.05
503-1923-419.28-04		06/18/2012	LOPEZ,H-MEALS AT TRNG	015532	121090	12/2012	1.62

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503-1923-419.28-04	06/18/2012	LOPEZ,H-MEAL WORK LATE	077817	121090	12/2012	3.54
101-1910-419.30-02	05/22/2012	CH WATER HEATER/MULCH	044192/7570009	121099	12/2012	280.58
101-6020-452.30-02	05/22/2012	CH WATER HEATER/MULCH	044192/7570009	121099	12/2012	15.36
101-1910-419.30-02	05/23/2012	WATER HEATER SUPPLIES	006535/6580486	121099	12/2012	38.11
101-1910-419.30-02	05/23/2012	WATER HEATER SUPPLIES	037847/6122155	121099	12/2012	43.75
101-1910-419.30-02	05/29/2012	SUNSCREEN	9651	121099	12/2012	13.22
101-1910-419.30-02	05/31/2012	BLDG DEPT WINDOW BLINDS	056130/8562246	121099	12/2012	105.53
101-1910-419.30-02	05/31/2012	HOSE BIBS	089313/8562303	121099	12/2012	12.59
101-1910-419.28-01	06/11/2012	TABLETOP SUPPLIES	003253/7026612	121099	12/2012	64.97
101-1910-419.28-01	06/12/2012	SP PK RR SUPPLIES/SANDPR	091040/6123427	121099	12/2012	29.30
210-1235-513.20-06	06/12/2012	SP PK RR SUPPLIES/SANDPR	091040/6123427	121099	12/2012	145.45
101-1910-419.28-01	06/13/2012	FIREHOUSE BREAKER SUPPLIE	34793	121099	12/2012	113.14
101-1910-419.28-01	06/18/2012	BATTERIES/FAUCET	018445/0573348	121099	12/2012	86.52
501-1921-419.30-02	06/18/2012	BATTERIES/FAUCET	018445/0573348	121099	12/2012	11.94
101-1910-419.28-01	06/18/2012	LADDER FOR 624	065661/0011807	121099	12/2012	246.75
101-1910-419.28-01	06/19/2012	SINK/COUNTERTOP CH	024758/9021549	121099	12/2012	338.34
101-1910-419.28-01	06/20/2012	COUNTERTOP CH	037111/8123930	121099	12/2012	16.16
101-6040-454.21-04	05/11/2012	SANDBLAST/PAINT SIGNS	107754	121103	12/2012	250.00
101-1230-413.28-04	06/14/2012	NAKAGAWA,J-SANDAG PRKG FE	65270	121065	12/2012	8.00
101-6040-454.21-04	06/04/2012	SANDBLASTING & PAINTING	108101	121103	12/2012	300.00
101-6040-454.30-22	06/07/2012	OSCILLATING MULTI TOOL	097434/1571999	121103	12/2012	171.32
101-6040-454.30-02	06/08/2012	SILICONE	006314/0563228	121103	12/2012	16.84
101-6040-454.30-02	06/11/2012	SPRAY PAINT	044769/7572448	121103	12/2012	4.29
101-6040-454.30-22	06/12/2012	BELTSANDER	065727/6572578	121103	12/2012	182.10
101-6040-454.30-02	06/14/2012	OUTLET COVERS	010878/4590300	121103	12/2012	11.28
101-1910-419.30-02	06/14/2012	KITCHEN FAUCET	081238/4590298	121103	12/2012	77.58
101-3030-423.25-03	11/17/2010	LG UNIFORMS	54650	121085	12/2012	733.98
101-3030-423.25-03	06/13/2011	CREDIT LG UNIFORMS	1905 RR	121085	12/2012	540.70-
101-3030-423.25-03	08/18/2011	LG UNIFORMS	87307	121085	12/2012	554.75
101-3030-423.25-03	08/25/2011	LG UNIFORMS	88271	121085	12/2012	185.29
101-3030-423.25-03	06/14/2012	CR LG UNIFORMS	125019	121085	12/2012	156.97-
08/03/2012	80962	AARON J. HUBBARD	2415			12.00
101-3035-423.28-04	07/06/2012	REIMBURSEMENT JRLG PARKNG	045141121883387		01/2013	12.00
08/03/2012	80963	AFLAC	120			876.72
101-0000-209.01-13	07/19/2012	PR AP PE 7/12/2012	20120719		01/2013	438.36
101-0000-209.01-13	08/02/2012	PR AP PE 7/26/2012	494139		02/2013	438.36
08/03/2012	80964	AT&T	2430			3,003.30
503-1923-419.27-04	07/20/2012	3372571583448	3555476		01/2013	356.85
503-1923-419.27-04	07/20/2012	3393431504727	3553868		01/2013	178.43
503-1923-419.27-04	07/20/2012	3393439371447	3556565		01/2013	178.43
503-1923-419.27-04	07/20/2012	3393442323406	3556874		01/2013	178.43
101-1210-413.27-04	07/17/2012	6194235034	3546269		01/2013	16.18
101-5020-432.27-04	07/15/2012	6194238311966	3541987		01/2013	7.61
101-3030-423.27-04	07/15/2012	6194238322966	3541988		01/2013	5.50
503-1923-419.27-04	07/11/2012	6194243481712	3522093		01/2013	15.91
101-1230-413.27-04	07/17/2012	6196281356950	3545491		01/2013	43.96-

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101-1920-419.27-04		07/15/2012	C602224829777	3543049		01/2013	100.73
101-1110-412.27-04		07/15/2012	C602224831777	3543051		01/2013	114.11
101-1020-411.27-04		07/15/2012	C602224832777	3543052		01/2013	59.61
101-1230-413.27-04		07/15/2012	C602224833777	3543053		01/2013	304.55
101-1130-412.27-04		07/15/2012	C602224834777	3543054		01/2013	65.99
101-1210-413.27-04		07/15/2012	C602224835777	3543055		01/2013	197.53
101-6030-453.27-04		07/15/2012	C602224836777	3543056		01/2013	77.67
101-6010-451.27-04		07/15/2012	C602224837777	3543057		01/2013	230.51
101-3020-422.27-04		07/15/2012	C602224838777	3543058		01/2013	288.39
101-3030-423.27-04		07/15/2012	C602224839777	3543059		01/2013	209.92
101-5020-432.27-04		07/15/2012	C602224840777	3543060		01/2013	292.74
601-5060-436.27-04		07/15/2012	C602224841777	3543061		01/2013	147.03
101-3020-422.27-04		07/17/2012	6194237246664	3545488		01/2013	.71
101-3020-422.27-04		07/17/2012	6194237246664	3464992		01/2013	.79
08/03/2012	80965	AUNT ELLENS WATER	307				107.50
101-3020-422.30-02		07/19/2012	BOTTLED WATER	776273	F13004	01/2013	107.50
08/03/2012	80966	CALIF ELECTRIC SUPPLY	609				112.56
101-5010-431.21-23		07/02/2012	WIRE SPOOL	1069-642525	130027	01/2013	112.56
08/03/2012	80967	CITY OF CHULA VISTA	823				17,373.00
101-3050-425.20-06		07/11/2012	JUNE 2012 A/C	AR132434	120457	12/2012	17,373.00
08/03/2012	80968	COLONIAL LIFE & ACCIDENT	941				266.88
101-0000-209.01-13		07/19/2012	PR AP PE 7/12/2012	20120719		01/2013	133.44
101-0000-209.01-13		08/02/2012	PR PA PE 7/26/2012	9498114-0702598		02/2013	133.44
08/03/2012	80969	COMMERCIAL LANDSCAPE SUPPLY	944				280.32
101-6020-452.30-02		07/06/2012	EDGER BLADES/GG SQ MONO	178411	130009	01/2013	231.02
501-1921-419.28-16		07/16/2012	#697 DECK BELT	178538	130009	01/2013	49.30
08/03/2012	80970	COUNTY RECORDER	1818				50.00
101-0000-221.01-02		07/16/2012	NOE - 1225 EAST LANE	MF 1094		01/2013	50.00
08/03/2012	80971	ESGIL CORPORATION	1225				889.95
101-3040-424.20-16		06/30/2012	JUN 2012 PLAN CHECK	06122990		12/2012	889.95
08/03/2012	80972	GARY BROWN	1387				420.00
101-1110-412.11-08		07/24/2012	HEALTH CARE REIMBURSEMNT	2012		01/2013	420.00
08/03/2012	80973	HARBOR FREIGHT TOOLS	56				79.36
601-5060-436.30-02		07/10/2012	PAINT BRUSHES	517206	130024	01/2013	79.36
08/03/2012	80974	I B FIREFIGHTERS ASSOCIATION	214				300.00
101-0000-209.01-08		08/02/2012	PR AP PE 7/26/2012	20120802		02/2013	300.00
08/03/2012	80975	ICMA RETIREMENT TRUST 457	242				6,755.65
101-0000-209.01-10		08/02/2012	PR AP PE 7/26/2012	20120802		02/2013	6,755.65

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08/03/2012	80976	IMPERIAL BEACH CHAMBER OF COMM	1505				130.00
101-1010-411.28-04		07/16/2012	07/16/12 BILBRAY - CHAMBE	6373	F13009	01/2013	70.00
101-1010-411.28-12		06/19/2012	2012/2013 JANNEY,J-MEMBER	6297	F13005	01/2013	60.00
08/03/2012	80977	KANE, BALLMER & BERKMAN	1828				16,633.99
101-5000-532.20-06		07/06/2012	JUN 2012 - 9TH/PALM DDA	18189		12/2012	3,362.50
101-5000-532.20-06		07/06/2012	JUN 2012 - 9TH/PALM OPA	18190		12/2012	300.00
216-1240-413.20-06		07/06/2012	JUN 2012 - GENERAL	18191		12/2012	700.00
405-1260-413.20-01		07/06/2012	JUN 2012 - SUCCESSOR	18192		12/2012	8,629.05
101-0000-221.01-02		07/06/2012	JUN 2012 - SEACOAST INN	18193		12/2012	875.00
405-1260-413.20-06		07/11/2012	JUN 2012-TRUST FUND PYMNT	18231		12/2012	586.11
405-1260-413.20-06		07/11/2012	JUN 2012-REDEVELOPMENT	18232		12/2012	2,181.33
08/03/2012	80978	KEYSER MARSTON ASSOC INC	620				2,745.88
405-1260-413.20-06		07/09/2012	06/01-06/16/12 -9TH/PALM	0025294	080320	12/2012	2,745.88
08/03/2012	80979	LA PRENSA SAN DIEGO	1714				108.00
101-1020-411.21-06		07/09/2012	NOTICE OF ELECTION	23805	F13003	01/2013	108.00
08/03/2012	80980	LIGHTHOUSE, INC	787				48.97
101-3030-423.30-02		07/10/2012	CIRCUIT BREAKER/TIE WRAP/	0262680	130043	01/2013	48.97
08/03/2012	80981	MOBILE HOME ACCEPTANCE CORPORA	1533				296.31
101-5020-432.25-01		07/24/2012	08/07-09/06/2012	166616	130124	01/2013	296.31
08/03/2012	80982	MRS ELLEN MARTHIENS	1				134.96
101-3035-423.30-02		07/11/2012	REIMBURSE JRLG COMP DAY	07-18-2012		01/2013	134.96
08/03/2012	80983	COUNTY OF SAN DIEGO	264				191.83
101-5020-432.28-11		07/10/2012	JUN 2012 ASSESSMENT ROLL	12422		12/2012	191.83
08/03/2012	80984	SD COUNTY FIRE CHIEFS' ASSOCIA	354				150.00
101-3020-422.28-12		07/10/2012	FY 12/13 DUES-CLARK,TOM	2012-2013 CLARK		01/2013	100.00
101-3020-422.28-12		07/10/2012	FY 12/13 DUES-FRENCH,JOHN	2012-2013 FRENC		01/2013	50.00
08/03/2012	80985	SEIU LOCAL 221	1821				1,480.08
101-0000-209.01-08		08/02/2012	PR AP PE 7/26/2012	20120802		02/2013	1,480.08
08/03/2012	80986	TRAFFIC SAFETY MATERIALS, LLC.	2369				53.77
101-5010-431.30-02		07/05/2012	AIRLESS SPRAYER TIP	1936	130068	01/2013	53.77
08/03/2012	80987	UNION BANK PARS-#6746022400	2400				3,355.18
101-0000-209.01-20		08/02/2012	PE 7/26/2012	20120802		02/2013	3,355.18
08/03/2012	80988	VERONICA TAM AND ASSOCIATES LL	2398				2,104.00
245-1240-513.20-06		07/06/2012	JUNE 2012	1371	120466	12/2012	2,104.00
08/03/2012	80989	WEST PUBLISHING DBA THOMSON RE	821				125.00
101-3020-422.28-14		07/12/2012	2013 CODES FOR INSPECTORS	624010	F13007	01/2013	125.00

CHECK DATE	CHECK NUMBER	VENDOR NAME / VENDOR #					CHECK AMOUNT
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08/03/2012	80990	WESTERN HOSE & GASKET	836				1,598.65
601-5060-436.28-01		07/12/2012	TRASH PUMP MANIFOLDS	267593	130059	01/2013	1,598.65
				DATE RANGE TOTAL *			332,351.28 *

AGENDA ITEM NO. 2.3

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**August 15, 2012**
ORIGINATING DEPT.:	**FINANCE DEPARTMENT**
SUBJECT:	**SALE OR TRANSFER OF SURPLUS PROPERTY AND COMMUNITY GROUP POLICY**

BACKGROUND:
At the June 6, 2012 Council Meeting, the City Council reviewed the surplus computer equipment and asked if staff could check if any community group would be interested in the surplus computer equipment. Staff is proposing a process to alert community groups to our used equipment and if there is no interest in 21 days then the equipment would be transferred to the County for sale or disposal.

DISCUSSION:
Below is an initial list of *community organizations* for review by the Council. Staff is proposing to notify by email community organizations the list of surplus computer equipment. The surplus computer equipment would be given away to any organization that showed interest and a use on a first come first serve basis. Any equipment remaining after 21 days would be sent to the County for public sale.

Staff is proposing the following community organizations for the initial list:

- Boys & Girls Club of IB
- Friends of the IB Library
- IB Beautiful
- Imperial Beach Chamber of Commerce
- Imperial Beach Women's Club
- South Bay community Services
- Mar Vista High School
- IB Elementary Schools
- Fleet Reserve Club

FISCAL ANALYSIS:
Items would be given away to community groups as opposed to being sent to the County for possible sale. The City generally receives minimal amounts for surplus computer equipment.

DEPARTMENT RECOMMENDATION:
Staff recommends approval of the attached Resolution authorizing the sale / transfer of surplus property as follows:

1. Items listed in Exhibit A, Equipment Inventory List for County Auction or donations to community groups on the approved community group list.

CITY MANAGER'S RECOMMENDATION:
Approve Department recommendation.

Gary Brown, City Manager

Attachments:
1. Resolution 2012-7241
2. Exhibit A – Equipment Inventory List for sale/transfer
3. Exhibit B – Approved Community Groups to Receive Surplus Computer Equipment

RESOLUTION NO. 2012-7241

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING THE SALE OR TRANSFER OF CERTAIN SURPLUS CITY EQUIPMENT

The City Council of the City of Imperial Beach does hereby resolve as follows:

WHEREAS, I.B.M.C. Chapter 3.04.050 states: "The purchasing officer shall have the following powers and duties:

...J. To recommend to the city manager the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for city use;" and

WHEREAS, the City Council of the City of Imperial Beach on October 3, 1990, adopted Resolution No. 90-3828 authorizing its Finance Director to participate in periodic sales of surplus property by the San Diego County Division of Purchasing and Contracting; and

WHEREAS, the City Council of the City of Imperial Beach now desires to declare the items of equipment shown on Exhibit "A" attached hereto as surplus or unsuitable for City use; and

WHEREAS, Community groups provide benefit to the City and City residents and the items of equipment are of little or no value to the City and the City receives only minimal amounts at a surplus sale.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Imperial Beach that:

1. The above recitals are true and correct.
2. The City Council of the City of Imperial Beach declares the items of equipment shown on Exhibit "A" (attached hereto), surplus and/or unused and hereby directs the Finance Director to dispose of same as follows:
   - Items in Exhibit "A" through the San Diego County Division of Purchasing and Contracting or as otherwise authorized by the City Manager.
3. Staff is directed to notify approved community groups (as shown on Exhibit "B" and as modified by City Council) of surplus computer equipment and staff is directed to give away any surplus computer equipment if requested from approved community groups.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 15th day of August 2012, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

_____
JAMES C. JANNEY, MAYOR

ATTEST:

_____
JACQUELINE M. HALD, CMC
CITY CLERK

Exhibit A

IMPERIAL BEACH
EQUIPMENT INVENTORY LIST
FOR COMMUNITY ORGANIZATIONS OR COUNTY AUCTION

printers		
hp laserjet 4250n	Cnbj1168	
hp laserjet 2015dr	cnbjr78162	
hp laserjet 2015dr	cnbjr78145	
hp photosmart 8750	my52c11086	
hp deskjet 935c	mx07v1f07g	1644
hp laserjet 2300d	cnbr78g71	
hp color laserjet 2550cn	cngrc04738	A0039
hp laserjet 4050tn	cnbc87214	1310
hp laserjet 1200s	cnc714b70	
pcs		
gateway e4500s	36000197	1593
dell optiplex gx270	71715	1526
dell optiplex gx270	3713424	1515
gateway e4800	36408528	A0012
compaq dc5700	mxl629ua	1614
dell optiplex gx270	9skj451	1520
gateway e6500	36824597	1660
compaq dc5700	mxm719056k	A0028
compaq dc5700	mxm80702vv	1650
dell optiplex gx270	4vkj541	1526
gateway e4300	35376458	1551
gateway e4300	3674136	1510
monitor		
lenovo 15 inch	v2fwv26	
lenovo 15 inch	v2fwv15	
samsung sync master 710tm	mj17mstbv	
dell 14 inch	mxo8r339	

ATTACHMENT 3

EXHIBIT B

Approved Community Groups
To Receive Surplus Computer Equipment

Boys & Girls Club of IB
Friends of the IB Library
IB Beautiful
Imperial Beach Chamber of Commerce
Imperial Beach Women's Club
South Bay community Services
Mar Vista High School
IB Elementary Schools
Fleet Reserve Club

AGENDA ITEM NO. 2.4

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**COMMUNITY DEVELOPMENT DEPARTMENT** **GREG WADE, ASSISTANT CITY MANAGER/ COMMUNITY DEVELOPMENT DIRECTOR** **JIM NAKAGAWA, AICP, CITY PLANNER**
SUBJECT:	**CONSENT AGENDA: RATIFICATION OF NAVAL BASE CORONADO (NBC) COASTAL CAMPUS ENVIRONMENTAL IMPACT STATEMENT (EIS) SCOPING COMMENTS**

PROJECT DESCRIPTION/BACKGROUND:

The Navy proposes a consolidation of training facilities within the Silver Strand Training Complex (SSTC) area. A community workshop was held in Imperial Beach on July 17, 2012. The City Council asked for a 30-day extension of the scoping comment period to August 30, 2012. The Navy provided a deadline of August 14, 2012 to submit comments. A draft letter listing a number of comments on the project has been prepared. However, the letter needs to be transmitted to the Navy prior to its August 14th deadline. Staff requests Council ratification of the letter.

ENVIRONMENTAL INFORMATION:

The Navy is asking for scoping comments for its preparation of the EIS for the NBC Coastal Campus EIS.

FISCAL ANALYSIS:

There is no direct fiscal impact on the City with this Navy project other than staff time expended to prepare comments.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council ratify the letter of scoping comments on the EIS for the NBC Coastal Campus EIS.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments:

1. NBC Coastal Campus scoping comments
2. Navy RE NBC Coastal Campus Comments Extension 073112

C: file NBC Coastal Campus EIS
Carl (Bruce) Shaffer, AICP, Community Plans and Liaison, Naval Base Coronado, Building 3 (Public Works Office), PO Box 357040, Code N46C, San Diego, CA 92135-7040
Captain Gary Mayes, Naval Base Coronado Commanding Officer, Box 357033, San Diego, CA 92135-7033
Blair King, City Manager, City of Coronado, 1825 Strand Way, Coronado, CA 92118

City of Imperial Beach, California

OFFICE OF THE MAYOR

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

August 9, 2012

Attachment 1

NBC Coastal Campus EIS Project Manager
Attn: Ms. Teresa Bresler
2730 McKean Street, Bldg. 291
San Diego, CA 92136

RE: Naval Base Coronado Coastal Campus EIS Scoping Comments

Dear Ms. Bresler:

The City of Imperial Beach, responding to the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed NBC Coastal Campus, offers the following comments:

1. The extension of the comment period is appreciated as was the scoping meeting held at the Marina Vista Center where staff provided extensive information about the project.

2. The scope of environmental issues that need to be addressed would appear to include at least the range of issues analyzed in the Final Silver Strand Training Complex (SSTC) EIS (January 2011).

3. The concept to consolidate Navy training facilities to reduce vehicle travel needs between facilities and, thereby, reduce greenhouse gas (GHG) emissions is a commendable one. We would ask that individual automobile use be minimized and that bus transportation is included in the project operation to further reduce GHG impacts.

4. Among the historical issues that has concerned the City has been noise, vibration, and traffic from Naval operations. Additionally, the EIS should consider specific time restrictions on Naval training operations to minimize and/or mitigate the impacts to residents of and visitors to Imperial Beach. We ask that the EIS include an extensive discussion on these issues.

5. The EIS should include a discussion of the Navy's on-going obligation to protect the habitat of threatened and endangered bird species in the SSTC South area.

6. The EIS should include a discussion of the project's

Alternative 2: SSTC-South Design II Expanded Footprint Alternative

- Like Alternative 1, Alternative 2 would consolidate the majority of certain NSWC facilities to one location on SSTC-South, but the facilities might be located down to the southern fenceline of SSTC-S, within the red boundaries
- Like Alternative 1, Alternative 2 would include the design and construction of logistical support buildings, equipment use and maintenance training facilities, classroom and tactical skills instruction buildings, storage and administrative facilities, utilities, fencing, roads, and parking, utilizing sustainable design for all facilities as is practicable
- Construction of a new controlled entry point providing immediate access from State Route 75.

impact on coastal access adjacent to NRRF and on the California Coastal Trail/ Bikeway that is proposed to run along the boundary between the City and Alternative 2: SSTC South Design II Expanded Footprint Alternative.

7. The EIS should include a discussion on how the project intends to adapt to climate change impacts such as sea level rise.

8. Alternative 2: SSTC South Design II Expanded Footprint Alternative appears to pose impacts to vernal pool resources that were identified in the Final Silver Strand Training Complex (SSTC) EIS as in need of protection. The EIS should discuss this issue.

SILVER STRAND TRAINING COMPLEX EIS FINAL (JANUARY 2011)

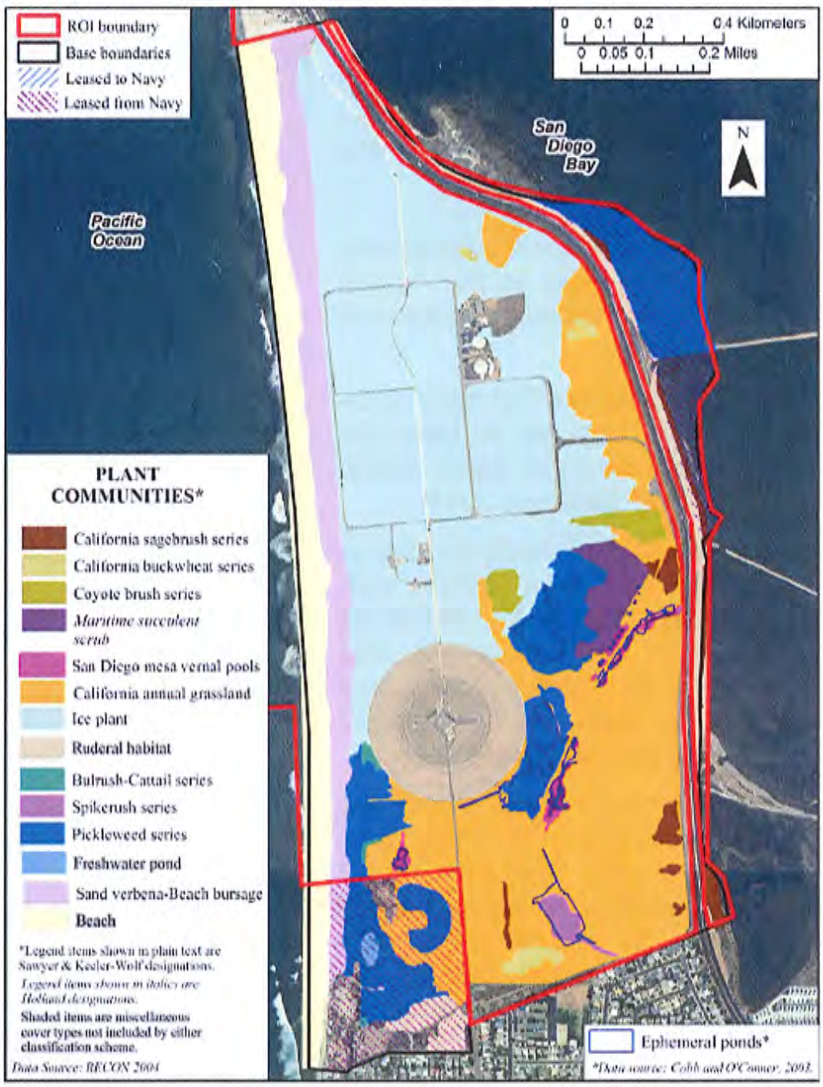

Figure 3.11-3: Plant Communities of SSTC-S (NRRF) Based on Most Recent Vegetation Map

TERRESTRIAL BIOLOGICAL RESOURCES 3.11-6

Recommended Bicycle Facilities
City of Imperial Beach
Ecoroute
Existing Bike Facilities
Class 1 - Bike Path
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Class 1: Bike Path
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Though some of these facilities are currently recommended to be Class 3 bike routes (signed only), this does not preclude the City from upgrading them to Class 2 bike lanes (striped) wherever feasible.

The City of Imperial Beach has had a long standing partnership with the Navy in dealing with a variety of issues. The City appreciates the national security role that the Navy assumes as a part of its mission while making efforts to be a good neighbor with the City. There are a number of Navy service personnel that have found much needed housing in Imperial Beach. The City has sought to protect its residents from the impacts from Navy operations and enhance its ecotourism and recreational economic base. It is with this perspective that the City offers its comments.

Sincerely,

James C. Janney
Mayor

cc: file
City Council
Gary Brown, City Manager
Greg Wade, Assistant City Manager/Community Development Director
Jim Nakagawa, AICP, City Planner
Carl (Bruce) Shaffer, AICP, Community Plans and Liaison, Naval Base Coronado, Building 3 (Public Works Office), PO Box 357040, Code N46C, San Diego, CA 92135-7040
Captain Gary Mayes, Naval Base Coronado Commanding Officer, Box 357033, San Diego, CA 92135-7033
Blair King, City Manager, City of Coronado, 1825 Strand Way, Coronado, CA 92118

DEPARTMENT OF THE NAVY
COMMANDING OFFICER
NAVAL BASE CORONADO
BOX 357033
SAN DIEGO, CA 92135-7033

ATTACHMENT 2

IN REPLY REFER TO:
5090
Ser N00/309
31 Jul 12

The Honorable Jim Janney
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

SUBJECT: NAVAL BASE CORONADO COASTAL CAMPUS ENVIRONMENTAL IMPACT STATEMENT

Dear Mayor Janney:

Thank you for your letter dated July 18, 2012, requesting an extension of the public scoping comment period for the proposed Naval Base Coronado (NBC) Coastal Campus Environmental Impact Statement (EIS). In response to requests from elected officials, the U.S. Navy will extend the public comment period an additional 15 days. The original comment period concluded on 30 July 2012. With the extension, all written comments must be postmarked by 14 August 2012 to ensure they become part of the official record. All timely comments will be considered in the preparation of the draft EIS. Please forward all comments to:

Naval Base Coronado Coastal Campus EIS Project Manager
Attn: Ms. Teresa Bresler
2730 McKean Street, Bldg 291
San Diego, CA 92136

Additional information is available on the EIS website at www.nbccoastalcampuseis.com. Comments may also be submitted via the website. Thank you for your interest in the project, and I look forward to working collaboratively with the City of Imperial Beach on behalf of both of our communities.

2012 AUG -7 PM 1:45
CITY MANAGER &
CITY CLERK OFFICES

Sincerely,

G. A. MAYES
Captain, U.S. Navy
Commanding Officer

AGENDA ITEM NO. 4.1

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**COMMUNITY DEVELOPMENT DEPARTMENT** **GREG WADE, ASSISTANT CITY MANAGER/ COMMUNITY DEVELOPMENT DIRECTOR** **JIM NAKAGAWA, AICP, CITY PLANNER**
SUBJECT:	**SECOND READING/ ADOPTION OF ORDINANCE NO. 2012-1130: THE CITY OF IMPERIAL BEACH: LOCAL COASTAL PROGRAM AMENDMENT (LCPA)/ ZONING CODE AMENDMENT (ZCA) 100057 FOR THE COMMERCIAL ZONING AMENDMENT PROJECT. MF 935**

PROJECT DESCRIPTION/BACKGROUND:

This is a City-initiated proposal to amend the Imperial Beach General Plan/ Local Coastal Plan and Zoning Ordinance (GPA/LCPA/ZCA 100057) for properties designated C-1 (General Commercial) in the Palm Avenue study area, C-2 (Seacoast Commercial) in the Old Palm Avenue and Seacoast Drive study areas, and C-3 (Neighborhood Commercial) in the 13th Street Corridor study areas. Also included in the proposed project are areas zoned R-1500 (High Density Residential) that are subject to the MU-1 (Mixed Use-1) overlay designation in the Palm Avenue study area and the MU-2 (Mixed Use-2) overlay designation in the Seacoast Drive study area.

The General Plan/LCP and commercial zoning amendments would apply a C/MU-1 General Plan/Zone designation to the Palm Avenue study area, a C/MU-2 General Plan/Zone designation to the Seacoast Drive and Old Palm Avenue study areas, and C/MU-3 General Plan/Zone designation to the 13th Street Corridor study areas. In addition, property at the northeast corner of 9th Street and Imperial Beach Boulevard has been included in the proposed project to change the existing C-3 General Plan/Zone designation to R-3000 (Two-Family Residential) pursuant to GP Policy L-4h. A proposed zoning map is shown on page 2 of this staff report. New or revised definitions would be added to the zoning ordinance for terms used in the proposed C/MU zones, such as for active commercial uses, incidental manufacturing, live/work units, mixed-use development, personal convenience services, and urban open space.

Commercial parking requirements would be changed primarily for mixed-use projects from a standard that varies by type of commercial use to a standard of 1 space per 500 gross square feet of commercial use in the proposed C/MU-1 and C/MU-3 zones, and to 1 space per 1,000 gross square feet of commercial use in the proposed C/MU-2 zone. In addition, a reduction in required parking would be permitted for vertical mixed-use projects of commercial, multiple-family, or hotel uses; parking requirements would be waived for commercial uses of less than

AGENDA ITEM NO. 2.4

STAFF REPORT
CITY OF IMPERIAL BEACH

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FISCAL ANALYSIS:

There is no direct fiscal impact on the City with this Navy project other than staff time expended to prepare comments.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council ratify the letter of scoping comments on the EIS for the NBC Coastal Campus EIS.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments:

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City of Imperial Beach, California

OFFICE OF THE MAYOR

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August 9, 2012

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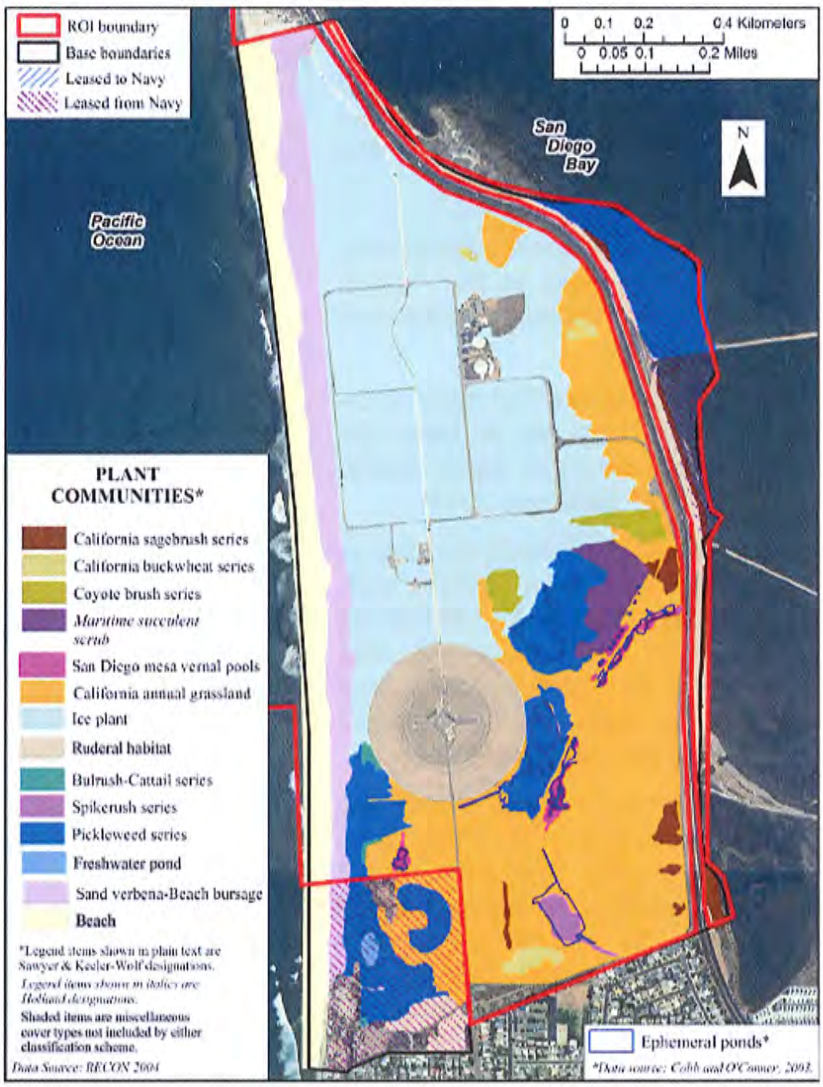

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Mayor

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Additional information is available on the EIS website at www.nbccoastalcampuseis.com. Comments may also be submitted via the website. Thank you for your interest in the project, and I look forward to working collaboratively with the City of Imperial Beach on behalf of both of our communities.

2012 AUG -7 PM 1:45
CITY MANAGER &
CITY CLERK OFFICES

Sincerely,

G. A. MAYES
Captain, U.S. Navy
Commanding Officer

1,000 square feet; and opportunities to satisfy parking requirements by use of shared parking or off-site parking located within 1,000 feet (an increase from 500 feet) would be allowed for multiple-family residential and commercial uses (except hotels). New stand-alone commercial projects would be subject to the existing requirements but would be eligible for the new waivers or parking reductions if the criteria are met.

Exhibit 2 – Proposed Zoning Map

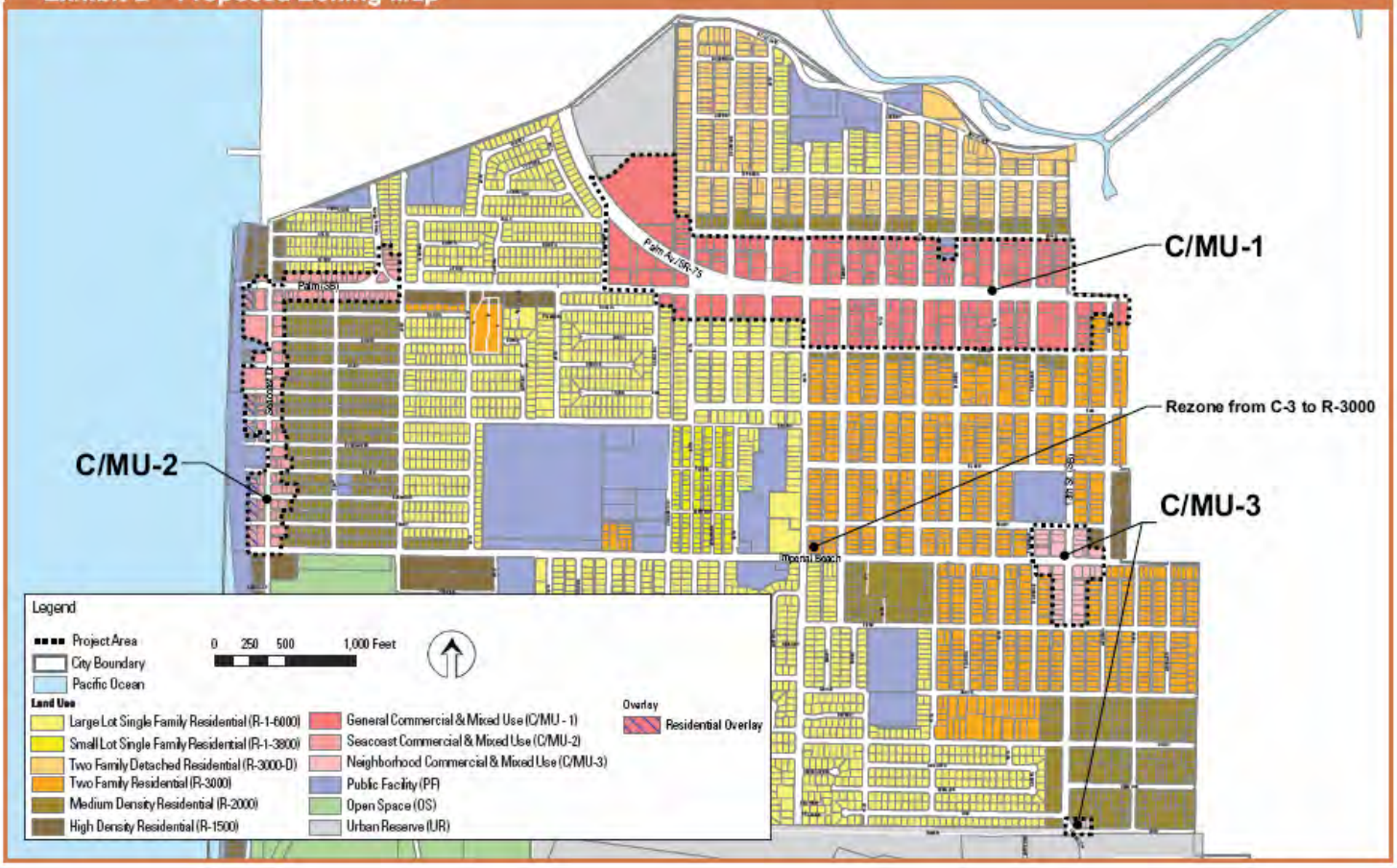


Table 14 – Summary of Parking Standard Changes

Category	Former Standard	Proposed Standard	Eligible for Waiver for 25% Reduction for Vertical Mixed-Use	Eligible for Waiver for Commercial Uses less than 1,000 SF (Consider increase to 1,500 SF)	Eligible for Additional Parking Reduction for Shared Parking
Commercial C/MU-1 C/MU-3	Varies by use	1 space per 500 SF of commercial	X	X	X
Commercial C/MU-2	Varies by use	1 space per 1,000 SF of commercial	X	X	X
Multi-Family Residential	1.5 spaces per unit	Same	X		X
Hotel without cooking facilities	1.0 spaces per unit	Same	X		
Hotel with cooking facilities	1.5 spaces per unit	Same	X		

Local Coastal Program (LCP) Amendment: This project constitutes an amendment to the Policy and Implementation Components of the City's certified LCP. It proposes to add and amend provisions of the General Plan/LCP as described above. Public notice was given of the availability of documents and request for comments pertaining to this item which began a six-week/45-day public review period. This public review period, from **April 19, 2012** to **June 4,** 2012, was required for the item prior to any final action being taken by the City Council on the General Plan Amendment request, pursuant to California Code of Regulations Code §13515 (14 CCR 13515) and California Government Code §65352. Pursuant to Section 21080.5 of CEQA, the California Coastal Commission will review the proposed amendments for compliance with the certified LCP and CEQA. The proposed amendments must be submitted to the California Coastal Commission for review and certification, and it will not become effective until certified by the California Coastal Commission.

ENVIRONMENTAL INFORMATION:

As the Lead Agency, the City of Imperial Beach prepared a Draft Program Environmental Impact Report (PEIR) in accordance with CEQA for the General Plan/Local Coastal Plan (LCP) and Commercial Zoning Amendments Project. A 45-day public review and comment period was provided pursuant to CEQA Guidelines Section 15105 for the Draft PEIR (SCH# 2011041048) from **April 19, 2012** to **June 4, 2012**. Comments from 7 agencies and 3 citizens were received and responses to those comments were prepared as a part of the Final PEIR (Appendix F). The Final PEIR was certified by the City Council on August 1, 2012 (Resolution No. 2012-7236).

Significant Environmental Effects Anticipated as a Result of the Proposed Project: The Final PEIR determined that the proposed project could have potentially significant environmental effects in the following areas: Air Quality, Paleontological Resources, and Noise. Mitigation measures are identified in the Final PEIR that would reduce the potential environmental impacts to these resource areas to below a level of significance.

Statement of Overriding Considerations

The Final PEIR also found that implementation of the proposed project would result in significant and unavoidable impacts to the following issue areas: Greenhouse Gas (GHG) Emissions; Hydrology and Water Quality (Sea Level Rise), and Transportation and Traffic. Implementation of the mitigation measures identified in the Final PEIR would reduce impacts to an extent; however, even with the proposed mitigation, the GHG emissions, hydrology and water quality (sea level rise), and transportation and traffic impacts would remain significant and unavoidable. Transportation Demand Management (TDM) strategies are also proposed as mitigation.

Pursuant to Section 15093 of the State CEQA Guidelines, when the lead agency approves a project that may result in the occurrence of significant effects that are identified in the Final Environmental Impact Report (EIR), but are not avoided or substantially lessened, the agency shall adopt a Statement of Overriding Considerations per CEQA stating in writing the specific reasons to support its action based on the Final EIR and/or other information in the record.

The City adopted Findings Regarding Significant Effects and adopted a Statement of Overriding Considerations for the above project, which identify that certain significant effects of implementing the project are unavoidable even after incorporation of any feasible mitigation measures. The City finds that the remaining unavoidable significant effects are acceptable due to specific economic, legal, social, technological, or other benefits which will result from

approval and implementation of the project, as listed below. All of these benefits are based on the facts set forth in the Findings Regarding Significant Effects, the Final PEIR, and the record of proceedings for this project. The benefits cited in the Statement include:

1. Increased City Revenue for Needed Municipal Services and Facilities. Implementation of the General Plan/Local Coastal Plan and Commercial Zoning Amendments Project will help to stimulate new commercial activity in Imperial Beach, which will in turn generate increased local sales tax revenue for the City. Increasing sales tax revenue is essential for funding existing and future municipal services as well as maintenance and improvements of public facilities that are owned and operated by the City.
2. Employment Opportunities. Implementation of the General Plan/Local Coastal Plan and Commercial Zoning Amendments Project will generate new construction employment opportunities over the multi-year buildout. Implementation will also stimulate new and redeveloped commercial areas that will generate long-term employment opportunities at local commercial establishments. This will provide an economic benefit to the community and potentially the region as a whole.
3. Enhancement of Local Community Character and Quality of Life. The development regulations and design guidelines associated with the project will yield development that better meets community goals for quality design and architecture, environmental sustainability, and pedestrian-friendliness in comparison to the existing zoning. Furthermore, expanding the number and diversity of local commercial businesses will allow residents and visitors to accomplish more shopping needs in Imperial Beach, resulting in shorter trips and opportunities to bike and walk to shopping, restaurant, and other commercial destinations.
4. Pedestrian-Oriented Development. One of Imperial Beach's valued assets is its walkable environment, which is associated with reduced automobile traffic and associated air pollutants, public health benefits, viable transit access, enjoyable and well connected urban form and connectivity, and overall quality of life advantages for residents and visitors. The new development regulations and design guidelines are intended to protect and enhance the pedestrian environment in the City's commercial corridors, thereby reinforcing and improving these benefits.

FISCAL ANALYSIS:

On December 1, 2010, the City Council/Redevelopment Agency approved a contract in the amount of $274,750 for preparation of the General Plan Amendments, the Zoning Ordinance Amendments and the Program Environmental Impact Report associated with proposed amendments that are the subject of this City Council item. A Fish and Game Fee of $2969.00 will need to be paid when the Notice of Determination is filed with the County Clerk.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council:

1. Declare the public hearing open;
2. Receive report and entertain testimony;
3. Close public hearing;

4. Mayor calls for the second reading of the title of Ordinance No. 2012-1130 approving the proposed Zoning Code Amendment (ZCA 100057);
5. City Clerk to read Ordinance 2012-1130 by title only;
6. Motion to waive further reading of Ordinance No. 2012-1130 and adopt Ordinance No. 2012-1130.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown

Gary Brown, City Manager

Attachments:

1. Ordinance No. 2012-1130
2. Proposed Commercial Zoning Amendments

C: file MF 935 Commercial Zoning Amendments
Joan Isaacson, Christine Babla, Kara Friedman, AECOM, 1420 Kettner Blvd, Suite 500, San Diego, CA 92101; Kara.Friedman@aecom.com; Christine.Babla@aecom.com; Joan.Isaacson@aecom.com
Seth Torma, KOA Corporation, 5095 Murphy Canyon Rd., Suite 330, San Diego, CA 92123 satorma@koacorporation.com
Paul C. Marra, Keyser Marston Associates, Inc., 1660 Hotel Circle North, Suite 716, San Diego, CA 92108 pmarra@keysermarston.com
Rick Espana, Roesling Nakamura Terada Architects, 363 Fifth Avenue, Suite 202, San Diego, CA espana@rntarchitects.com
Christopher Gray, AICP, Fehr & Peers Transportation Consultants, 15707 Rockfield Blvd, Suite 155, Irvine, CA 92618 c.gray@fehrandpeers.com
Jacob Armstrong, Chief, California Department of Transportation, District 11, Development Review/ International Border Studies Branch, 4050 Taylor Street, MS-240, San Diego, CA 92110 anthony_aguirre@dot.ca.gov jacob_armstrong@dot.ca.gov
Susan Baldwin, Housing, SANDAG, 401 B Street, Ste. 800, San Diego, CA 92101 sba@sandag.org
Kelly Broughton, Planning & Development Services Department, City of San Diego, 202 C Street, MS 5A, San Diego, CA 92101 mprinz@sandiego.gov crothman@sandiego.gov
Diana Lilly, Coastal Planner, CA Coastal Commission - San Diego District, 7575 Metropolitan Dr. Ste. 103, San Diego, CA 92108-4402 Diana.Lilly@coastal.ca.gov
Keith Wilschetz and Ted Anasis, San Diego County Regional Airport Authority, P.O. Box 82776, San Diego, CA 92138-2776 tanasis@san.org
Patricia Hutchins, Imperial Beach Chamber of Commerce, 702 Seacoast Drive, Imperial Beach, CA 91932-1871 Pathut@aol.com
California Coastal Commission, Diana Lilly, Coastal Planner, 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-1735 dlilly@coastal.ca.gov

ATTACHMENT 1

ORDINANCE NO. 2012-1130

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AMENDING TITLE 19 (ZONING) OF THE IMPERIAL BEACH MUNICIPAL CODE BY AMENDING THE PROVISIONS FOR THE C-1, C-2, AND C-3 COMMERCIAL ZONES AND AMENDING THE ZONING MAP FOR PROPERTIES DESIGNATED C-1 (GENERAL COMMERCIAL) IN THE PALM AVENUE STUDY AREA, C-2 (SEACOAST COMMERCIAL) IN THE OLD PALM AVENUE AND SEACOAST DRIVE STUDY AREAS, AND C-3 (NEIGHBORHOOD COMMERCIAL) IN THE 13TH STREET CORRIDOR STUDY AREAS AND AREAS ZONED R-1500 (HIGH DENSITY RESIDENTIAL) THAT ARE SUBJECT TO THE MU-1 (MIXED USE-1) OVERLAY DESIGNATION IN THE PALM AVENUE STUDY AREA AND THE MU-2 (MIXED USE-2) OVERLAY DESIGNATION IN THE SEACOAST DRIVE STUDY AREA. MF 935.

WHEREAS, on August 1, 2012, and on August 15, 2012, the City Council of the City of Imperial Beach held duly advertised public hearings to consider the merits of approving or denying an application for Zoning Code Amendment (ZCA) 100057 to amend the Zoning Ordinance and Zoning Map for properties designated C-1 (General Commercial) in the Palm Avenue study area, C-2 (Seacoast Commercial) in the Old Palm Avenue and Seacoast Drive study areas, and C-3 (Neighborhood Commercial) in the 13th Street Corridor study areas; and areas zoned R-1500 (High Density Residential) that are subject to the MU-1 (Mixed Use-1) overlay designation in the Palm Avenue study area and the MU-2 (Mixed Use-2) overlay designation in the Seacoast Drive study area; and

WHEREAS, the City Council finds that the proposed Commercial Zone changes to be consistent with General Plan Policies L-4f and L-6 that encourage visitor-serving and tourist-oriented commercial uses and the proposed zoning code amendment would, therefore, be externally consistent with the General Plan/ Local Coastal Plan pursuant to Government Code Section 65860; and

WHEREAS, the City Council finds that the proposed Commercial Zones promotes the local and regional goals for a walkable community, implements SANDAG's Smart Growth policy to take advantage of existing infrastructure, reduce sprawl, provide for a more pedestrian environment, and eventually reduce GHG to better adapt to if not mitigate the effects of global warming.; and

WHEREAS, in compliance with Section 15063 of the California Environmental Quality Act (CEQA) Guidelines, a Program Environmental Impact Report (PEIR) has been prepared for this project and routed for public review from April 19 to June 4, 2012, and submitted to the State Clearinghouse (SCH # 2011041048) in accordance with the requirements of the (CEQA) for agency review, and

WHEREAS, the City Council has considered and heard any and all public testimony regarding the potential environmental impacts associated with this project, and hereby determines that:

1) the Final Program Environmental Impact Report (SCH # 2011041048)) reflects the decision-making body's independent judgment and analysis;

2) the decision-making body has, pursuant to CEQA Guidelines Section 15074(b), considered the information contained in the Draft and Final Environmental Impact Reports (SCH # 2011041048) and the written comments received during the public review period;

3) The PEIR found significant and unavoidable environmental impacts to the issue areas of greenhouse gas emissions (GHG), hydrology and water quality, and transportation and traffic.

4) Pursuant to Section 21081 of the California Environmental Quality Act (CEQA) and Section 15091 of the State CEQA Guidelines, the City found that mitigation for the project's greenhouse gas emissions; hydrology and water quality; and transportation and traffic impacts would not fully reduce those impacts to below a level of significance. Other potential measures were found to have specific economic, legal, technological, and social considerations that otherwise render full mitigation infeasible.

5) Pursuant to Section 15093 of the State CEQA Guidelines a Statement of Overriding Considerations is hereby adopted, by the City Council of the City of Imperial Beach, as certain significant effects of implementing the project are unavoidable even after incorporation of any feasible mitigation measures.

6) The City finds that the remaining unavoidable significant effects are acceptable due to specific economic, legal, social, technological, or other benefits which will result from approval and implementation of the project, as listed below. All of these benefits are based on the facts set forth in the Findings Regarding Significant Effects, the Final PEIR, and the record of proceedings for this project.

7) The City finds that the proposed Imperial Beach General Plan/Local Coastal Plan and Commercial Zoning Amendments Project would have the following substantial Overriding Benefits:

   a. Increased City Revenue for Needed Municipal Services and Facilities. Implementation of the General Plan/Local Coastal Plan and Commercial Zoning Amendments Project will help to stimulate new commercial activity in Imperial Beach, which will in turn generate increased local sales tax revenue for the City. Increasing sales tax revenue is essential for funding existing and future municipal services as well as maintenance and improvements of public facilities that are owned and operated by the City.

   b. Employment Opportunities. Implementation of the General Plan/Local Coastal Plan and Commercial Zoning Amendments Project will generate new construction employment opportunities over the multi-year buildout. Implementation will also stimulate new and redeveloped commercial areas that will generate long-term employment opportunities at local commercial establishments. This will provide an economic benefit to the community and potentially the region as a whole.

c. Enhancement of Local Community Character and Quality of Life. The development regulations and design guidelines associated with the project will yield development that better meets community goals for quality design and architecture, environmental sustainability, and pedestrian-friendliness in comparison to the existing zoning. Furthermore, expanding the number and diversity of local commercial businesses will allow residents and visitors to accomplish more shopping needs in Imperial Beach, resulting in shorter trips and opportunities to bike and walk to shopping, restaurant, and other commercial destinations.

d. Pedestrian-Oriented Development. One of Imperial Beach's valued assets is its walkable environment, which is associated with reduced automobile traffic and associated air pollutants, public health benefits, viable transit access, enjoyable and well connected urban form and connectivity, and overall quality of life advantages for residents and visitors. The new development regulations and design guidelines are intended to protect and enhance the pedestrian environment in the City's commercial corridors, thereby reinforcing and improving these benefits.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH DOES ORDAIN AS FOLLOWS:

SECTION 1: That the zoning amendments as provided in Attachment 2 are made a part of the ordinance herein.

SECTION 2: That the zoning classification of the properties designated C-1 (General Commercial) in the Palm Avenue study area, C-2 (Seacoast Commercial) in the Old Palm Avenue and Seacoast Drive study areas, and C-3 (Neighborhood Commercial) in the 13th Street Corridor study areas; and areas zoned R-1500 (High Density Residential) that are subject to the MU-1 (Mixed Use-1) overlay designation in the Palm Avenue study area and the MU-2 (Mixed Use-2) overlay designation in the Seacoast Drive study area are changed to C/MU-1, C/MU-2, and C/MU-3 respectively and that the Zoning Map adopted pursuant to Section 19.06.020 shall be amended to reflect the change of zoning classification.

SECTION 3: That the development of the properties as designated above are subject to the mitigation measures as provided in the Final PEIR.

SECTION 4: That this ordinance shall only become effective upon its certification by the California Coastal Commission.

Appeal Process under the California Code of Civil Procedure (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

PROTEST PROVISION: The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, on the 1st day of August, 2012; and **THEREAFTER ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, on the 15th day of August, 2012, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

James C. Janney

JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald

JACQUELINE M. HALD, MMC
CITY CLERK

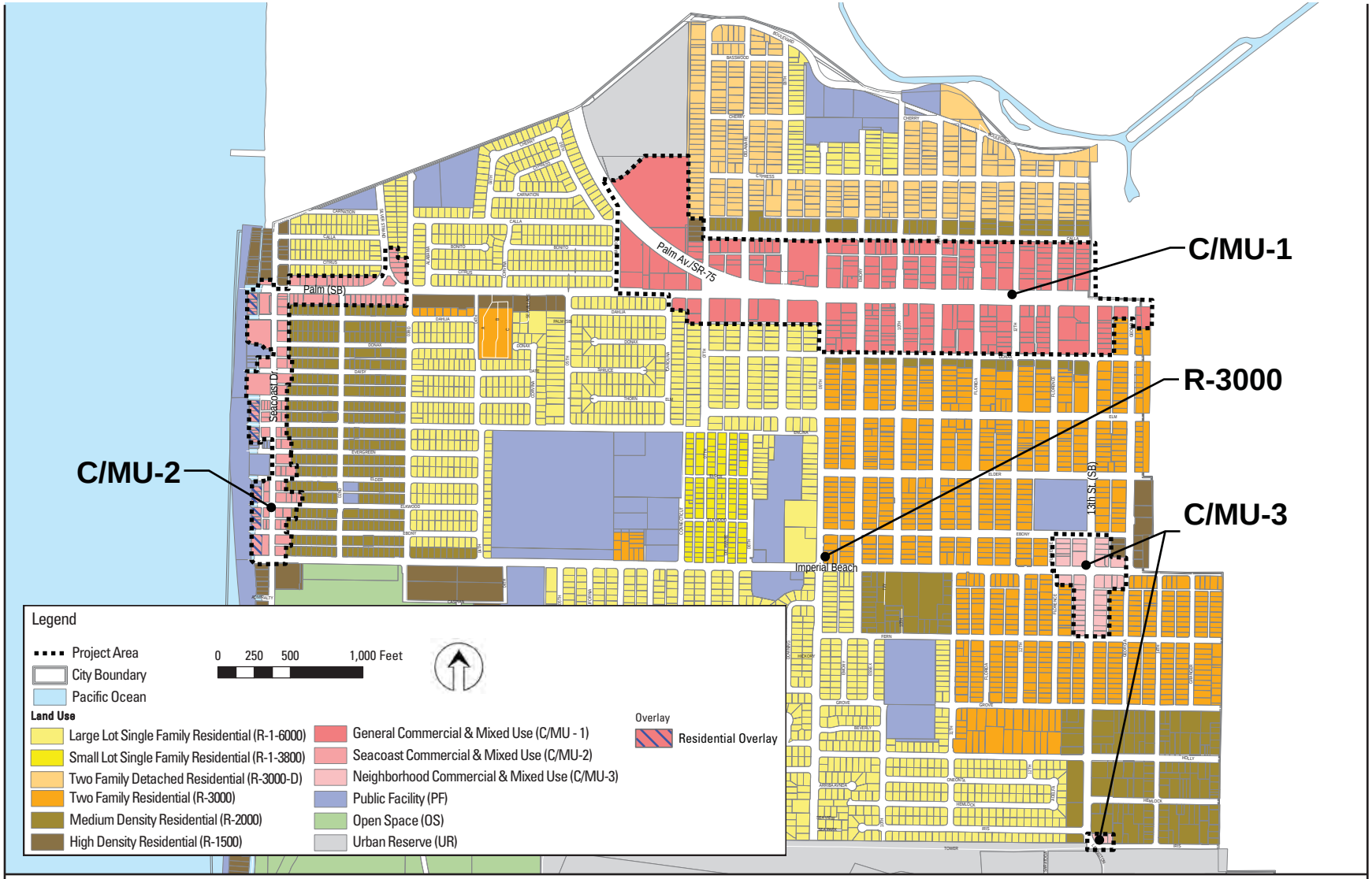
APPROVED AS TO FORM:

Jennifer M. Lyon

JENNIFER M. LYON
CITY ATTORNEY

ATTACHMENT 2

Proposed
Zoning Code Amendments



Proposed Zoning Map

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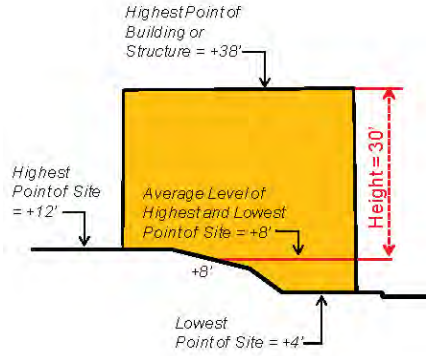
PROPOSED NEW AND AMENDED DEFINITIONS



19.04.400. Height, Measurement of

Height shall be measured from the average level of the highest and lowest point of that portion of the building site covered by the building or structure to the highest point of the building or structure.

19.04.217. Religious Assembly

"Religious assembly" means an institution organized and operated for nonprofit purposes within the provisions of Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the California Revenue and Taxation Code and to whom the Franchise Tax Board has issued a determination exempting the organization from tax, which people regularly attend to participate in or hold religious services, meetings, and other activities.

19.04.410. Hotel

"Hotel" means any establishment offering commercial transient lodging accommodation on a less than monthly basis to the general public, including any incidental services such as eating, drinking, meeting, banquet, entertainment, or recreational services intended primarily for the convenience of guests. Hotels shall consist of various types, which are further defined as follows:

H-1: A site area of a minimum square footage of thirty-five thousand square feet; at least thirty guest rooms; facilities for conference, meeting, or public use; and a full-service restaurant on-site.

H-2: A "motel," which is an establishment providing guest rooms for periods less than thirty days, with most rooms gaining access from an exterior walkway.

H-3: A lot, parcel, or segment of real property dedicated to "timeshare units" as defined in Section 19.04.756 of this Code.

H-4: A "bed and breakfast" lodging place containing no more than six guest rooms and one kitchen. (Ord. 2003-1007 § 1, 2003; Ord. 94-884, 1994)

H-5: An "inn" means a commercial establishment that affords public lodging to travelers, for periods less than thirty days. A kitchen and dining area may also be included to provide meal and beverage service to guests and to the general public.

19.04.530. Massage Therapy Establishment

"Massage therapy establishment" means a fixed location at which a massage business engages in or carries on a commercial activity involving, in whole or in part, the recurring giving or administering of massages on the premises, consistent with the definition in Section 4.28.020 of the Imperial Beach Municipal Code, and in compliance with SB 731. This definition specifically excludes any adult-oriented business as defined in Section 19.60 of the Imperial Beach Municipal Code.

Active Commercial Uses

"Active commercial uses" mean commercial uses that are oriented along the street wall facing the main street at ground level. Active commercial uses should be accessible to the general public, generate walk-in pedestrian clientele, and contribute to a high level of pedestrian activity. Property entrances will be oriented to the street, which will facilitate sidewalk traffic and active streets. Uses that generate pedestrian activity include retail shops, grocery stores, restaurants, bars, theaters and the performing arts, personal convenience services, hotels, banks, travel agencies, child care services, libraries, museums and galleries, and commercial recreation and entertainment.

Active Use Area

"Active use area" means all portions of a site and buildings included in the use area, except storage, parking, and landscaping.

Antique Store

"Antique store" means a bona fide antique store in which substantially all the merchandise is antique. "Antique" means any collectible, object of art, bric-a-brac, curio, household furniture, or other furnishing offered for sale upon the basis, expressed or implied, that the value of the property, in whole or in substantial part, is derived from its age or from historical associations.

Athletic or Health Clubs

"Athletic or health clubs" means any business that offers or provides to the public, services, facilities, and/or instruction in bodybuilding, exercising, weight reduction, figure development, aerobics, or any other similar physical activity. This includes physical fitness clubs, yoga or pilates studios, and dance studios.

Courtyard

"Courtyard" means an open space unobstructed to the sky, located at or above grade level on a lot, and bounded on two or more sides by walls of a building.

Dwelling, Multiple-Family

"Multiple-family dwelling" means a residential structure containing two or more dwelling units that are attached vertically or horizontally.

Emergency Shelter

"Emergency shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Garage

"Garage" means an accessible and usable enclosed space of not less than nine feet by nineteen feet for the parking of automobiles off the street.

Green Building Utilities

"Green building utilities," also referred to as small wind turbines, residential alternative power sources, or small alternative utilities, refers to the provision of sustainable essential services (such as water and electricity) in the form of small infrastructure that reuses water or generates electricity that is primarily used on-site and which support the principal development. Examples of green building utilities include small wind turbines, solar panels, and barrels for grey water reuse.

Ground Floor Retail (see Retail, Ground Floor, below)

Habitable Floors

"Habitable floors" are levels within a residential or mixed-use structure that permit residential, employment, visitor, or similar uses to be developed. Habitable floors do not include levels with rooftop, mechanical equipment, architectural treatments, stairwell entries, or similar uses open or partially open to the environment at the highest floor of the structure. The highest habitable floor shall not exceed the height limits defined in respective zones.

Height, First Floor

"First floor height" means the vertical distance from the average level of the highest and lowest point of that portion of the building site covered by the building or structure, to the highest point of the ceiling.

Hostel

"Hostel" means a place where travelers may stay for a limited duration at low cost in a facility that is appropriately recognized by a state, national, or international hostel organization and that may include dormitory-like sleeping accommodations.

Incidental Manufacturing

"Incidental manufacturing" means design, fabrication, and assembly of items for sale and is incidental or secondary to the use of the premises for retail sales of the items being produced. Manufacturing activities would involve production of individual items by hand manufacturing or the use of electric hand tools. Floor area used for manufacturing or storage of produced goods should not exceed the floor area used for retail sales. Typical uses would include ceramic studios, candle-making, leather-working, or custom jewelry manufacturing.

Kiosk

"Kiosk" means a small booth with an open window on one or more sides for selling small consumables such as newspapers, magazines, street maps, and confections. An information kiosk (or information booth) dispenses information in the form of maps, pamphlets, and other literature, and/or advice offered by an attendant. An electronic kiosk (or computer kiosk or interactive kiosk) houses a computer terminal that may store data locally, or retrieve it from a computer network and provide an informational public service or serve a commercial purpose. Kiosks shall be fixed in nature and may not be movable. Kiosks do not include push carts or vending machines. Additionally, a kiosk is not to exceed twenty square feet in area and shall be located on public plazas or private leaseholds.

Live/Work Units

A "live/work unit" means a structure or portion of a structure combining a residential living space for a group of persons including not more than four adults in the same unit with an integrated work space principally used by one or more of the residents of that unit.

Live Entertainment

"Live entertainment" includes live music, recorded music, music played by a DJ, comedy, karaoke, readings, dancing, acting, or other entertainment performed on a site three or more days during a calendar year. This includes dancing by patrons to live music, recorded music, or music played by a DJ or disk jockey.

Loading Area

"Loading area" means an area of adequate size for the delivery vehicles expected to be used, logically and conveniently located for bulk pickup and delivery, readily accessible when required parking spaces are filled, and located totally outside of any street or alley right-of-way.

Main Streets

"Main street" is defined as the primary street adjacent to a parcel that carries the largest amount of pedestrian and automotive traffic. For the commercial zones within the City, the main streets are considered Palm Avenue, Old Palm Avenue, State Route 75 (SR-75), Seacoast Drive, Imperial Beach Boulevard, and 13th Street.

Mixed-Use Development

"Mixed-use development" means a development consisting of one or more lots developed as a cohesive project and designed with a blend of various compatible uses such as commercial, residential, and institutional. The uses may be located in the same building or in separate buildings on the same site plan. A mixed-use development should not consist exclusively of live/work units.

Open Space, Private

"Private open space" means an area connected or immediately adjacent to a dwelling unit. The space can be a balcony, porch, ground or above grade patio, or roof deck used exclusively by the occupants of the dwelling unit and their guests.

Open Space, Public

"Public open space" means those usable outdoor spaces commonly accessible to all residents and users of the building for the purpose of passive or active recreation.

Paseo

"Paseo" means a path set aside for pedestrian walking that may pass through any part of a parcel to access points away from the main street edge.

Parapet

"Parapet" means a low protective wall or railing along the edge of a raised structure such as a roof or balcony.

Pedestrian Entrance

"Pedestrian entrance" means a functional entrance or door that is accessible to the general public from an enclosed occupied space. This does not include entrances to mechanical equipment or storage areas, emergency exits, or decorative nonfunctional doors and entrances.

Personal Convenience Services

"Personal convenience services" include commercial establishments such as, but not limited to, dry cleaners, shoe repair, drug stores, convenience stores, barber shops, hair salons, nail salons, mailing centers, ticket sales, and travel agents, excluding any adult uses as defined in Section 19.04 of the Municipal Code.

Plaza

A "plaza" is a type of public open space usually located near urban buildings and often featuring walkways, trees and shrubs, places to sit, and sometimes smaller shops.

Public Parking Lot

A "public parking lot" means a parking area that contains parking spaces available to all members of the public on a free or for-fee basis, for purposes of parking a motor vehicle while accessing other areas in the city.

Retail Sales

"Retail sales" refers to establishments primarily engaged in the sale or rental of goods or merchandise for personal or household use. Typical uses would include department stores, variety stores, drug stores, jewelry stores, apparel stores, and furniture stores.

Retail, Ground Floor

"Ground floor retail" is considered a general commercial use that is oriented along the street wall facing a main street with pedestrian movement, serves as a component of a mixed-use

or multi-story project, and is suitable for a broad range of retail types that add to and benefit from a pedestrian retail context.

Second-Hand Store or Thrift Shop

"Second-hand store" or "thrift shop" means a place of business that engages in buying and selling, trading, or accepting for sale on consignment previously sold property, excluding bona fide antique stores (see definition).

Senior Housing

"Senior housing" or "senior units" means a housing development as defined in State of California Civil Code Section 51.3.

Stepback

"Stepback" means the minimum horizontal distance between the building line of a developed floor beneath and the building line of a floor above the ground floor along any side of a structure as defined in the respective zones in this code.

Street Wall

"Street wall" means the building façade along a property line adjacent to any public street. The street wall may include arcades, colonnades, recessed entrances, private open space, and urban open space.

Urban Open Space

"Urban open space" means any usable space accessible to the general public that is one thousand square feet or greater in size such as plazas, parks, etc.

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Chapter 19.23. COMMERCIAL/ MIXED-USE USE REGULATIONS

The following land uses are allowed in the C/MU-1, C/MU-2, and C/MU-3 zones as uses that are expressly permitted, uses that require a conditional use permit, or uses that are permitted only if in compliance with specific location requirements. Any use not listed is prohibited unless the City Council determines it to be compatible with the zone.

Key to Land Use Tables	
P	Expressly permitted
C	Permitted with conditional use permit
N	Not permitted

Notes

Per the City's zoning code, hotels consist of various types and are defined as follows:

- H-1 A site area of a minimum of thirty-five thousand square feet; at least thirty guest rooms; facilities for conference, meeting, or public use; and a full-service restaurant on-site.
- H-2 A "motel," which is an establishment providing guest rooms, for periods less than thirty days, with most rooms gaining access from an exterior walkway.
- H-3 A lot, parcel, or segment of real property dedicated to "timeshare units," as defined in Section 19.04.756 of the Imperial Beach Municipal Code.
- H-4 A "bed and breakfast" lodging place containing no more than six guest rooms and one kitchen.
- H-5 An "inn" means a commercial establishment that affords public lodging to travelers, for periods less than thirty days. A kitchen and dining area may also be included to provide meal and beverage service to guests and to the general public.

Commercial Uses	**C/MU-1**	**C/MU-2**	**C/MU-3**	**Notes**
Adult bookstore, adult hotel/motel, adult mini-motion picture theater, adult motion picture arcade, adult motion picture theater, sexual encounter studio, rap parlor, model studio	P	N	N	See definitions. Subject to requirements for adult-oriented businesses in Chapter 19.60.
Antique store	P	P	P	See definition.
Arcades and game centers	C	C	C	See definition.
Art studio, gallery, museum	P	P	P	See definition.
Athletic and health clubs	P [C]	P [C]	P [N]	See definition.
Bars or cocktail lounges	C	C	N	See definition.
with live entertainment	C	C	N	See definition.
Beach equipment rental, bike rental, surf shop, fishing supply	P	P	N	
Body piercing establishment	C	N	N	See definition. Subject to Section 19.26.020(B)(1).

Bookstore	P	P	P	
Boutique	P	P	P	
Cabaret	C	N	N	See definition. Subject to Section 19.60.
Child day care center	P	P	P	See definition.
Clinic	P	P	P	See definition.
Dancehall	C	N	N	See definition. Subject to Section 19.60.
Department store	P	N	N	
Drive-in restaurant	P	P	N	See definition.
Drive-through establishment	C	N	C	See definition.
Fortune telling establishment	C	N	N	See definition. Subject to Section 19.26.020(B)(3).
Kennel	C	N	N	See definition. Subject to Section 19.74.050.
Kiosk	P [C]	P	P [C]	See definition. In C/MU-2: Subject to Section 19.27.020(A)(2).
Liquor store	P	P	N	See definition.
Massage therapy establishment	P	P	P	See definition. Per Senate Bill 731.
Mortuary	C	N	N	
Motor vehicle sales	C	N	N	Subject to Section 19.74.070.
Palm reading establishment	C	N	N	See definition. Subject to Section 19.26.020(B)(3).
Pawnshop	C	N	C	See definition.
Personal convenience services	P	P	P	See definition.
Pool or billiard hall	C	C	N	See definition.
with live entertainment	C	C	N	See definition.
Postal services, private	P	P	P [C]	
Professional offices, financial institutions, and real estate	P	P [C]	P	
Restaurant	P	P	P	See definition.
with live entertainment	C	C	C	See definition.
Retail food store	P	P	P	
Retail sales	P	P	P	See definition.
Sales of secondhand or used merchandise	N	N	N	See definition.
Tattoo establishment	C	N	N	See definition. Subject to Section 19.26.020(B)(4).
Residential and Similar Uses	C/MU-1	C/MU-2	C/MU-3	**Notes**
Accessory building, structures, private garages	C	C	C	See definition of accessory building.
Boarding house	C [P]	N	N	See definition.

Emergency shelter	P	N	N	See definition.
Hostel	N	C	N	See definition.
Hotel, motel, bed and breakfast lodging, inn (H-1, H-2, H-3, H4, H-5)	P	P	P [C]	See definitions above.
Live/work unit	P	P	P	See definition.
Mixed-use development	P	P	P	See definition.
Motor home/manufactured housing community	N	N	N	See definitions.
Multiple-family dwellings	P	P	P	See definition. See requirement for active commercial uses on ground floor per Sections 19.26.020(A)(1), 19.27.020(A)(1), 19.28.020(A)(1).
Second-family units	N	N	N	
Senior housing, nursing home, retirement home	C	C	C	See definitions (definition of senior housing added).
Short-term rental	P	P	P	See definition.
Single-family detached	N	N* [P]	N	*Only permitted in Seacoast Residential Overlay Zone.
Timeshare	C	C	N	See definition.
Light Industrial Uses	**C/MU-1**	**C/MU-2**	**C/MU-3**	**Notes**
Automobile dismantling or wrecking yard	N	N	N	See definition.
Automobile repair or automobile body shop	C	N	N	See definitions.
Automobile sales lot	C	N	N	See definition.
Automobile service station/gas station	C	N	C	See definition.
Energy facility	C	N	N	See definition.
Equipment rental yard	C	N	N	
Incidental manufacturing	C	C [N]	C [N]	See definition.
Light manufacturing, manufacturing, industrial	N	N	N	
Public and Semi-public uses	**C/MU-1**	**C/MU-2**	**C/MU-3**	**Notes**
Campsites	N	N	N	See definition.
Clubs, fraternal/veteran/service organizations	C	C	C [N]	Subject to Sections 19.26.020(B)(2), 19.27.020(A)(3), 19.28.020(A)(2).
with live entertainment	C	C	C	
Educational institutions	C	C	N	

Governmental or quasi-public building	P	P	P	
Library	P	P	P	
Religious assembly	C	C	C	See definition. Subject to Sections 19.26.020(B)(2), 19.27.020(A)(3), 19.28.020(A)(2).
Public parking lot	P	P [C]	P	
Theatre/Assembly	C	C	C	
Wireless communication facility	C	C	C	See definition. Subject to Section 19.90.
Green Building Utilities	**C/MU-1**	**C/MU-2**	**C/MU-3**	**Notes**
Green Building Utilities	P	P	P	See definition. Subject to Section 19.92.
Open Space and Recreation	**C/MU-1**	**C/MU-2**	**C/MU-3**	**Notes**
Passive public parks	P	P	P	
Playground and recreation areas	C	C	C	Permitted if incidental and accessory to a permitted use.
Public riding and hiking trails	P	P	P	

Notes:

[C] or [P] or [N] text indicates land use permission in the existing ordinance that is proposed to be changed.

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Chapter 19.26. C/MU-1 GENERAL COMMERCIAL AND MIXED-USE ZONE

19.26.010. Purpose of zone.

The purpose of the C/MU-1 zone is to provide areas for mixed-use development, multiple-family dwellings, and for businesses to meet the local demand for commercial goods and services. It is intended that the dominant type of commercial activity in the C/MU-1 zone will be community and neighborhood serving retail and office uses. (Ord. 94-884, 1994)

19.26.020. Permitted uses.

A. Specified commercial, residential, light industrial, public and semi-public, green building utilities, and open space and recreation uses allowed in the C/MU-1 zone are listed in Chapter 19.23, including those requiring a conditional use permit, and shall also comply with the following land use regulations:

1. For all buildings with frontage along Palm Avenue between 7th Street and Florida Street, including those with multiple-family dwelling units, “active commercial uses” as defined in Chapter 19.05 are required to be provided at a minimum of sixty percent of each building’s ground floor square footage, have direct pedestrian access from the Palm Avenue sidewalk or a plaza, and have a minimum building depth of twenty-five feet. Exceptions would require approval of a conditional use permit.

2. Residential dwelling units may be permitted at a maximum density of one unit per every one thousand gross square feet of lot area.

3. A kiosks shall not exceed twenty square feet in area, and shall be located on public plazas or private leaseholds. Kiosks shall not exceed ten locations in the C/MU-1 zone.

4. Time shares require approval of a conditional use permit and shall be prohibited on the first floor unless twenty-five percent of the units are restricted to overnight accommodations.

B. The following uses are permitted subject to the approval of a conditional use permit and in compliance with requirements specified below:

1. Body piercing establishments may be permitted, subject to the approval of a conditional use permit; however, it is unlawful to establish any such body piercing establishment if the location is within one hundred feet of any property that is zoned R-l-6000, R-l-3800, R-3000-D, R-3000, R-2000 or R-1500, or any other area that is primarily residential in character, as evidenced by letter designation in the zoning law of the City; or within two hundred feet of any of the following:

a. Bar, cocktail lounge, or liquor store;

b. Body piercing establishment;

c. Religious assembly;

d. Educational institution;

e. Public park; or

f. Tattoo establishment.

2. Religious assemblies, clubs, fraternal organizations (e.g., Masons, Moose, Elks, and Eagles), service organizations (e.g., Rotary, Kiwanis, Lions Club, and Jaycees), and veterans organizations (e.g., American Legion, VFW, FRA, and Disabled American Veterans), may be permitted, subject to the approval of a conditional use permit and to subsections E, F, G, and H of this chapter as appropriate.

3. Fortune telling or palm reading establishments may be permitted, subject to the approval of a conditional use permit; however, it is unlawful to establish any such fortune telling or palm reading establishment if the location is within:

a. One hundred feet of any property that is zoned R-1-6000, R-1-3800, R-3000-D, R-3000, R-2000, or R-1500, or any other area that is primarily residential in character, as evidenced by letter designation in the zoning law of the City; or

b. Five hundred feet of any mobilehome park, manufactured housing community, or senior housing development; or

c. One thousand feet of any similar establishment.

4. Tattoo establishments may be permitted, subject to the approval of a conditional use permit; however, it is unlawful to establish any such tattoo establishment if the location is within one hundred feet of any property that is zoned R-1-6000, R-1-3800, R-3000-D, R-3000, R-2000, or R-1500, or any other area that is primarily residential in character, as evidenced by letter designation in the zoning law of the City; or within two hundred feet of any of the following:

a. Bar, cocktail lounge, or liquor store;

b. Body piercing establishment;

c. Religious assembly;

d. Educational institution;

e. Public park; or

f. Tattoo establishment.

C. Site plan review by the City Council will be required if any of the following applies to proposed uses located in the C/MU-1 zone:

1. All proposed developments involving new construction.

2. Any addition, construction, or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center.

3. Any proposed use or structure requiring the approval of a conditional use permit.

4. Any development including residential dwelling units.

D. Site plan review by the community development director (administrative approval) will be required if any of the following applies for proposed uses located in the C/MU-1 zone:

1. Any addition, construction, or alteration of existing buildings resulting in a one-time increase of less than ten percent of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center. Multiple additions to existing commercial buildings that cumulatively result in an increase of ten percent or greater of the originally approved gross floor area of a commercial building shall require site plan review by the City Council.

2. Exterior facade alterations to existing buildings located on a design review corridor as identified in subsection 19.83.020(A)(1) of this code.

3. The building or site or a portion of the building or site that is proposed to be occupied has been vacant for a period of two years or greater.

4. Public parking lots.

E. Notice to adjoining property owners of any application for conditional use permit for a religious assembly, club, fraternal organization, service organization, or veteran's organization, under subsection (B)(2) of this section shall be given pursuant to Section 19.86.050 of this code. Additionally, notice of hearing shall be made by mailing a postal card or letter to all the business owners within three hundred feet of the exterior boundary of the property involved, such business owners and their addresses being established for this purpose by the latest business licenses issued by the City; provided, however, that in the case where the ownership or address has recently changed and such knowledge is available to the Community Development Department, notice shall also be sent in this manner to the current business owners. Such notice shall include the nature of the proposal, a description of the property under consideration, and the time and place of the public hearing. In certain cases where mailed notice of hearing is deemed impractical, notice may be affected by posting upon the subject property and within the area of the subject property a notice bearing the same information as contained in the notice to be mailed. The notice shall be posted at least ten days prior to the date set for the public hearing, and the Community Development Department shall sign an affidavit of posting to be held in the record. No defect or irregularity in the giving of such notice shall invalidate the public hearing.

F. The report prepared by staff for the City Council on the conditional use permit application for a religious assembly, club, fraternal organization, service organization, or veteran's organization under subsection (B)(2) of this section, shall provide a listing of the number of property owners, business owners, and types of businesses located within three hundred feet of the exterior boundaries of the subject property. Prior to the scheduled public hearing, the applicant shall attempt to contact the property owners and business owners located within three hundred feet of the exterior boundary of the subject property to determine how many support and how many oppose the application for the conditional use permit on the subject property. The results of the survey of the property owners and business owners shall be forwarded to City staff for inclusion in the staff report to the City Council.

G. Prior to the issuance of a conditional use permit for a religious assembly, club, fraternal organization, service organization, or veteran's organization under subsection (B)(2) of

this section, the applicant must demonstrate and the City Council must make a finding that the parking requirements of Chapter 19.48 of this code are met and that sufficient parking exists to accommodate the proposed uses.

H. Any conditional use permit issued for a religious assembly, club, fraternal organization, service organization or veteran's organization under subsection (B)(2) of this section shall, at a minimum, specifically address the following:

1. Proposed uses or activities;

2. Hours of operations, uses, and activities;

3. The days of the week and times for meetings or gatherings and the number of people attending those meetings or gatherings;

4. The number, time, and days of the week of any proposed musical activities, performances, or entertainment;

5. The number, time, and days of the week of activities involving infants, pre-teens, teens, or young adults;

6. The dates, times, and number of persons in attendance for any special meetings, events, or gatherings not included in the normal hours of operation, that are directly related to the operation, uses, and activities of the facility, or are attended by the principal membership of the facility;

7. The dates, times and number of persons in attendance for any special meetings, events, or gatherings not included in the normal hours of operation, if any, that are not directly related to the operation, uses, and activities of the facility, nor are attended by the principal membership of the facility; and

8. No child care services by persons unrelated to the parent or child, child day care center, or educational institution shall be operated on the premises unless specifically provided for under the conditional use permit issued for the religious assembly, club, fraternal organization, service organization, or veteran's organization. Nothing in subsections E, F, G, or H of this section shall supersede or preempt the issuance criteria for a conditional use permit as set forth in Chapter 19.82 of this code. (Ord. 2003-1013 § 4, 2003; Ord. 2002-986 §§ 2, 3, 2002; Ord. 2002-983 §§ 21, 22, 2002; Ord. 2001-973 §§ 3—6, 2001; Ord. 2001-971 §§ 3—5, 2001; Ord. 2001-960 §§ 3—8, 2001; Ord. 94-884, 1994)

19.26.040. Yards.

Yard requirements for the C/MU-1 zone are as follows:

A. Front Yard. Zero feet; up to forty percent of the project frontage may be set back up to an additional five feet. Front yards facing Donax Avenue or Calla Avenue shall be a minimum of fifteen feet.

B. Side Yard. There shall be a minimum side yard of five feet.

C. Rear Yard. There shall be a minimum rear yard of ten feet.

D. The open space and landscaping requirements as stated in Chapter 19.50 of this code shall be met.

19.26.041. Stepbacks

For property with a side or rear yard abutting a residential zone, the second floor shall be set back a minimum of five feet from the abutting residential property line and the third floor shall be set back a minimum of ten feet from the abutting residential property line.

19.26.050. Minimum lot size.

The minimum lot size for any new lot created in the C/MU-1 zone shall be three thousand square feet (for related provisions concerning small lots, see Chapter 19.42.). (Ord. 94-884, 1994)

19.26.060. Frontage.

Every new lot created in the C/MU-1 zone shall have a minimum width along a street of thirty feet (for related provisions concerning small lots, see Chapter 19.42.). (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.26.070. Building height.

No building in the C/MU-1 zone shall exceed four stories or forty feet in height, whichever is less. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983). All commercial spaces on the ground floor shall have a minimum fifteen-foot floor-to-ceiling height; and single-story commercial buildings shall have a minimum building height of twenty feet.

19.26.080. Separation of buildings.

No buildings shall be located less than five feet from any other building on the same lot. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.26.110. Parking.

For provisions on parking applicable in the C/MU-1 zone, see Chapter 19.48. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.26.120. Signs.

For provisions on signs applicable in the C/MU-1 zone, see Chapter 19.52. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.26.130. Uses conducted outside buildings.

For provisions on uses conducted outside buildings applicable in the C/MU-1 zone, see Chapter 19.72. (Ord. 94-884, 1994)

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Chapter 19.27. C/MU-2 SEACOAST COMMERCIAL AND MIXED-USE ZONE

19.27.010. Purpose of zone.

The purpose of the C/MU-2 zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in the C/MU-2 zone will be visitor-serving retail such as specialty stores, surf shops, restaurants, and hotels and motels. Additionally, the Seacoast Residential Overlay Zone has been established to preserve opportunities for single-family residences within the overlay area. Mixed-use and multiple-family residences are also permitted in the C/MU-2 zone and in the Seacoast Residential Overlay Zone. The development standards of the C/MU-2 zone encourage pedestrian activity through the design and location of building frontages and parking provisions. (Ord. 94-884, 1994)

19.27.020. Permitted uses.

A. Specified commercial, residential, light industrial, public and semi-public, green building utilities, and open space and recreation uses allowed in the C/MU-2 zone are listed in Chapter 19.23, including those requiring a conditional use permit, and shall also comply with the following land use regulations:

1. For all buildings with frontage along Seacoast Drive, including those with multiple-family dwelling units, “active commercial uses” as defined in Chapter 19.04 are required to be provided at a minimum sixty percent of each building’s ground floor square footage and have direct pedestrian access from the Seacoast Drive sidewalk or a plaza. Exceptions would require approval of a conditional use permit.

2. Kiosks are not to exceed twenty square feet in area each, shall be located on public plazas or private leaseholds, and shall not exceed ten locations in the C/MU-2 zone.

3. Religious assemblies, clubs, fraternal organization (e.g., Masons, Moose, Elks, and Eagles), service organizations (e.g., Rotary, Kiwanis, Lions Club, and Jaycees), and veterans organizations (e.g., American Legion, VFW, FRA, and Disabled American Veterans) require approval of a conditional use permit and are subject to subsections D, E, F, and G of this section as appropriate.

4. Time shares require approval of a conditional use permit and shall be prohibited on the first floor unless twenty-five percent of the units are restricted to overnight accommodations.

5. Multiple-family residential dwelling units are permitted at a maximum density of one unit per every one thousand five hundred gross square feet of lot area; or if located on Palm Avenue and the east side of Seacoast Drive, residential dwelling units may be increased to a maximum density of one dwelling unit for each one thousand two hundred and ten gross square feet of lot area with approval of a conditional use permit by the City Council that demonstrates compliance with two or more of the following development incentives:

a. Project sites that are consolidated to a final size greater than twenty thousand square feet;

b. Entire project achieves Leadership in Energy and Environmental Design (LEED) Green Building Rating System certification, a comparable green building certification, or can demonstrate the ability to achieve certification;

c. Entire project provides a minimum of seventy-five percent “active commercial uses” on the ground floor;

d. At least twenty-five percent of proposed residential units must be three-bedroom units;

e. Provide an additional one hundred square feet of public open space or plaza space with minimum dimensions of six feet by ten feet;

f. Dedicate a minimum of one foot of private property frontage to public use (creates a one-foot front setback dedicated to public use);

g. Floors above first floor provide additional stepback of five feet beyond required stepback.

B. Site plan review by the City Council will be required if any of the following applies for proposed uses located in the C/MU-2 zone:

1. All proposed developments involving new construction;

2. Any addition, construction, remodeling or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center;

3. Any proposed commercial use, residential use, or structure requiring the approval of a conditional use permit;

4. Any development including residential dwelling units; and

5. Public parking lots.

C. Site plan review by the community development director (administrative approval) will be required if any of the following applies for proposed uses located in the C/MU-2 zone:

1. Any addition, construction, remodeling, or alteration of existing buildings resulting in a one-time increase of less than ten percent of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center. Multiple additions to existing commercial buildings that cumulatively result in an increase of ten percent or greater of the originally approved gross floor area of a commercial building shall require site plan review by the City Council;

2. Exterior facade alterations to existing buildings located on a design review corridor as identified in subsection 19.83.020(A)(1) of this title;

3. The building or site or a portion of the building or site that is proposed to be occupied has been vacant for a period of two years or greater; and

4. Kiosks.

D. Notice to adjoining property owners of any application for conditional use permit for a religious assembly, club, fraternal organization, service organization, or veteran's organization, under subsection (A)(3) of this section shall be given pursuant to Section 19.86.050 of this code. Additionally, notice of hearing shall be made by mailing a postal card or letter to all the business owners within three hundred feet of the exterior boundary of the property involved, such business owners and their addresses being established for this purpose by the latest business licenses issued by the City; provided, however, that in the case where the ownership or address has recently changed and such knowledge is available to the Community Development Department, notice shall also be sent in this manner to the current business owners. Such notice shall include the nature of the proposal, a description of the property under consideration, and the time and place of the public hearing. In certain cases where mailed notice of hearing is deemed impractical, notice may be affected by posting upon the subject property and within the area of the subject property a notice bearing the same information as contained in the notice to be mailed. The notice shall be posted at least ten days prior to the date set for the public hearing, and the Community Development Department shall sign an affidavit of posting to be held in the record. No defect or irregularity in the giving of such notice shall invalidate the public hearing.

E. The report prepared by staff for the City Council on the conditional use permit application for a religious assembly, club, fraternal organization, service organization, or veteran's organization under subsection (A)(3) of this section, shall provide a listing of the number of property owners, business owners, and types of businesses located within three hundred feet of the exterior boundaries of the subject property. Prior to the scheduled public hearing, the applicant shall attempt to contact the property owners and business owners located within three hundred feet of the exterior boundary of the subject property to determine how many support and how many oppose the application for the conditional use permit on the subject property. The results of the survey of the property owners and business owners shall be forwarded to City staff for inclusion in the staff report to the City Council.

F. Prior to the issuance of a conditional use permit for a religious assembly, club, fraternal organization, service organization, or veteran's organization under subsection (A)(3) of this section, the applicant must demonstrate and the City Council must make a finding that the off-street parking requirements of Chapter 19.48 of this code are met and that sufficient parking exists to accommodate the proposed uses.

G. Any conditional use permit issued for a religious assembly, club, fraternal organization, service organization, or veteran's organization under subsection (A)(3) of this section shall, at a minimum, specifically address the following:

1. Proposed use or activities;

2. Hours of operations, uses, and activities;

3. The days of the week and times for meetings or gatherings and the number of people attending those meetings or gatherings;

4. The number, time, and days of the week of any proposed musical activities, performances, or entertainment;

5. The number, time, and days of the week of activities involving infants, pre-teens, teens, or young adults;

6. The dates, times and number of persons in attendance for any special meetings, events, or gatherings not included in the normal hours of operation, that are directly related to the operation, uses, and activities of the facility or are attended by the principal membership of the facility;

7. The dates, times, and number of persons in attendance for any special meetings, events, or gatherings not included in the normal hours of operation, if any, that are not directly related to the operation, uses, and activities of the facility, nor are attended by the principal membership of the facility; and

8. No child care services by persons unrelated to the parent or child, child day care center, or educational institution shall be operated on the premises unless specifically provided for under the conditional use permit issued for the facility. Nothing in subsections D, E, F, or G of this section shall supersede or preempt the issuance criteria for a conditional use permit as set forth in Chapter 19.82 of this code. (Ord. 2003-1013 § 5, 2003; Ord. 2002-983 §§ 23, 24, 2002; Ord. 2001-960 §§ 9—13, 2001; Ord. 98-930 § 1, 1998; Ord. 98-920 § 1 (part), 1998: Ord. 97-910 § 1, 1997; Ord. 94-888 § 1, 1994; Ord. 94-884, 1994)

19.27.040. Yards.

Yard requirements of the C/MU-2 zone are as follows:

A. On property fronting on Seacoast Drive, the front of each building shall be set on the front property line. For purposes of this requirement an arcade is considered a part of the building. For lots not fronting on Seacoast Drive there are no front, side, or rear yard setbacks in the C/MU-2 zone except as follows:

1. A ten-foot rear and/or side yard setback is required for properties abutting any property zoned R-1-6000;

2. A five-foot rear and/or side yard setback is required for properties abutting any property zoned R-2000; and

B. For properties within the Seacoast Residential Overlay Zone, the setbacks shall be as required in Section 19.27.140(B); and

1. The open space and landscaping requirements as stated in Chapter 19.50 of this code shall be met.

.19.27.041. Stepbacks.

A. On property with a side or rear yard abutting a residential zone, the second-floor stepback shall be a minimum of five feet from the abutting residential property line and the third-floor stepback shall be a minimum of ten feet from the abutting residential property line.

B. Stepbacks are not required where the ten-foot setback is required or observed for at least fifty percent of the property line abutting residential property.

C. On properties fronting Seacoast Drive, an upper-story setback of five to ten feet is required for a minimum of fifty percent of street-facing facades along Seacoast Drive.

19.27.050. Minimum lot size.

The minimum lot size for any new lot created in the C/MU-2 zone shall be three thousand square feet (for related provisions concerning small lots, see Chapter 19.42). (Ord. 98-920 § 3 (part), 1998; Ord. 94-884, 1994)

19.27.060. Frontage.

Every new lot created in the C/MU-2 zone shall have a minimum width along a street of thirty feet (for related provisions concerning small lots, see Chapter 19.42). (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.27.070. Building height.

A. No building in the C/MU-2 zone shall exceed three stories or thirty feet in height, whichever is less, except as follows:

1. Properties within the Seacoast Residential Overlay Zone are subject to a reduced single-family residential building height of two stories or twenty-six feet, whichever is less, per Section 19.27.140(C);

2. Properties east of Seacoast Drive shall have a height limit not to exceed three stories and thirty-five feet with approval of a conditional use permit that demonstrates compliance with two or more of the development incentives listed in Section 19.27.020(A)(5); and

3. Hotel, as defined in Section 19.04.410 as an H-1 type hotel, shall have a height limit not to exceed forty feet as part of an approved Specific Plan pursuant to Section 19.27.150. (Ord. 2003-1007 § 2, 2003: Ord. 94-884, 1994).

B. All commercial spaces on the ground floor shall have a minimum fifteen-foot floor-to-ceiling height; and single-story commercial buildings shall have a minimum building height of twenty feet.

19.27.080. Separation of buildings.

No buildings shall be located less than five feet from any other building on the same lot. (Ord. 94-884, 1994)

19.27.110. Parking.

For provisions on parking applicable in the C/MU-2 zone, see Chapter 19.48. (Ord. 94-884, 1994)

19.27.120. Signs.

For provisions on signs applicable in the C/MU-2 zone, see Chapter 19.52. (Ord. 94-884, 1994)

19.27.130. Uses conducted outside buildings.

For provisions on uses conducted outside buildings applicable in the C/MU-2 zone, see Chapter 19.72. (Ord. 94-884, 1994)

19.27.140. Seacoast Residential Overlay Zone.

The area located between Ocean Boulevard on the west, Ocean Lane on the east, and between Imperial Beach Boulevard on the south and Palm Avenue on the north is designated as the Seacoast Residential Overlay Zone. The purpose of this overlay zone is to preserve opportunities for continuation of single-family residential uses in this area.

A. The following uses shall be permitted in the Seacoast Residential Overlay Zone:

1. Single-family residential;

2. Short-term rentals as defined in Section 19.040.692 of this code; and

3. Any use listed in Chapter 19.27.020 as a permitted use in the C/MU-2 zone is a permitted use in the Seacoast Residential Overlay Zone.

B. Yard requirements in the Residential Overlay Zone are as follows:

1. Residential uses:

Ocean Lane: five feet.

Side yard: five feet.

Ocean Boulevard (Beach): ten feet.

2. Commercial uses:

Ocean Lane: zero feet.

Side yard: fifteen feet.

Ocean Boulevard (Beach): ten feet.

C. Height requirements in the Seacoast Residential Overlay Zone are as follows:

Single-family uses. Two stories or twenty-six feet, whichever is less.

All other uses. As permitted per Section 19.27.070.

19.27.145. Conditional Use Permit.

Conditions for a conditional use permit may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls, and screening; requirements for installation and maintenance of landscaping and erosion control measures; requirements for street improvements and dedications, regulations of vehicular ingress and egress and traffic circulation; regulations of signs; regulations of hours of operation; establishment of development schedules or time limits for performance or completion; requirements for periodic review; and such other conditions as may be deemed necessary to ensure compatibility with existing surrounding uses, and to preserve the public health, safety, and welfare. (Ord. 2003-1013 §§ 6, 7, 2003; Ord. 94-884, 1994)

19.27.150. Specific Plan.

A. The City Council may approve a specific plan for an H-1 hotel as defined in Chapter 19.25 of this code that allows deviations from the following regulations in the C/MU-2 zone:

1. Building heights specified in Section 19.27.070, provided that a height deviation may not exceed four stories or forty feet, whichever is less;

2. Building yard requirements specified in Section 19.27.040 and building stepbacks specified in Section 19.27.041. The specific plan shall establish setbacks and stepbacks to create public view corridors to and along the beach and to avoid impacts to existing public ocean views. The specific plan shall set back private development from public use areas to maximize public access, create open space buffers, and avoid conflicts between public and private uses;

3. Parking requirements specified in Section 19.48.035 may be reduced to one parking space per unit if a site-specific parking study, taking into account the demand for parking associated with ancillary uses such as conference areas and restaurants, establishes that parking demand will not exceed one parking space per unit.

B. The intent of this section is to accommodate, to the greatest extent possible, an equitable balance of project design, project amenities, public improvements, and community and city benefits. The purpose of the specific plan is to provide flexibility in the application of development regulations for hotel projects where strict application of those regulations would restrict design options and result in a less desirable project.

C. All of the following findings must be made before a specific plan may be approved under this section:

1. The proposed project will not adversely affect the general plan or the local coastal program;

2. The proposed project will not be detrimental to the public health, safety, or welfare;

3. The proposed project, when considered as a whole, will be beneficial to the community and the city; and

4. The proposed deviations are appropriate for the location and will result in a more desirable project than would be achieved if designed in strict conformance with zoning regulations in the C/MU-2 zone.

E. A specific plan approved under this section must state the ways in which the project benefits the community and the city and the ways in which the resulting project is preferable to what the existing regulations would have allowed. (Ord. 2003-1002 § 1, 2003: Ord. 2002-984 § 1, 2002)

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Chapter 19.28. C/MU-3 NEIGHBORHOOD COMMERCIAL AND MIXED-USE ZONE

19.28.010. Purpose of zone.

The purpose of the C/MU-3 zone is to provide areas for businesses to meet the local neighborhood demand for commercial goods and services. It is intended that the dominant type of commercial activity in the zone will be neighborhood-serving retail and office uses such as markets, professional offices, personal convenience services, restaurants, and hardware stores. Multiple-family residences are also permitted in the C/MU-3 zone. (Ord. 94-884, 1994)

19.28.020. Permitted uses.

A. Specified commercial, residential, light industrial, public and semi-public, green building utilities, and open space and recreation uses allowed in the C/MU-3 zone are listed in Chapter 19.23, including those requiring a conditional use permit, and shall also comply with the following land use regulations:

1. For all buildings with frontage along Imperial Beach Boulevard and 13th Street, including those with multiple-family dwelling units, "active commercial uses" as defined in Chapter 19.04 are required to be provided at a minimum of sixty percent of each building's ground floor square footage and have direct pedestrian access from the Imperial Beach Boulevard and 13th Street sidewalks or a plaza. Exceptions would require approval of a conditional use permit.

2. Religious assemblies, clubs, fraternal organization (e.g., Masons, Moose, Elks, and Eagles), service organizations (e.g., Rotary, Kiwanis, Lions Club, and Jaycees), and veterans organizations (e.g., American Legion, VFW, FRA, and Disabled American Veterans) require approval of a conditional use permit and are subject to subsections D, E, F, and G of this section as appropriate.

3. Multiple-family residential dwelling units at a maximum density of one unit per every one thousand five hundred gross square feet of lot area; or one dwelling unit for each one thousand two hundred and ten gross square feet of lot area and subject to approval of a conditional use permit that demonstrates compliance with two or more of the following development incentives:

a. Project sites that are consolidated to a final size greater than twenty thousand square feet;

b. Entire project achieves Leadership in Energy and Environmental Design (LEED) Green Building Rating System certification, a comparable green building certification, or can demonstrate the ability to achieve certification;

c. Entire project provides a minimum of seventy-five percent "active commercial uses" on the ground floor;

d. At least twenty-five percent of proposed residential units must be three-bedroom units;

e. Provide an additional one hundred square feet of public open space or plaza space with minimum dimensions of six feet by ten feet;

f. Dedicate a minimum of one foot of private property frontage to public use (creates a one-foot front setback dedicated to public use);

g. Floors above first floor provide additional stepback five feet beyond required stepback.

4. Kiosks are not to exceed twenty square feet in area each, shall be located on public plazas or private leaseholds, and shall not exceed ten locations in the C/MU-3 zone.

B. Site plan review by the City Council will be required if any of the following applies for proposed uses located in the C/MU-3 zone:

1. All proposed developments involving new construction;

2. Any addition, construction, remodeling, or alteration of existing buildings resulting in an increase of ten percent or greater of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center;

3. Any proposed commercial use or structure requiring the approval of a conditional use permit;

4. Any development including residential dwelling units; and

5. Public parking lots.

C. Site plan review by the community development director (administrative approval) will be required if any of the following applies for proposed uses located in the C/MU-3 zone:

1. Any addition, construction, or alteration of existing buildings resulting in a one-time increase of less than ten percent of the gross floor area of a commercial structure or in an individual commercial space within the structure or within a commercial shopping center. Multiple additions of the originally approved gross floor area of a commercial building shall require site plan review by the City Council;

2. Exterior facade alterations to existing buildings located on a design review corridor as identified in subsection 19.83.020(A)(1); and

3. The building site or a portion of the building or site that is proposed to be occupied has been vacant for a period of two years or greater.

D. Notice to adjoining property owners of any application for conditional use permit for a religious assembly, club, fraternal organization, service organization, or veteran's organization, under subsection (A)(2) of this section shall be given pursuant to Section 19.86.050 of this code. Additionally, notice of hearing shall be made by mailing a postal card or letter to all the business owners within three hundred feet of the exterior boundary of the property involved, such business owners and their addresses being established for this purpose by the latest business licenses issued by the City; provided, however, that in the case where the ownership or address has recently changed and such knowledge is available to the Community Development Department, notice shall also be sent in this manner to the current business owners. Such notice

shall include the nature of the proposal, a description of the property under consideration, and the time and place of the public hearing. In certain cases where mailed notice of hearing is deemed impractical, notice may be affected by posting upon the subject property and within the area of the subject property a notice bearing the same information as contained in the notice to be mailed. The notice shall be posted at least ten days prior to the date set for the public hearing, and the Community Development Department shall sign an affidavit of posting to be held in the record. No defect or irregularity in the giving of such notice shall invalidate the public hearing.

E. The report prepared by staff for the City Council on the conditional use permit application for a religious assembly, club, fraternal organization, service organization, or veteran's organization, under subsection (A)(2) of this section, shall provide a listing of the number of property owners, business owners, and types of businesses located within three hundred feet of the exterior boundaries of the subject property. Prior to the scheduled public hearing, the applicant shall attempt to contact the property owners and business owners located within three hundred feet of the exterior boundary of the subject property to determine how many support and how many oppose the application for the conditional use permit on the subject property. The results of the survey of the property owners and business owners shall be forwarded to City staff for inclusion in the staff report to the City Council.

F. Prior to the issuance of a conditional use permit for a religious assembly, club, fraternal organization, service organization, or veteran's organization, under subsection (A)(2) of this section, the applicant must demonstrate and the City Council must make a finding that the off-street parking requirements of Chapter 19.48 of this code are met and that sufficient parking exists to accommodate the proposed uses.

G. Any conditional use permit issued for a religious assembly, club, fraternal organization, service organization, or veteran's organization, under subsection (A)(2) of this section shall, at a minimum, specifically address the following:

1. Proposed uses or activities;

2. Hours of operations, uses, and activities;

3. The days of the week and times for meetings or gatherings and the number of people attending those meetings or gatherings;

4. The number, time, and days of the week of any proposed musical activities, performances, or entertainment;

5. The number, time, and days of the week of activities involving infants, pre-teens, teens, or young adults;

6. The dates, times, and number of persons in attendance for any special meetings, events, or gatherings not included in the normal hours of operation, that are directly related to the operation, uses, and activities of the facility, or are attended by the principal membership of the facility;

7. The dates, times, and number of persons in attendance for any special meetings, events, or gatherings not included in the normal hours of operation, if any, that are not directly related to the operation, uses, and activities of the facility, nor are attended by the principal membership of the facility; and

8. No child care services by persons unrelated to the parent or child, child day care center, or educational institution shall be operated on the premises unless specifically provided for under the conditional use permit issued for the facility. Nothing in subsections D, E, F, or G of this section shall supersede or preempt the issuance criteria for a conditional use permit as set forth in Chapter 19.82 of this code. (Ord. 2002-986 §§ 7, 8, 2002; Ord. 2002-983 §§ 25, 26, 2002; Ord. 2001-973 §§ 11, 13, 14, 2001; Ord. 2001-972 §§ 1, 2, 2001; Ord. 2001-971 §§ 8, 9, 2001; Ord. 2001-960 §§ 14—18, 2001; Ord. 94-884, 1994)

19.28.030. Yards.

Yard requirements for the C/MU-3 zone are as follows:

A. Front Yard and Side Street. Zero feet; up to forty percent of the project frontage may be set back up to an additional five feet.

B. Side Yard. There shall be a minimum side yard of five feet.

C. Rear Yard. There shall be a minimum rear yard of ten feet.

D. The open space and landscaping requirements as stated in Chapter 19.50 of this code shall be met.

19.28.031. Stepbacks.

For property with a side or rear yard abutting a residential zone, the second-floor stepback shall be a minimum of five feet from the abutting residential property line and the third-floor stepback shall be a minimum of ten feet from the abutting residential property line.

19.28.040. Minimum lot size.

The minimum lot size for any new lot created in the C/MU-3 zone shall be three thousand square feet. (For related provisions concerning small lots, see Chapter 19.42). (Ord. 94-884, 1994)

19.28.050. Frontage.

Every new lot created in the C/MU-3 zone shall have a minimum width along a street of thirty feet. (For related provisions concerning small lots, see Chapter 19.42). (Ord. 94-884, 1994)

19.28.060. Building height.

No building in the C/MU-3 zone shall exceed three stories and thirty feet in height, whichever is less; or three stories or thirty-five feet in height and subject to approval of a conditional use permit that demonstrates compliance with two or more of the development incentives listed in Section 19.28.020(A)(3). All commercial spaces on the ground floor shall have a minimum fifteen-foot floor-to-ceiling height; and single-story commercial buildings shall have a minimum building height of twenty feet. (Ord. 94-884, 1994).

19.28.070. Separation of buildings.

No buildings shall be located less than ten feet from any other building on the same lot. (Ord. 94-884, 1994)

19.28.080. Parking.

For provisions on parking applicable in the C/MU-3 zone, see Chapter 19.48. (Ord. 94-884, 1994)

19.28.090. Signs.

For provisions on signs applicable in the C/MU-3 zone, see Chapter 19.52. (Ord. 94-884, 1994)

19.28.100. Uses conducted outside buildings.

For provisions on uses conducted outside buildings applicable in the C/MU-3 zone, see Chapter 19.72. (Ord. 94-884, 1994)

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Chapter 19.48. OFF-STREET PARKING

19.48.010. Purpose of provisions.

The parking regulations contained in this chapter are intended to provide space off public streets for automobiles and other vehicles, to prevent traffic congestion, to encourage safe vehicular travel, and to provide for the welfare and convenience of residents and shoppers. This chapter recognizes that adequate off-street parking facilities should be provided in accordance with the type of land use, and the standards set forth in this Title should be the minimum required to provide reasonable assurance that the public health, safety, and welfare will be maintained. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.020. Requirements generally—Existing buildings and additions.

A. The parking requirements of this chapter shall be observed only for proposed uses or developments requiring site plan review by the City Council or Community Development Director as identified in chapters 19.26, 19.27, and 19.28, provided that in no case shall the number of existing parking spaces be reduced and that any new and all existing parking spaces shall be permanently available and be permanently maintained for parking purposes.

B. Cumulative alterations or additions to existing residential structures that are not new dwelling units of up to five hundred square feet, or a combined total (existing square footage plus new square footage) of up to fifteen hundred square feet, neither of which is exceeded, shall be allowed without providing additional off-street parking as required by this chapter, provided that in no case shall the number of existing off-street parking spaces be reduced and that any new and all existing off-street parking spaces shall be made permanently available and be permanently maintained for parking purposes.

The parking exemption shall not be allowed for multifamily structures where the addition consists of a new bedroom or would be located on a portion of the lot that could otherwise be used for parking, on lots west of Seacoast Drive, and on lots fronting on the east side of Seacoast Drive.

C. Cumulative alterations or additions greater than five hundred square feet to existing residential structures, that are not new dwelling units, or a combined total (existing square footage plus new square footage) greater than fifteen hundred square feet, may be allowed without providing additional off-street parking as required by this chapter with the approval of a site plan and design review application by the community development department that demonstrate that there are inadequate side yards or areas to provide the additional parking, that

there is no adjacent alley to provide access for the additional parking, and that substitute tandem parking in the driveway will be provided. (Ord. 2007-1052, 2007; Ord. 2005-1032, 2005; Ord. 94-888, 1994)

19.48.030. Required spaces—Residential uses.

The number of required off-street parking spaces for residential uses shall be as follows:

A. R-1-6000, R-1-3800, R-3000, and R-3000-D: two spaces per dwelling unit, one hundred percent enclosed;

B. R-2000 and R-1500: two spaces per dwelling unit, fifty percent enclosed.

19.48.035. Required spaces in the C/MU-1, C/MU-2, and C/MU-3 zones.

For new development or expansion of existing structures designed to accommodate a variety of shops, stores, offices, restaurants, personal convenience services, and athletic and health clubs in the C/MU-1, C/MU-2, and C/MU-3 zones, off-street parking shall be provided in accordance with the standard listed in the following table. During site plan review, the City would determine whether the standard for required parking could be reduced based on the types of proposed land uses and existing land use, and the availability of parking (both private and public parking) in the project area. Shared parking shall be permitted and shall only be approved when technical evidence is presented to justify the shared use. The Urban Land Institute guidebook Shared Parking Second Edition (2005) shall be used as a guideline and supplemented by additional findings, where appropriate.

Zone/Land Use	Standard	25% Reduction for Vertical Mixed-use	Eligible for Waiver for Commercial Uses Less Than 1,000 SF	Eligible for Additional Parking Reduction for Shared Parking
C/MU-1 and C/MU-3	1 space per 500 gross SF of commercial	X	X	X
C/MU-2	1 space per 1,000 gross SF of commercial	X	X	X
Multiple-family Residential	1.5 spaces per dwelling unit	X		X
Hotel without Cooking Facilities	1 space per guest room	X		
Hotel with Cooking Facilities	1.5 spaces per guest room	X		

19.48.040. Required spaces—Other residentially oriented uses.

The number of required off-street parking spaces for other residentially oriented uses shall be as follows:

A. Boarding houses, retirement homes, and clubs having sleeping rooms: two spaces plus one space for each three beds;

B. Hostels: one space per five beds, plus two total employee spaces;

C. Mobile home parks, trailer parks: one and one-half spaces for each trailer space;

D. Hospitals, sanitariums: one and one-half spaces for each bed. (Ord. 2002-986 §§ 9, 10, 2002; Ord. 94-888, 1994; Ord. 601 § 1 (part), 1983).

19.48.050. Required spaces—Commercial and other uses.

The number of required off-street parking spaces for commercial and other uses shall be as follows:

A. Automobile service stations: one space for each pump island;

B. Bowling alleys: two spaces for each lane;

C. Car washes, self-service or attendant-operated: three spaces for each stall;

D. Educational institutions: five spaces plus one for each employee;

E. The following uses require one space for each fifty square feet of net floor area; plus one space per two employees at largest work shift:

1. Drive-in restaurants, drive-through establishments, and food stands.

F. The following uses require one space for each seventy-five square feet of net floor area, plus one per two employees at largest work shift:

1. Establishments for the sale and consumption on the premises of food and beverages (minimum four spaces).

G. The following uses require one space for each one hundred square feet of net floor area, plus one space per two employees:

1. Auditoriums;

2. Funeral home;

3. Mortuaries;

4. Sports arenas;

5. Stadiums;

6. Theaters.

H. The following uses require one space per each one hundred square feet of net floor area, plus one space per two employees minimum. When a conditional use permit is required for any of these uses, applicant shall provide a report by a qualified Civil Engineer or other specialist that shows the proposed uses and maximum required parking:

1. Religious assemblies;

2. Fraternal organizations (Masons, Moose, Elks, Eagles, etc.);

3. Service organizations (such as Rotary, Kiwanis, Lions Club, Jaycees, etc.);

4. Veterans organizations (American Legion, VFW, FRA, Disabled American Veterans, etc.).

I. All other commercial uses require one space for each five hundred square feet of net floor area.

J. In the C/MU-1, C/MU-2, and C/MU-3 zones, shared parking or off-site parking within one thousand feet of the project site may be used to satisfy this requirement with the approval of a conditional use permit. Projects in these zones shall be reviewed to determine the suitability and feasibility of implementing one or more transportation demand management strategies that may be approved through a development agreement. (Ord. 2005-1032 § 3; Ord. 2001-960 § 19, 2001; Ord. 94-888 § 3, 1994; Ord. 94-884, 1994; Ord. 640 § 1, 1984; Ord. 635 § 3, 1984; Ord. 601 § 1 (part), 1983)

For mixed-use development of multiple-family residential over commercial use, required parking may be reduced by up to twenty-five percent with approval of a conditional use permit.

19.48.060. Required spaces—Uses not listed.

Where parking requirements for a use are not specifically defined in this chapter, the parking requirements for such use shall be determined by the community development department, subject to approval by the City Council. Such determination shall be based upon the

requirements for the most comparable use specified in this chapter or professionally accepted standards. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.070. Required spaces—Fractional requirements.

Where computation of required off-street parking results in a fractional requirement, the requirement shall be calculated as follows:

A. If the fraction is one-half or more, it shall be calculated as one space;

B. If the fraction is less than one-half, it shall be disregarded. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.090. Size of spaces.

Each parking space shall be not less than eight and one-half feet in width, eighteen feet in length, and seven feet in height, except as follows:

A. Alley Spaces. Off-street parking spaces aligned perpendicular to an alley and accessing directly off an alley such that the alley is used for back-out shall be a minimum of twenty-two feet in length.

B. Parallel Spaces. Parallel spaces are those located parallel to a property line, accessway, building, or structure in such manner that a vehicle occupying the space must maneuver from a parallel position to the parking space. Parallel spaces shall not be less than twenty-two feet in length by eight feet in width.

C. Each parking space adjoining a wall, column, or other obstruction higher than 0.75 feet shall be increased by one foot on each obstructed side.

D. Disabled parking requirements as established under State law and the California Building Code shall be satisfied. (Ord. 94-884, 1994; Ord. 690 § 13 (part), 1986; Ord. 635 § 4, 1984; Ord. 601 § 1 (part), 1983)

19.48.100. Access.

A. No parking area in a C/MU-1, C/MU-2, or C/MU-3 zone shall be located so as to require or encourage the backing of automobiles or other vehicles across any street lot line to effect egress from the place of parking.

B. Parking areas in R zones shall meet the following standard:

1. Where properties abut both an alley and a street designed as a collector, major, or prime arterial, no new street curb cuts or parking layouts requiring backing into the street shall be allowed;

2. Where properties abut both a collector, major, or prime arterial and a local street, access shall be taken only from the local street;

3. Properties abutting both an alley and residential street shall take access from the alley with the exception that one sixteen-foot-wide curb cut allowing no more than two vehicles to back into the street may be allowed.

C. Each parking space shall be provided with adequate ingress and egress to a public street or alley. “Adequate ingress and egress” means a driveway meeting the following conditions:

1. Minimum width of nine feet;

2. Surfaced as required in this chapter;

3. No part included in the area of a required parking space;

4. Minimum width of driveway serving more than two dwelling units or a commercial use shall be twelve feet;

5. Minimum width of driveway providing two-way access shall be eighteen feet;

6. Minimum width of driveway providing two-way access to a parking area serving nine or fewer spaces on a fifty-foot-wide or smaller lot shall be twelve feet, when the parking area is not between a structure and a street subject to site plan approval by the community development department;

7. Any driveway also used for back-out and maneuvering for adjacent parking shall provide a width required under subsection D of this section.

D. The free-and-clear back-out and turning radius from a parking space to a drive aisle shall be no less than twenty-four feet.

E. All accessways shall be kept free and clear of any obstructions for a height of not less than seven feet.

F. Notwithstanding lesser setback requirements or other provisions of this title, the minimum distance from the street lot line to the door of a garage or the entrance of a carport shall be twenty feet where the garage or the entrance of a carport faces the street and the driveway is perpendicular to the street; this setback distance may be reduced to fifteen feet

subject to site plan and design review approval by the community development department. (Ord. 2005-132 § 5; Ord. 94-884, 1994; Ord. 635 § 5, 1984; Ord. 628 § 1, 1984; Ord. 690 § 13 (part), 1983; Ord. 601 § 1 (part), 1983)

19.48.110. Location.

Off-street parking facilities shall be located as follows:

A. Same Building Site. Required off-street parking spaces shall be located on the same lot they are required to serve.

B. Tandem Parking. Every required parking space shall have unrestricted ingress and egress that does not require the moving of another vehicle. This restriction may be modified by the community development department for those projects subject to Section 19.48.020(C).

C. Angle Parking. Where required parking spaces are located at an angle to the required access way of greater or less than ninety degrees, the one-way drive aisle width for a sixty degree angle shall be eighteen feet, for a forty-five degree angle thirteen feet six inches, and for a thirty degree angle twelve feet.

D. The minimum two-way aisle width shall be twenty-four feet in all cases.

E. Commercial Parking. Required off-street parking facilities serving commercial or mixed commercial-residential buildings or uses may be located in any part of a lot except within five feet of any street lot line.

F. Residential Dwellings. Required off-street parking facilities serving dwelling units shall be located as follows:

1. Unenclosed and uncovered parking spaces shall be permitted in any portion of a lot, except the required front yard of any lot (in any case not within fifteen feet of the front property line) and the required street side yard of a corner or reversed corner lot. This restriction may be modified by site plan/design review approval pursuant to Section 19.48.020(C). Any parking enclosure or cover shall respect structural yard requirements as established under this title.

2. No parking area, the location of which is not regulated by the requirements enumerated in this section, shall be located any closer than three feet from any side property line except for parking in a rear yard accessing off an alley. (Ord. 205-1032 § 5; Ord. 94-884, 1994; Ord. 690 §§ 14, 15, 1986; Ord. 635 § 6, 1984; Ord. 601 § 1 (part), 1983)

19.48.120. Surfacing.

All parking spaces, parking areas, and driveways shall be surfaced with Portland cement concrete on a suitable base as determined by the building official or may be surfaced with alternative paving materials approved by the community development department such as, but not limited to, turf pavers, ribbon driveways, and pervious concrete. Urban runoff from imperviously surfaced driveways and parking areas shall be designed to drain toward approved biofiltration areas or media filtration mechanisms. Parking spaces and parking areas shall be part of or adjacent to the paved driveway. Parking off a paved driveway, on lawns or on unpaved areas, shall not be allowed. (Ord. 2005-1032 § 5; Ord. 98-933 § 4, 1998; Ord. 98-931 § 9 1998: Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.130. Marking.

A. Each parking space shall be clearly marked and striped with paint or other more durable materials, contrasting in color with the surface to which it is applied, so as to delineate the boundaries of such space. Markings shall not be required where the boundaries are evident because of curbs, termination of paving, or similar reasons.

B. Parking spaces serving multiple family buildings (more than two dwelling units) shall be marked with the apartment number (or other designation) of each dwelling unit, so that each dwelling unit is assigned a parking space. Additional parking spaces, required or optional, need not be marked. (Ord. 2005-1032 § 5; Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.140. Bumpers.

All parking spaces abutting buildings or structures, or located so that access and egress are provided from one direction, shall be provided with concrete curb or bumper, or its equivalent, at least six inches in height. Bumpers shall be located not more than three feet from the front edge of the parking space. Bumpers shall be adequately anchored to the ground. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.150. Fences.

Where parking areas abut property zones for residential uses they shall be separated from such property by a solid fence, wall, or building six feet in height, provided that in the required front yard the fence or wall shall not exceed four feet in height. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.160. Landscaping.

For landscaping provisions applicable to off-street parking, see Chapter 19.50. (Ord. 94-884, 1994; Ord. 635 § 7, 1984; Ord. 601 § 1 (part), 1983)

19.48.170. Lighting.

All outdoor lighting for parking areas shall be so shaded and adjusted that light therefrom is directed to fall only on the same premises where such light source is located. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.180. Refuse and recycling container storage prohibited.

No required parking spaces shall be used for storage of refuse and recycling containers. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.48.190. Regulation of other parking areas.

Any area regularly used for the parking of vehicles shall be developed, improved, and maintained in the same manner as required parking areas. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

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ZONING ORDINANCE AMENDMENTS

19.06.010. Zones established.

The several zones established and into which the City is divided are designated as follows:

A. R-1-6000 — Single-family residential zone, one single-family detached dwelling unit per lot with a minimum lot size of six thousand square feet.

B. R-1-3800 — Single-family residential zone, one single-family detached dwelling unit per lot, with a minimum lot size of three thousand eight hundred square feet.

C. R-3000-D — Medium density or two-family detached residential zone, one detached dwelling unit for every three thousand square feet of lot area.

D. R-3000 — Medium density or two-family residential zone, one dwelling unit for every three thousand square feet of lot area.

E. R-2000 — Medium density residential zone, one dwelling unit for every two thousand square feet of lot area.

F. R-1500 — High density residential zone, one dwelling unit for every one thousand five hundred square feet of lot area.

G. PF — Public Facilities zone.

H. C/MU-1 — General Commercial and Mixed-use zone, one dwelling unit for every one thousand gross square feet of lot area.

I. C/MU-2 — Seacoast Commercial and Mixed-use zone, one dwelling unit for every one thousand five hundred gross square feet of lot area.

J. C/MU-3 — Neighborhood Commercial and Mixed-use zone, one dwelling unit for every one thousand five hundred gross square feet of lot area.

K. OS — Open Space zone.

L. UR — Urban Reserve zone.

(Ord. 94-884, 1994)

19.44.020. Access.

A. No parking area in the C/MU-1, C/MU-2, or C/MU-3 zone shall be located so as to require or encourage the backing of automobiles or other vehicles across any street lot line to effect egress from the place of parking.

B. Parking areas in R zones shall meet the following standard:

1. Where properties abut both an alley and a street designed as a collector, major, or prime arterial, no new street curb cuts or parking layouts requiring backing into the street shall be allowed.

2. Where properties abut both a collector, major, or prime arterial and a local street, access shall be taken only from the local street.

3. Properties abutting both an alley and residential street shall take access from the alley with the exception that one sixteen-foot-wide curb cut allowing no more than two vehicles to back into the street may be allowed. (Ord. 94-884, 1994)

19.50.031. Requirements generally—Existing buildings.

The commercial landscaping requirements of this Chapter shall be observed only for proposed commercial uses or developments requiring Site Plan Review by the City Council, as identified in Section 19.26.020, 19.27.020, and 19.28.020, provided that in no case shall the amount of existing landscaping be reduced and that any new and all existing landscaping shall be permanently maintained. (Ord. 94-884, 1994)

19.52.050. Signs Allowed on Private Property.

Signs shall be allowed on private property in the City in accordance with and only in accordance with Table “A”. If a “Yes” appears for a sign type in a column, such a sign is allowed in the zones represented by that column. If a “No” appears for a sign type in a column, such a sign is not allowed in the zones represented by that column under any circumstances.

Although permitted under the previous paragraph, a sign designated by a “Yes” in Table “A” shall be allowed only if:

A. The sum of the area of all building and freestanding signs on the lot conforms with the maximum permitted sign area as determined by the formula for the zone in which the lot is located as specified in Table “A”;

B. The size, location, and number of signs on the lot conform with the requirements of Table “B”, which establishes permitted sign dimensions by sign type, and with any additional limitations listed in Table A; and

C. The characteristics of the sign conform with the limitations of Tables “A” and “B”. (Ord. 94-884, 1994)

Table "A"

Sign Type	R-1-6000 R-1-3800 R-1-3000-D R-1-3000	R-2000, R-1500	C/MU-1	C/MU-2	C/MU-3
Freestanding					
Monument	Yes	Yes	Yes	Yes	Yes
Incidental	No	Yes	Yes	Yes	Yes
Pole	No	No	No	No	No
Building					
Banner	No	No	Yes	Yes	Yes
Canopy	No	Yes	Yes	Yes	Yes
Incidental	No	Yes	Yes	Yes	Yes
Marquee	No	Yes	Yes	Yes	Yes
Projecting	No	Yes	Yes	Yes	Yes
Roof	No	No	No	No	No
Roof Integral	No	No	Yes	yes	Yes
Suspended	No	No	Yes	Yes	Yes
Wall	No	Yes	Yes	Yes	yes
Window	No	No	Yes	Yes	Yes
Miscellaneous*					
Balloons and inflatable signs	No	No	No	No	No
Banner	No	No	Yes	Yes	Yes
Beacons	No	No	No	No	No
Billboards	No	No	No	No	No
Flag	Yes	Yes	Yes	Yes	Yes
Pennants	No	No	No	No	No
Portable	No	No	No	No	No
Other					
Animated	No	No	No	No	No
Changeable copy	No	No	No	No	No
Illumination internal	No	Yes	Yes	Yes	Yes
Illumination external	No	No	Yes	Yes	Yes
Illumination neon	No	No	Yes	Yes	Yes
Time and temperature	No	No	Yes	Yes	Yes

Table "B"

Sign Type	R-1-6000 R-1-3800 R-1-3000-D R-1-3000	R-2000 R-1500	C/MU-1	C/MU-2	C/MU-3
Freestanding					
Area (sq. ft)	N.A.	12	40	40	40
Height (feet)	N.A	6	8	8	8
Number permitted per lot frontage	N.A.	1	1	1	1
Building signs (except window)					
Area (max sq.ft.)	N.A.	32	1 per lineal ft. of wall face	1 per lineal ft. of wall face	1 per lineal ft. of wall face
Window signs	N.A.	N.A.	35% of total window area	35% of total window area	35% of total window area

Chapter 19.60. ADULT-ORIENTED BUSINESSES

19.60.010. Allowed in C/MU-1 zone only.

A. The following described businesses shall only be permitted within the C/MU-1 zone:

1. Adult bookstores;
2. Adult motion picture theaters;
3. Adult mini-motion picture theaters;
4. Adult motion picture arcades;
5. Adult hotels or motels;
6. Model studios;
7. Sexual encounter studios and rap parlors.

B. The following described businesses shall only be permitted within the C/MU-1 zone, and shall require the approval of a conditional use permit:

1. Dance halls
2. Cabarets

(Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.60.020. Establishment and location.

A. An adult-oriented business shall only be located in a C/MU-1 zone. It is unlawful to establish any such adult-oriented business if the location is:

1. Within five hundred feet of any religious assembly, public school, park, or playground;

2. Within two hundred feet of any area that is denominated as an R-1-6000, R-1-3800, R-3000-D, R-3000, R-2000, or R-1500 zone, or any other area that is primarily residential in character, as evidenced by letter designation in the zoning law of the City.

3. Within five hundred feet of another adult-oriented business.

B. The establishment of any adult-oriented business shall include the opening of such a business as a new business, relocation of such business, or the conversion of an existing business location to any adult-oriented business use. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

Chapter 19.62. BARS AND COCKTAIL LOUNGES

19.62.010. Purpose of provisions.

The purpose of this Chapter is to provide for the location of bars and cocktail lounges in the City and to provide minimum regulations designed to protect the health, safety, and welfare of the general public. The purpose is not to regulate alcoholic beverage sales or in any way to conflict with the State in its control of alcoholic beverages. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994

19.62.020. Conditional Use Permit—Required.

Bars or cocktail lounges shall be permitted in the C/MU-1 and C/MU-2 zones with approval of a conditional use permit. (Ord. 94-884, 1994)

19.62.030. Conditional Use Permit—Issuance criteria.

In considering the granting of a conditional use permit for a bar or cocktail lounge, the City Council shall use the following criteria as guidelines:

A. Establishments should not be less than two hundred feet from a residential zone;

B. Establishments should not be less than two hundred feet from an existing residential building;

C. Establishments should not be less than three hundred feet from a religious assembly or public school, playground, or park;

D. Amount of existing and proposed off-street parking;

E. Hours of operation of the proposed establishment;

F. The type of business proposed;

G. The number of bars or cocktail lounges in close proximity to the proposed establishment;

H. The possible effect of the operation of the proposed establishment on health, safety, and welfare of the neighborhood. (Ord. 94-884, 1994; Ord. 601 § 1 (part), 1983)

19.74.070. Motor vehicle sales.

A. Establishment of businesses designed for the sale, lease, or rental of new and/or used motor vehicles shall require approval of a conditional use permit and shall be permitted only in the C/MU-1 zone.

B. Before approval of a conditional use permit, the City Council shall consider the following, to be submitted by the applicant:

1. A site plan showing the parking alignment, the location of all structures, and the proposed on-site traffic flow;

2. A sign program showing all existing and proposed signing;

3. A landscape plan showing at least a ten-foot strip of permanently maintained landscaping abutting each street, except for approved areas of ingress and egress.

4. A lighting plan for display areas. (Ord. 601 § 1 (part), 1983; Ord. 94-884, 1994)

19.83.050. Design guidelines.

The Design Review Board in its project review, and the Community Development Department in its review of projects which do not appear before the Design Review Board, shall both use the "Design Manual and Design Review Guidelines" as adopted by the City Council on June 19, 1984, as a guide in reviewing projects throughout the community, with the exception of those areas for which specific unique design criteria have been established. In these cases the specific criteria will be used by the Design Review Board or the Community Development Department. (Ord. 97-917 § 1 (part), 1997) Specific design criteria for the C/MU-1, C/MU-2, C/MU-3 Commercial/Mixed-Use Zones (Commercial/Mixed-Use Zones Design Guidelines) that are adopted by the City Council are to be used by the Design Review Board and the Community Development Department when reviewing commercial and mixed-use projects.

19.92. Green Building Utilities.

Applicable standards:

1. Setbacks:

    a. Green building utilities associated with, or mounted to, a building/structure shall respect the setbacks of the established building/structure of the parcel; where encroachment is necessary for the function or design of the system, no portion of the system shall be closer than two feet to any property line and/or adjacent building/structure.

    b. Green building utilities shall be set back a minimum of ten feet from any property line abutting a street or public right-of-way. Where devices include moving parts, the measurement shall be taken from the outermost edge of the moving portion of the device.

    c. Stand-alone, ground-mounted small energy utility units are prohibited.

2. Height: Small wind turbine shall be roof mounted, with a height not to exceed fifteen feet from base/mount of the unit to the top of the unit (including blade length in vertical position where applicable). Small wind turbines shall be permitted to exceed the height limitations of the applicable zones. All other devices shall conform to the height limitations of the applicable zones.

3. Size/Coverage: A green building utility shall not exceed thirty percent area coverage of the surface to which the system is mounted; this standard shall apply to single or multiple system installations.

4. Noise: The green building utility shall be operated in such manner that it does not exceed the City's noise standards in Chapter 9.32 of the Municipal Code.

5. Design of wind system units shall be of a white, grey, or other non-obtrusive color. Design of non-solar/non-wind units shall complement the design of the associated building/structure.

6. Standard drawings and an engineering analysis of the green building utility are required showing compliance with latest version of the California Building Code.

7. Applicant shall submit line drawing of electrical components of the energy system in sufficient detail to demonstrate compliance with the applicable electrical code.

8. Applicant shall submit plan and elevation diagram of the utility and placement showing compliance with the standards identified herein.

9. Any non-operational energy systems shall be removed within twelve months after becoming non-operational.

AGENDA ITEM NO. 5.1

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**PUBLIC WORKS**
SUBJECT:	**PUBLIC HEARING; OPPOSING AN INCREASED STATE ROUTE 75 SPEED LIMIT FROM 40 MILES PER HOUR TO 45 MILES PER HOUR EAST OF DELAWARE STREET TO THE WESTERN CITY LIMITS IN BOTH DIRECTIONS**

BACKGROUND:
In October 2011, the City became aware that most recent State Route 75 (S.R. 75) speed survey study had expired. The expired speed survey meant that traffic enforcement on S.R. 75 would not be held up in court. The City asked California Department of Transportation, District 11(CALTRANS) to perform a new speed survey on S.R. 75 as soon as possible. CALTRANS initiated the speed survey in early Calendar Year 2012. On June 1, 2012, CALTRANS, Traffic Operations, reported that the speed survey for S.R. 75 was complete and that the data supported changing the speed limit on S.R. 75 east of Delaware Street to the west City limits (boundary with Coronado) from the current speed of 40 mph to 45 mph in both directions. The remainder of S.R. 75 will stay at 40 mph. On June 4, 2012 staff received a copy of the study (see attachment 2) forwarded with the following text from CALTRANS:

> ... [This] E&TS [Engineering & Traffic Survey] has not taken effect as the Order is unsigned.
>
> I have been in contact with Deputy Rob Siegfried (XXX) XXX-XXXX (direct office number) from the San Diego County Sheriff's Department who is aware of the survey. This week, Caltrans will be mailing a hard copy to Captain Roy Heringer requesting for San Diego County Sheriff's Department concurrence regarding the speed limit proposals.
>
> It is also my understanding you will be providing the E&TS to the City Manager and will be discussing whether or not to hold an optional public hearing regarding the proposed speed limit increase from 40 mph to 45 mph from just east of Delaware Street to north of Rainbow Drive.

This staff report is prepared for the purpose of holding a public hearing. Mr. Charles Gray and Mr. Joe Hull from CALTRANS will be present for this public hearing and available to comment on or respond to questions from Council Members. A public hearing notice was advertised starting July 5, 2012.

DISCUSSION:

The increase in posted traffic speed on S.R. 75 was viewed with some concern by City staff and staff believed that City Council may have similar concerns. Thus staff requested that CALTRANS consider participating in a public hearing when those concerns could be presented in a public meeting. Some of the comments and concerns from staff are listed below:

- The collision data set from the I.B. Sheriff's Division files show substantially different collision data than CALTRANS used from SWITTERS in their report. For instance the collisions for west Palm contain 22 crashes over a 29 month period, although some months had no crashes. Using all this information, despite the inebriated bicyclist and possibly some other crashes, we obtain a substantially higher rate of crashes per million vehicle miles (about 2.95) than CALTRANS is reporting in the speed survey (1.46). We do observe that the dates included by CALTRANS from the SWITTERS reports don't match the Sheriff's Dept. dates given the time it takes to process this in Sacramento.
- The increase in posted speed is not consistent with making Palm Avenue pedestrian friendly and it may not be consistent with the Palm Ave. master plan done several years ago.
- At the western end and around the curve there is a lot going on with the curve, intersections, signals, lane drops, merging traffic, etc., and it would not seem helpful to raise the speed through this area from 40 to 45 mph.
- It would seem that one speed limit is appropriate all the way from I-5 to the place where traffic has cleared Imperial Beach on the west/north.
- The City of Imperial Beach Palm Avenue Corridor Master Plan Study proposes to make Palm Avenue more of a Main Street in keeping with CALTRANS's "Main Streets: Flexibility in Design & Operations" manual (January 2005). "Main Streets" manual begins by stating:
    - "Caltrans recognizes the potential benefits of measures such as reducing the number of lanes through a downtown, reducing lane widths, installing traffic calming devices, **lowering speed limits**, providing angled parking, wider sidewalks, roundabouts, raised medians and providing other street side amenities that provide a feeling that a town's main street is where you want to be."
- Additionally, CALTRANS commented on the City's PEIR for the Commercial Zoning Review and General Plan Amendment (see attachment 3). The first comment in CALTRANS's comment letter states the following:
    - "The proposed revisions to the existing land use designations and zoning regulations should be consistent with the City's Palm Avenue Commercial Corridor Master Plan, for which Caltrans provided comments pertaining to the coordination between the City's Plans and Caltrans standards and requirements as owner and operator of S.R. 75 (Palm Avenue)."
- Increasing the speed limit on any section of Palm Avenue would be contrary to the stated objectives of the Palm Avenue Master Plan and CALTRANS's Main Streets manual both of which emphasize pedestrian safety, traffic calming and **speed reduction** along Palm Avenue/S.R. 75.
- Increasing speed at the intersection at 7th Street, a major bicycle crossing between the Bayshore Bikeway and the Seacoast Drive at the beachfront, heightens the risk of vehicle/bicycle incidents. This bike lane is included in the adopted Bicycle Transportation Plan (BTP).
- There is a 124 unit mobile home park with residents entering and exiting at the north side of S.R. 75 at Rainbow Drive, many of which are senior citizens. This high concentration of vehicles with older citizens increases the risk of accidents.

As Council considers the issue of changing the posted speed along the western section of S.R. 75 within the City limits of the City of Imperial Beach, the following information is pertinent:

- State law gives CALTRANS the right to determine speed limits on S.R. 75, and gives requirements for how CALTRANS sets those limits. When it recommended increasing the speed on S.R. 75 between Delaware and Rainbow, CALTRANS simply followed standard rules, except, as the City Engineer noted, that CALTRANS probably did not have to split up the roadway for purposes of the survey. But CALTRANS has a little bit of discretion, and based on the survey and comments from the City it could keep the speed limit on S.R. 75 at 40 mph.
- Assuming CALTRANS sticks with this survey and does not change its current division of S.R. 75 into two segments; CALTRANS's discretion to reduce the speed to 40 mph is limited in two ways. First, downward departures from the speed survey should only happen in unusual circumstances. Second, obvious features of the road (curves, grade, and surface conditions, for example) won't justify a downward departure. The City will need to rely on factors that aren't necessarily apparent to the average person driving the stretch of road.
- With this in mind, the City should be looking to gather information about factors that aren't so obvious to the average motorist to support a downward departure. Some ideas include looking at whether there are an unusually high number of bars/drunk patrons/DUI arrests there, whether there are unusually high ticketing rates for speeding (one of the City Engineer's good ideas), whether facilities on that stretch of road serve elderly or disabled persons who might pose an unusual traffic/collision risk, or other similar information.
- If the City conducts a public hearing (including publication in the newspaper 10 days before the hearing), CALTRANS MUST consider the City's input, but does not need to follow it.

ENVIRONMENTAL DETERMINATION:
Not a project as defined by CEQA.

FISCAL IMPACT:
The increased posted speed could increase the number of accidents thereby increasing the cost for public safety. Without historical data to capture these costs, it is impossible to put a dollar figure this additional effort.

DEPARTMENT RECOMMENDATION:

1. Open the Public Hearing.
2. Receive comment from the public.
3. Close the Public Hearing.
4. Discuss the implications of the proposed increase in the posted speed west of 9th Street.
5. Adopt Resolution No. 2012-7229 opposing the increase in posted speed on S.R. 75 east of Delaware Street to western City limits based on the following:
    a. The high number of traffic accidents as found in the Sheriff Department data.
    b. The conflict with the bicycle crossing at 7th Street.
    c. The conflict with the mobile home park entrance at Rainbow Drive.
    d. The conflict with the stated "Complete Streets" objective adopted by CALTRANS.
    e. Increasing the speed limit on any section of Palm Avenue would be contrary to the stated objectives of the Palm Avenue Master Plan and CALTRANS's Main Streets Manual both of which emphasize pedestrian safety, traffic calming and speed reduction along Palm Avenue/S.R. 75

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments:

1. Resolution No. 2012-7229.
2. CALTRANS Engineering and Traffic Survey (E&TS) dated May 30, 2012.
3. Department of Transportation, District Eleven letter dated June 5, 2012.

RESOLUTION NO. 2012-7229

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, OPPOSING AN INCREASED STATE ROUTE 75 SPEED LIMIT FROM 40 MILES PER HOUR TO 45 MILES PER HOUR EAST OF DELAWARE STREET TO THE WESTERN CITY LIMITS IN BOTH DIRECTIONS

WHEREAS, in October 2011, the City became aware that most recent State Route 75 (S.R. 75) speed survey study had expired; and

WHEREAS, the expired speed survey meant that traffic enforcement on S.R. 75 would not be held up in court; and

WHEREAS, CALTRANS initiated the speed survey in early Calendar Year 2012; and

WHEREAS, on June 1, 2012, CALTRANS, Traffic Operations, reported that the speed survey for S.R. 75 was complete and that the data supported changing the speed limit on S.R. 75 east of Delaware Street to the west City limits (boundary with Coronado) from the current speed of 40 MPH to 45 mph in both directions; and

WHEREAS, the increase in posted traffic speed on S.R. 75 was viewed with some concern; and

WHEREAS, staff recommends City Council oppose the increase in posted speed west of 9th Street based on the following:

a. The high number of traffic accidents as found in the Sheriff Department data.
b. The conflict with the bicycle crossing at 7th Street.
c. The conflict with the mobile home park entrance at Rainbow Drive.
d. The conflict with the stated "Complete Streets" objective adopted by CALTRANS.
e. Increasing the speed limit on any section of Palm Avenue would be contrary to the stated objectives of the Palm Avenue Master Plan and Caltrans' Main Streets manual both of which emphasize pedestrian safety, traffic calming and speed reduction along Palm Avenue/S.R. 75.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. This legislative body opposes the increase in posted speed on S.R. 75 east of Delaware street to west City Limits (boundary with Coronado).
3. Requests CALTRANS consider the mitigating issues noted in the public hearing as consistent with retaining the posted speed of S.R. 75 east of Delaware Street to west City Limits.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 15th day of August 2012, by the following vote:

AYES:	**COUNCILMEMBERS:**	**BILBRAY, KING, BRAGG, SPRIGGS, JANNEY**
NOES:	**COUNCILMEMBERS:**	**NONE**
ABSENT:	**COUNCILMEMBERS:**	**NONE**

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

Attachment 2

ENGINEERING AND TRAFFIC SURVEY

In the City of Imperial Beach, San Diego County, California

CALIFORNIA DEPARTMENT OF TRANSPORTATION
DISTRICT 11 - SAN DIEGO AND IMPERIAL COUNTIES

TRAFFIC OPERATIONS
PLANNING AND ENGINEERING
SUPPORT BRANCH
4050 TAYLOR STREET, MS 230
SAN DIEGO, CA. 92110-2737

ROUTE:	SD-75
POSTMILE:	9.96 – 11.19
PROJECT ID:	0000001139
DATE:	May 30, 2012

State Route 75 E&TS Route Map

City of Imperial Beach

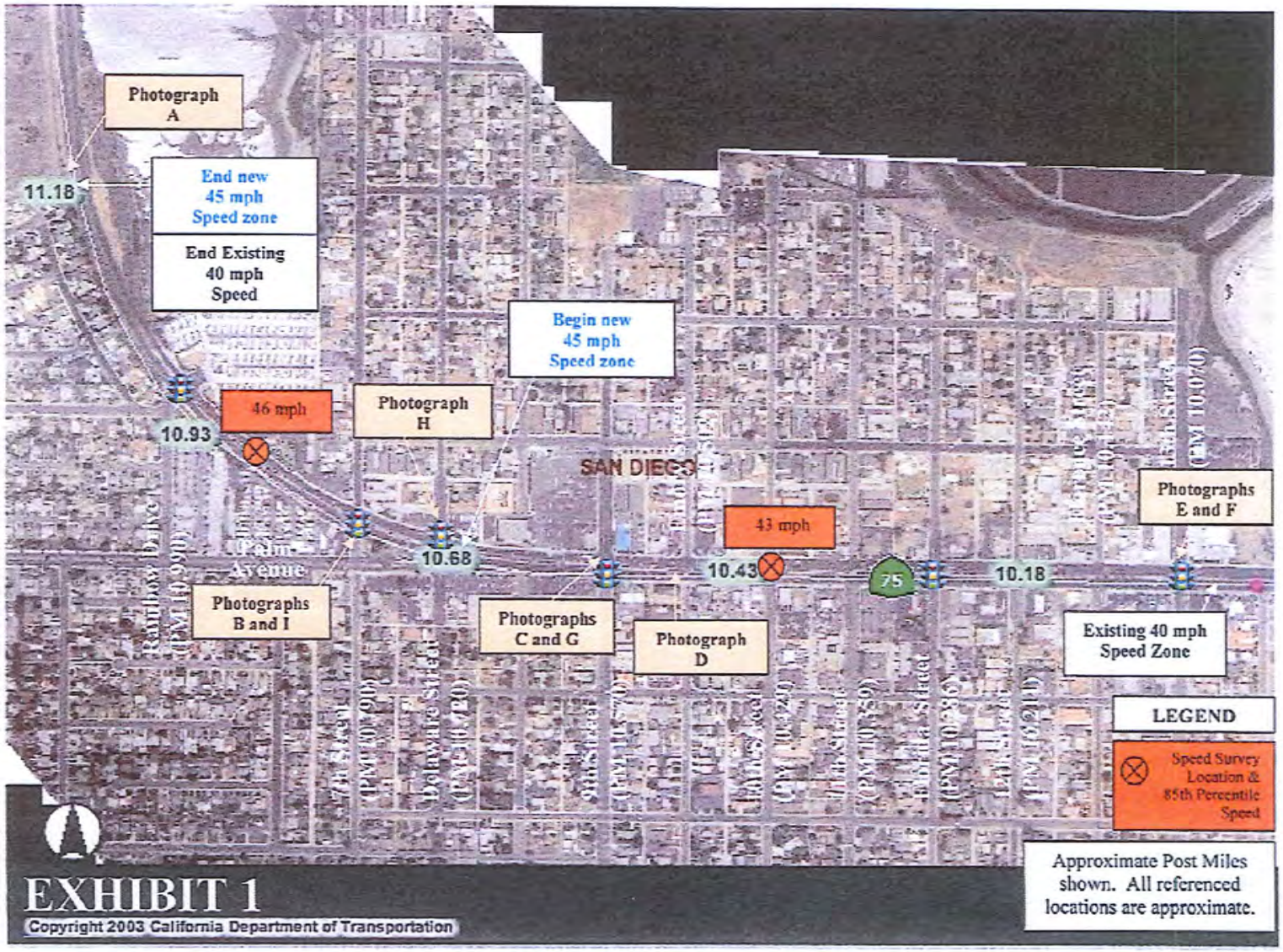

EXHIBIT 1

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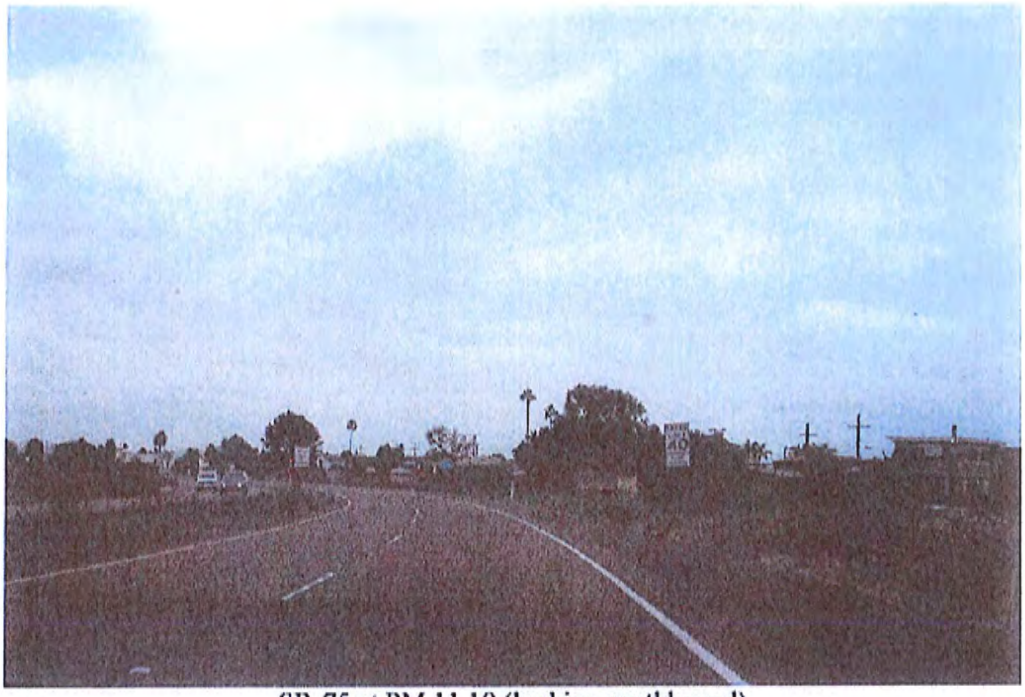


SR-75 at PM 11.19 (looking southbound)
Photograph A

SR-75 and 7th Street (looking southbound)
Photograph B

SR-75 and 9th Street (looking southbound)
Photograph C

SR-75 at Emory Street PM 10.50 (looking southbound)
Photograph D

SR-75 and 13th Street (looking southbound)
Photograph E

SR-75 and 13th Street (looking northbound)
Photograph F

SR-75 and 9th Street (looking northbound)
Photograph G

SR-75 at Delaware Street (looking southwest)
Photograph H

SR-75 and 7th Street (looking northbound)
Photograph I

C) SPEED DATA

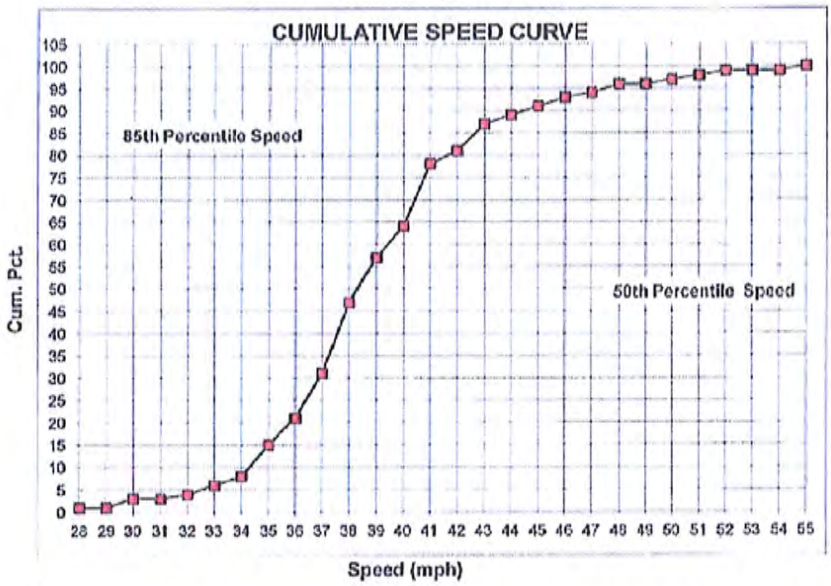
STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
CALTRANS DISTRICT 11
TRAFFIC OPERATIONS PLANNING & ENGINEERING SUPPORT BRANCH

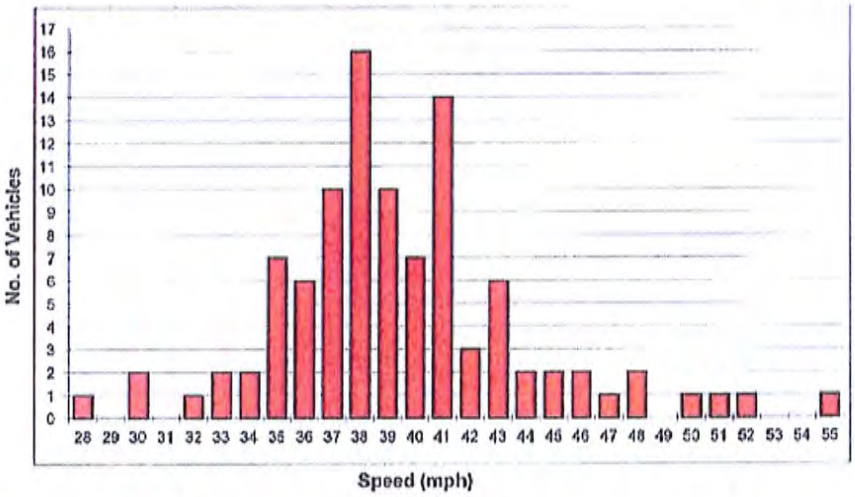
LOCATION: Between 10th Street and Emory Street
P.M.: 10.45
DIRECTION(S): SB and NB ROUTE: SR-75
DATE: 11/10/2011 TIME: 1132 to 1230
POSTED SPEED LIMITS: 40 OBSERVER: JA Jacinto and T Tadeo
WEATHER: Overcast, 74 degrees

50th Percentile Speed		39.0
85th Percentile Speed		43.0
Number of Vehicles Observed		100
Average Speed		39
Range of Speeds	28 to	55

10 MPH Pace Speed	34	to	43
Percent in Pace Speed			81
Percent over Pace Speed			13
Percent under Pace Speed			6

Speed (MPH)	No. (cars)	Pct. (%)	Cum. Pct. (%)
25	0	0	0
26	0	0	0
27	0	0	0
28	1	1	1
29	0	0	1
30	2	2	3
31	0	0	3
32	1	1	4
33	2	2	6
34	2	2	8
35	7	7	15
36	6	6	21
37	10	10	31
38	16	16	47
39	10	10	57
40	7	7	64
41	14	14	78
42	3	3	81
43	6	6	87
44	2	2	89
45	2	2	91
46	2	2	93
47	1	1	94
48	2	2	96
49	0	0	96
50	1	1	97
51	1	1	98
52	1	1	99
53	0	0	99
54	0	0	99
55	1	1	100
56	0	0	100
57	0	0	100
58	0	0	100
59	0	0	100
60	0	0	100
61	0	0	100
62	0	0	100
63	0	0	100
64	0	0	100
65	0	0	100
66	0	0	100
67	0	0	100
68	0	0	100
69	0	0	100
70	0	0	100





VEHICLE SPEED SURVEY SHEET

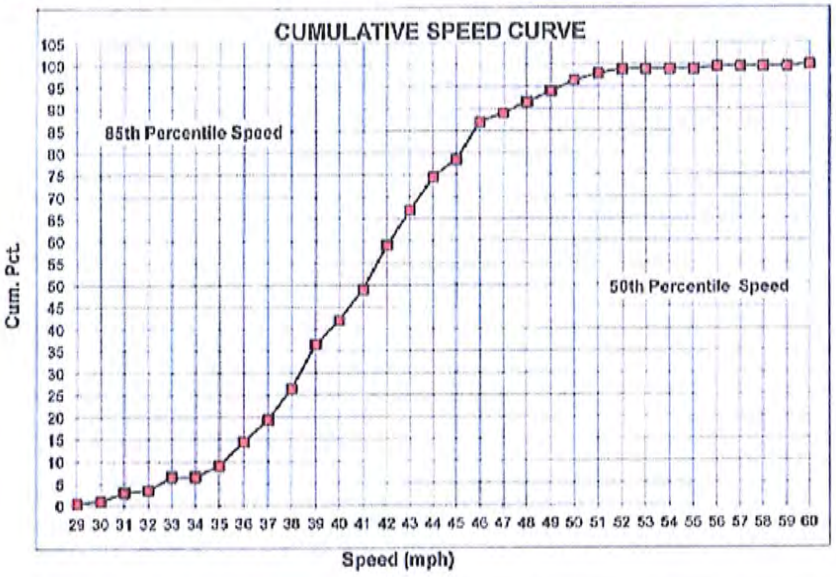
STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF TRANSPORTATION
CALTRANS DISTRICT 11
TRAFFIC OPERATIONS PLANNING & ENGINEERING SUPPORT BRANCH

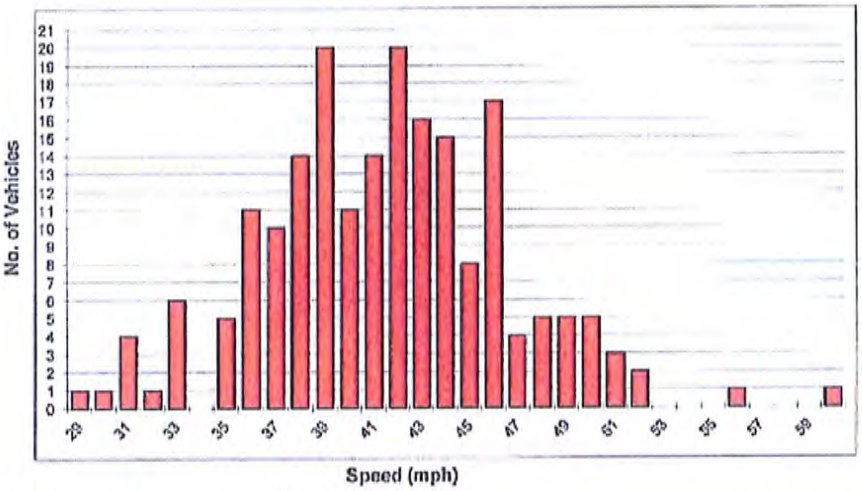
LOCATION: Between Rainbow Drive and 7th Street
P.M.: 10.89
DIRECTION(S): SB & NB ROUTE: SR-75
DATE: 1/19/2012 TIME: 1022 to 1300
POSTED SPEED LIMITS: 40 OBSERVER: T Tadeo and C Nunez
WEATHER: Sunny and Clear

50th Percentile Speed			42.0
85th Percentile Speed			46.0
Number of Vehicles Observed			200
Average Speed			42
Range of Speeds	29 to		60

10 MPH Pace Speed	37	to	46
Percent in Pace Speed			73
Percent over Pace Speed			13
Percent under Pace Speed			15

Speed (MPH)	No. (cars)	Pct. (%)	Cum. Pct. (%)
25	0	0	0
26	0	0	0
27	0	0	0
28	0	0	0
29	1	1	1
30	1	1	1
31	4	2	3
32	1	1	4
33	6	3	7
34	0	0	7
35	5	3	9
36	11	6	15
37	10	5	20
38	14	7	27
39	20	10	37
40	11	6	42
41	14	7	49
42	20	10	59
43	16	8	67
44	15	8	75
45	8	4	79
46	17	9	87
47	4	2	89
48	5	3	92
49	5	3	94
50	5	3	97
51	3	2	98
52	2	1	99
53	0	0	99
54	0	0	99
55	0	0	99
56	1	1	100
57	0	0	100
58	0	0	100
59	0	0	100
60	1	1	100
61	0	0	100
62	0	0	100
63	0	0	100
64	0	0	100
65	0	0	100
66	0	0	100
67	0	0	100
68	0	0	100
69	0	0	100
70	0	0	100





VEHICLE SPEED SURVEY SHEET

Attachment 3

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DISTRICT 11
4050 TAYLOR STREET, MS 240
SAN DIEGO, CA 92110-2714
PHONE (619) 688-6960
FAX (619) 688-4299
TTY 711
www.dot.ca.gov

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Flex your power!
Be energy efficient!

June 5, 2012

11-SD-5
PEIR
General Plan Amendment/Local Coastal
Program Amendment

Mr. Jim Nakagawa
City Planner
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

Dear Mr. Nakagawa:

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the Program Environmental Impact Report (PEIR) for the Imperial Beach General Plan and Local Coastal Plan and Commercial Zoning Amendment, dated April 2012. The City of Imperial Beach proposes to revise existing land use designations and zoning regulations for properties designated C1 General Commercial in the Palm Avenue/State Route 75 (SR-75) study area. Caltrans would like to submit the following comments:

General Comments:
The proposed revisions to the existing land use designations and zoning regulations should be consistent with the City's Palm Avenue Commercial Corridor Master Plan, for which Caltrans provided comments pertaining to the coordination between the City's Plans and Caltrans standards and requirements as owner and operator of SR-75 (Palm Avenue).

Caltrans also encourages the City of Imperial Beach to consider as part of the City's land use and transportation plans the feasibility of pursuing the relinquishment of SR-75 between Rainbow Drive to east of the City's boundary by Caltrans to the City, which would formally need to be requested by the City.

Caltrans does not agree with the following statement in the PEIR: "No funding to construct the improvements by San Diego or Caltrans has been identified and, therefore, this PEIR finds these improvements are within the responsibility and jurisdiction of another public agency." The proportional percentage of growth inducing vehicular trips being generated within the jurisdiction of the City of Imperial Beach contributing the cumulative impacts to traffic should be documented and a mechanism should be established by the City of Imperial Beach to contribute towards future facility improvements outside of its respective jurisdiction, including Caltrans facilities.

Traffic Comments:

- Section 4.1 Cumulative Projects, the Sudberry Development Project should be included in this list, as this project proposes to reconfigure Delaware and SR-75 intersection and other major improvements to adjacent intersections.

- The segment classification of Palm Avenue at Delaware (4 lane collector), does not adequately address the lane reduction on eastbound Palm Avenue west of Delaware. Therefore, the traffic analysis for Palm Avenue gives this segment a Level of Service (LOS) B on Table 3.9-1. Caltrans does not believe this is an appropriate LOS for this segment and the nearby intersection.

- Table 3.9-4, the existing ADT Volumes for the following locations are low, more than 20% below Caltrans latest volumes (2010). Please see the numbers provided below.

Location	Table Volume	Caltrans Volume
SR-75 7th to Delaware	15,157	20,000
SR-75 I-5 SB to NB ramps	22,866	30,500

- For Traffic Impact Analysis, all state-owned signalized intersection affected by this project shall be analyzed using the ILV procedure per Highway Design Manual (HDM), Topic 406, Page 400-430. ILV sheets should include the date that the calculations were performed or reference the revision date of the specific plan. Please submit ILV calculations for the intersections with SR-75 (Rainbow Dr., Seventh St., Delaware St., Ninth St., and Thirteenth St.) and the intersection of Coronado Ave. and I-5 SB and NB Ramps.

Caltrans appreciates the coordination with City staff on this plan. If you have any questions, please contact Anthony Aguirre, of the Development Review Branch, at (619) 688-3161.

Sincerely,

JACOB ARMSTRONG, Chief
Development Review Branch

AGENDA ITEM NO. 6.1

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	HONORABLE MAYOR AND CITY COUNCIL
FROM:	GARY BROWN, CITY MANAGER
MEETING DATE:	AUGUST 15, 2012
ORIGINATING DEPT.:	PUBLIC WORKS
SUBJECT:	RESOLUTION APPROVING STREET IMPROVEMENTS PHASE 4/5 (CIP S11-105) PROJECT CHANGE ORDERS 4, 5, 6 AND 7 WITH SOUTHLAND PAVING, INC. AND ALLOCATING AN ADDITIONAL $70,000 TO THE PROJECT BUDGET.

BACKGROUND: The total appropriated by City Council to Street Improvements RDA Phase 4/5 is $4,411,931.47. On December 7, 2011, the City Council adopted Resolution No. 2011-7126 awarding the Street Improvements Phase 4/5 capital improvement project (CIP) S11-105 to Southland Paving, Inc. for $3,672,542.00. On March 7, 2012, City Council adopted Resolution No. 2012-7164 awarding Change Order No. 1 which added the following streets to the project for an added cost of $387,335.32:

- 9th Street – S.R. 75 to Donax Ave. - added cost: $132,129.17
- Donax Avenue – 2nd Street to 3rd Street – added cost: $84,576.95
- Louden Lane – Imperial Beach Blvd. to Grove Ave. – added cost: $170,629.20

On April 17, 2012, the City Manager approved Change Order No. 2 for the deletion of 4 new sewer manholes in the project scope of work for a cost reduction of ($45,320.00).

On May 14, 2012, the City Manager approved Change Order No. 3 for the addition of the MTS bus stop pad repair on Imperial Beach Blvd. west of 13th Street for an added cost of $20,964.40.

The total construction contract cost with the approved Change Orders No. 1, 2 and 3 was $4,035,521.72.

Imperial Beach Municipal Code (I.B.M.C.) provides the following directions regarding change orders:

> Article 3.04.220. reads "Change order procedures for contracts covering public works construction projects.
>
> A. Change orders for an amount of less than five thousand dollars shall be approved by the department director overseeing the project.
>
> B. The city manager may approve any change order for five thousand dollars or more with the following limitations: ten percent of the project contract value, provided sufficient project appropriations exist.
>
> C. The city council shall approve any change order for amounts that exceed any of the limitations described in subsection B of this section. (Ord. 758 § 2 (part), 1988)"

Article 3.04.230. reads "Change orders—General.

A. Any change order that results in the need of additional appropriations shall be approved by the city council.

B. All requests for change orders shall be reviewed by the finance director to verify that sufficient appropriations exist to fund the requested change order.

C. All change order requests will be accompanied by a written report to be prepared by the requesting operating department detailing the specific nature of the change order and associated fiscal impact. (Ord. 758 § 2 (part), 1988)"

DISCUSSION: Since Change Order No. 3 was approved, there have been four additional emergent change orders drafted as follows:

- Change Order No. 4 – Repair of unsuitable subgrade areas encountered on Louden Lane, Fern Avenue and East Lane – repair cost - $36,617.00:
- Change Order No. 5 – Repair of unsuitable subgrade areas encountered on 9th Street between Palm Avenue and Fern Avenue and on Elm Avenue east of 9th Street – repair cost $84,043.25;
- Change Order No. 6 – repair of chain-link fences at 935 & 981 Elm Avenue; increase in the size of 150 truncated domes; replacement of one storm drain cover – repair cost $17,500.61; and
- Change Order No. 7 – replacement of additional traffic loops on 9th Street at Palm Avenue and on 9th Street at Imperial Beach Blvd. – replacement cost of $7,315.00.

The total cost of Change Orders No. 4, 5, 6, and 7 is $145,475.86. If Change Orders No. 4, 5, 6 and 7 are approved; the total new construction contract price is $4,180,997.58.

Although Change Orders No. 4, 5, 6 and 7 do not exceed the City Managers authorization to approve change orders, the estimated total project cost of $4,477,021.43, which includes construction, engineering, inspection and administrative costs (see "Total Estimated Expenditures to date" under Fiscal Impact), will exceed the project appropriation of $4,411,931.47 as shown in the FISCAL IMPACT statement below. Thus this report is prepared to seek City Council approval of:

1. Change Orders No. 4, 5, 6 and 7; and
2. Budget appropriation increase of $70,000

The City Council approved Cooperative Agreement for street projects was $6,000,000 of which $4,000,000 was ear-marked for Street Improvements RDA Phase 4/5 CIP project S11-105. The remaining $2,000,000 was ear-marked for Street Improvements RDA Phase 3B CIP project (S04-108). The Cooperative Agreement funds earmarked for CIP S04-108 has sufficient unobligated funds to cover the $70,000 budget transfer to CIP S11-105.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA. This project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15302(c): Replacement or Reconstruction of Existing Utility Systems and Facilities.

FISCAL IMPACT:

Budget appropriation for Street Improvements RDA Phase 4/5 is as follows:

$4,000,000.00	from Council approved Cooperative Agreement
$ 411,931.47	from Prop 1B (resolution no. 2010-6959)

Total Appropriated Budget: $4,411,931.47

Approved Expenditures / Obligations as of August 2012 for Street Improvements RDA Phase 4/5:

• BDS Engineering (including C/O 1 & 2)	$ 235,100.00
• Miscellaneous Direct Cost	$ 923.85
• Southland Paving, Inc. (including C/O 1, 2, & 3)	$4,035,521.72

Total Approved Expenditures: $4,271,545.57

Construction Change Orders No. 4, 5, 6 and 7 cost	$ 145,475.86
Estimated City Inspection and Administration cost	$ 60,000.00

Total Estimated Expenditures to date: $4,477,021.43

ESTIMATED APPROPRIATED/EXPENDITURE BALANCE (65,089.96)

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Adopt Resolution 2012-7242 approving Change Orders No. 4, 5, 6 and 7 for a total cost of $145,475.86 and transferring an additional $70,000 from the $2,000,000 Council approved Cooperative Agreement currently earmarked for the Street Improvements RDA Phase 3B Project (S04-108).
3. Authorize the City Manager to sign change orders no. 4, 5, 6 and 7.
4. Authorize the City Manager to transfer $70,000 of Cooperative Agreement funds from Street Improvements RDA Phase 3B (S04-108) to Street Improvements RDA Phase 4/5 (S11-105).

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments:
1. Resolution No. 2012-7242

ATTACHMENT 1

RESOLUTION NO. 2012-7242

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING STREET IMPROVEMENTS PHASE 4/5 (CIP S11-105) PROJECT CHANGE ORDERS 4, 5, 6 AND 7 WITH SOUTHLAND PAVING, INC. AND ALLOCATING AN ADDITIONAL $70,000 TO THE PROJECT BUDGET

WHEREAS, on December 7, 2011, the City Council adopted Resolution No. 2011-7126 awarding the Street Improvements Phase 4/5 capital improvement project (CIP) S11-105 to Southland Paving, Inc. for $3,672,542.00; and

WHEREAS, on March 7, 2012, City Council adopted Resolution No. 2012-7164 awarding Change Order No. 1 which added the following streets to the project for an added cost of $387,335.32:

- 9th Street – S.R. 75 to Donax Ave. - added cost: $132,129.17
- Donax Avenue – 2nd Street to 3rd Street – added cost: $84,576.95
- Louden Lane – Imperial Beach Blvd. to Grove Ave. – added cost: $170,629.20;

and

WHEREAS, on April 17, 2012, the City Manager approved Change Order No. 2 for the deletion of 4 new sewer manholes in the project scope of work for a cost reduction of ($45,320.00); and

WHEREAS, on May 14, 2012, the City Manager approved Change Order No. 3 for the addition of the MTS bus stop pad repair on Imperial Beach Blvd. west of 13th Street for an added cost of $20,964.40; and

WHEREAS, the total construction contract cost with the approved Change Orders No. 1, 2 and 3 was $4,035,521.72; and

WHEREAS, since Change Order No. 3 was approved, there have been four additional emergent change orders drafted as follows:

- Change Order No. 4 – Repair of unsuitable subgrade areas encountered on Louden Lane; Fern Avenue and East Lane – repair cost - $36,617.00:
- Change Order No. 5 – Repair of unsuitable subgrade areas encountered on 9th Street between Palm Avenue and Fern Avenue and on Elm Avenue east of 9th Street – repair cost $84,043.25;
- Change Order No. 6 – repair of chain-link fences at 935 & 981 Elm Avenue; increase in the size of 150 truncated domes; replacement of one storm drain cover – repair cost $17,500.61; and
- Change Order No. 7 – replacement of additional traffic loops on 9th Street at Palm Avenue and on 9th Street at Imperial Beach Blvd. – replacement cost of $7,315.00; and

WHEREAS, the total cost of Change Orders No. 4, 5, 6, and 7 is $145,475.86; and

WHEREAS, the total construction contract cost with Change orders 1 through 7 is $4,180,997.58; and

WHEREAS, although Change Orders No. 4, 5, 6 and 7 do not exceed the City Managers authorization to approve change orders, the estimated total project cost will exceed the project appropriation of $4,411,931.47; and

WHEREAS, the CIP S11-105 estimated appropriation/expenditure balance is short $65,089.96: and

WHEREAS, the Cooperative Agreement funds earmarked for CIP S04-108 has sufficient unobligated funds to cover the $70,000 budget transfer to CIP S11-105.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. Change Orders No. 4, 5, 6 and 7 for a total cost of $145,475.86 are approved.
3. The transfer $70,000 from the $2,000,000 Council approved Cooperative Agreement currently earmarked for the Street Improvements RDA Phase 3B Project (S04-108) is approved.
4. The City Manager is authorized to sign change orders no. 4, 5, 6 and 7.
5. The City Manager is authorized to transfer $70,000 of Cooperative Agreement funds from Street Improvements RDA Phase 3B (S04-108) to Street Improvements RDA Phase 4/5 (S11-105)

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 15th day of August 2012, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

AGENDA ITEM NO. 6.2

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**PUBLIC WORKS** HAL
SUBJECT:	**REVIEW OF AND DIRECTION FOR THE DESIGN AND CONSTRUCTION OF A REVISED DRIVEWAY EXIT AT SPORTS PARK**

BACKGROUND: On March 21, 2012 staff presented City Council a report on the design of the new crosswalk on Imperial Beach Boulevard adjacent to Sports Park (5th Street). As that project design was near completion, staff asked City Council to consider relocating the 4th Street exit from Sports Park back coincident with the 4th Street entrance at Sports Park. Staff presented attachment no. 1 as a possible design. Generally City Council was supportive of the revised exit design. This exit project was to be constructed in support of the new Imperial Beach Boulevard crosswalk.

Following the March 21, 2012 City Council meeting, a local resident, John Keating, who is a professional Traffic Engineer, contacted the City and asked if staff would be willing to share our thoughts with him and if possible would we entertain an alternative to the design prepared by staff. A meeting was held and after a site visit, Mr. Keating provided the City with 4 alternatives to the design suggested by staff. Those four design alternative are submitted herewith for City Council's review and consideration. See attachment no. 2.

DISCUSSION: Staff has reviewed the proposed alternatives and compared them with the proposal drafted by staff. There are several advantages to each of the designs as well as some drawbacks. Staff will present the different drawing concepts to City Council and denote the pluses and minuses of each. The intent is to obtain direction from City Council on their preference for a new exit from Sports Park.

ENVIRONMENTAL DETERMINATION:

Project exempt per CEQA Guidelines Section 15301(c) (Existing Facilities), minor alteration of existing street.

FISCAL IMPACT:
Project costs estimates are as follows:

1. Keating Alternate A	Under $1,000
2. Keating Alternate B	Under $5,000
3. Keating Alternate C	Under $8,000 with combination of City and contract work for new asphalt

4. Keating Alternate D	Under $14,000 000 with combination of City and contract work for new asphalt
5. Staff Design	Under $12,000 with combination of City and contract work for the new asphalt.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Receive staff presentation
3. Direct staff to proceed with the Staff Design or as otherwise directed.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

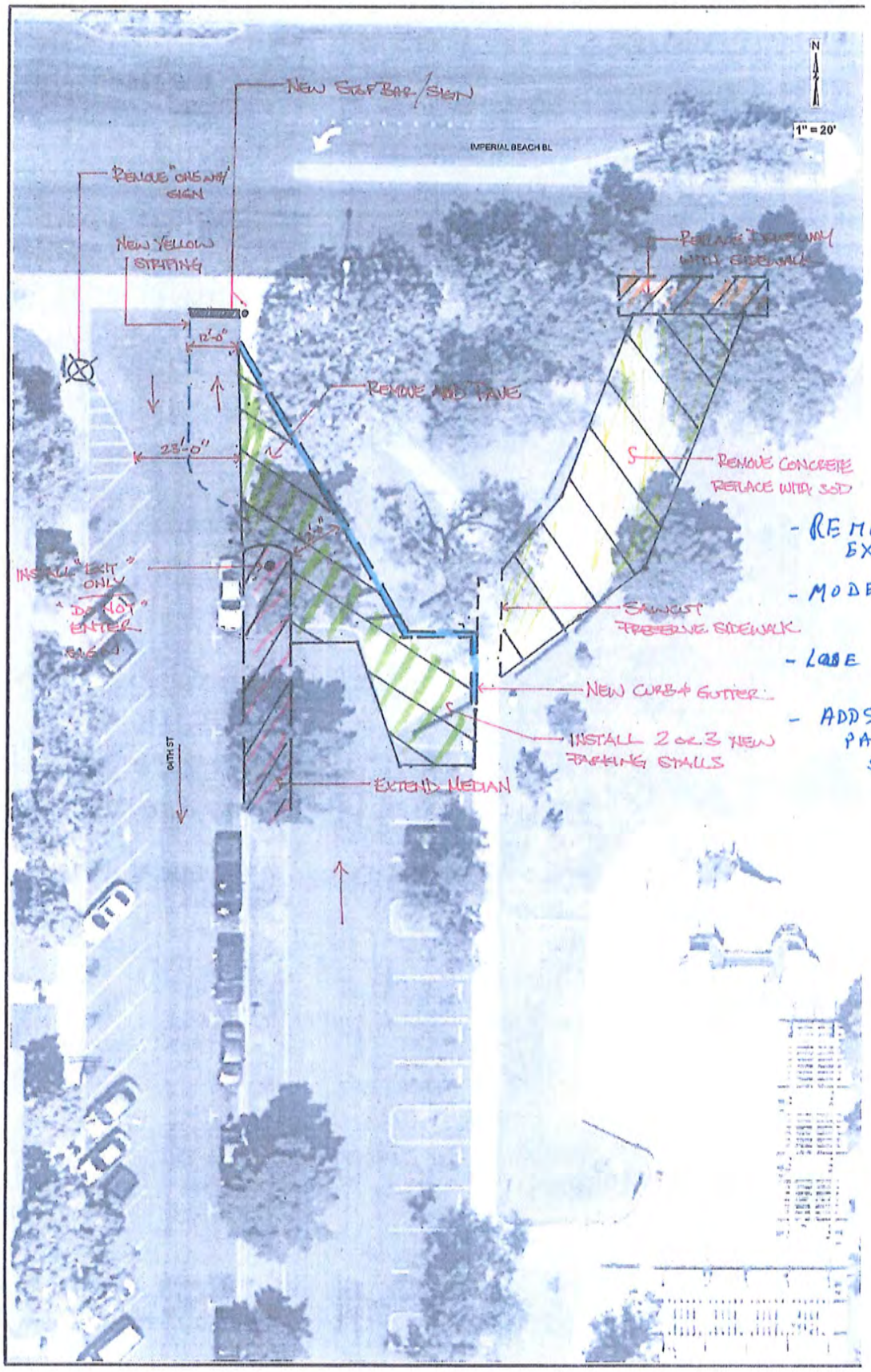
Gary Brown

Gary Brown, City Manager

Attachments:

1. Staff Proposed 4th Street Exit Plan at Sports Park.
2. John Keating's Exit Plan Alternatives (Alt. A through Alt. D)

Attachment 1



ATTACHMENT 2

N

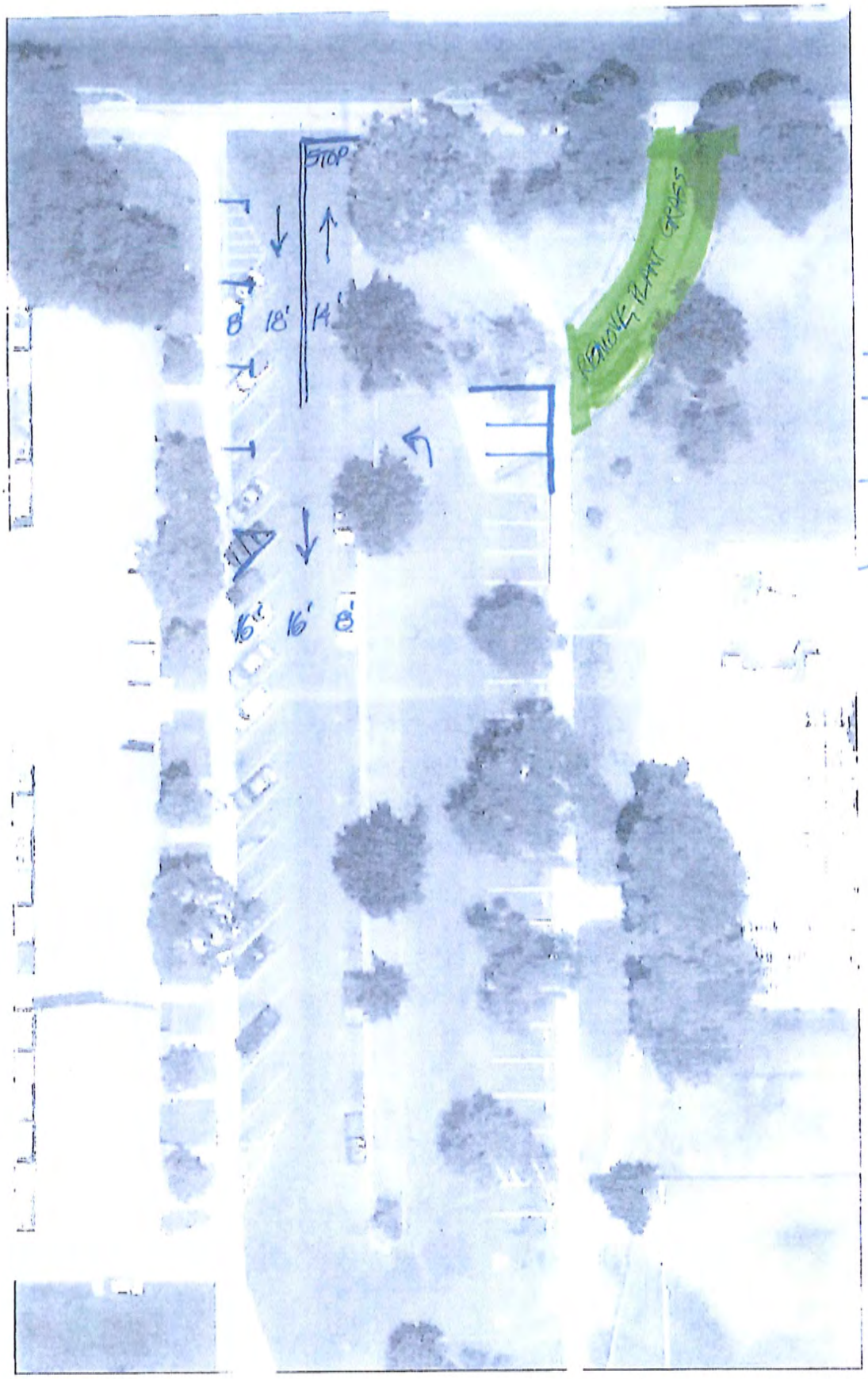
JPK
6/21/12

- LOWEST COST
- NO CONSTRUCTION
- LOSE 5 SPACES
- NO TREE REMOVAL

1"
40'

ALT A

Attachment 2



N

JPK
6/21/12

- MINIMAL CONST.
- ~~NO~~ LOSS OF 2 PARKING
- REMOVE EXISTING DRIVEWAY
- NO TREE REMOVAL

1"
40'

ALT B

Attachment 2

N

JPK

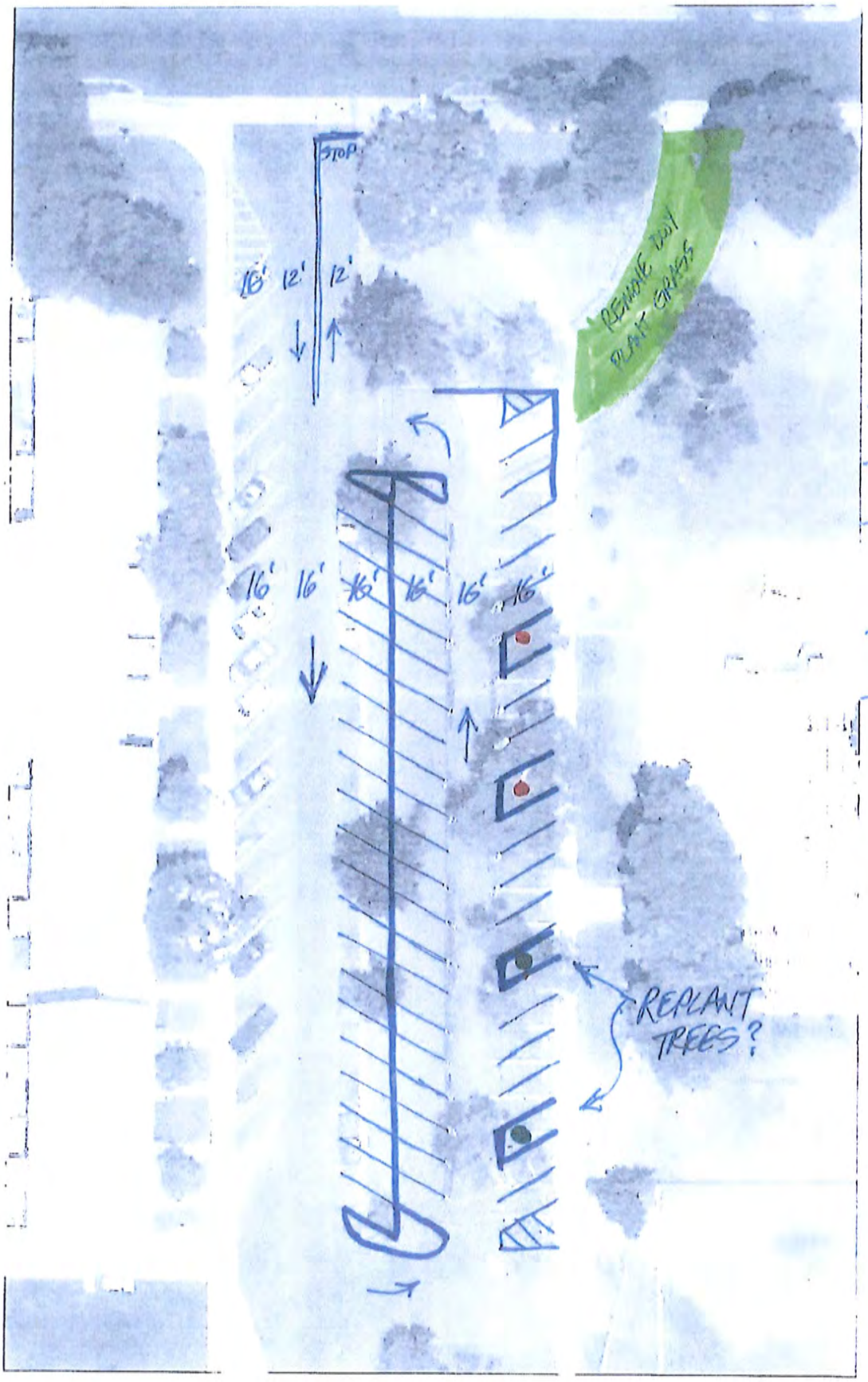
6/21/12

- REMOVE EXISTING DRIVEWAY
- MINIMAL CONST.
- ADDS 9 PARKING SPACES
- NO TREE REMOVAL

1" = 40'

ALT C

Attachment 2



N

JPK
6/21/12

- MAXIMUM PARKING
- ADDS ~~34~~ 32 SPACES
- REPLANT 2 TREES OR DESIGN AROUND THEM
- 45° PARKING
- MAJOR RECONST OF PLANTER ISLAND, MAY NEED SMALL RETAINING WALL

1" = 40'

ACT D

AGENDA ITEM NO. 6.3

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**PUBLIC WORKS DEPARTMENT**
SUBJECT:	**TIJUANA RIVER BACTERIA SOURCE IDENTIFICATION STUDY FINAL UPDATE**

BACKGROUND:
In April 2007 the City of Imperial Beach was awarded a Proposition 50 Clean Beach Initiative Grant in the amount of $1,045,050 to conduct a Bacteria Source Identification Study in the Tijuana River watershed. City Council adopted Resolution 2007-6524 on August 1, 2007 awarding a contract for the Study to Weston Solutions, Inc. The SWRCB then requested additional work for the project and increased the total grant amount awarded to the City to $1,324,784. City Council adopted Resolution Nr. 2008-6689 amending the contract with Weston Solutions, Inc. The project was subsequently put on hold from December 2008 through February 2010 due to budgetary constraints with the State of California. Work resumed on the Study in the spring of 2010 once state funding was restored to the project but the interruption resulted in a 2 year delay in the completion of the project. Work on the Bacteria Study is now complete and the final project report is under review by the State Water Resource Control Board and will be posted on the City's website under the Environmental Division upon approval.

DISCUSSION:
The aim of the project was to undertake a comprehensive assessment of the bacterial impacts within the U.S. portion of the watershed through collaboration with the State Water Resources Control Board, a Scientific Advisory Group, and local stakeholders. The study assessed the sources, loads, and impacts of bacterial pollution in the Tijuana River Watershed during both dry and wet weather conditions. Review of historical data shows that the pollution sources and impacts vary significantly between these two seasonal variables. In dry weather conditions (regardless of whether it is winter or summer) the watershed is relatively unimpacted with little overland flow and little discharge into waterways. The estuary is a healthy, vibrant and vital ecosystem. However, during wet weather, the watershed transforms into a severely impacted, polluted, and hazardous waterbody with bacterial concentrations so elevated it is often difficult to quantify effectively. The impact on the surrounding ecosystem is severe with poor water quality lasting several days to weeks after a storm event. The study was designed to assess these two seasonal conditions as separately and clearly defined environmental conditions.

The objectives of this study were to:
1. Identify anthropogenic sources of bacteria;
2. Identify non-anthropogenic sources of bacteria;
3. Assess annual bacteria loads into the Tijuana River;
4. Identify point and non-point sources (NPSs) of bacterial pollutants; and

5. Develop best management practices (BMPs) to reduce bacterial loads originating in from the U.S. side of the border.

The Study addressed these objectives through the following tasks:

- Sanitary and Dry Weather Surveys
- Wet Weather Assessments
- Multiple Special Studies
- BMP Concept Designs and BMP Prioritization

Each of these tasks is briefly discussed in the Report Summary that is attached to this staff report and will be presented in detail within the Final Report on the City's website upon final approval from the State Water Resource Control Board. Knowledge gained from this study will help direct efforts to address pollution in the Tijuana River Valley and help the City implement its storm water management program.

ENVIRONMENTAL DETERMINATION:

This project is categorically exempt according to Section 15306 (Information Collection) of the California Environmental Quality Act.

FISCAL IMPACT:

The City was awarded a Clean Beach Initiative Grant in the amount of $1,324,784 with $29,448 dedicated to cover City administrative costs.

DEPARTMENT RECOMMENDATION:

1. Receive report and comment on presentation from Chris Helmer, Environmental Programs Manager.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown

Gary Brown, City Manager

Attachments:

1. Tijuana River Bacteria Source Identification Study Summary Report

EXECUTIVE SUMMARY

In April 2008, the City of Imperial Beach (City) was awarded a Clean Beach Initiative (CBI) grant by the State Water Resources Control Board (SWRCB) (Grant Program Agreement No. 07-584-550-0) to assess the potential sources of indicator bacteria on the United States (U.S.) side of the Tijuana River Watershed that may be impacting the Tijuana River Estuary and adjacent beaches. The resultant project was named the *Tijuana River Bacterial Source Identification Study*. The contract timeline for the work identified for the study was as follows:

- The SWRCB Contract for the City of Imperial Beach was awarded in February 28, 2008.
- The Contract was closed by the SWRCB due to the State-wide funding crisis on December 17, 2008.
- The Project was reopened on May 6, 2010.
- The Project end date is October 1, 2012.

Study Objectives

The overall goal of the study was to identify sources of indicator bacteria in the Tijuana River Watershed within the U.S. side of the U.S./Mexico border that have the potential to impact the Tijuana River Estuary and adjacent beaches. Within this larger framework, the study had several specific objectives:

1. Identify anthropogenic sources of bacteria,
2. Identify non-anthropogenic sources of bacteria,
3. Assess annual bacteria loads into the Tijuana River,
4. Identify point and non-point sources (NPSs) of bacterial pollutants, and
5. Develop best management practices (BMPs) to reduce bacterial loads originating in from the U.S. side of the border.

To address these objectives, the project had several elements:

- Sanitary and Dry Weather Surveys,
- Wet Weather Assessments,
- A Series of Special Studies, and
- BMP Concept Designs and Prioritization.

Each of these elements is discussed below.

Sanitary and Dry Weather Surveys

The primary objectives of the sanitary surveys were to identify anthropogenic and non-anthropogenic sources of indicator bacteria that could impact receiving waters in the estuary. Three two-week sanitary surveys were conducted over the course of the study, targeting approximately 100 sampling locations per survey, covering the entire urbanized area on the western portion of the U.S. side of the Tijuana River Watershed. Follow-up dry weather surveys were conducted if high bacterial concentrations were found, if the sample tested positive for human-specific Bacteroides (a genetic marker that is specific to human fecal contamination), or if visual observations suggested follow up was necessary.

- The results of the first two sanitary surveys identified several sites where indicator bacterial concentrations were high or tested positive for human-specific Bacteroides. In all cases, follow up dry weather surveys indicated that water at the site was either ponded, had very low trickle flows, and/or the flow could not be traced upstream to any source.
- These results of these extensive surveys suggest that with few exceptions, elevated levels of indicator bacteria or the potential presence of human fecal contamination at numerous sites assessed in the watershed were ephemeral and did not represent a consistent source of bacteria to the estuary.

- Sanitary Survey 3 was a dry weather survey that focused primarily on sites within the estuary itself. Thorough visual observations on all sides of the watershed adjacent to the estuary revealed that with one exception there was no apparent hydrologic connection between surface waters in the watershed and those in the estuary. That is, during dry weather, the vast majority of the flows in the sub-drainages on the U.S. side of the border never reach the estuary.

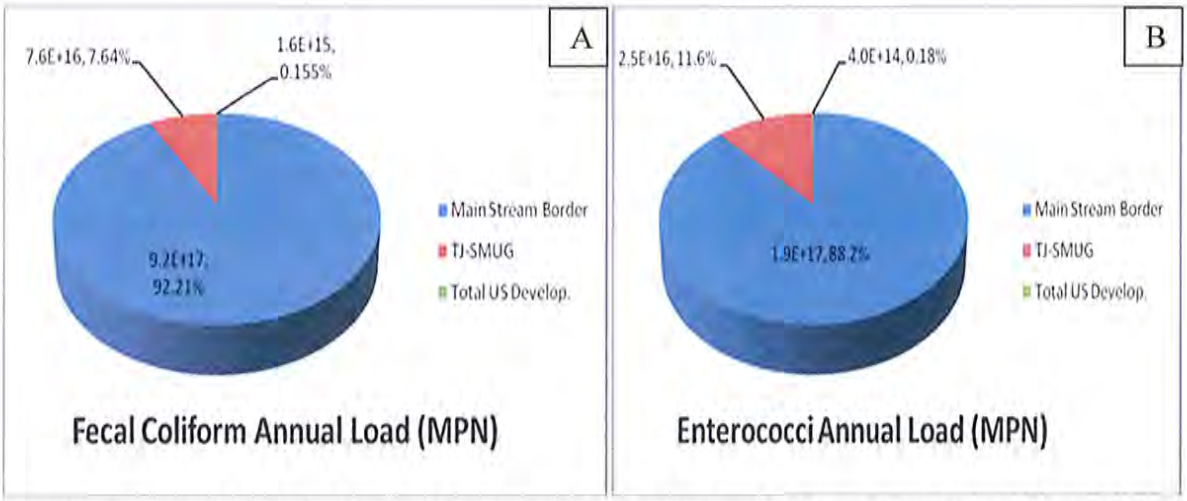
Further assessments conducted in January, 2012 confirmed that the substantial majority of dry weather from the U.S. side of the border never reaches the estuary because the majority of the sub-drainages discharge to a soft-bottom creek or other semi-natural feature (e.g., ponds) where dry weather flows infiltrate rapidly. The one area of direct, but very small flow to the estuary was the outfalls of the E and F Lines in Imperial Beach that discharge directly to the estuary. Dry weather flows from these outfalls were very low. Thus, one of the major findings of this study was that potential impacts to the estuary from dry weather flows are limited to these small sub-drainages and episodic and infrequent rogue flows from the Mexico side of the border when the diversion structures are bypassed.

E-line storm drain outfalls showing minimal dry weather flow directly to the Tijuana River Estuary. The majority of dry weather flow from other sub-drainages on the U.S. side of the border never reaches the estuary.

Wet Weather Assessments

The objective of the wet weather monitoring was determine the concentrations and loads of indicator bacteria and other constituents that impact the estuary from the mainstem of the Tijuana River (Dairy Mart Bridge and Hollister Bridge), Smuggler's Gulch (a tributary to the mainstem originating in Mexico), and Veterans Park (a tributary to the estuary originating in the City of Imperial Beach).

- The results of the wet weather assessments were similar among the three storms monitored. Indicator bacteria concentrations were in the 1,000,000 to 10,000,000 MPN/100 mL range over the course of the storm from all three sites originating from Mexico. However, indicator bacteria concentrations from the Veterans Park site (which originates in the City of Imperial Beach) were one to two orders of magnitude lower than those from sites originating from Mexico.
- When these concentrations were combined with flow data collected during the storm events, it was determined that approximately 90% of the annual bacterial load that enters the Tijuana River Estuary (and has the potential to impact area beaches) originates from the Tijuana River mainstem.
- Smuggler's Gulch, which also originates in Mexico, accounts for approximately 11 and 8% of the enterococci and fecal coliform loads, respectively.
- The contribution from the entire U.S. urbanized portion of the watershed that flows directly to the estuary accounts for less than 1 % of the enterococci and fecal coliform loads entering the estuary.
- In addition, nearly all of the samples originating from Mexico were positive for the human-specific Bacteroides marker (indicating human fecal matter), while none of those from the U.S. drainage were positive for the marker.



Annual Loads of Fecal Coliforms (A) and Enterococci (B) showing that approximately 90% of the bacterial load that enters the Tijuana River Estuary originates from the Tijuana River mainstem (blue), approximately 10% originates from Smuggler's Gulch in Mexico (red), and less than 1% originates from the entire urbanized portion on the U.S. side of the border (green).

Seacoast Drive Special Study

During the first sanitary survey conducted in July, 2010, human-specific Bacteroides (indicator of the presence of human fecal contamination) and elevated bacterial levels were found in the northern arm of the Tijuana River Estuary adjacent to Seacoast Drive in Imperial Beach. As a result, the Seacoast Drive Special Study was initiated to identify the source or sources of bacteria and the potential for human sewage in this portion of the estuary. Prior to the initiation of the study, leaking sewer infrastructure had been identified by the City as a potential problem along Seacoast Drive in a length of sewer pipe approximately ½ mile long that ended in a pump station on the northern end of Seacoast Drive. As a result, the City took proactive steps and re-sealed the pump station to eliminate any potential leakage from the sewage infrastructure to the adjacent estuary.

The goal of the Seacoast Drive Special Study was to assess the effectiveness of sewage infrastructure repairs and to determine if there was evidence of human sewage impacting the estuary after the repairs had been made. In February, 2011 rhodamine dye was placed in the sewer pipe on the southern end of Seacoast Drive where it flowed north to the newly sealed pump station. Samples were collected from several sites in the northern arms of the estuary (adjacent to Seacoast Drive) and from the pump station. All samples were analyzed for indicator bacteria and human-specific Bacteroides on the day the dye was injected and for two subsequent days. In addition, filter packs containing absorbent media were anchored in the estuary for the same three day period, then analyzed for the presence of the rhodamine dye.

- The results of the study suggest that sealing the pump station had prevented any potential leakage of sewer water from the Seacoast Drive sewer line and pump station that may have been entering the estuary.
- Over the course of the three day sampling event, none of the more than 60 samples collected were positive for the human-specific Bacteroides marker.
- In addition, none of the absorbent media filter bags anchored in the estuary had even trace amounts of the rhodamine dye.

The results suggest that sealing the sewage infrastructure along Seacoast Drive was effective in preventing sewage from entering the Tijuana River Estuary. These results were confirmed in subsequent monitoring conducted in the estuary in the summer of 2011 as part of a dry weather survey. During this follow-up investigation, all samples collected from the estuary (including several sites in the estuary's northern arm

Seacoast Drive Special Study showing insertion of rhodamine dye and collection of dye and bacterial samples in the Tijuana River Estuary adjacent to Seacoast Drive. Evidence of bacteria from human origin was not observed in the estuary after the Seacoast Drive pump station was sealed by the City of Imperial Beach.

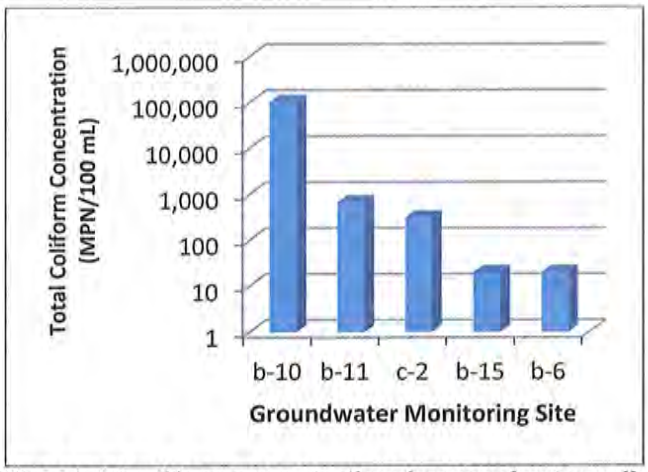
adjacent to Seacoast Drive) were negative for the human-specific Bacteroides marker.

Groundwater Special Study

This project element was designed and implemented in order to assess the presence of indicator bacteria as well as human-specific Bacteroides and enterovirus (a marker of potential human pathogens) in groundwater within the western portion of the Tijuana River Watershed and to assess the extent to which groundwater may impact surface waters within the estuary. The objective was to determine if groundwater is a source of microbes to the estuary and to assess the spatial distribution of microbes in groundwater in the western portion of the watershed.

In order to address these objectives, five previously existing groundwater monitoring wells were sampled over a period of 16 months and analyzed for indicator bacteria, human-specific Bacteroides, enterovirus, and a suite of chemical constituents.

- In general, indicator bacteria concentrations were low in most groundwater samples and all samples were negative for the human-specific Bacteroides marker.
- There appeared to be a spatial gradient in bacterial and nutrient concentrations among the groundwater wells monitored, with relatively high concentrations in groundwater closest to the U.S. / Mexico Border and lower concentrations found in groundwater closest to the Tijuana River Estuary.



Mean total coliform concentrations in groundwater wells showing higher concentrations at sites closest to the U.S./Mexico Border (Sites b-10 and b-11) compared to sites closest to the Tijuana River Estuary (Sites b-15 and b-6).

- The one exception to this pattern was that observed for enterovirus. Among the 35 samples collected over the course of the study, three were identified as positive for enterovirus, all of which were found at sites closest to the estuary (sites b-15 and b-6).

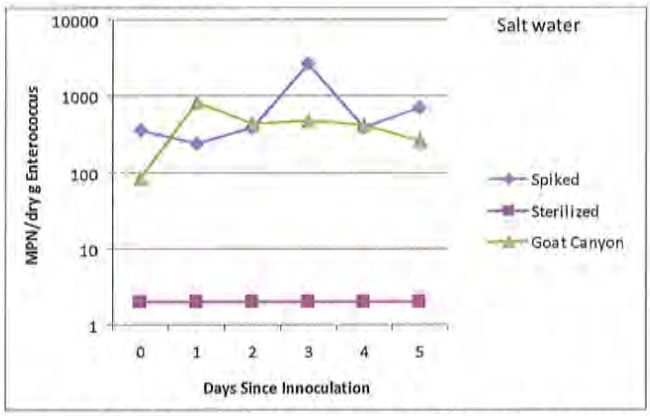
The low concentrations of indicator bacteria and nutrients in groundwater closest to the estuary and the absence of human-specific Bacteroides throughout the study suggest that groundwater may not be a likely source of fecal contamination to the receiving waters of the estuary. However, positive results for the enterovirus assay at the two sites closest to the estuary indicate the potential for groundwater contamination and suggest that further investigations may be necessary to determine the potential impact to the estuary from groundwater sources.

Goat Canyon Dredged Sediment Special Study

Goat Canyon is located at the southern end of the Tijuana River National Estuarine Research Reserve in the western portion of the Tijuana River Watershed and spans the U.S. / Mexico Border. Ninety percent of the Canyon's sub-watershed lies in Mexico. In recent decades, human-induced disturbance originating primarily upstream in Mexico has resulted in increased sedimentation in Goat Canyon, which increases sediment loads to the Tijuana River Estuary. Sediment basins have been installed on the U.S. side of the border to trap Goat Canyon sediment before reaching the estuary. The goal of the Goat Canyon Dredged Sediment Special Study was to determine if dredged material removed from the basins is a reservoir for indicator bacteria and to assess the potential for the dredged material to impact surface waters if the sediment were used for beach replenishment purposes.

To address these goals, sediment samples were collected in November, 2010 from sediment that had been dredged from the Goat Canyon sediment basins and stockpiled adjacent to the site. The sediment was suspended in sterile solutions of water of varying salinities (fresh, brackish, and marine). Sub-samples were then drawn from each of the solutions over a period of five days and quantified for indicator bacteria.

- The results indicated that the relatively fine-grained, high nutrient sediment in the Goat Canyon sediment basins do serve as a reservoir for both fecal coliforms and enterococci.
- The inoculation test results suggest that the Goat Canyon dredged sediments can contribute elevated bacterial concentrations to the water columns in fresh, brackish and marine systems, and that the indicator bacteria can survive in these solutions for at least several days.



Results of Goat Canyon Sediment Study showing elevated enterococcus concentrations over time in salt water. The results suggest that bacteria (especially enterococci) in basin sediments may persist in seawater if sediments were used for beach replenishment.

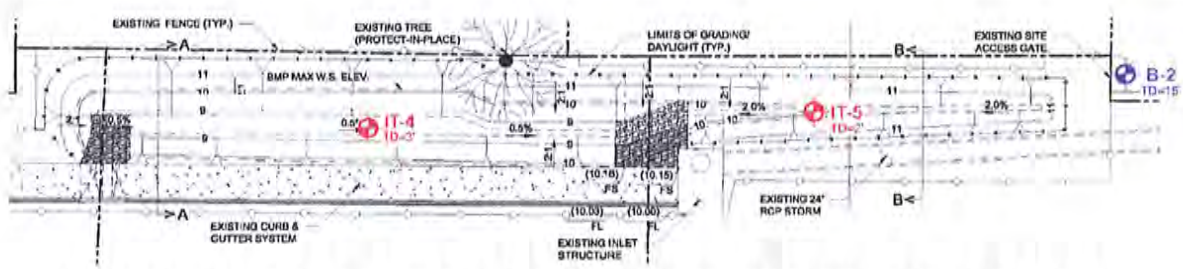
The persistence of enterococci, compared to fecal coliforms, in each of the three water treatments is similar to results observed in other studies which have shown that enterococci tend to survive better in the environment than fecal coliforms. It also supports the findings of other studies that suggest that sediments play an important role in the survival of bacteria by providing a favorable, environment for microbes. When taking into account the complex environment of the Pacific Ocean, the results of this special study suggest that if Goat Canyon dredged material was used for beach replenishment, it could cause an initial increase in both enterococcus and fecal coliform concentrations in the receiving waters. However, that increase is most likely to be

transitory in nature when sea temperatures, hydrologic flow patterns, and UV radiation are taken into account.

BMP Concept Designs and Prioritization

The purpose of this part of the study was to conduct a hydrologic and water quality analysis to assess and prioritize concept designs to reduce bacterial loads to the Tijuana River Estuary. The best BMPs proposed in the selected concept designs were based on low impact development (LID) features at selected sites with the Tijuana River Watershed. The study was performed to determine and document the water quality flows and volumes (storm water runoff) from the tributary area for each concept design site. The BMPs are proposed to provide water quality improvement of storm water runoff with some attenuation of peak flows, which in itself also provides water quality benefits (less downstream flow equates to less potential for downstream sediment transport). Locations for the BMPs were determined based on the findings of the wet and dry weather studies conducted as part of this project.

Based on the criteria listed above, six concept designs were produced as part of this study using established BMPs to reduce bacterial loading, such as bioretention basins at Imperial Beach Boulevard Parkway and Mar Vista Church, porous concrete on Thorn Street Cul de Sac and Donax Avenue, an eco bike lane and green street BMP on Imperial Beach Boulevard, and bioretention basins on East San Ysidro Boulevard. The tributary drainage areas for these BMPs ranged from 0.46 to 5.3 acres with estimated bacterial load reductions ranging from 62 to 100% removal. Estimated project capital costs to achieve these load reductions ranged from $50,250 to $1,110,750. Based on these costs and the estimated annual load removal, a priority ranking of the BMPs was conducted based on a cost / benefit analysis. Among the six projects for which concept designs were produced, the Donax Avenue project had the lowest cost per annual load removed and the Imperial Beach Boulevard Eco-Bike Lane had the highest cost per annual load removed. Watershed managers may use this cost / benefit analysis as one of many tools to facilitate decisions about future implementation of BMPs to reduce bacterial loading to the Tijuana River Estuary. Other factors should be taken into consideration, such as existing conditions, public perception, and multiple benefits provided by projects.



BMP Concept Designs were produced as part of the project to decrease bacterial loads to the Tijuana River Estuary.

Summary of Major Findings

There were numerous findings from this multi-year, multi-faceted study. The major conclusions drawn from the results of the monitoring and special studies are summarized below.

- The pollution sources and their impact on the Tijuana River Estuary vary dramatically by season. During dry weather, the estuary is relatively un-impacted from the watershed, and the estuary is a healthy, vibrant and vital ecosystem. During storm events, flows from Mexico transform the estuary into a severely impacted, polluted and hazardous waterbody with extremely elevated bacterial concentrations and elevated potential health risk to the environment and the public.

- Extensive dry weather and sanitary surveys revealed several locations in the watershed where indicator bacterial concentrations were high, or there was evidence of human fecal contamination, but the contamination was determined to be ephemeral and not related to a consistent source (such as leaking infrastructure).

- Dry weather surveys also revealed that there is very little hydrologic connection between watershed surface waters and the estuary (with the exception of some small drainages).

- Semi-natural BMPs such as soft-bottom sediments and ponds at the base of the major sub-drainages prevent the large majority of dry weather flows from entering the estuary.

- During wet weather, approximately 99% of the indicator bacterial loads entering the Tijuana River Estuary and Pacific Ocean originates from un-diverted flows from the Tijuana River mainstem and tributary channels from Mexico.

- Proactive steps to reline the sewage system along Seacoast Drive by the City of Imperial Beach appear to have eliminated a suspected source of human fecal contamination from entering the northern arm of the estuary.

- Groundwater associated with the mainstem of the Tijuana River at the U.S. Mexico Border may have elevated bacterial and nutrient levels compared to relatively clean sites closest to the estuary, suggesting the groundwater may not be a likely source of bacterial contamination to the estuary. However, the presence of enterovirus at sites closest to the estuary suggest that further studies may be needed to better understand surface groundwater interactions and the potential risk to estuary surface waters from groundwater resources.

- Sediments within the Goat Canyon Sediment Basins appear to act as a reservoir for indicator bacteria that has the potential to impact receiving waters for several days if the sediment were used for beach replenishment. Further studies are needed to clarify potential impacts indicated by this initial, small-scale study.

- Based on the findings of these studies, BMPs were designed and prioritized on their ability to reduce bacterial loads and will serve as a tool for managers to reduce potential impacts to the Tijuana River Estuary.

Recommendations

Based on the major findings of the study, the following recommendations may be considered:

- One of the major goals of this study was to identify sources of indicator bacteria on the U.S. side of the border and produce designs for BMPs that can reduce those loads. The designs for low impact development BMPs produced as part of this study are focused on providing the most efficient and cost-effective means of reducing bacterial loads in areas that flow directly to the Tijuana River Estuary. They should be considered for implementation based on the prioritization assessment provided in the report and additional priorities and constraints of the City of Imperial Beach.

- During the sanitary and dry weather surveys, positive results for human-specific Bacteroides suggested the presence of human fecal matter at some sites. Although specific sources were never identified, the cities of Imperial Beach and San Diego may wish to consider prioritizing and implementing sewer system upgrades to minimize the potential for sewage in the sanitary sewer from contaminating the storm drain system and potentially impacting the estuary.

- The Goat Canyon Special Study demonstrated that elevated bacterial levels exist in sediment dredged from the basins. Understanding the role of beneficial reuse of the dredged sediment is a critical component of effective management of the basins. Further studies to understand the potential risk factors and fate and transport variables associated with the sediment under various management scenarios (e.g., beach replenishment) should be considered to enhance potential management options.

- This study was focused on understanding the sources of indicator bacteria in the Tijuana River Watershed and the potential impacts it may have on the estuary. However, further study is needed to understand how bacteria (and potential pathogens) associated with the river and the estuary may affect water quality at adjacent beaches. Studies designed to use rapid indicators of fecal contamination combined with an understanding of environmental variables that affect beach water quality (e.g., storm events or rogue flows from Mexico) could provide a more precise assessment of potential human health risks from the river and potentially reduce beach closures in the area.

- The Special Study on Groundwater suggested that groundwater quality at sites close to the U.S. / Mexico Border may be impacted by indicator bacteria, but sites closer to the estuary appeared to have better water quality. These results conflicted with the enterovirus results, which showed the presence of enterovirus at sites closest to the estuary. To better understand the fate and transport of bacterial and viral pathogens in groundwater and the potential risk associated with groundwater / surface water interactions, groundwater modeling may be considered to enhance the small scale study conducted as part of this project.

AGENDA ITEM NO. 6.4

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**PUBLIC WORKS DEPARTMENT**
SUBJECT:	**FATS, OILS, AND GREASE (FOG) CONTROL PROGRAM UPDATE**

BACKGROUND:

On May 2, 2006, the State Water Resources Control Board (SWRCB) adopted and implemented Order No. 2006-0003 Statewide General Waste Discharge Requirements (WDR) for Sanitary Sewer Systems. The WDR required preparation of a Sewer System Management Plan (SSMP), which documents the program to properly manage, operate, and maintain all parts of the sanitary sewer system to reduce and prevent sewer system overflows (SSOs). The WDR stipulates the SSMP must contain 11 elements, each of which must be approved by the agency's governing board (City Council) at a public meeting. The Imperial Beach City Council approved these 11 elements of the SSMP through resolution 2007-6541, 2008-6683, and 2009-6731.

One of the provisions in the WDR requires the City to control the impacts of fats, oils, and grease (FOG) on the collection system and to implement the legal authority to implement and enforce a FOG control program. In 2008 the City updated sections 13.04.030.B and 13.04.04.E that prohibit the discharge of grease into the collection system and also adopted the FOG control element in the SSMP that established a preventative FOG inspection program at food service establishments.

Starting in 2009 the Environmental Division initiated the SSMP FOG inspection program at food service businesses in combination with the annual commercial storm water inspections. The results of the inspections revealed a large number of deficiencies in the management of FOG at food service establishments in the community. The results from the 2009 FOG inspection program were presented to Council on May 4, 2010 as part of the Biennial Audit requirement for the SSMP. At that time Staff was directed to return at a later date with options on how to better manage the buildup of FOG in the sewer system that is being discharged from food service establishments.

Staff returned to Council on February 16, 2011 and presented a list of strategy options to enhance the City's FOG Control Program. Staff was then directed to reach out to the local business community that would be affected by the implementation of a FOG Control Program with the different options for a FOG Control Program. On April 13, 2011 Staff gave a presentation to the local Chamber of Commerce and then on May 31, 2011 held a special workshop for local restaurant owners to discuss the range of FOG control options.

DISCUSSION:

The City has many locations within the sewer collection system that require frequent cleaning due to excessive fats, oils, and grease accumulation. The operations goal for Public Works is to get to a condition where the sewer lines will only need to be cleaned once per year. Implementing an effective FOG Program, which is required under the WDR, is one of the tools that will reduce the required cleaning frequency necessary to prevent sewer system overflows and allow for Public Works to better maintain the sewer collection system.

Staff is here at this meeting to provide an update on the City's process to enhance the FOG Control Program based on the direction from previous Council meetings and community outreach efforts. Attachment 1 is a preliminary draft ordinance provided to initiate the discussion of what the City Ordinance should contain regarding the FOG control and management within the City. Following this review with City Council, Staff will return at a future Council meeting to present specific changes to the municipal code that will enhance the City's ability to manage the discharge of FOG into the sewer collection system.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

Costs for implementation of a FOG Control Program will be absorbed into the operating budget for Public Works. Inspection of food service facilities are already being done through the storm water program.

DEPARTMENT RECOMMENDATION:

1. Receive this report
2. Receive oral report Chris Helmer, Environmental Programs Manager
3. Comment or provide direction on the draft Ordinance Elements.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown, City Manager

Attachments:

1. Preliminary Draft FOG Ordinance

Sample Ordinance for FOG – 2012 Draft

13.14 – REGULATION OF GREASE DISPOSAL IN COMMERCIAL KITCHENS

13.14.010 – Definitions

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the introduction of FOG to the sewer facilities.

"Change in operations" means any change in the ownership, food types, or operational procedures that have the potential to increase the amount of FOG generated and/or discharged by FSEs in an amount that alone or collectively causes or creates a potential for SSOs to occur.

"City Manager" means the city manager of the City of Imperial Beach or his or her designee.

"Discharger" means any person who discharges or causes a discharge of wastewater directly or indirectly to a public sewer. Discharger shall mean the same as user.

"Effluent" means any liquid outflow from the FSE that is discharged to the sewer.

"Existing Food Service Establishment" means an FSE which legally exists and operates at the time of the effective date of this Chapter.

"Fats, oils and grease (FOG)" means any substance such as a vegetable or animal product that is used in, or is a byproduct of, the cooking or food preparation process, and that turns or may turn viscous or solidifies with a change in temperature or other conditions.

"FOG control program" means the FOG control program required by and developed pursuant to State Water Resources Control Board (SWRCB) ORDER NO. 2006-0003-DWQ.

"Food Service Establishment (FSE)" means facilities defined in California Health And Safety Code Section 113785 and any commercial entity, operating in a permanently constructed structure such as a room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, or manufacturing, packaging, or otherwise handling food for sale to other entities, or for consumption by the public, its members or employees, and which has any process or device that uses or produces FOG, or grease vapors, steam, fumes, smoke or odors that are required to be removed by a Type I or Type II hood, as defined in CURFFL Section 113785.

"Grease control device" means any grease interceptor, grease trap or other mechanism, device or process, which attaches to, or is applied to, wastewater plumbing fixtures and lines, the purpose of which is to trap or collect or treat FOG prior to it being discharged into the sewer system. "Grease control device" may also include any other proven method to reduce FOG subject to the approval of the city.

"Grease interceptor" means a multi-compartment device that is constructed in different sizes and is generally required to be located, according to the California Plumbing Code, underground between a FSE and the connection to the sewer system. These devices primarily use gravity to separate FOG from the wastewater as it moves from one compartment to the next. These devices must be cleaned, maintained, and have the FOG removed and disposed of in a proper manner on regular intervals to be effective.

"Grease trap" means a grease control device that is used to serve individual fixtures and have limited effect and should only be used in those cases where the use of a grease interceptor or other grease control device is determined to be impossible or impracticable.

"Hot spots" means areas in sewer lines that have experienced sanitary sewer overflows or that must be cleaned or maintained frequently to avoid blockages of sewer system.

Interceptor" means a grease interceptor.

"Program manager" means the individual designated by the City Manager to administer the FOG control program. A consultant retained under contract by the city may be designated as the FOG control program manager. The FOG control program manager is responsible for all determinations of compliance with the program, including approval of discretionary waivers, inspections and development and implementation of the best management practices and the rules and regulations for the city's FOG control program.

"Regulatory agencies" means those agencies having regulatory jurisdiction over the operations of the city, including, but not limited to:

A. United States Environmental Protection Agency, Region IX, San Francisco and Washington, DC (EPA).

B. California State Water Resources Control Board (SWRCB).

C. California Regional Water Quality Control Board, San Diego Region (RWQCB).

D. California Department of Health Services (DOHS).

"Twenty-five percent rule" means requirement for grease interceptors to be maintained such that the combined FOG and solids accumulation does not exceed twenty-five percent of the design hydraulic depth of the grease interceptor. This is to ensure that the minimum hydraulic retention time and required available hydraulic volume is maintained to effectively intercept and retain FOG discharged to the sewer system.

13.14.020 – Purpose and Intent

It is the intent of this article to establish regulations for the disposal of grease and other insoluble waste discharges from commercial kitchens within the city. The city council, in enacting the ordinance codified in this article, intends to provide for the protection and maximum beneficial public use of the city's sewer system, to prevent blockages of that system and accidental discharge of grease into the storm water system, to ensure the cost of maintaining the public sewer system is equitably distributed amongst users, to clarify grease disposal requirements for existing commercial kitchens, and to promote public health and safety.

13.14.030 – FOG Discharge Prohibited

No establishment shall discharge or cause to be discharged into the sewer system FOG that accumulates and/or causes or contributes to blockages in the sewer system or at the sewer lateral which connects the establishment to the sewer system.

13.14.040 – Conditions for grease disposal at Food Service Establishments

Food Service Establishments (FSE) shall not discharge fats, oils, and/or grease into a public sewer without complying with the following conditions:

A. If requested, the FSE shall submit pertinent information on business operations to the City in order to assess the overall impact on the sewer collection system. The FSE may be required to submit, in units and terms appropriate for evaluation, the following information:

1. Name, address and Standard Industrial Classification number of FSE;

2. Volume of wastewater to be discharged;

3. Proposed wastewater constituents;

4. Time of daily food preparation operations;

5. Average and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variation if any;

6. Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;

7. Plans or diagrams depicting location of on-site sewer lines pumping stations and any reclamation or pretreatment facilities;

8. Description of food preparation, type, number of meals served, cleanup procedures, dining room capacity, number of employees and size of kitchen;

9. Any other information required by the Program Manager to evaluate the FOG disposal of the FSE. The Program Manager will evaluate the data submitted and may require additional information.

B. The Program Manager will evaluate the data furnished by the applicant and may require additional information. Prior to or after evaluation and acceptance of the data furnished, an on -site inspection of the waste discharge system, treatment systems or other systems relating to the waste discharge may be required. The Program Manager may then permit FOG discharge subject to terms and conditions provided herein.

C. FSE grease disposal shall be allowed only for specific use for a specific operation. Re-evaluation may be required for any sale, lease, transfer or assignment of the premises or business or any change in operations.

13.14.060 – Prohibitions. The following prohibitions shall apply to all Food Service Establishments:

A. Installation of food grinders in new constructions of Food Service Establishments shall be prohibited. Furthermore, all food grinders shall be removed from existing Food Service Establishments within 180 days of the effective date of these regulations.

B. Introduction of any additives into a Food Service Establishment's wastewater system for the purpose of emulsifying FOG is prohibited, unless a specific written authorization from the Program Manager is obtained based upon evidence showing that such additives will not cause or contribute to interference and/or a sewer system overflow.

C. Discharge of wastewater with temperatures in excess of 140°F to any grease control device, including interceptors is prohibited.

D. The use of biological additives to treat or reduce FOG or as a supplement to interceptor maintenance, without prior authorization from the Program Manager, is prohibited. Such authorization shall be based upon evidence showing that such biological additives will not cause or contribute to interference and/or a sewer system overflow.

E. No waste removed from an interceptor may be discharged to the sewer system.

13.14.70 – Grease control device required.

All building permit plans or designs shall comply with applicable sections of the currently adopted edition of the California Plumbing Code to eliminate or minimize the sewer system impacts due to fats, oils, and grease discharge.

A. Food Service Establishments are required to install operate and maintain an approved type and adequately sized grease control device necessary to maintain compliance with the objectives of this chapter.

1. New Construction of Food Service Establishments.

    a. Food Service Establishments which are newly constructed shall install, operate, and maintain a grease control device prior to and following commencement of wastewater discharges to the sewer system.

    b. Newly constructed Food Service Establishments shall size grease control devices according to the current edition of the California Plumbing Code.

2. Existing Food Service Establishments.

    a. Existing Food Service Establishments shall be required to install and commence proper operation of a grease control device upon notification by the City if in the determination of the Program Manager any of the following apply:

        (1) The Existing Food Service Establishment has caused or contributed to a grease-related blockage in the sewer system including private laterals, or which have sewer laterals connected to hot spots shall be deemed to have significant potential to adversely impact the sewer system; .
        (2) The Existing Food Service Establishments has contributed significant FOG to the sewer system, which may be determined through observation of kitchen equipment or operations, observation of grease in the sewer lateral, or testing of effluent shall be deemed to have a reasonable potential to adversely impact the sewer system.

    b. Existing Food Service Establishments undergoing any change in operations may be required to install a grease control device prior to the issuance of any building permit, certification of occupancy, final permit approval, or if none, prior to commencing the discharge of wastewater to the sewer system, unless a conditional waiver is obtained from the Program Manager.

    c. Existing Food Service Establishments which have already installed a grease control device at the time of adoption of this Chapter will be allowed to continue using said device provided it is in proper working order and meets the standards of the version of California Plumbing Code in place at the time of installation.

B. The grease control device shall be connected to all grease bearing fixtures and adequate to separate and remove FOG contained in wastewater discharges from any establishment prior to discharge to the sewer system consistent with the grease control device requirements of this chapter.

C. Property owners of commercial developments or their official designee shall be responsible for the installation and maintenance of the grease control device serving multiple establishments that are located on a single parcel

D. Conditional Waiver

1. Any existing FSE may obtain a conditional *waiver* from the Program Manager, in order to avoid compliance with the grease removal device installation requirement. The FSE bears the burden of demonstrating, to the Program Manager's reasonable satisfaction, that the installation of a grease removal device is not necessary and that acceptable alternatives such as, but not limited to, installation of alternative technologies or implementation of BMPs will be sufficient to prevent significant FOG discharges from the applicant. Upon determination by the Program Manager that a conditional *waiver* may be granted, the FSE will be given notice in writing that a *waiver* has been approved and that the FSE is relieved of the requirement to install a grease removal device. So long as the *waiver* remains effective the Program Manager may impose terms and conditions on the issuance of a *waiver* and may impose conditions on the FSE's business license in accordance with any approved *waiver*.

2. A conditional *waiver* may be suspended or revoked at any time when any of the terms and conditions for its issuance is not satisfied or if the conditions upon which the conditional *waiver* was based change so that the justification for the exception no longer exists. Appeal of any suspension or revocation may be made, as provided in this chapter.

3. Period of Validity. The conditional *waiver* shall be valid only so long as the FSE remains in compliance with all requirements of this chapter, including, but not limited to, the requirements to apply for a new or renewed business license and to implement BMPs. The conditional *waiver* may be suspended or revoked if any of the terms and conditions for its issuance are not satisfied. Appeal of any suspension or revocation may be made as provided in this chapter.

13.14.080 – Grease control device maintenance requirements.

A. Each commercial kitchen with a grease control device shall be required to employ an appropriate service or procedures for periodic collection of accumulated grease from any grease control device. The collection schedule shall be determined by the following criteria:

1. Twenty Five Percent Rule. Grease control devices shall be fully pumped out and cleaned at a frequency such that the combined FOG and solids accumulation does not exceed 25% of the total designed hydraulic depth of the grease control device. This is to ensure that the minimum hydraulic retention time and required available hydraulic volume is maintained to effectively intercept and retain FOG discharged to the sewer system.

2. Each Food Service Establishment with a grease control device shall fully pump out and clean its grease control device not less than every 6 months, unless required sooner by the 25% Rule in subsection (1) above, or a later interval determined under subsection (3) below.

3. Grease control devices shall be fully pumped out and cleaned every six months when the frequency described in subsection (1) has not been established. The maintenance frequency may be adjusted by the Program Manager when sufficient data have been obtained to establish an average frequency based on the requirements described in subsection (1).The Program Manager may change the maintenance frequency at any time to reflect changes in actual operating conditions. Based on the actual generation of FOG from the Food Service Establishment, the maintenance frequency may increase or decrease.

B. Maintenance Records. Each commercial kitchen with a grease control device shall be required to keep records of cleaning, maintenance and grease removal. All such records must be retained on site by the permitted facility for a minimum of three (3) years. A separate maintenance log shall be maintained for each grease control device and posted in the immediate vicinity of each device. Maintenance logs shall include the following information: Grease control device location and volume; maintenance dates; volume removed (gallons); disposal methods; and name of person performing maintenance and, if the person is not employed by the commercial kitchen, the name, address and phone number of the person or company performing the maintenance activities.

C. Inspection. Each commercial kitchen with a grease control device shall allow City representatives access to the premises during normal business hours and at reasonable times, for purposes of sampling, inspections and review of records relating to commercial kitchen grease disposal.

13.14.090 – Best management practice requirements and general requirements applicable to all food preparation and service establishments and commercial kitchens.

All food preparation and service establishments and commercial kitchens must install, implement and maintain at least the following minimum best management practices:

A. Drain screens.

Drain screens shall be installed on all drainage pipes in food preparation areas.

B. Waste cooking oil.

1. All waste cooking oil shall be collected and stored properly in recycling barrels or drums.

2. Such recycling barrels or drums shall be maintained appropriately to ensure they do not leak.

3. Licensed haulers or an approved recycling facility must be used to dispose of waste cooking oil.

D. Food waste.
All food waste shall be properly disposed of as organic waste or placed in enclosed plastic bags and disposed directly into the trash or garbage, and not in sinks.

E. Employee training.

1. Employees of the food service establishment shall be trained at the beginning of their term of employment, and once each calendar year thereafter, on the following subjects:

   a. How to "dry wipe" pots, pans, dishware and work areas before washing, to remove grease.

   b. How to properly dispose of food waste and solids.

   c. The location and use of absorption products to clean under fryer baskets and other locations where grease may be spilled or dripped.

   d. How to properly dispose of grease or oils from cooking equipment into a grease barrel or drum without spilling.

2. Kitchen exhaust filters shall be cleaned as frequently as necessary to be maintained in good operating condition

13.14.110 – Enforcement

Authorized enforcement officials and authorized enforcement staff may enforce this chapter and abate public nuisances as follows:

A. Administrative Authorities.

1. Administrative Penalties. Administrative penalties may be imposed in accordance with the provisions for administrative penalties set forth in this chapter. Administrative penalties may include the recovery of fines assessed against the City of Imperial Beach by the RWQCB. Any later-enacted administrative penalty provision in the Imperial Beach Municipal Code shall also be applicable to this chapter, unless otherwise provided therein.

2. Cease and Desist Orders. Written and/or verbal orders may be issued to stop illegal discharges and/or remove illegal connections.

3. Notice and Order to Clean, Test, or Abate. Written and/or verbal orders may be issued to perform any act required by this chapter where conditions warrant.

4. Public Nuisance Abatement. Violations of this chapter are deemed a threat to public health, safety, and welfare; and are identified as a public nuisance. If actions ordered pursuant to this chapter are not performed, the authorized enforcement official may abate any public nuisance. City costs for pollution detection and abatement, if not paid in full by the discharger in addition to any other penalties, may be made a lien against the property in accordance with this procedure.

5. Stop Work Orders. Whenever any work is being done contrary to the provisions of this chapter, an authorized enforcement official may order the work stopped by notice in writing served on any person engaged in the doing or causing such work to be done, and any such person shall immediately stop such work until authorized by the authorized enforcement official to proceed with the work.

6. Permit Suspension or Revocation. Violations of this chapter may be grounds for permit and/or other city license suspension or revocation in accordance with applicable sections of the Imperial Beach Municipal Code.

B. Judicial Authorities.

1. Civil Penalties and Remedies. The Imperial Beach city attorney or designee is hereby authorized to file civil actions in superior court to enforce this chapter, seeking civil penalties and/or other remedies as provided in this section. There is no requirement that administrative enforcement procedures be pursued before such actions are filed.

2. Injunctive Relief. Any violation of this chapter may be enforced by a judicial action for injunctive relief.

3. Arrest or Issue Citations. The assistance of a peace officer may be enlisted to arrest violators as provided in California Penal Code and/or a citation and notice to appear as prescribed in Imperial Beach Municipal Code Chapter 1.12 and Part 2 of the California Penal Code, including Section 853.6 (or as amended) may be issued. There is no requirement that administrative enforcement authorities be used before such actions are filed. The immunities prescribed in Section 836.5 of the Penal Code are applicable to authorized enforcement officials and authorized enforcement staff acting in the course and scope of their employment pursuant to this chapter.

13.14.120 - Penalties

A. Administrative Penalties. Administrative penalties may be imposed pursuant to Chapter 1.22 of the Imperial Beach Municipal Code. Any later-enacted administrative penalty provision in the Imperial Beach Municipal Code shall also be applicable to this chapter, unless otherwise provided therein.

B. Misdemeanor Penalties. Non-compliance with any part of this chapter constitutes a misdemeanor and may be enforced and punished as prescribed in the Penal Code and Government Code of the state of California.

C. Penalties For Infractions. Authorized enforcement officials and authorized enforcement staff may charge any violation of this chapter as an infraction at their discretion. Infractions may be abated as a nuisance or enforced and punished as prescribed in the Penal Code and Government Code of the state of California.

D. For Civil Actions.

1. In addition to other penalties and remedies permitted in this chapter, a violation of this chapter may result in civil actions. Except where a maximum monetary amount is specified, the following may also be awarded without monetary limitations in any civil action:

2. Injunctive relief;
   i. Costs to investigate, inspect, monitor, survey, or litigate;
   ii. Costs to any adverse effects of a violation;
   iii. Compensatory damages for losses to the city or any other plaintiff caused by violations; and/or restitution to third parties for losses caused by violations; and

3. Civil Penalties.
   i. As part of a civil action filed by the city to enforce provisions of this chapter, a court may assess a maximum civil penalty of two thousand five hundred dollars per violation for unfair business practices that violate this chapter for each day during which any violation of any provision of this chapter is committed, continued, permitted or maintained by such person(s).
   ii. As part of a civil action filed by the city to enforce provisions of this chapter, a court may assess a maximum civil penalty of one thousand dollars per violation for violations of this chapter for each day during which any violation of any provision of this chapter is committed, continued, permitted or maintained by such person(s).
   iii. In determining the amount of any civil liability to be imposed pursuant to this chapter, the superior court shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether any discharge caused the violation is susceptible to cleanup or abatement, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any resulting from the violation, and such other matters as justice may require.

E. Penalties and Remedies Not Exclusive. Penalties and remedies under this article may be cumulative and in addition to other administrative, civil or criminal remedies.

13.14.130 - Compliance schedule agreement

A. Upon determination that a FSE is not in compliance with this chapter, or needs to construct and/or acquire and install a grease control device or grease interceptor, the Program Manager may require the FSE to enter into a Compliance Schedule Agreement (CSA) pursuant to this section.

B. The issuance of a CSA may contain terms and conditions including but not limited to requirements for installation of a grease control device, grease interceptor and facilities, submittal of drawings or reports, audit of waste hauling records, best management and waste minimization practices, payment of fees, or other provisions to ensure compliance with this chapter.

C. The Program Manager shall not enter into a CSA until such time as all amounts owed to the city, including user fees, noncompliance sampling fees, or other amounts due are paid in full, or an agreement for deferred payment secured by collateral or a third party, is approved by the Program Manager.

D. If compliance is not achieved in accordance with the terms and conditions of a CSA during its term, the Program Manager may issue an order suspending or revoking the FSE business license in accordance with the provisions of this chapter.

AGENDA ITEM NO. 6.5

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**CITY MANAGER**
SUBJECT:	**LEAGUE RESOLUTIONS FOR THE SEPTEMBER ANNUAL CONFERENCE**

BACKGROUND:
The League of California Cities will consider five resolutions at its Annual Conference this year and Councilmember Bragg is designated as Imperial Beach's voting delegate.

Council may wish to provide direction to Councilmember Bragg or may simply leave the voting to her discretion after listening to the discussions at the League meeting.

DISCUSSION:
The resolutions are summarized in the 2012 Annual Conference Resolutions Packet (Attachment 1).

ENVIRONMENTAL DETERMINATION:
Not a project as defined by CEQA.

FISCAL IMPACT:
No direct impact, but some resolutions may indirectly affect cities.

DEPARTMENT RECOMMENDATION:
Staff recommends Council consider the following options:

1. Provide direction to your voting delegate, Councilmember Bragg, to make her best judgment on the resolutions and vote as she deems in the best interest of Imperial Beach and other California cities; **OR**
2. Provide specific directions to Councilmember Bragg on whether she should support or oppose one or more of the resolutions under consideration by the League.

Given our inability to know all the arguments that may arise at the conference and given the nature of the resolutions, we recommend option 1, above, especially if Council does not feel very strongly about the resolutions.

CITY MANAGER'S RECOMMENDATION:
Approve Department recommendation.

Gary Brown, City Manager

Attachments:

1. League Annual Conference Resolution Packet

ATTACHMENT 1

1400 K Street
Sacramento, CA 95814
ph: (916) 658-8200
fx: (916) 658-8240

LEAGUE OF CALIFORNIA CITIES

2012 JUL 18 PM 3:12

WWW.CACITIES.ORG

CITY MANAGER &
CITY CLERK OFFICES

July 12, 2012

TO: Mayors, City Managers and City Clerks
League Board of Directors

RE: Annual Conference Resolutions Packet
Notice of League Annual Meeting

Enclosed please find the 2012 Annual Conference Resolutions Packet.

Annual Conference in San Diego. This year's League Annual Conference will be held September 5 - 7 at the San Diego Convention Center in San Diego. The conference announcement has previously been sent to all cities and we hope that you and your colleagues will be able to join us. More information about the conference is available on the League's Web site at www.cacities.org/ac. We look forward to welcoming city officials to the conference.

Annual Luncheon/Business Meeting - Friday, September 7, 12:00 p.m. The League's Annual Business Meeting will be held at the San Diego Convention Center.

Resolutions Packet. At the Annual Conference, the League will consider the five resolutions introduced by the deadline, Saturday, July 7, 2012, midnight. These resolutions are included in this packet. We request that you distribute this packet to your city council.

We encourage each city council to consider the resolutions and to determine a city position so that your voting delegate can represent your city's position on each resolution. A copy of the resolutions packet is posted on the League's website for your convenience: www.cacities.org/resolutions.

The resolutions packet contains additional information related to consideration of the resolutions at the Annual Conference. This includes the date, time and location of the meetings at which resolutions will be considered.

Voting Delegates. Each city council is encouraged to designate a voting delegate and two alternates to represent their city at the Annual Business Meeting. A letter asking city councils to designate their voting delegate and two alternates has already been sent to each city. Copies of the letter, voting delegate form, and additional information are also available at: www.cacities.org/resolutions.

Please Bring This Packet to the Annual Conference
September 5 - 7 — San Diego

GCUC 1197-M

I.
INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, five resolutions have been introduced for consideration by the Annual Conference and referred to the League policy committees.

POLICY COMMITTEES: Three policy committees will meet at the Annual Conference to consider and take action on resolutions referred to them. The committees are Environmental Quality, Public Safety, and Revenue & Taxation. These committees will meet on Wednesday, September 5, 2012, at the San Diego Marriott Marquis & Marina Hotel in San Diego. Please see page iii for the policy committee meeting schedule. The sponsors of the resolutions have been notified of the time and location of the meetings.

Two other policy committees ***may*** also be meeting: Administrative Services and Employee Relations. Administrative Services will meet pending League Board (July 19 & 20) action to determine whether the committee will review any November General election ballot initiatives. Employee Relations will meet if the Legislature acts on pension reform in August. If pension reform is passed, the committee will meet to discuss the details of the proposal. For now, please plan to attend the meeting at the Annual conference. If for some reason this changes, League staff will send an email notifying the committee.

Three policy committees will ***not*** be meeting at the annual conference. These committees are: Community Services; Housing, Community & Economic Development; and Transportation, Communication, & Public Works.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 6, at the San Diego Convention Center, to consider the reports of the three policy committees regarding the five resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president. Please check in at the registration desk for room location.

ANNUAL LUNCHEON/BUSINESS MEETING/GENERAL ASSEMBLY: This meeting will be held at 12:00 p.m. on Friday, September 7, at the San Diego Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Session of the General Assembly. This year, that deadline is 12:00 p.m., Thursday, September 6. If the petitioned resolution is substantially similar in substance to a resolution already under consideration, the petitioned resolution may be disqualified by the General Resolutions Committee.

Resolutions can be viewed on the League's Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224.

II.
GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities and the League is through the League's eight standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.

2. The issue is not of a purely local or regional concern.

3. The recommended policy should not simply restate existing League policy.

4. The resolution should be directed at achieving one of the following objectives:

   (a) Focus public or media attention on an issue of major importance to cities.

   (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the Board of Directors.

   (c) Consider important issues not adequately addressed by the policy committees and Board of Directors.

   (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

III.
LOCATION OF MEETINGS

Policy Committee Meetings
Wednesday, September 5, 2012
San Diego Marriott Marquis & Marina Hotel
333 W. Harbor Drive, San Diego

POLICY COMMITTEES MEETING AT ANNUAL CONFERENCE TO DISCUSS AN ANNUAL CONFERENCE RESOLUTION

9:00 a.m. – 10:30 a.m.	**Environmental Quality; Revenue and Taxation**
10:30 a.m. – 12:00 p.m.	**Public Safety**

***TENTATIVE* POLICY COMMITTEE MEETINGS AT ANNUAL CONFERENCE TO DISCUSS OTHER ISSUES**

9:00 a.m. – 10:30 a.m.	**Administrative Services**
10:30 a.m. – 12:00 p.m.	**Employee Relations**

Note: These policy committees will ***NOT*** meet at the Annual Conference:
Community Services
Housing, Community & Economic Development
Transportation, Communication & Public Works

General Resolutions Committee
Thursday, September 6, 2012, 1:00 p.m.
San Diego Convention Center

Annual Business Meeting and General Assembly Luncheon
Friday, September 7, 2012, 12:00 p.m.
San Diego Convention Center

IV.
KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned. **Please note that one resolution has been assigned to more than one committee. This resolution is noted by this sign (♦).**

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee
2 - General Resolutions Committee
3 - General Assembly

ENVIRONMENTAL QUALITY POLICY COMMITTEE

		1	2	3
3	Desert Protection Act			
4	Global Warming			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
♦1	Fines and Forfeitures			
2	Internet Crimes Against Children			
5	Emergency Management Mission for California Cities			

REVENUE AND TAXATION POLICY COMMITTEE

		1	2	3
♦1	Fine and Forfeitures			

Please note: These committees will ***NOT*** meet at the annual conference: Community Services; Housing, Community & Economic Development; and Transportation, Communication & Public Works

Information pertaining to the Annual Conference Resolutions will also be posted on each committee's page on the League website: www.cacities.org. The entire Resolutions Packet will be posted at: www.cacities.org/resolutions.

KEY TO ACTIONS TAKEN ON RESOLUTIONS *(Continued)*

KEY TO REVIEWING BODIES

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

Action Footnotes

* Subject matter covered in another resolution

** Existing League policy

*** Local authority presently exists

KEY TO ACTIONS TAKEN

A - Approve

D - Disapprove

N - No Action

R - Refer to appropriate policy committee for study

a - Amend

Aa - Approve as amended

Aaa - Approve with additional amendment(s)

Ra - Amend and refer as amended to appropriate policy committee for study

Raa - Additional amendments and refer

Da - Amend (for clarity or brevity) and Disapprove

Na - Amend (for clarity or brevity) and take No Action

W - Withdrawn by Sponsor

Procedural Note: Resolutions that are approved by the General Resolutions Committee, as well as all qualified petitioned resolutions, are reported to the floor of the General Assembly. In addition, League policy provides the following procedure for resolutions approved by League policy committees but *not* approved by the General Resolutions Committee:

Resolutions initially recommended for approval and adoption by all the League policy committees to which the resolution is assigned, but subsequently recommended for disapproval, referral or no action by the General Resolutions Committee, shall then be placed on a consent agenda for consideration by the General Assembly. The consent agenda shall include a brief description of the basis for the recommendations by both the policy committee(s) and General Resolutions Committee, as well as the recommended action by each. Any voting delegate may make a motion to pull a resolution from the consent agenda in order to request the opportunity to fully debate the resolution. If, upon a majority vote of the General Assembly, the request for debate is approved, the General Assembly shall have the opportunity to debate and subsequently vote on the resolution.

V.
2012 ANNUAL CONFERENCE RESOLUTIONS

RESOLUTIONS REFERRED TO ENVIRONMENTAL QUALITY POLICY COMMITTEE

3. RESOLUTION ENCOURAGING CALIFORNIA CITIES TO OPPOSE THE CALIFORNIA DESERT PROTECTION ACT OF 2011

Source: City of Needles
Referred To: Environmental Quality Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, in 1993 Senator Diane Feinstein introduced the California Desert Protection Act of 1994 which became federal law and was passed by the United States Congress on October 8, 1994, and

WHEREAS, this act established the Death Valley and Joshua Tree National Parks and the Mojave National Preserve in the California desert; and

WHEREAS, this act designated 69 wilderness areas as additions to the National Wilderness Preservation System within the California Desert Conservation Area (CDCA), the Yuma District, the Bakersfield District, and the California Desert District of the Bureau of Land Management permits grazing in such areas; and

WHEREAS, the Act abolished Death Valley National Monument, established in 1933 and 1937, and incorporated its lands into a new Death Valley National Park administered as part of the National Park System. Grazing of domestic livestock was permitted to continue at no more than the then-current level. The Act also required the Secretary of the Interior to study the suitability of lands within and outside the boundaries of the park as a reservation for the Timbisha Shoshone Tribe; and

WHEREAS, the Act abolished Joshua Tree National Monument, established in 1936, and incorporated its lands into Joshua Tree National Park; and

WHEREAS, the Act established the Mojave National Preserve, consisting of approximately 1,419,800 acres (5,746 km; 2,218.4 sq mi), and abolished the East Mojave National Scenic Area, which was designated in 1981. The preserve was to be administered in accordance with National Park System laws. Hunting, fishing and trapping were permitted as allowed by federal and state laws, with certain exceptions. Mining claims were governed by the National Park System laws, and grazing was permitted to continue at no more than the then-current level; and

WHEREAS, the Act required the Secretary of the Interior to ensure that American Indian people have access to the lands designated under the Act for traditional cultural and religious purposes, in recognition of their prior use of these lands for these purposes. Upon the request of an Indian tribe or religious community, the Secretary must temporarily close specific portions to the general public to protect the privacy of traditional cultural and religious activities; and

WHEREAS, flights by military aircraft over the lands designated by the Act were not restricted or precluded, including over flights that can be seen or heard from these lands; and

WHEREAS, Congress found that federally owned desert lands of southern California constitute a public wildland resource of extraordinary and inestimable value for current and future generations; these desert wildlands have unique scenic, historical, archeological, environmental, ecological, wildlife, cultural,

scientific, educational and recreational values; the California desert public land resources are threatened by adverse pressures which impair their public and natural values; the California desert is a cohesive unit posing difficult resource protection and management challenges; statutory land unit designations are necessary to protect these lands; and

WHEREAS, Senator Dianne Feinstein, author of the 1994 California Desert Protection Act has introduced legislation "California Desert Protection Act of 2011" that will set aside new land in the Mojave Desert for conservation, recreation and other purposes; and

WHEREAS, the proposed legislation will take AN ADDITIONAL 1.6 million acres of Bureau of Land Management land out of potential development, including mining exploration, by designating two new "National Monuments", one adjacent to the Mojave National Preserve which will take 1.5 million acres out of BLM multiple use in addition to 800,000 acres out of private ownership and one adjacent to the Joshua Tree National Park; and

WHEREAS, this legislation will result in just about every square inch of the desert spoken for, either for military use, national parks, wilderness and special conservation areas, Indian reservations and other types of land management (half of the lands under BLM management are protected under wilderness or special conservation area restrictions); and

WHEREAS, projects, such as California mandated solar energy development, that would disturb or destroy habitat must make up for that loss by purchasing private habitat at ratios of at least three acres for every one acre disturbed; and

WHEREAS, at that rate, even in the nation's largest county, San Bernardino, just three solar projects on federal land will require an amount of private land acquisition of 22,000 acres, or roughly 34 square miles, land will come off of the county's tax rolls and we will literally run out of mitigation land after a handful of projects; and

WHEREAS, the Federal Energy Policy Act of 2005 requires that 10,000 megawatts of renewable energy be generated on public land in the west. To meet California's mandate of having 33 percent of our energy come from renewable sources, it requires more that 20,000 megawatts of production and they are looking mainly at public lands. If we approve that much solar, the result would be a regulatory lockdown on the rest of the Desert by the Federal Fish and Wildlife Service and the State Department of Fish and Game; and

WHEREAS, the Desert Protection Act of 1994 encompassed 1.5 million acres or 2,218.4 square miles plus an additional 800,000 acres of private land or 1,250 square miles; Fort Irwin, 1,000 square miles; 29 Palms Marine Base, 931.7 square miles and they have also applied for an additional 420,000 acres in 2008, or 659.375 square miles totaling 6,059.48 square miles; and

WHEREAS, the California Desert Protection Act of 2011 will take OVER 2,300 square miles, not including the acreage of wilderness located outside any of the above mentioned areas (this total mileage would roughly encompass Rhode Island, Delaware, and Connecticut); and

WHEREAS, these public lands have long supported a range of beneficial uses and efforts have been made to protect the desert inhabitants. Let's not destroy the desert or our ability to use and enjoy it.

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the

League encourages California cities to adopt resolutions in opposition to the California Desert Protection Act of 2011.

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League of California Cities Staff Analysis

Staff: Kyra Ross, Legislative Representative, (916) 658-8252
Committee: Environmental Quality Policy Committee

Summary:
This resolution encourages California cities to oppose the California Desert Protection Act of 2011.

Background:
The California Desert Protection Act of 2011 (S. 138) is legislation proposed by Senator Dianne Feinstein which would provide for conservation, enhanced recreation opportunities, and development of renewable energy in the California Desert Conservation Area. The Measure would:

- Create two new national monuments: the 941,000 acres Mojave Trails National Monument along Route 66 and the 134,000 acres Sand to Snow National Monument, which connects Joshua Tree National Park to the San Bernardino Mountains.
- Add adjacent lands to Joshua Tree National Park, Death Valley National Park and Mohave National Preserve;
- Protect nearly 76 miles of waterways;
- Designate five new wilderness areas;
- Designate approximately 250,000 acres of Bureau of Land Management wilderness areas near Fort Irwin;
- Enhance recreational opportunities; and,
- Designate four existing off-highway vehicle areas in the California Desert as permanent.

S. 138 is a re-introduction of S. 2921, the California Desert Protection Act of 2010 which is now dead. S. 138 was introduced in January 2011 and was referred to the Senate Committee on Energy and Natural Resources. The measure has not yet been set for hearing by the Committee.

Fiscal Impact:
Unknown. No direct fiscal impact to city general funds.

Existing League Policy:
The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

Specific to this Resolution, existing policy offers no specific policy on this issue.

The League's Strategic Priorities for 2012, as adopted by the League Board of Directors, include:

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

>>>>>>>>>>

4. RESOLUTION REQUESTING CONSIDERATION OF SUSPENSION OF IMPLEMENTATION OR REVISION OF THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT (AB 32 of 2006)

Source: City of Needles
Referred to: Environmental Quality Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, in 2006 the California Legislature adopted the California Global Warming Solutions Act, commonly referred to as AB 32 (Health & Safety Code §§38500 et seq.); and

WHEREAS, AB 32 aims to reduce California's greenhouse gas emissions (GHGs) to 1990 levels by 2020 (Health & Safety Code §38550) and to 80 percent below 1990 levels by 2050; and

WHEREAS, the California Air Resources Board (CARB) is the government agency charged with determining how the AB 32 goals will be reached (Health & Safety Code §38510); and

WHEREAS, CARB's implementation of AB32 aims to reduce California's GHG emissions by 169 million metric tons of carbon dioxide equivalent (MMTCO2E) through a variety of strategies, including sector-specific regulations, market mechanisms, voluntary measures, fees, incentives and other policies and programs; and

WHEREAS, there are portions of the state that have been designated as nonattainment for the national ambient air quality standards (NAAQS) for Ozone and PM, nonattainment for state ambient air quality standards (SAAQS) for Ozone, PM, Sulfates and Hydrogen Sulfide, and identified by CARB pursuant to as overwhelmingly impacted by transported air pollution from upwind air basins; and

WHEREAS, areas designated nonattainment are mandated under the provisions of the Federal Clean Air Act (FCAA) to require pursuant to New Source Review (NSR) rules, Best Available Control Technology (BACT) and offsetting emissions reductions (Offsets) on major new or modified stationary sources of those nonattainment air pollutants and their precursors (42 U.S.C. §§7502(c)(5), 7503) regardless of whether or not the area so designated has any control or not over the pollution causing the nonattainment finding; and

WHEREAS, the United States Environmental Protection Agency (USEPA) has requested that a program be developed to implement the Prevention of Significant Deterioration (PSD) which will require additional analysis for new or modified sources of attainment pollutants including but not limited to greenhouse gases, which will also necessitate emissions reductions and BACT in some cases for attainment pollutants; and

WHEREAS, due in part to the limited number of existing sources of air pollutants and the overwhelming impact of transport some or a majority of the cities have few if any available emissions reductions available to provide such offsets; and

WHEREAS, many technologies used to attain BACT levels of air pollution control are based upon the combustion of fossil fuels which also causes emissions of GHGs; and

WHEREAS, there are a variety of Federal regulations promulgated and proposed by the USEPA regarding greenhouse gasses that have the potential to conflict both directly and in their implementation with regulatory measures to implement AB32 as adopted and proposed by CARB; and

WHEREAS, there are a variety of other mandates and regulations at the State level (municipal waste diversion, renewable energy mandate etc.) which have the potential to conflict both directly and in due to their implementation with regulatory measures to implement AB32 as adopted and proposed by CARB; and

WHEREAS, such conflicts severely impede the cities or state as well as regulated industry efforts to comply with both the applicable Federal regulations and regulations implementing AB32; and

WHEREAS, the existing and proposed regulations on both the State and Federal level result in an overall regulatory structure that is inconsistent and confusing making it virtually impossible or incredibly slow to start any new large scale projects within the State at a time where California infrastructure and its economy are in most need of refurbishment; and

WHEREAS, the existing and proposed regulations and unclear guidelines will also make it more difficult for smaller, pollution transport impacted air districts like the MDAQMD, to properly implement and enforce the regulations;

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League encourages the existing 482 California cities to adopt resolutions requesting a suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32 of 2006) until such time as the legal and regulatory inconsistencies can be resolved; and

BE IT FURTHER RESOLVED, that California cities request the California Air Resources Board and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32 and for potential direct and indirect conflict with other existing regulations at both the State and Federal level including but not limited to the potential for gains in one area to jeopardize progress in another; and

BE IT FURTHER RESOLVED, that California cities request the California Air Resources Board and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity "flight" from California; and

BE IT FURTHER RESOLVED, that California cities request the State of California by and through its Governor, Legislature, and applicable state agencies should encourage the resolution of internal conflicts between and among existing Federal programs by supporting items including but not limited to: reopening the Federal Clean Air Act, New Source Review Reform, and efforts to regulate GHGs under a comprehensive Federal program.

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League of California Cities Staff Analysis on Resolution No. 4

Staff: Kyra Ross, Legislative Representative, (916) 658-8252
Committee: Environmental Quality Policy Committee

Summary:
This resolution encourages California cities to:

1.) Adopt resolutions requesting the suspension of the implementation of some, if not all, the regulations promulgated under the California Global Warming Solutions Act (AB 32) until such time as the legal and regulatory inconsistencies can be resolved;
2.) Asks cities to request the California Air Resources Board (CARB) and other applicable state agencies examine the impact of the regulations promulgated pursuant to AB 32, and for potential conflict with other existing regulations at both the State and Federal level including, but not limited to, the potential for gains in one area to jeopardize progress in another; and,
3.) Asks cities to request the CARB and other applicable state agencies examine the overall economic impact of the regulations promulgated pursuant to AB 32 and their interaction with other existing regulations with emphasis upon the potential for job and other economic activity "flight" from California; and,
4.) Asks cities to request the State to encourage the resolution of internal conflicts between and among existing Federal programs by supporting items, including but not limited to:
    a. Reopening the Federal Clean Air Act;
    b. New Source Review Reform; and,
    c. Efforts to regulate greenhouse gas emissions under a comprehensive federal program.

Background:
AB 32 passed in 2006 and requires the State to reduce greenhouse gas emissions to 1990 levels by 2020. As the implementing agency, CARB developed and passed a Scoping Plan in 2008, outlining emission reduction measures to help the state meet its statutory reduction of greenhouse gas emissions. Since 2008, a number of measures outlined in the Scoping Plan have been implemented. Measures of interest to cities include: voluntary local government 15% reduction in greenhouse gas emissions; regional transportation-related greenhouse gas targets; landfill methane control; and green building codes.

At the same time, many of California's 15 air basins are facing ongoing challenges to meeting federal air quality standards. It's important to note that regulation of air quality in California is separated into two levels of regulation. CARB regulates air pollution from cars, trucks, buses and other sources, often referred to as "mobile sources". Local air districts regulate businesses and industrial facilities. Local air districts are the bodies that regulate ozone, PM 2.5 and PM 10. Ground level ozone (ozone), more commonly referred to as smog, is a pollutant that forms on hot summer days (not to be confused with the ozone that forms in the upper atmosphere or stratosphere). Ozone is not directly emitted by one source but comes from a combination of volatile organic compounds and nitrogen oxides. In the presence of sunlight, especially on hot summer days, this mixture forms ozone. Particulate Matter (PM) is made up of fine solid or liquid such as dust, fly ash, soot, smoke, aerosols, fumes, mists, and condensing vapors. US EPA has set health based standards for particles smaller than 10 microns (PM 10) and particles smaller than 2.5 microns (PM 2.5). When these particles become airborne, they can be suspended in the air for long periods of time. Both PM 10 and PM 2.5 have been determined to cause serious adverse health effects.

According to an April 2012 report by the California Air Pollution Control Officer's Association "California's Progress Toward Clean Air":

> *Despite significant improvements, air quality remains a major source of public health concern in large metropolitan areas throughout California. The San Joaquin and South Coast Air Basin*

continue to face significant challenges in meeting the federal health-based standards for ozone and fine particles, despite their regional and state-level controls on mobile and stationary sources that are the most stringent in the nation. In 2007, both regions sought extension for meeting the 1997 8-hour federal ambient air quality standard for ozone. A comparable challenge faces each region with respect to attainment of the 1997 PM2.5 standard. Due to continued progress in health research, the federal EPA lowered the ambient concentration for the 8-hour ozone and 24-hour PM 2.5 standards in 2008 and 2006, respectively. The net effect of these stricter standards is to raise the performance bar for California air basins. This will extend the timeframe for attainment in highly polluted regions as well as increase the number of basins with non-attainment status. Challenges also exist for air districts across California who are in attainment with the federal standards, as they continue to strive for attainment of the State's health-based ozone and PM standards, which are more stringent than the standards adopted by the US EPA.

According to the Sponsor, areas designated nonattainment are mandated under the provision of the federal Clean Air Act to require (pursuant to New Source Review Rules) Best Available Control Technology (BACT) and offsetting emissions reduction on major new or modified stationary sources of those nonattainment air pollutants and their precursors regardless of whether or not the area so designated has any control and not over the pollution causing the nonattainment finding.

The Sponsor also notes that there are a variety of other mandates and regulations at the state level that have the potential to conflict both directly and indirectly with the implementation of AB 32 measures being proposed and implemented by CARB. Two measures pointed out by the Sponsor are the existing mandate for local jurisdictions to divert 50% of solid waste from landfills (Public Resources Code 41780) and the state Renewable Portfolio Standard (RPS) that requires all retail sellers (Investor Owned Utilities, electric service providers, and community choice aggregators) and all publicly owned utilities to procure at least 33% of electricity delivered to their retail customers from renewable resources by 2020.

Fiscal Impact:
Unknown. No direct fiscal impact to city general funds.

Existing League Policy:
Specific to this Resolution, existing policy states:

Air Quality

- The League believes cities should have the authority to establish local air quality standards and programs that are stricter than state and federal standards. The League opposes efforts to restrict such authority.
- The League opposes legislation redirecting the funds authorized by Health and Safety Code Section 44223, which are currently used by local governments for locally based air quality programs.
- The League opposes air quality legislation that restricts the land use authority of cities.

Climate Change

- The League recognizes that climate change is both immediate and long term, with the potential for profound environmental, social and economic impacts to the planet and to California.
- Through the Global Warming Solutions Act of 2006 (AB 32 (Nuñez) Chapter 488, Statutes of 2006) California has embarked on a plan that requires the reduction of greenhouse gas emissions to 1990 levels by 2020. Although uncertainty remains about the pace, distribution and magnitude of the effects of climate change, the League recognizes the need for immediate actions to mitigate the sources of greenhouse gas emissions and has adopted the following principles:

1. Action Plans for Mitigating Greenhouse Gas Emissions. Encourage local governments to complete

an inventory of greenhouse gas emissions, set appropriate reduction targets, and create greenhouse gas emission reduction action plans.

2. Smart Growth. Consistent with the League's Smart Growth policies, encourage the adoption of land use policies designed to reduce sprawl, preserve open space, and create healthy, vibrant, and sustainable communities.
3. Green Technology Investment Assistance. Support tax credits, grants, loans and other incentives to assist the public, businesses, and local agencies that invest in energy efficient equipment and technology, and fuel efficient, low emission vehicles.
4. Energy and Water Conservation and Efficiency. Encourage energy efficiency, water efficiency, and sustainable building practices in new and existing public, residential and commercial buildings and facilities. This may include using the U.S. Green Building Council's LEED program or similar systems.
5. Increase the Use of Clean Alternative Energy. Promote the use and purchase of clean alternative energy through the development of renewable energy resources, recovery of landfill methane for energy production and waste-to-energy technologies.
6. Reduction of Vehicle Emissions in Public Agency Fleets. Support the reduction of vehicle emissions through increased fuel efficiency, use of appropriate alternative fueled vehicles, and/or low emission vehicles in public agency fleets. Encourage the use of appropriate alternative fueled vehicles, and/or low emission vehicles in private fleets.
7. Climate Change Impacts. Encourage all levels of government to share information to prepare for climate change impacts.
8. Coordinated Planning. State policy should encourage and provide incentive for cities to coordinate and share planning information with neighboring cities, counties, and other governmental entities so that there are agreed upon regional blueprints and strategies for dealing with greenhouse gas emissions.
9. Water Supply for New Development. Encourage exchange of water supply information between state and local agencies, including information on the impacts of climate change on state and local water supplies.
10. Recycles Content and Green Purchasing Policies. Encourage the adoption and implementation of recycled content and green procurement policies, if fitness and quality are equal, including the adoption of an Environmental Management System and authorization of local agencies to consider criteria other than only cost in awarding contracts for services.

Additionally, the League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

Finally, the League's Strategic Priorities for 2012, as adopted by the League Board of Directors, include:

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:
1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

RESOLUTIONS REFERRED TO PUBLIC SAFETY POLICY COMMITTEE

♦1 A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.

Source: City of Glendora
Referred to: Revenue & Taxation Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, the primary purpose of criminal and traffic laws is to improve safety for the public, where the cost involved to implement enforcement falls primarily upon local law enforcement agencies throughout the State; and

WHEREAS, if State laws are to be effectively enforced then local cities must have a fair revenue structure to pay the cost of making arrests and issuing citations for criminal and traffic violators; and

WHEREAS, the significant inequity in the amount cities receive in relation to the full cost of a citation and/or arrest results in an unfair distribution of revenue to cities that are generated by court fines, fees, surcharges, penalties and assessments levied on offenders; and

WHEREAS, the current inefficiencies in the system makes it practically impossible for cities to insure transparency and effectively audit, administer and manage public funds that are generated by cities and distributed by the State and County; and

WHEREAS, to adequately protect and serve the public during this time of declining revenue and deteriorating services the inequities in the system needs to be changed; and

WHEREAS, court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements; and

WHEREAS, once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed by the court has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections; and

WHEREAS, the current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected; and

WHEREAS, Counties and the State have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed; and

WHEREAS, in December 2011 at the request of the Glendora Police Department the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the City of Glendora received about 12% ($253) of the $2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit were sent to collection or warrants. Based on those results, the city received an average of $21, while the State and County received an average of $172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the State and County's share of 86.75%; and

WHEREAS, issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the time of a records clerk tasked with entering citations into the database costing approximately $82 per hour. If the citation is challenged the cost increases another $135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation currently is between $82 and $217, while the sample audit reveals the city is receiving about $21 in cost recovery; and

WHEREAS, officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the State issuing citations due to the complexity and "Priority of Distribution" they must follow from the State of California. "Priority Distribution" is triggered when a court reduces a fine for a citation. This process prohibits Judges from reducing penalty assessments and thus the only discretion Judges have in reducing fines, fees and costs is to reduce the base fine, or city portion, of the total fine. This process has a significant impact on the amount of money cities issuing the citation will receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priorities on the distribution list and often find themselves receiving significantly less share-or no share after deducting State and County fees and surcharges; and now there let it be

RESOLVED by the General Assembly of the League of California Cities, assembled in San Diego on September 7, 2012, that the League of California Cities calls upon the State Legislature and Governor to:

1. Create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations;

2. Enact legislation that changes the "Priority Distribution" mandate so cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations; and

3. That any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed, not just from the city base fine.

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Background Information on Resolution No. 1

Source: City of Glendora

Background:
Court-ordered debt collection and revenue distribution is a complex system where there are few audits, if ever, done to determine if cities are receiving their fair share of disbursements. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities. Because of the complex system cities cannot determine if they are receiving their fair share of the fines collected.

Once a debt has been collected, in whole or in part, distributing the money is not simple as there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts, depending on the fine, fee, surcharge or penalty assessment imposed by the court and California has more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different government code.

County and state have statutory responsibility and power to conduct their audits, while cities do not currently have clear legal standing to demand access to court records for purposes of conducting audits in a thorough and transparent manner which further shrouds the understanding of when and how revenue is distributed.

At the request of the City of Glendora, in December 2011, the Los Angeles Superior Court conducted a sample audit of 15 Glendora Police Department-issued citations from 2010. The results of the sample audit revealed the Glendora received about 12% ($253) of the $2,063 in paid fines for the 12 of the 15 citations submitted. Three (3) of the citations in the audit had been sent to collection or warrants. Based on those results, the city received an average of $21, while the state and county received an average of $172 for each of the 12 citations. The percentage breakdown for the city was 12.25% as compared to the state and county's share of 86.75.%

Issuing a typical vehicle code violation citation can involve up to an hour of the issuing officer's time and the records clerk tasked with entering citations into the database costing approximately $82 per hour. If the citation is challenged the cost increases another $135 to cover the cost of court time and handling of the notices associated with such an appeal. Therefore, the cost incurred to issue a citation that is currently between $82 about $217, while the sample audit reveals the city is receiving about $21 in cost recovery.

Officials with Superior Court openly admit that similar results would be expected for almost every jurisdiction in the state because when a court reduces a fine it triggers a process called "Priority Distribution." This process prohibits Judges from reducing penalty assessments imposed by the county and state and thus the only discretion that Judges have in reducing fines is to reduce the *Base Fine (City Portion)* of the total fine. This mandate has a significant impact on the amount of money cities issuing the citation receive. Rarely is the reduction in the fine taken from other stakeholders. Cities are one of the lowest priority on the distribution so often they find themselves receiving significantly less share-or no share after deducting state and county fees and surcharges.

The primary cost to implement enforcement falls upon local law enforcement agencies throughout the state. This Resolution calls upon the State Legislature and Governor to create an efficient system to provide cities with a clear authority to audit the distribution of fines, fees, assessments and administrative costs for criminal and traffic violations. In addition, legislation should be developed and passed that changes the "Priority Distribution" mandate so the cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations and that any reduction in fines, fees, assessments or costs should be equally distributed from the total fine imposed.

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League of California Cities Staff Analysis on Resolution No. 1

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214
Committee: Public Safety Policy Committee

Staff: Dan Carrigg, Legislative Representative, (916) 658-8222
Committee: Revenue and Taxation Policy Committee

Summary:
This Resolution urges the League of California Cities, through legislative or administrative means, to clarify the authority for cities to audit the distribution of court imposed fines, fees, penalty assessments and administrative costs for criminal and traffic violations.

It also urges the League to seek legislative changes to the "Priority Distribution" statutory formula so that cities receive the total cost of issuing, processing and testifying in court on criminal cases and traffic violations. The current statutory formula allows reductions to the base fine but maintains the same level of penalty assessments, based upon the full penalty charge.

Finally, any reductions that may occur in fines, fees, assessments or costs determinations should be equally distributed from the total fine imposed, not just from the city base fine.

This Resolution raises several policy questions:
1) Should cities have the authority to request audits and receive reports from a county or the state on the local share of revenue resulting from criminal and traffic violation penalties?

2) Should cost-recovery be a driving factor in setting monetary penalties for criminal or traffic violations?

3) Should reductions (as ordered by a judge) to the fines owed by violators be taken just out of the base fine, or should the base fine and related penalty assessments be reduced proportionately?

Background:
In California, criminal offenders may have additional penalty assessments made to their base fines. These penalty assessments are based on the concept of an "abusers fee," in which those who break certain laws will help finance programs related to decreasing those violations. For example, drug and alcohol offenses and domestic violence offenses are enhanced by special assessments on fines that directly fund county programs designed to prevent the violations. All other criminal offenses and traffic violations are subject to penalty assessments that are used to fund specific state programs.

According to the Resolution sponsor, the City of Glendora, the court-ordered collection of penalty fines and additional assessments, as well as the subsequent revenue distribution, is a complex system where few audits are conducted to determine if cities are receiving their share of collections. The current system makes it practically impossible for cities to effectively administer and manage public funds that are generated by cities.

The League recently held in-depth policy discussions related to audit authority in light of the misconduct charges against the City of Bell in 2011. The League convened a technical working group to review audit legislation and administrative efforts by the State Controller's Office. Following the work of this group, the League Board adopted principles supporting transparent, accurate financial and performance information. (See "Existing Policy" section below.) However, these principles did not address expanding cities' audit authority over the state, counties, or other public agencies.

The sponsors state that there are over 150 ways collection entities are required to distribute revenue collected from traffic and criminal court debts. Depending on the fine, fee, surcharge or penalty assessment imposed, there are more than 3,100 separate court fines, fees, surcharges, penalties and assessments levied on offenders that appear in statutes spanning 27 different state code sections.

Generally, the base fines for criminal and traffic citations are significantly lower than the additional penalty assessments levied by the state and counties. In some instances, the penalty assessment for state and local programs can be three or four times the amount collected by the city or county agency that issued the citation through their local enforcement authority. The amount each program account receives is based on a statutory formula. For example, if a driving under the influence (DUI) fine is $1000, specific dollar amounts proportionate to the base fine are added under six different code sections for a total price tag of $3,320 for the offense.

Some examples of program accounts receiving penalty assessment revenues include Peace Officer Standards and Training (POST), victim witness protection and services, court security, court construction, forensic laboratories for DNA identification, and automated fingerprint identification. The impact of programs largely funded, if not solely funded, by penalty assessment revenue casts a wide net of stakeholders including counties, sheriffs, district attorneys, public defenders, fish and game wardens, victim advocates, and access to the judicial system advocates. Cities are also partial benefactors of penalty assessment funded programs related to law enforcement.

For the last three decades, this policy area has been under great scrutiny and study but with little reform taking place. The recommendations from past studies and reports to consolidate penalty assessment accounts or their collections efforts, which would require legislative action, have likely not gained traction because of the inevitable loss of revenue for the specific programs and the affected interest groups.

In 1986, the Legislature enacted Senate Concurrent Resolution 53, requiring the Legislative Analyst Office (LAO) to study the statutory penalty assessments that are levied by the courts on offenders and the state programs that the funds support. The completed 1988 study found a complicated system of collection and distribution of penalty funds. The LAO was unable to fully identify the source offenses that generated penalty revenues because of limitations in most county collection systems.

In 2005, the California Research Bureau issued a report for the Assembly Public Safety Committee on county penalty assessments that drew similar conclusions. They stated the complexity of the system means poor revenue collection, disproportionate justice for debtors, and undermines the usefulness of fines as a punishment or deterrent. They recommended efforts to streamline and consolidate collections, funding, and appropriations.

After some delay, the state created the Administrative Office of the Court's Court-Ordered Debt Task Force, which is charged with evaluating and exploring means to streamline the existing structure for imposing and distributing criminal and traffic fines and fees. This Task Force has been asked to present preliminary recommendations to the Legislature regarding the priority in which court-ordered debt should be satisfied and the use of comprehensive collection programs. Currently, the League of California Cities has two appointments to the Task Force. However, the Task Force has been put on hiatus and has not met for approximately 12 months due to significant state cuts to the court budget in recent years.

Currently, legislation was introduced this year to address the issue of cities not recouping the costs of issuing citations. The response has been to increase the base fine and not change penalty assessments. Assembly Bill 2366 (Eng) would increase the base fine of "fix-it" tickets from $10 to $25 dollars. This has largely been successful in the legislative fiscal committees because with every increase to the base fine for the issuing agency, so increases the state and county share of penalty assessments proportionately.

Lastly, in most instances when the legislature takes into consideration a fine increase, be it for manufacturer product responsibility or criminal acts, the legislature focuses on how the increased fine will alter behavior, not on recovering the costs of enforcing that violation.

Fiscal Impact:
Unknown. Potential additional revenue received by cities, if any, would vary based on total citations issued and collected.

Existing League Policy:
Related to this Resolution, existing policy offers:

- Cities and the League should continue to emphasize efficiency and effectiveness, encouraging and assisting cities to achieve the best possible use of city resources.
- The League supports efforts to preserve local authority and accountability for cities, state policies must ensure the integrity of existing city revenue sources for all cities, including the city share and situs allocation, where applicable, of property tax, sales tax, vehicle license fee, etc.

Audit Principles Adopted by the League Board

- Given the State already has substantial authority to examine local government financial practices, and recognizes the significant resources required by auditors and local governments to complete audits, additional authority should only be granted to a State agency when there are documented insufficiencies in its existing authority.

- Governmental financial audits and performance audits ensure financial integrity and promote efficient, effective and accountable local government.

- Transparent, accurate financial and performance information is necessary for citizens to have confidence that their interests are being served, and for decision makers to be accountable for ensuring that public funds are spent appropriately and effectively.

- Public trust is inspired when auditors perform their work with independence, objectivity and integrity, remaining free from personal, external and organizational impairments to that independence, both in fact and in appearance.

- Public confidence in government is maintained and strengthened when financial and performance information is collected, managed and reported in accordance with nationally recognized professional accounting and auditing standards.

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:
1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

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2. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES RAISING PUBLIC AWARENESS AND SUPPORTING TOUGHER LAWS RELATED TO INTERNET CRIMES AGAINST CHILDREN

Source: San Diego County Division
Referred To: Public Safety Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, technology has brought significant changes to our society over the past two decades, many of which have had a positive effect on our quality of life while some have threatened the safety and well- being of our young children; and

WHEREAS, the internet has made victimization of children easier than ever before; and

WHEREAS, the internet has also significantly increased the availability of child pornography, with more than 6.5 million images being shared via the internet , compared to only a few hundred photos less than a generation ago; and

WHEREAS, some see viewing child pornography as a "victimless crime," however these images are never completely eradicated from the internet and the victims continue to have their horrific photos viewed over and over again by pedophiles for sexual gratification; and

WHEREAS, in 2007 the National Center for Missing and Exploited Children reported it had identified 9.6 million images and videos of child pornography and believed there were millions more not identified; and

WHEREAS, in the 2006 Butner Redux Study, 98 percent of convicted child pornographers had molested children before their capture; and

WHEREAS, the United States is the number one producer and consumer of child pornography in the world, with more than 624,000 child pornography users identified nationwide.

NOW THEREFORE BE IT RESOLVED by the General Assembly of the League of California Cities assembled at the Annual Conference in San Diego, September 7, 2012, that the League of California Cities:

1. Desires to increase public awareness and educate others about the critical issue of internet crimes against children statewide.

2. Requests the League advocate for the State Legislature to adopt tougher laws for child pornographers.

3. Requests the League advocate for additional and more permanent funding for Internet Crimes Against Children Task Forces (ICAC) statewide.

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Background Information on Resolution No. 2

Source: San Diego County Division

Background:
Technology has brought significant changes to our society over the past two decades. While most have had a positive effect on our quality of life, many have threatened the safety and well-being of our young children.

The internet has made victimization of children much easier than ever before. Today, pedophiles can network with one another online, encourage one another to commit crimes against children, and share tips on evading law enforcement. Worse yet, they often use the internet – social media sites, in particular – to find and prey on young children. Many times, these innocent children are lured away from their homes by these perpetrators and never seen again.

The internet has also significantly increased the availability of child pornography. More than 6.5 million child abuse images are being shared via the internet today. Before this technology was in place, the number of photos available numbered in the few hundreds.

While some see viewing child pornography as a "victimless crime," nothing could be further from the truth. One study showed that 98 percent of convicted child pornographers had molested children before being captured (Butner Redux Study, 2006).

Additionally, these images can never be completely eradicated from the internet once they are placed online. Therefore, victims continue to suffer the irrevocable damage of knowing their horrific photos are being viewed over and over again for sexual gratification by pedophiles.

Many believe these horrendous crimes happen mostly in other countries. Sadly, the United States is the number one producer and consumer of child pornography in the world, and American children are the primary victims. More than 624,000 child pornography users have been identified nationwide and thousands of these reside in San Diego County.

While the internet is exploited by these predators to harm children, it ironically is the same tool used by law enforcement to track down and arrest these criminals.

Your help is urgently needed to secure resources for this effort, increase public awareness, work to support tougher laws and educate others on this critical issue. While San Diego has one of the nation's 61 ICAC task forces, its six trained investigators are overwhelmed with cases due to funding shortfalls.

With your help, these predators can be taken off the street and our children will be safer. Here is what needs to be done:

Change state law. The current "wobbler" (misdemeanor and felony) wording should be eliminated. All child pornography charges should be made a straight felony.

Strengthen sentencing. State sentencing on child pornography cases needs to be more in line with

federal sentencing.

Toughen discovery statutes. State discovery statutes should be amended to comply with the Adam Walsh Act. Child pornography is contraband that is easily reproduced and should be treated as such.

Change pornography evidence rules. Stop the practice of giving copies of child pornography evidence to the defense. Instead, provide the defense a secure area where they can view the evidence but not take procession of it.

Strike current law about possession/distribution of child pornography. Currently, state law allows for a defendant's conviction for possession and distribution of child pornography to be set aside if he/she has complied with all probation conditions, pursuant to Penal Code Section 1203.4.

Strengthen disclosure laws. If applying for any job other than public office, licensure by any state or local agency, or for contracting with the state lottery, a convicted possessor of child pornography does not need to disclose their prior conviction. That allows people who have been convicted of possessing or dealing in photos of child exploitation to get closer to children. PC 1203.4 already has exceptions for convictions of PC 286(c), 288, 288a(c), 2813.5, 289m, felony 261.5(d) and 42001(b) of the Vehicle Code. These convictions may not be set aside per PC 1203.4 and must always be disclosed. PC 311.1, 311.2, 311.3, 311.4, 311.10 and 311.11 should be added to the list of charges to which this type of relief does not apply.

Update reporting laws. The existing mandatory reporting law should be updated to include librarians and computer technicians.

Provide permanent funding for ICAC. Significantly more permanent funding is needed for Internet Crimes Against Children Task Forces (ICAC's). They are tasked with investigating crimes against children involving electronic devices. The crimes include child pornography, child molestation and peer-to-peer bullying. ICAC task force's are severely undersized and underfunded to keep up with the magnitude of the growing problem.

Increase public awareness. Public awareness of the issue needs be heightened particularly to parents and children as well as all public officials and the community in order to protect our children against these unspeakable crimes.

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League of California Cities Staff Analysis on Resolution No. 2

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214
Committee: Public Safety Policy Committee

Summary:
This Resolution seeks to increase public awareness of the prevalence of internet crimes against children. To help promote this goal, the Resolution requests the League of California Cities advocate for legislation that creates tougher laws for child pornographers and provides additional, more permanent funding for Internet Crimes Against Children (ICAC) Task Forces.

Background:
According to the Resolution sponsors, the U.S. Census Bureau (2005) estimates that there are over 24.5 million internet users in the United States between the ages of 10 and 17. They cite that the rapid growth of internet accessibility has brought forth helpful tools for our children and youth. Unfortunately, it has also brought with it the increased potential for online victimization including unwanted exposure to sexual material, unwanted sexual solicitations, and online harassment.

The Internet Crimes Against Children (ICAC) Program was created to help federal, state and local law enforcement agencies enhance their investigative responses to offenders who use the internet, online communication systems, or computer technology to sexually exploit children. The program is funded by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The program is a national network of 61 coordinated task forces representing over 3,000 federal, state, and local law enforcement and prosecutorial agencies. These agencies are engaged in proactive investigations, forensic investigations, and criminal prosecutions.

In FY 2009, ICAC Program received $25 million under the Omnibus Appropriation Act to support ICAC task forces, training, and technical assistance. The ICAC Program received an additional $50 million through the **American Reinvestment and Recovery Act** to support ICAC task forces, training, technical assistance, and research. In each of the past two fiscal years, the program received $30 million nationally.

Existing California law addresses the policy area extensively in the areas of solicitation, pornography, and harassment with additional penalties often levied when the victim is a minor less than 14 years of age. Internet-based crimes against minors have been a popular topic in recent legislative proposals especially as new web-based technology is brought into the market. Legislation has included both increased penalties and greater protections or remedies for victims.

Fiscal Impact:
Unknown. No direct fiscal impact to city general funds.

Existing League Policy:
Related to this Resolution, existing policy offers:
The League believes that the children of California must be recognized as our state's most valuable resource. Their development, education, and well-being are key to our state's future. Further, it is essential that each child have the support needed to become a productive citizen in the world of the 21st Century.

The League supports the promotion of public safety through stiffer penalties for violent offenders.

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:
1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

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5. A RESOLUTION CALLING FOR AN EMERGENCY MANAGEMENT MISSION FOR CALIFORNIA CITIES

Source: League Public Safety Policy Committee
Referred To: Public Safety Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, emergency management is a basic responsibility of city government and a fundamental duty of all city employees; and

WHEREAS, prepared, disaster resilient communities save lives, prevent injuries, protect property, promote economic stability, and rapid recovery; and

WHEREAS, employees who have a family plan and supplies will be more likely to stay at work or come to work after an emergency incident; and

WHEREAS, the National Incident Management System (NIMS) provides guidelines and requirements to ensure a national coordinated emergency response system, including training requirements; and

WHEREAS, the Standardized Emergency Management System (SEMS) provides the foundation for California cities to ensure a state-wide coordinated, standardized emergency response system. SEMS is intended to be flexible and adaptable to the needs of all emergency responders in California; and

WHEREAS, emergency managers are responsible for promoting and encouraging personal, family and community preparedness and readiness. It is critical to focus on and support public education and training to ensure that the public understands that government entities may need time to recover from disaster situations, and to spread the message that disaster resilience, or the ability to recover from a disaster situation, requires participation from the whole community; and

WHEREAS, The League of California Cities (League) recognizes that cities, counties and the state do not have the reserves to support residents with food, water, and other necessary supplies after an "emergency event". Now, therefore let it be

RESOLVED, at the League General Assembly, assembled at the League Annual Conference on September 7, 2012, in San Diego, that the League encourages cities to actively pursue employee and resident emergency preparedness. In addition, the League encourages cities to actively engage residents in emergency preparedness programs that promote creating a family plan, including having supplies of food and water, in the promotion of self-reliance.

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League of California Cities Staff Analysis on Resolution No. 5

Staff: Dorothy Holzem, Assoc. Legislative Representative, (916) 658-8214
Committee: Public Safety Policy Committee

Summary:
This Resolution seeks to create a clear statement of support for emergency preparedness in the League of California Cities existing policy and guiding principles. Specifically, it requests that the League encourages cities to actively pursue employee and resident emergency preparedness and to engage residents in

emergency preparedness programs that promote creating a family plan, that includes provisions for supplies of food and water, in the promotion of self-reliance, with the ultimate goal of creating "disaster resilient" cities.

Background:
This resolution was brought to the Public Safety Policy Committee by that committee's Emergency and Disaster Preparedness Subcommittee to create a clear statement of support for emergency response, management, and recovery efforts as a community. While the League has extensive policy that supports related activities, there is no explicit statement of support in the existing policy or guiding principles.

In addition, numerous articles in *Western City Magazine*, the League's monthly publication, have featured case studies and best practices about emergency response and disaster preparedness. This topic has been a key component of the Public Safety Committee's work program for the last five years.

Fiscal Impact:
Unknown. This Resolution does not seek to create new requirements for the League or cities. Possible costs to cities that take steps to educate community members about disaster preparedness could be off-set by future limited damage and loss of life or injury due to those preparedness efforts.

Existing League Policy:
Related to this Resolution, existing policy provides:
The League supports the 2-1-1 California telephone service as a non- emergency, human and community services and disaster information resource.

The League supports "Good Samaritan" protections that include both medical and non-medical care when applicable to volunteer emergency, law enforcement, and disaster recovery personnel. The League also supports providing "Good Samaritan" protections to businesses that voluntarily place automated external defibrillators (AEDs) on their premises to reduce barriers to AED accessibility

The League supports activities to develop and implement statewide integrated public safety communication systems that facilitate interoperability and other shared uses of public safety spectrum with local state and federal law enforcement, fire, emergency medical and other public safety agencies.

The League supports a single, efficient, performance-based state department (the California Emergency Management Agency) to be responsible for overseeing and coordinating emergency preparedness, response, recovery and homeland security activities.

The League supports disaster recovery legislation that includes mitigation for losses experienced by local government.

The League's Mission Statement is "to expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians."

In addition, the Strategic Priorities for 2012, as adopted by the League Board of Directors, are to:
1) Support Sustainable and Secure Public Employee Pensions and Benefits: Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

2) Promote Local Control for Strong Cities: Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues,

land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

3) Build Strong Partnerships for a Stronger Golden State: Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity, and responsiveness of our state government and intergovernmental system.

>>>>>>>>>>

RESOLUTION REFERRED TO REVENUE AND TAXATION POLICY COMMITTEE

♦1 **A RESOLUTION CALLING UPON THE GOVERNOR AND LEGISLATURE TO ENACT LEGISLATION THAT WOULD CORRECT INEFFICIENCIES IN THE AUDIT SYSTEM, DISTRIBUTION SYSTEM AND INEQUITIES IN THE FORMULAS FOR DISTRIBUTING COURT ORDERED ARREST AND CITATION FINES, FEES AND ASSESSMENTS GENERATED BY LOCAL GOVERNMENT.**

Resolution #1 also referred to Public Safety Policy Committee. **Please see Public Safety Policy Committee section for the resolution, background and staff analysis information.**

AGENDA ITEM NO. 6.6

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**COMMUNITY DEVELOPMENT DEPARTMENT** **GREG WADE, ASSISTANT CITY MANAGER/COMMUNITY DEVELOPMENT DIRECTOR**
SUBJECT:	**VISUAL SIMULATIONS FOR SEACOAST DRIVE**

BACKGROUND:

Over the past several months, the City Council has discussed ways in which the City could best position itself to take advantage of the impending completion of the Seacoast Inn. Specifically, it has been suggested that the City should be pursuing both near- and long-term opportunities to create the most attractive and conducive environment within which the new hotel will be able to provide the most optimal economic return to the City and its owner/operator. During these discussions, it was suggested that visual simulations illustrating the development potential of Seacoast Drive would greatly benefit the City both as a marketing tool and in planning for both the near- and long-term improvement on the City's beachfront.

In response to this objective, staff initiated discussions with the San Diego Association of Government's (SANDAG's) Service Bureau to discuss the possibility of securing professional consulting services to provide the requested visual simulations. Advised that the Service Bureau had such on-call consultants, staff began negotiating a scope of services to prepare these visual simulations as a tool to illustrate the development potential along Seacoast Drive adjacent to the new hotel and the City's beachfront.

On March 26, 2012, the City entered into a contract with SANDAG, acting through its Service Bureau, to provide the requested services through one of its on-call visual simulation consultants.

DISCUSSION:

Staff has been working with The Planning Center/DC&E staff, the on-call consultant selected by the Service Bureau, to prepare the visual simulations. Two base photograph views were selected to best illustrate the development potential along Seacoast Drive in and around a newly-constructed Seacoast Inn. The multi-stepped, photo-realistic series of images have been designed to demonstrate both the near-term streetscape improvements currently being constructed as well as possible long-term, infill development that might also occur along

Seacoast Drive. One of the visual simulation series also includes a night-time view to illustrate the development potential of a night-time or "twenty-four hour" atmosphere along the City's beachfront. Finishing touches are still being incorporated into the visual simulations. Attached to this staff report are the visual simulations. A night-time view is included in one of the series of images. Staff will also present them at the City Council meeting on August 15th.

FISCAL ANALYSIS:

The City of Imperial Beach contracted with SANDAG, acting through its Service Bureau, in an amount not to exceed $14,999 for the preparation of the visual simulations.

ENVIRONMENTAL REVIEW

None required with this report.

DEPARTMENT RECOMMENDATION:

That the City Council receives the report on the Seacoast Drive Visual Simulations and provide comment and input as necessary.

CITY MANAGER'S RECOMMENDATION

Approve Department recommendation.

Gary Brown, City Manager

Attachments:

1. Seacoast Drive Visual Simulations

ATTACHMENT 1

IMPERIAL BEACH
WALK
SUN
Seacoast Inn

IMPERIAL BEACH
WALK
SUN

IMPERIAL BEACH
WALK
SURF
SUN
Seacoast Inn

BEER/WINE

SURF
LIFE
BEER/WINE

IMPERIAL BEACH
SURF
LIFE
WALK
BEER/WINE
STATE LAW

AGENDA ITEM NO. 6.7

STAFF REPORT
CITY OF IMPERIAL BEACH

TO:	**HONORABLE MAYOR AND CITY COUNCIL**
FROM:	**GARY BROWN, CITY MANAGER**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**CITY MANAGER'S OFFICE & COMMUNITY DEVELOPMENT DEPARTMENT**
SUBJECT:	**ACTIONS TO PROMOTE ECONOMIC DEVELOPMENT**

BACKGROUND:

Many ideas about economic development came from Council's workshop of July 11, 2012, and Council directed staff to return with next steps. (please see Attachment A - List of Ideas)

DISCUSSION:

We see five main areas to work on:

1. Focus on specific sites – Specific sites in commercial areas that have reasonably good chances for new development or substantial redevelopment.
2. Public Private Partnerships – Work with small businesses, the Business Improvement District, Chamber of Commerce, Seacoasters, the Tijuana Estuary, Pier South (the new hotel), Camp Surf and others to see how they want to work together to improve economic conditions.
3. Marketing – Define and carry-out marketing plans.
4. Improve zoning and other factors - Make conditions more receptive for economic development.
5. Neighborhoods – Actions to enhance the quality of life in neighborhoods as the backbone to our predominantly residential community.

WORK PLAN ACTIONS:

We suggest the following actions be taken over the next 12 months:

- Specific Sites
  1. Create a map that is an inventory of potential development properties along Seacoast Drive, Palm Avenue, and 13th Street that will identify owners to be contacted.
  2. Continue work on the following sites and ensure that developers and property owners know the City is interested in helping developments come to fruition:
     a. Bikeway Village – Press for timely Coastal Commission review.

b. Sudberry (9th and Palm) – Take steps to secure title insurance and sign-off from the State Department of Finance to move ahead with development.
c. Bernardo Shores – Work with property owner and developers to create mixed-use development on the site. The site may also link to the El Camino property.
d. Properties on Palm Ave. – Continue to work with property owners, developers and businesses interested in properties on Palm Avenue such as Burger King, the All American Car Wash, the site north of the Car Wash, the former site of Kragen Auto Parts, and the site of Marissa's Restaurant.
e. On Seacoast Drive:
    i. Work with Brett Miller to see what property he's interested in for another hotel.
    ii. Work with the Port and adjacent property owners to create new developments at or near: the southeast corner of Palm and Seacoast Drive, the Port's parking area near Elkwood and Seacoast Drive, and Pier Plaza.
    iii. Contact other property owners on Seacoast Drive and link them with potential developers on properties such as the northeast corner of Evergreen and Seacoast Drive or properties due east of the hotel.
f. Continue work with Port on Pond 20.
g. Respond to other opportunities identified by the site inventory and developers.

- Work with other stakeholders, create partnerships.
  1. Meet with organizations such as the Chamber of Commerce, Tijuana Estuary, Business Improvement District, merchants, Camp Surf, Pacifica Hotels, Seacoasters, and others to receive their ideas about development and what they want to do.
     a. Determine if they are willing to create special districts to improve facilities, add and maintain new lighting and landscaping, enhance public safety, way-faring signage, special events and marketing and determine financial feasibility of achieving goals.
     b. Meet with Pacifica to see what they are willing to do to support improvements and marketing efforts.
     c. Determine what stakeholders are willing to do to enhance tourism.
     d. See if stakeholders want the City to assist in creating districts to support their activities.
     e. See what stakeholders want to do about marketing the City and programming activities.
     f. Meet with the Port and determine what role it can play in marketing, events, and infrastructure improvements.
     g. Secure a three-to-five year contract with the Port for maintenance of Tidelands.
- Marketing
  1. Work with businesses and other stakeholders to create a marketing plan that includes:
     a. Information and ways to attract and retain development and business growth.
     b. Information and ways to attract tourists and enhance their visits
     c. Event programming and promotion of events
     d. Coordination of stakeholders to enhance the experience of tourists
     e. Work with Pacifica to make Pier South a focus of tourism and community activities.
     f. Meet with individual developers and development organizations such as ULI to present opportunities in Imperial Beach.

- Zoning and other fundamentals
  1. Secure approval of the new commercial zoning from the Coastal Commission. Work on other zoning changes they've identified.
  2. Identify and carry-out other regulatory changes that will make doing business and building developments easier while still maintaining desired quality.
  3. Monitor and take advantage of legislation that increases the feasibility of development such as laws for special districts, improvement districts and infrastructure improvements.
  4. Find out more about "Buy Local" programs
  5. Review the City's processing of development proposals from large scale to small improvements to make it easier and faster while retaining quality.
  6. Early Feedback – Allow developers and property owners to receive early feedback, if they wish, from City Council about proposed projects.
- Neighborhoods
  1. Find additional ways to finance street and other infrastructure improvements and maintenance within neighborhoods. See if property owners are willing to support special assessment districts.
  2. Continue good maintenance of parks.
  3. Continue code enforcement work to preserve and maintain neighborhoods.
  4. Identify ways to simplify processing of applications for home improvements and expansions.
  5. Change City ordinances to facilitate second family/accessory dwelling units, "granny flats."
  6. Find new funding for home improvement loans.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

Many of the above tasks may need funding. We'll return to Council with funding requests as necessary, but we hope the private sector will make a significant financial investment.

CITY MANAGER'S RECOMMENDATION:

1. Council review and comment upon the work plan actions.
2. Council amend and/or approve actions to be carried out by staff.

FOR

Gary Brown, City Manager

Attachments:
1. Attachment A – List of Ideas

List of Ideas from Economic Development Workshop

1. Without redevelopment, non-governmental stakeholders will need to do more through special districts
2. Adopt commercial zoning and then explore amendments about height and other changes. What other zoning changes can be done to encourage development?
3. Growing property taxes is slow, but let's look into the possibility of New Market Tax Credits.
4. Work with small businesses to retain and improve their businesses.
    a. Meet with Chamber, BID and others to see what they believe would improve their businesses as well as hindrances that we could reduce.
    b. Learn more about the "Go Local" programs in Santa Rosa and Bellingham. Copy what we like.
5. Review city regulations, simplify and reduce them.
6. Ask Seacoast property owners if they want to create an assessment district for lighting, street and sidewalk cleaning, landscaping, public safety, and anything else.
7. Are there realistic ways to simplify and reduce building codes without harming the public's safety?
8. Assign staff to high priority projects to make sure they happen as quickly as possible.
9. Seek Council's early comments on projects so developers can receive feedback.
10. How to best let developers know that we're interested in public-private partnerships to make things happen?
    a. Marketing, personal outreach—knock on doors
    b. List all the tools we can that may prove helpful
11. Learn more about infrastructure districts and how the pending legislation may affect them.
12. Streamline entitlement process—explain how the program EIR works and again let the world know we have it.
13. How can we make the pedestrian experience more pleasant and fun in certain areas?
14. How best to market?
    a. To outside developers and businesses
    b. To the general public about Imperial Beach
    c. To businesses in Imperial Beach

    Who should be responsible for marketing? The Chamber? The BID? Other coalition of businesses?
    What coalitions can be formed around the many opportunities—bicycling, hiking, nature walks, ocean, the bay, the new hotel, Seacoasters, horseback riding.
    What organizations to involve in addition to the Chamber and BID—Seacoasters, the YMCA—Camp Surf, the Port's activation program, Seacoast Inn—Pacifica, Estuary staff, sailing and kayaking along the Strand, horse stables, Farmers Market, entertainment groups—who/what else?
15. Programming of events—see # 15 ideas
    a. How can we simplify our processing of events, make it less costly and much faster?
16. Explore the feasibility of waiving development fees as well as make sure they cover impacts of development.

17. Finish survey of properties that present opportunities for development.
18. Contact property owners identified under #18. Work with them individually and well as in groups for assembly of land so it's more likely to be developed. Link property owners to potential developers.
19. Issues RFPs for property owners willing to partner with developers.
20. Signage: wayfaring signs, flags, banners. This is something that could be done through an assessment district.
21. Music events/ concerts—This goes with the programming/marketing actions.
22. Close the gap of quality and service between the new hotel and its surroundings. How? Must involve business people in the vicinity, Chamber and BID.
23. Let's get a map of the BID boundaries.
24. Explain how BID can work to promote its businesses.
25. How can the Chamber and BID be strengthened or create alternative organizations.
26. Can business unite to offer discount coupons through the hotel and each other?
27. How to make the hotel a hub of community and business activity? How to unify work and cooperation among the estuary, Camp Surf, the hotel, Sports Park, the Port, Bicycle Village, the Chula Vista Nature Center, and other South Bay activities. Also need to link to other San Diego activities such as SeaWorld, Old Town, the Zoo, Balboa Park, Safari Park, etc..
28. How to breakdown the psychological and physical distance between IB and the San Diego region?
29. How to link more with Tijuana and points south?
30. Neighborhoods—what incentives can we create to continue to improve neighborhoods?
    a. Home improvement loans available to people of all incomes, energy efficiencies
    b. Trees along parkways and on properties
    c. Maintain high quality streets and sidewalks
    d. Can we, should we re-energize neighborhood associations to do more for themselves?
    e. Alley paving special districts.
    f. Landscaping, lighting districts
31. In terms of "commercial neighborhoods"
    a. Along Palm Ave-
        i. Work with vacant property owners—Burger King, automotive parts place, Marissa's site, other properties identified on map.
        ii. What can be done at Bernardo Shores and El Camino sites?
        iii. Continue work to make Sudberry development happen
        iv. Jim Algert's trailer park?
        v. Other properties on Old Palm
    b. Seacoast Drive
        i. What are the businesses willing to do to help themselves?
        ii. Mundt property

iii. Port properties and properties adjacent to Port property—bring owners together to create more value, investments and development

iv. Would Pacifica be interested in working with properties across the street?

c. Bayfront

i. Continue work to make Bicycle Village happen

ii. Pond 20

iii. Bernardo Shores/ El Camino

iv. Work with Port, federal and state agencies to get water access from IB to the Bay

AGENDA ITEM NO. 7.1

STAFF REPORT
CITY OF IMPERIAL BEACH
CITY COUNCIL/REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

TO:	**HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL AND CHAIR AND MEMBERS OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**
FROM:	**GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR**
MEETING DATE:	**AUGUST 15, 2012**
ORIGINATING DEPT.:	**COMMUNITY DEVELOPMENT & SUCCESSOR AGENCY STAFF** **GREG WADE, DEPUTY DIRECTOR** GW
SUBJECT:	**(1) SUCESSOR AGENCY ADOPTION OF RESOLUTION NO. SA-12-15 APPROVING THE TERMS OF THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF IMPERIAL BEACH (CITY) AND SUDBERRY-PALM AVENUE LLC AND APPROVING THE TRANSFER OF OWNERSHIP OF REAL PROPERTY AND THE RETENTION AND OWNERSHIP OF CERTAIN PUBLIC IMPROVEMENTS; AND** **(2) CITY COUNCIL ADOPTION OF RESOLUTION NO. 2012-7243 APPROVING, SUBJECT TO CONDITIONS PRECEDENT, THE CITY'S TRANSFER TO THE SUCCESSOR AGENCY OF THE RESIDUAL PROCEEDS RECEIVED FROM THE SALE OF THE PROPERTY PURSUANT TO THE DDA**

BACKGROUND:

On September 2, 2009, the Imperial Beach Redevelopment Agency approved an Exclusive Negotiation Agreement (ENA) with Sudberry Development, Inc. for the development of the former Miracle Shopping Center and North Island Credit Union properties located at the southwest corner of 9th Street and Palm Avenue (the "Property"). On February 16, 2011, the City of Imperial Beach (the "City") and the Imperial Beach Redevelopment Agency (the "Former Agency") entered into a Cooperation Agreement within which were identified several projects to be carried out by the City on behalf of the Former Agency. One of the projects identified in the Cooperation Agreement are "Highway 75 Improvements" which call for the reconfiguration of the Palm Avenue/State Route 75 right-of-way and other related public improvements adjacent to and associated with development of the Property. On March 9, 2011, the Former Agency authorized the transfer of portions of the Property constituting approximately 3.9 acres and referenced by Assessor Parcel Numbers 626-250-03 and 626-250-04 Thru 06 from the Former Agency to the City and the transfer of certain tax-exempt bond proceeds of the Former Agency to the City for development of the Project (defined below).

On June 28, 2011, AB x1 26 (the "Dissolution Act") was signed into law by the Governor of California which called for the dissolution of redevelopment agencies throughout the state and established the procedures by which this was to be accomplished. On December 29, 2011, the California State Supreme Court largely upheld the Dissolution Act as constitutional and reformed and extended certain dates, by which certain dissolution actions were to occur under the Dissolution Act, by an additional four months. As a result of the Supreme Court's decision, and on February 1, 2012, all California redevelopment agencies were dissolved, including the Former Agency; successor agencies to the former redevelopment agencies were established and were tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the affairs of the former redevelopment agencies.

On December 14, 2011, the City approved a Disposition and Development Agreement (DDA) with Sudberry-Palm Avenue LLC (Sudberry) for a proposed 46,200 square foot commercial/retail town center shopping development on the Property, including the construction of certain public improvements (the "Project"), along with the project entitlements and a Mitigated Negative Declaration (MND) associated with the Project.

On January 5, 2012, as part of the wind-down process enacted by the Dissolution Act, the City Council adopted Resolution No. 2012-7136 electing for the City to serve as the successor agency to the Former Agency ("Successor Agency") upon the dissolution of the Former Agency under the Dissolution Act. As also required by the Dissolution Act, a seven-member Oversight Board consisting of representatives of the affected taxing entities, resident representatives of the City of Imperial Beach and staff of the Former Agency was created to oversee the activities of the Successor Agency. It is the duty of the Successor Agency to wind down the fiscal and business activities of the Former Agency and it is the responsibility of the Oversight Board to oversee the activities and actions of the Successor Agency.

On February 1, 2012, pursuant to the Dissolution Act, the Former Agency was effectively dissolved by operation of law and the Successor Agency assumed the duties of dissolving and/or winding down the activities of the Former Agency. Since that time, the Successor Agency and its staff have been working to ensure that the wind-down process is accomplished in compliance with the Dissolution Act and with any other pertinent guidelines and/or legislation adopted by the State. On March 15, 2012, the City and Sudberry mutually agreed to extend certain dates and deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) by an additional 9 months.

On June 27, 2012, the State Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012) as a trailer bill for the Fiscal Year 2012-2013 State budget package. Although the primary purpose of AB 1484 is to make technical and substantive amendments to the Dissolution Act based on issues that have arisen in the implementation of the Dissolution Act, AB 1484 also imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind-down process of former redevelopment agencies (remaining references in this staff report to the "Dissolution Act" means Assembly Bill x1 26 as amended by AB 1484).

DISCUSSION:

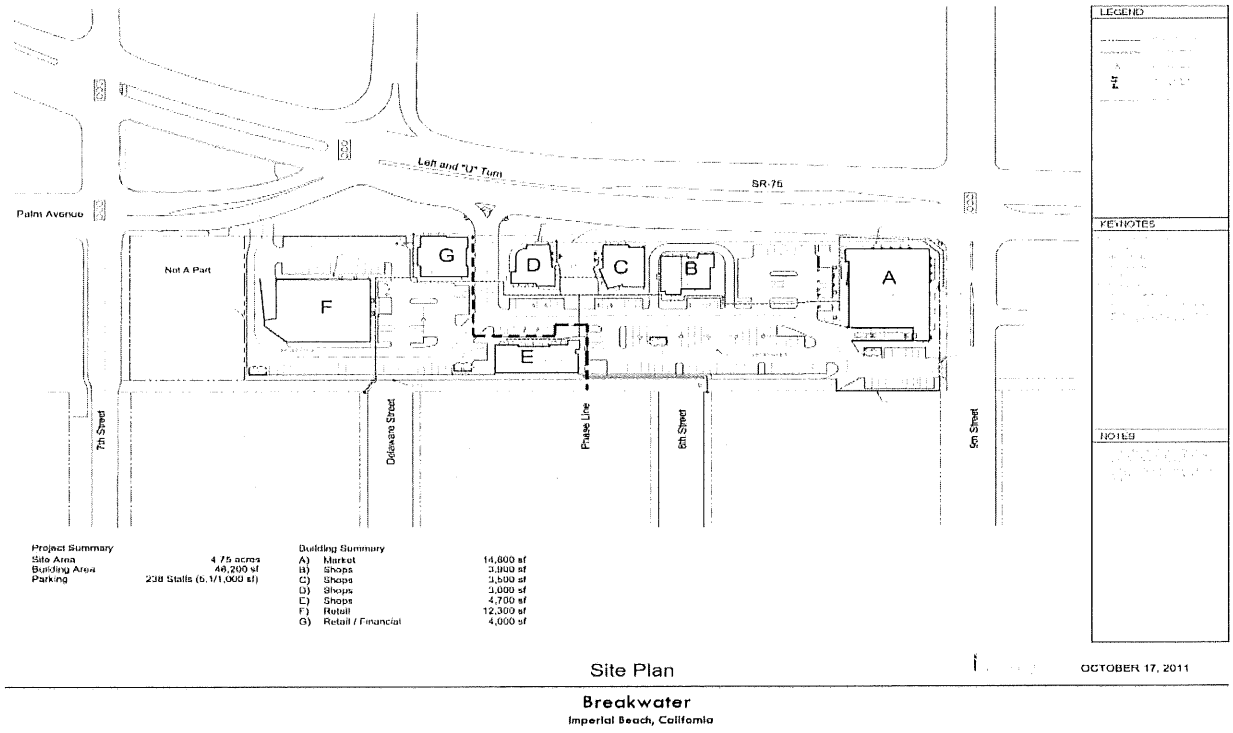
Pursuant to Section 34177(e) of the Dissolution Act, the Successor Agency is required to dispose of assets and property of the Former Agency as directed by the Oversight Board, provided, however, that the Oversight Board may instead direct the Successor Agency to transfer ownership of certain assets pursuant to Section 34181(a) of the Dissolution Act. Section 34181(a) of the Dissolution Act provides that the Oversight Board is required to direct the Successor Agency to dispose of assets and property of the Former Agency; provided, however, that the Oversight Board may direct the Successor Agency to transfer ownership of

certain assets constructed and used for governmental purposes to the appropriate public jurisdiction pursuant to existing agreements relating to the construction or use of such assets. The disposal of assets is to be done expeditiously and in a manner aimed at maximizing value. Section 34181(a) of the Dissolution Act provides that any compensation to be provided to the Successor Agency for the transfer of an asset shall be governed by the agreements relating to the construction or use of that asset. Section 34177(e) of the Dissolution Act provides that proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the Former Agency, as determined by the Oversight Board, shall be transferred to the County Auditor-Controller for distribution as property tax proceeds under Section 34188 of the Dissolution Act.

The Successor Agency staff is now seeking the Successor Agency's approval of, among other actions, (i) the terms of the DDA between the City and Sudberry, (ii) the sale and conveyance of the Property to Sudberry pursuant to the terms of the DDA for development of the Project; (iii) the City's retention and ownership of certain public improvements constructed as part of the Project; and (iv) the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Property to Sudberry for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Section 34177(e) of the Dissolution Act.

In addition, City staff is seeking the City Council's approval of, subject to certain conditions precedent, the City's transfer to the Successor Agency of the residual proceeds of the sale of the Property under the terms of the DDA. Should the Successor Agency and City Council support staff's recommendations, the matter would then be forwarded to the Oversight Board for its consideration.

The Property consists of two separate components, designated in the DDA as "Property 1" (Parcels A, B, C & D) and "Property 2" (Parcels E, F, & G) which are illustrated as follows:



Terms of the DDA:

The terms and conditions of the DDA anticipate that the entire Property would be conveyed by the City to Sudberry at one time. The DDA also expects but does not require that the Property will be developed in two phases, each with separate and distinct conditions precedent to closing. Phase 1 of the Project would include development of Property 1 (Parcels A, B, C and D) and would consist of the following:

- The construction of the Public Improvements (except the Undergrounding Utilities, Alley Improvements and new traffic signal that are deferred until Phase 2);
- The construction of all Horizontal Improvements on Property 1;
- The construction of all Building Pads and related improvements on Property 1; and
- The construction of the Vertical Improvements to be constructed on Property 1, with related on-site utilities, improvements, landscaping, lighting, parking and driveways.

Phase 2 of the Project would include development of Property 2 (Parcels E, F, and G) and would consist of the following:

- The construction of any of the Public Improvements deferred by Developer until Phase 2; and
- The construction of any remaining Horizontal Improvements on Property 2;
- The preparation of Building Pads and related improvements on Parcels E, F and G and the buildings on Parcel E (if Sudberry elects to construct the building on Parcel E), Parcel G (if Sudberry elects to construct the building on Parcel G) and Parcel F (if Sudberry elects to construct the building on Parcel F – it being acknowledged that such building may be constructed either by Sudberry or the Approved Parcel F Assignee) and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

Please note, however, that Sudberry has indicated a desire to proceed with development of the Property in one complete phase and that nothing in the DDA would prohibit this from occurring.

Pursuant to Section 33433 of the California Community Redevelopment Law, Keyser Marston and Associates (KMA) prepared a Summary Report dated November 2011 for the conveyance of the Property under the terms of the DDA. The Summary Report determined and the DDA acknowledges that the public funds of the Former Agency proposed to be expended by the City to acquire the Property, relocate its former tenants and demolish the existing structures, exceed the Purchase Price to be paid by Sudberry for the Property. The difference between the Purchase Price and funds expended, together with the funds allocated for construction of the public improvements associated with the proposed project, will constitute a "Public Agency Subsidy". The Public Agency Subsidy previously recommended by staff would be in consideration for the following:

- The construction by Sudberry and/or its Assignees of an approximately 46,200-square-foot retail/commercial center on the Property in accordance with the DDA and permits issued by the City;
- Sudberry's satisfactory construction of the proposed Public Improvements as detailed below; and

- Sudberry's and/or Assignee's maintenance and operation of the proposed development in accordance with the Grant Deeds for the Property and the Agreements Containing Covenants to be recorded concurrently with the conveyance of the Property to Sudberry.

The following are the essential terms of the DDA:

- The City will sell the Property to Sudberry for $1.00 and Sudberry will construct a 46,200-square-foot, privately-owned retail center containing 7 retail/commercial buildings, and public improvements, including intersection improvements at Delaware, Palm and State Route 75 and other improvements (public improvements to be paid for by the City with approximately $2.2 million of Former Agency tax-exempt bond funds, some of which has already been spent by the City to start preparing plans).

- As a component of the Purchase Price for the Property, the City will receive 1.5% of the gross sales price from the first arm's-length sale of the Project, excluding the sale of Parcel A and Parcel F if Sudberry conveys these parcels for development by an end user in accordance with the DDA. However, if Sudberry constructs the Vertical Improvements on Parcel F, and enters into an agreement to sell or long-term lease the improvements to an end user within one year and conveys the improvements to the end user within three years, the City will not receive the 1.5% percent participation in the sale or long-term lease of Parcel F.

- No General Funds whatsoever are obligated for development of the Property. To the extent that the City has any financial obligation to Sudberry, that financial obligation is limited solely to Former Agency funds including tax allocation bond proceeds that have been pledged and paid to the City by the Former Agency pursuant to the Cooperation Agreement. Accordingly, the City is not committed under the terms of the agreement to expend or commit to expend monies from its General Fund to satisfy any of the obligations set forth in the DDA.

- Sudberry has 28 months from execution of the DDA for satisfying the Phase 1 conditions, the close of escrow and start of construction. Sudberry has 33 months from the conveyance date to complete the construction of Phase 1. The City's "right of reverter" is exercisable as to any uncompleted Parcels if City terminates DDA for uncured default after close of escrow but before completion of construction.

- Sudberry will assign its rights under the DDA for Parcel A to an end user who will be required to construct and open an approximately 14,800-square-foot grocery or supermarket, in in accordance with all DDA requirements.

- The City will have an option to re-purchase Parcels E, F and G for $1.00 if the Phase 2 Closing does not occur within 51 months of the effective date of the Agreement. The City will remove the Option Agreement secured by Parcels E, F and G when Sudberry meets all conditions precedent to the start of Phase 2. Specifically, prior to the Phase 2 Closing, Sudberry will submit to the City evidence of binding commitments from the Parcel F assignee for the construction and operation of a 5,000- to 15,000-SF retail store, if applicable, and commitments from tenants to lease space in Parcels E and G, if any.

- Subject to the conditions precedent set forth in Section 219.e. of the DDA, the City has agreed to pay to or for the benefit of or reimburse Sudberry for the cost of designing, permitting, constructing and installing certain public improvements described in Section 219.c. of the DDA, not to exceed the amount of $2.2 million. Prior to the Effective Date

of the DDA, the City incurred and disbursed to Project Design Consultants a portion of that amount for the preparation of plans for the subject public improvements, which has been estimated to be $43,152. Promptly following the mutual execution of a Disbursed Funds Memorandum by the City and Sudberry, the City is required to open a construction escrow account and deposit into the escrow account the sum referenced as the Initial Deposit equal to the amount by which $200,000 exceeds the previously disbursed funds, plus an additional $100,000 for Developer's costs with site preparation design work pursuant to the Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work (discussed below). As a condition precedent to the disbursement from escrow of any portion of the Initial Deposit, the City, Sudberry and the escrow agent shall execute a Disbursement Agreement. Thereafter, upon satisfaction of all conditions precedent set forth in Section 219.e. of the DDA, the City shall deposit into the escrow account the balance of the remaining public improvement funds for disbursement in accordance with the Disbursement Agreement. These funds will be used first for the Intersection Improvements at Delaware/Palm/Highway 75. To the extent the Highway 75 Intersection improvements cost less than $2.2 million; the balance of the $2.2 million will be disbursed to reimburse Sudberry for a portion of the cost of the other public improvements.

It should be noted that the funds to be used for the public improvements are 2010 Former Agency tax-exempt bond proceeds and that the expenditure of these proceeds toward the Project were included for this purpose in the First Recognized Obligation Payment Schedule (ROPS) for the period of January to June 2012 which was approved by the Successor Agency and the Oversight Board and not disputed by the State Department of Finance. Additionally, the official Bond Statement and the Certificate Regarding Use of Proceeds associated with that bond issuance specifically identify "Palm Avenue Corridor Improvements" as one of the projects to be carried out with the bond proceeds.

Public Improvements

The Public Improvements associated with the Project consists of the design, construction and installation of the intersection improvements at Delaware, Palm Avenue/State Route 75, and 9th Street and will include the following:

- Removal of existing median and pavement between Palm Avenue/State Route 75 and the Property entrance;
- Removal of existing curb/gutter, median and pavement along southern side of Palm Avenue/State Route 75, between 7th Street and State Route 75;
- Construction of new curb/gutter, pavement and median on Palm Avenue/State Route 75 between 7th Street and State Route 75;
- Installation of landscaping and irrigation and storm water treatment "garden";
- Installation of new street lights;
- Construction of right-turn lane, center-island, curb/gutter, and pavement on State Route 75, between Palm Avenue and 9th Street.Moving of traffic signals and interconnection of traffic signals and construction of curbs, gutters, sidewalks and landscaping on Palm Avenue and 9th Street;
- All existing and proposed utilities within the boundary of the Property, or within any

public right-of-way abutting the boundary will be placed underground (conversion) to the reasonable satisfaction of the City Engineer. Sudberry is responsible for complying with the requirements of and making arrangements with each serving and impacted utility company for the conversion or additional installation of such facilities;

- Removal and replacement of the concrete alley at the south end of the Property to the reasonable satisfaction of the City Engineer, including the adjustment to grade and/or replacement of all utility covers in such alley. The concrete section shall be designed to support the imposed load of fire apparatus to withstand a minimum 95,000 pound vehicle load;

- The existing traffic signal pole signaling left turns from Westbound Silver Strand Boulevard to Palm Avenue shall be removed and replaced to the reasonable satisfaction of the City Engineer; and

In addition to the above, the DDA also contemplated as a public improvement the removal of the center median and resurfacing of 9th Street between Palm Avenue and Donax Avenue. Shortly before the approval of the DDA on December 14, 2011, the City awarded a contract for the Streets Phase 4/5 project which included the resurfacing of 9th Street south of Palm Avenue/State Route 75 within its scope. Discussions with Sudberry at the time of DDA negotiation led to the inclusion of the requirement in the DDA that Sudberry would be responsible for the resurfacing of 9th Street between Palm Avenue/State Route 75 and Donax Avenue during construction of the Project. However, the Supreme Court ruling on December 29, 2011, and subsequent dissolution of the Redevelopment Agency on February 1, 2012, raised concerns about the timing and coordination of the improvement of 9th Street. Therefore, the City and Sudberry mutually agreed that the City would include the resurfacing of 9th Street and elimination of the median between Palm Avenue/State Route 75 and Donax Avenue within the Streets Phase 4/5 project and, by execution of a Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work (MOA), eliminate this requirement from the DDA as a responsibility of Sudberry. The 9th Street resurfacing work and removal of the center median is currently under construction and nearing completion as part of the Streets Phase 4/5 project. This resurfacing and infrastructure project and its funding were included on the ROPS for the period of January to June 2012 and approved by the Successor Agency and Oversight Board and not disputed by the State Department of Finance.

On August 9, 2012, the MOA was executed thereby removing the "Ninth Street Improvements" from the DDA that would have required Sudberry to resurface 9th Street and the roadway median between Palm Avenue/State Route 75 and Donax Avenue. It should be noted, however, that, under the terms of the DDA, all other public improvements on 9th Street (curb, gutter, sidewalk, landscaping, lighting, etc.) will remain the responsibility of Sudberry. The MOA also allows up to $100,000 of the City's $2.2 million to be used toward certain site preparation design work costs incurred for preparation of plans for certain on-site improvements relating to the grading of the Property and construction of infrastructure necessary for development of the Property.

The Property is located within the geographical area of the Palm Avenue/Commercial Redevelopment Project (the "Project Area"). The Project complies with and furthers the goals and objectives of the Redevelopment Plan for the Project Area approved and adopted by the City Council of the City on February 6, 1996 by Ordinance No. 96-901, as subsequently amended (the "Redevelopment Plan") and the Project also furthers municipal and other public purposes.

As stated above, Section 34181(a) of the Dissolution Act provides, in pertinent part, that the Oversight Board shall direct the Successor Agency to transfer ownership to the appropriate public jurisdiction of all assets and property constructed and used for governmental purposes. In this regard, the public improvements that are to be funded pursuant to the DDA and constructed as part of the Project will be publicly-owned by the City when completed. Because of the nature of these public improvements, the City is the most appropriate public jurisdiction to own these public improvements. The public improvements, once completed, will benefit the Project Area by helping to eliminate blight and by serving as a catalyst by providing an incentive for future private development and investment, thereby contributing to the removal of economic blight. Further, the public improvements, once completed, will enhance the public right-of-way and replace and construct public improvements that are currently inadequate or non-existent and provide improved pedestrian access to public and private properties.

As the result of current economic conditions, it would not be feasible to fund the public improvements with any other funds that are or will become available to the City in the foreseeable future except for the funds currently committed to the City by the Former Agency under the Cooperation Agreement. Therefore, no other reasonable means of financing the public improvements associated with the Project are available to the City or to Sudberry. Further, the use of the tax-exempt bond proceeds toward the uses proposed by the DDA is consistent with the covenants and requirements set forth in the 2010 bond issuance covenants and related documents for the purposes for which the bonds were issued by the Former Agency and for the tax exempt status of said bonds.

Once again, the funds for these improvements were included in the First Recognized Obligation Payment Schedule (ROPS) for the period of January to June 2012 and were approved as an Enforceable Obligation by the Successor Agency and the Oversight Board and not disputed by the State Department of Finance.

FISCAL IMPACTS/ECONOMIC BENEFITS:

Financial/Re-Use Analysis and Proposed Purchase Price

Acquisition of the Property was completed in February 2009 and was purchased with a combination of Former Agency and City funds. At the time of approval of the DDA, the City Council was required to make the finding that the price to be paid for the Property would not be less than either of the following:

(1) the fair market value at highest and best use under the Redevelopment Plan, or

(2) the fair re-use value, taking into account the uses, covenants, conditions, and development costs required by the DDA

The Summary Report prepared by KMA, determined that finding number 2 could be made. Specifically, the estimated compensation of $1 for the sale of the Property and the fair re-use value of the Property was determined to be *negative* $50,000. The Summary Report provided further justification for the Former Agency's financial participation in the project. The compensation to the City is lower than the fair market value at its highest and best use for the following reasons:

- The DDA imposes a covenant on the use of the Property so that it can only be used for the development and operation of a retail center, generally consistent with the information submitted as part of Sudberry's proposal to the City.

- The DDA imposes a covenant on the use of Parcel A for the construction and operation of a neighborhood market, and that it must be opened and operated for at least one day.

- The DDA imposes the obligation on Sudberry and its contractors to comply with applicable governmental requirements, including (to the extent applicable) the payment of State prevailing wages during construction.

- Sudberry is required to develop a first class, signature commercial/retail development that incorporates high quality features. Moreover, Sudberry is required to adhere to the Schedule of Performance contained in the DDA, notwithstanding current market and financing conditions for new commercial/retail development.

- The DDA includes an Option Agreement that enables the City the right to take back Parcels E, F and G if Sudberry fails to meet the conditions precedent to start Phase 2 of the Project. As a result, Sudberry will be unable to obtain financing secured by Property 2 until these conditions have been met.

- The DDA imposes a burden on Sudberry to pay the City 1.5% of the gross sales price from the future resale of the Site, excluding the sale of Parcel A and Parcel F if the Developer assigns these parcels to another entity pursuant to the DDA.

Recently, an appraisal of the Property was conducted on behalf of the Successor Agency. The results of the appraisal, dated July 10, 2012, took into consideration the approved entitlements for the Property, the physical constraints of the Property and the conditions upon which the City would approve any future development of the Property. Given this information, the Property was determined to have "nominal value". That is, due to the significant required on- and off-site improvement costs necessary to prepare the Property for development, together with the costs necessary to provide adequate access to the Property, and the costs to prepare the Property for development, the costs would exceed the Property's potential value (see Attachment 3 which contains a summary of this appraisal). As such, development of the Property pursuant to the terms of the DDA would benefit not only the City, but also the State and other affected taxing entities as further detailed below and should be pursued as the best viable option for long-term economic benefit to all taxing entities.

Further, as indicated in the appraisal, San Diego County's retail market is still experiencing the impact of the market recession, although a few projects are moving forward, and retail and office rents remain soft. Additionally, as indicated in the appraisal, experts have agreed that San Diego's office market will likely continue at a slow pace over the next few years as recovery from the recession occurs. Therefore, it is a tremendous benefit to the State and other affected taxing entities to have available for immediate development the currently vacant property into the economically productive Project in accordance with the DDA.

In order to assess the economic benefit of the proposed Project that the City and other affected taxing entities would derive from development of the Property in accordance with terms of the DDA, KMA carried out a detailed analysis of the proposed Projects. The analysis resulted in the following tax projections:

Sudberry Proceeds with Approved Development Under DDA

	State of California	County of San Diego	City of Imperial Beach	TransNet	K-14 School Districts	Total
Annual Sales Tax	$700,000	-	$112,000	$56,000	-	$868,000
Annual Property Tax	-	$32,000	$26,000	-	$63,000	$121,000
Total Annual Sales & Property Tax	$700,000	$32,000	$138,000	$56,000	$63,000	$989,000

It should be noted that the above table includes only the largest affected taxing entities and does not include those receiving less than 0.50% of the 1.0% property tax. According to the KMA analysis, if the Property is developed by Sudberry under the terms of the DDA, the Project would have an overall assessed value of approximately $12,290,000 and would generate estimated annual taxable sales of approximately $11,196,000. This, in turn, would generate annual property tax of approximately $121,000, with more than 50% ($63,000) going to the South Bay Union, Sweetwater Union and Southwestern Community College districts and would generate approximately $868,000 of annual sales tax, with over 80% ($700,000) going to the State of California.

Beyond the direct economic benefits of the project, KMA also analyzed the potential impacts to employment if the Project were constructed under the terms of the DDA. Based upon this analysis, it is estimated that the development of the Property would create both short-term construction and long-term permanent employment opportunities as follows:

	Sudberry Proceeds with New Development	
	Direct Impacts of Construction	**Total Impact of Construction Including Direct, Indirect and Induced Impacts**
Economic Impacts of Construction:		
Economic Output	$12.5 million	$17.0 million
Payroll	$3.9 million	$5.3 million
Employment (during one year construction period)	68 workers	98 workers
Permanent Employment:		
Project Description	46,200 square feet of development	
Employment @	3.00 jobs/1,000 square feet	
Total Permanent Jobs (FTEs)	139 jobs	

A more detailed description and analysis of these employment impacts are contained in Attachment 4 of this staff report. Generally speaking, the analysis provided by KMA determined that, assuming a one-year construction period, the development of the Property under the terms of the DDA would generate approximately 68 construction jobs with another 30 construction-related positions for a total of 98 short-term jobs during construction. The analysis further determined that development of the Property under the terms of the DDA, consisting of 46,200 square feet of commercial/retail development, would yield approximately 139 full-time jobs. It is also important to note that these employment impacts would then create additional economic benefits to both the State and Federal governments in the form of income and other taxes. Additionally, beyond these economic benefits, at today's rates the project would also generate school fees in the amount of $22,236 to the Sweetwater Union High School District and $6,930 to the South Bay Union School District.

SUMMARY:

Development of the Property in accordance with the terms of the DDA would generate substantial short-term and long-term economic benefits not only to the City of Imperial Beach, but also to the State and all other affected taxing entities. The Project is not only projected to generate an annual and on-going flow of sales tax to both the State and the City, but it will also generate annual and on-going property tax to all affected taxing entities. Development of the Property in accordance with the DDA will also provide significant State and Federal economic benefits from income taxes generated through construction-related and full-time jobs both during construction and from the long-term operation of the Project. An appraisal dated July 10, 2012, determined that, given the significant physical and other constraints necessary to prepare the Property for development, the Property had "nominal value". Given this nominal value, the economic benefits derived from development of the Property by Sudberry in accordance with the terms of the DDA would far surpass what might be obtained by sale of the Property in its current condition. In fact, given the afore-mentioned physical site constraints, together with the lengthy and expensive entitlement process any future owner of the Property would have to pursue, it is unlikely that the Property would be developed for another several years at least, resulting in little to no long-term economic benefits. Finally, what should not be overlooked is the potential catalytic benefit this type of development can have throughout the City. Projects of this size and quality typically result in improvements to adjacent and nearby properties. To that end, speculation and interest in nearby properties has already been noted as have inquiries by other existing and potential property owners eager to see this Property developed as contemplated by the DDA.

ENVIRONMENTAL DETERMINATION:

A Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

DEPARTMENT RECOMMENDATION:

Staff recommends that:

1. The Imperial Beach Redevelopment Agency Successor Agency adopt Resolution No. SA-12-15 approving the terms of the Disposition and Development Agreement (DDA) between the City and Sudberry-Palm Avenue LLC and approving the transfer of ownership of real property and the retention and ownership of certain public improvements; and

2. The City Council of the City of Imperial Beach adopt Resolution No. 2012-7243 approving, subject to conditions precedent, the City's transfer to the Imperial Beach Redevelopment Agency Successor Agency of the residual proceeds received from the sale of the Property pursuant to the DDA.

CITY MANAGER/EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation.

Gary Brown

Gary Brown, Executive Director/City Manager

Attachments:

1. Resolution No. SA-12-15
2. Resolution No. 2012-7243
3. Summary of Property Appraisal
4. Economic Benefits Analysis
5. Disposition and Development Agreement between the City of Imperial Beach and Sudberry-Palm Avenue LLC
6. Letter Agreement Dated March 15, 2012
7. Memorandum of Agreement Regarding Ninth Street Improvements

Attachment 1

RESOLUTION NO.SA-12-15

RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT AND THE TRANSFER OF OWNERSHIP OF REAL PROPERTY AND RETENTION AND OWNERSHIP OF CERTAIN PUBLIC IMPROVEMENTS

WHEREAS, AB X1 26 (2011-2012 1st Ex. Sess.) (the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

WHEREAS, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Imperial Beach Redevelopment Agency (the "Former Agency"), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council (the "City Council") of the City of Imperial Beach (the "City") adopted Resolution No. 2012-7136 on January 5, 2012, accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

WHEREAS, the Dissolution Act was amended when the Governor signed Assembly Bill 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means Assembly Bill X1 26 as amended by AB 1484); and

WHEREAS, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

WHEREAS, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, the City has entered into that certain Disposition and Development Agreement by and between the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking

consisting of 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

WHEREAS, the DDA pertains to that certain real property constituting two (2) parcels (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

WHEREAS, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

WHEREAS, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

WHEREAS, the Site is located within the geographical area of the Palm Avenue/Commercial Redevelopment Project (the "Project Area"); the Project complies with and furthers the goals and objectives of the Redevelopment Plan for the Project Area approved and adopted by the City Council of the City on February 6, 1996 by Ordinance No. 96-901, as subsequently amended (the "Redevelopment Plan") and the Project also furthers municipal and other public purposes; and

WHEREAS, Health and Safety Code Section 34181(a) provides, in pertinent part, that the Oversight Board shall direct the Successor Agency to transfer ownership to the appropriate public jurisdiction of all assets and property constructed and used for governmental purposes; and

WHEREAS, the City is the appropriate public jurisdiction for ownership of the Public Improvements pursuant to the DDA due to the nature of the Public Improvements that will be developed as part of the Project and constructed and used for governmental purposes, as authorized pursuant to Health and Safety Code Section 34181(a); and

WHEREAS, a Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

Section 1: The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2: The Successor Agency hereby approves of the terms of the DDA.

Section 3: The Successor Agency hereby approves of the sale and conveyance of the Site from the City to the Developer in accordance with the terms and conditions set forth in the DDA, for the purpose of the Developer developing the Project.

Section 4: The Successor Agency hereby approves the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Health and Safety Code Section 34177(e).

Section 5: The Successor Agency hereby approves the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA.

Section 6: The Successor Agency hereby acknowledges and agrees that the DDA constitutes the existence of an enforceable obligation pursuant to Part 1.8 and Part 1.85 of Division 24 of the Health and Safety Code for the purposes of, without limitation, the disposition of assets previously owned by the Former Agency.

Section 7: The Successor Agency hereby authorizes and directs the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his or her designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by this Resolution including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) as determined necessary by the City Manager, or his or her designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his or her designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to this Resolution.

Section 8: The Successor Agency does not intend, by adoption of this Resolution, to waive any constitutional, legal and/or equitable rights of the Successor Agency or the City under law and/or in equity, including, without limitation, the effectiveness of the DDA or previous actions taken with respect to the DDA, by virtue of the adoption of this Resolution and actions approved and taken pursuant to this Resolution and, therefore, reserves all such rights of the Successor Agency and the City under law and/or in equity.

Section 9: A Mitigated Negative Declaration (MND) was prepared for the Project,

routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 15th day of August 2012, by the following vote:

AYES: BOARDMEMBERS: NOES: BOARDMEMBERS: NONE
ABSENT: BOARDMEMBERS: NONE

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY

Attachment 2

RESOLUTION NO. 2012-7243

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH APPROVING, SUBJECT TO CONDITIONS PRECEDENT, THE CITY'S TRANSFER TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY OF THE RESIDUAL PROCEEDS RECEIVED FROM THE SALE OF REAL PROPERTY PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF IMPERIAL BEACH AND SUDBERRY-PALM AVENUE LLC

WHEREAS, AB X1 26 (2011-2012 1st Ex. Sess.) (the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

WHEREAS, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Imperial Beach Redevelopment Agency (the "Former Agency"), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council (the "City Council") of the City of Imperial Beach (the "City") adopted Resolution No. 2012-7136 on January 5, 2012, accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

WHEREAS, the Dissolution Act was amended when the Governor signed Assembly Bill 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means Assembly Bill X1 26 as amended by AB 1484); and

WHEREAS, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

WHEREAS, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, the City has entered into that certain Disposition and Development

Agreement by and between the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

WHEREAS, the DDA pertains to that certain real property constituting two (2) parcels (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

WHEREAS, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

WHEREAS, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

WHEREAS, the Site is located within the geographical area of the Palm Avenue/Commercial Redevelopment Project (the "Project Area"); the Project complies with and furthers the goals and objectives of the Redevelopment Plan for the Project Area approved and adopted by the City Council of the City on February 6, 1996 by Ordinance No. 96-901, as subsequently amended (the "Redevelopment Plan") and the Project also furthers municipal and other public purposes; and

WHEREAS, Health and Safety Code Section 34181(a) provides, in pertinent part, that the Oversight Board shall direct the Successor Agency to transfer ownership to the appropriate public jurisdiction of all assets and property constructed and used for governmental purposes; and

WHEREAS, the City is the appropriate public jurisdiction for ownership of the Public Improvements pursuant to the DDA due to the nature of the Public Improvements that will be developed as part of the Project and constructed and used for governmental purposes, as authorized pursuant to Health and Safety Code Section 34181(a); and

WHEREAS, the Successor Agency and Oversight Board will each consider approving its own resolution (the "Successor Agency Resolution" and the "Oversight Board Resolution", respectively) to: (1) approve of the terms of the DDA; (2) approve of the sale and conveyance of the Site from the City to the Developer in accordance with the terms and conditions set forth in the DDA, for the purpose of the Developer developing the Project; (3) approve of the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; (4) approve of the City's transfer to the Successor Agency of the residual

proceeds received from the sale of the Site to the Developer for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Health and Safety Code Section 34177(e); and (5) acknowledge and agree that the DDA constitutes the existence of an enforceable obligation pursuant to Part 1.8 and Part 1.85 of Division 24 of the Health and Safety Code for the purposes of, without limitation, the disposition of assets previously owned by the Former Agency; and

WHEREAS, a Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

Section 1: The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2: Provided that all of the following conditions are satisfied (collectively, the "Conditions"), the City Council hereby approves the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to California Health and Safety Code Section 34177(e):

(1) The Successor Agency adopts the Successor Agency Resolution;
(2) The Oversight Board adopts the Oversight Board Resolution; and
(3) (a) The Department of Finance either does not review the Oversight Board Resolution within the time period set forth in the Dissolution Act and the Oversight Board Resolution and the actions therein are deemed effective pursuant to the Dissolution Act or (b) the Department of Finance reviews the Oversight Board Resolution within the time period set forth in the Dissolution Act and the Department of Finance approves of the Oversight Board Resolution and the actions therein.

Section 3: Provided that all of the Conditions are satisfied, the City Council hereby authorizes and directs the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his or her designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by this Resolution including, without limitation, approving extensions of deadlines set forth in the DDA

and the Schedule of Performance (Attachment No. 5 to the DDA) as determined necessary by the City Manager, or his or her designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his or her designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds or quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to this Resolution.

Section 4: The City Council does not intend, by adoption of this Resolution, to waive any constitutional, legal and/or equitable rights of the Successor Agency or the City under law and/or in equity, including, without limitation, the effectiveness of the DDA or previous actions taken with respect to the DDA, by virtue of the adoption of this Resolution and actions approved and taken pursuant to this Resolution and, therefore, reserves all such rights of the Successor Agency and the City under law and/or in equity.

Section 5: A Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

PASSED, APPROVED, AND ADOPTED by the City of Imperial Beach at its meeting held on the 15th day of August 2012, by the following vote:

AYES:	**BOARDMEMBERS:**	**NOES:**	**BOARDMEMBERS: NONE**
ABSENT:	**BOARDMEMBERS:**	**NONE**	

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY

ATTACHMENT 3

COMPLETE APPRAISAL SUMMARY REPORT

OF

City of Imperial Beach Property
Proposed "Breakwater" Commercial Center Site
735-849 Palm Avenue
Imperial Beach, CA 91932
APNs: 626-250-03, 04, 05 & 06

AS OF

July 10, 2012

PREPARED FOR

Gregory Wade
Assistant City Manager/Community Development Director
City of Imperial Beach
Community Development Department
825 Imperial Beach Blvd
Imperial Beach, CA 91932

PREPARED BY

Robert M. Backer, MAI, SRA
Robert Backer & Associates
990 Highland Drive, Suite 110B
Solana Beach, CA 92075

ROBERT BACKER & ASSOCIATES

Robert M. Backer, MAI, SRA
Certified General Appraiser
AG 002082

appraisal of real estate

August 6, 2012

Gregory Wade
Assistant City Manager/Community Development Director
City of Imperial Beach
Community Development Department
825 Imperial Beach Blvd
Imperial Beach, CA 91932

Re: Imperial Beach Property
Proposed "Breakwater" Commercial Center Site
735-849 Palm Avenue
Imperial Beach, CA 91932

Dear Mr. Wade:

At your request, we have prepared an appraisal for the above referenced property. Please reference page 7 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, Highest and Best Use analysis and valuation methodology.

We certify that we have no present or contemplated future interest in the property beyond this estimate of value. Your attention is directed to the Limiting Conditions and Assumptions section of this report (page 5). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, we note the following:

Hypothetical Conditions:

- The subject property was previously used as a shopping center and bank which have since been demolished. Tentative map approval for development with new retail improvements was obtained on December 14, 2011. The resolution document is included in the report addenda. There are several conditions and stipulations in the document which must be met in order to obtain final map recordation, including utilities improvement; storm drain and frontage improvement replacement; raising the site to street grade; and traffic flow and access enhancement. The first portion of this appraisal is conducted under the hypothetical condition that the site is vacant, in finished condition, with all frontage improvements, utilities and entitlements in place. The second portion of the appraisal adjusts to an as-is value by deducting the anticipated costs for the required improvements.

990 HIGHLAND DRIVE, SUITE 110 B, SOLANA BEACH, CA 92075 * 858 755-8383 * FAX 858 755-8898*bob@rbackerappraisal.com

Extraordinary Assumptions:

- The appraiser has relied on a construction and grading cost estimate draft provided by Sudberry Properties on July 10, 2012 to derive the value of the subject as-is. A copy of the cost estimate is included in the report addenda. This appraisal is operated under the extraordinary assumption that the reported costs are substantially accurate. If the anticipated development costs change in the future, this appraisal will need revision.

- The proposed project includes vacation of City-owned Streets and a portion of an alley that runs along the southern perimeter of the subject. Currently, the appraiser's calculations based on the assessor's parcel map indicates a site size of 3.91 acres *exclusive* of the City Streets that will be included in the project. The approved tentative map document (included in the report addenda) states a site size of 4.75 acres. For the purposes of this analysis, the area of 4.75 acres reflected in the resolution document is utilized.

Based on our review of national investor surveys, marketing times attributed to the sales comparables utilized in the sales comparison approach, and information gathered during the sales verification process, a reasonable exposure time for the subject property at the value reported herein is concluded at twelve to twenty four (12 - 24) months.

Based on the appraisal described in the accompanying report, subject to the Limiting Conditions and Assumptions, Extraordinary Assumptions and Hypothetical Conditions (if any), we have made the following value conclusion(s:

Imperial Beach Property Proposed "Breakwater" Commercial Center Site 735-849 Palm Avenue Imperial Beach, CA 91932	Value of the Subject – As-is:	**Nominal Value***

Respectfully submitted,

Robert M. Backer, MAI, SRA
AG002082

* The cost to achieve the condition specified in the hypothetical condition used in this appraisal exceeds the market value of the property under those conditions, resulting in a nominal value.

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Summary of Salient Facts

Subject Property:	Proposed "Breakwater" Commercial Center Site 735-849 Palm Avenue Imperial Beach, CA 91932
Property Overview:	The subject property consists of two and one-half city blocks of commercial land in Imperial Beach, California. The site is identified as Assessor's parcel numbers 626-250-03, 04, 05 & 06. The site was previously in use as a shopping center and bank before those improvements were demolished. As of the date of value of this report the site has an approved tentative map for 46,200 SF of retail space in seven buildings. The project also includes vacation of two city streets and an alley, which will bring the site size to a total of 4.75 acres (see extraordinary assumption). In order for new development to occur, the site will need to be elevated to street level as it is currently below grade; and extensive frontage, access, and utilities improvements are required in order to develop the property. A detailed estimate of the anticipated costs is included in the report addenda.
Interest Appraised:	Fee simple
Highest and Best Use As Vacant:	Hold for Future Commercial or Mixed-Use Development
Highest and Best Use As Improved:	The subject property is not improved.
Zoning:	C-1 (commercial)
Concluded Value of the Subject As-is:	Nominal Value*

* The cost to achieve the condition specified in the hypothetical condition used in this appraisal exceeds the market value of the property under those conditions, resulting in a nominal value.

SUMMARY TABLE A-1

ECONOMIC IMPACT TO CITY AND OTHER TAXING ENTITIES - PER YEAR
9TH AND PALM
CITY OF IMPERIAL BEACH

	Sudberry Proceeds with Approved 9th & Palm Development					
	State of California	County of San Diego	City of Imperial Beach	TransNet	K - 14 School Districts	Total
A. Annual Sales Tax Distribution	$700,000	-	$112,000	$56,000	-	$868,000
B. Annual Property Tax Distribution	-	$32,000	$26,000	-	$63,000	$121,000 (1)
C. Total Annual Sales and Property Tax	$700,000	$32,000	$138,000	$56,000	$63,000	$989,000

(1) Excludes property tax allocations to taxing entities receiving less than 0.50% of the 1.0% property tax.

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SUMMARY TABLE A-2

ESTIMATE OF EMPLOYMENT GENERATION
9TH AND PALM
CITY OF IMPERIAL BEACH

	Sudberry Proceeds with Approved 9th & Palm Development	
	Direct Impacts of Construction	Total Impact of Construction Including Direct, Indirect, and Induced Impacts [2]
I. Economic Impacts of Construction [1]		
Economic Output	$12.5 Million	$17.0 Million
Payroll	$3.9 Million	$5.3 Million
Employment (during one year constuction period)	68 workers	98 workers
II. Permanent Employment		
Project Description		46,200 SF
Employment @		3.00 jobs/1,000 SF
Total Permanent Jobs (FTEs)		139 jobs

Notes

(1) See Worksheet A-5 for derivation of these estimates. Economic Output and Payroll estimates represent total impacts during construction. Employment estimate represents the average annual employment impact during a one-year construction period.

(2) Indirect and Induced Impacts are also referred to as "multiplier effects."

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APPENDIX A

Sudberry Proceeds with Approved 9th & Palm Development

City of Imperial Beach

WORKSHEET A-1

ESTIMATE OF SALES TAX DISTRIBUTION
9TH AND PALM
CITY OF IMPERIAL BEACH

	Square Feet (SF)	Average Annual Sales Productivity Per SF (1)	2011 Estimated Sales Potential	Percentage Taxable	Estimated Annual Taxable Sales
I. Annual Taxable Sales					
Building A - Market	14,800	$400	$5,920,000	30.0%	$1,776,000
Buildings B, C, D - Shops	10,400	$300	$3,120,000	100.0%	$3,120,000
Building E - Shops	4,700	$300	$1,410,000	100.0%	$1,410,000
Building F - Retail	12,300	$300	$3,690,000	100.0%	$3,690,000
Building G - Retail	4,000	$300	$1,200,000	100.0%	$1,200,000
Totals/Average	**46,200**	**$332**	**$15,340,000**	**73.0%**	**$11,196,000**
Sales Tax Rate					7.75%
Total Sales Tax Distributed to Taxing Entities					**$868,000**

II. Distribution by Taxing Entity (2)		
A. State of California		
General Fund	3.9375%	$441,000
Fiscal Recovery Fund	0.2500%	$28,000
Local Public Safety Fund	0.5000%	$56,000
Local Revenue Fund for Health and Social Services	0.5000%	$56,000
Local Revenue Fund 2011	1.0625%	$119,000
Total State of California	6.2500%	$700,000
B. City of Imperial Beach		
City Operations	1.0000%	$112,000
C. TransNet		
San Diego County Regional Transportation Commission (SDTC)	0.5000%	$56,000
D. Total Sales and Use Tax	**7.7500%**	**$868,000**

(1) Represents an average of retail and restaurant average annual sales productivity per SF.
(2) Source: California State Board of Equalization

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WORKSHEET A-2

SUDBERRY PROCEEDS WITH APPROVED
9TH AND PALM DEVELOPMENT

ESTIMATE OF PROPERTY TAX DISTRIBUTION
9TH AND PALM
CITY OF IMPERIAL BEACH

I. Projected Assessed Value (1)					**Total**
Building A - Market	14,800	SF @	$300	/SF	$4,440,000
Buildings B, C, D - Shops	10,400	SF @	$250	/SF	$2,600,000
Building E - Shops	4,700	SF @	$250	/SF	$1,175,000
Building F - Retail	12,300	SF @	$250	/SF	$3,075,000
Building G - Retail	4,000	SF @	$250	/SF	$1,000,000
Total/Average	**46,200**	**SF @**	**$266**	/SF	**$12,290,000**
Property Tax Rate					1.0%
Total Property Tax Distributed to Taxing Entities					**$123,000**

	Tier 1 Pass-Through @ 25.0%		**Tier 2 Pass-Through @ 21.0%**		**Remainder @ 54.0%**		**Total to Taxing Entities**
	$30,750		**$25,830**		**$66,420**		**$123,000**
II. Distribution by Taxing Entity	**ATI Ratio**	**Tier 1**	**ATI Ratio**	**Tier 2**	**ATI Ratio**	**Remainder**	**Total**
A. County of San Diego							
County General	20.22%	$6,218	27.69%	$7,152	20.22%	$13,430	$26,801
County Library	3.21%	$988	4.40%	$1,136	3.21%	$2,133	$4,257
County School Service	0.63%	$194	0.86%	$223	0.63%	$419	$837
County School Service - Capital Outlay	0.16%	$49	0.22%	$56	0.16%	$106	$211
Total County of San Diego	24.22%	$7,449	33.17%	$8,568	24.22%	$16,089	$32,106
B. City of Imperial Beach							
Imperial Beach City	26.98%	$8,295	0.00%	$0	26.98%	$17,917	$26,212
C. K - 14 School Districts							
General Elementary South Bay Union	27.78%	$8,544	38.05%	$9,828	27.78%	$18,455	$36,826
High Sweetwater Union	15.69%	$4,826	21.49%	$5,551	15.69%	$10,423	$20,800
Southwestern Community College	4.23%	$1,300	5.79%	$1,496	4.23%	$2,809	$5,605
Total K - 14 School Districts	47.71%	$14,670	65.33%	$16,875	47.71%	$31,687	$63,231

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WORKSHEET A-2

ESTIMATE OF PROPERTY TAX DISTRIBUTION
9TH AND PALM
CITY OF IMPERIAL BEACH

	Tier 1 Pass-Through @ 25.0%		Tier 2 Pass-Through @ 21.0%		Remainder @ 54.0%		Total to Taxing Entities
	$30,750		$25,830		$66,420		$123,000
II. Distribution by Taxing Entity (Cont'd.)	**ATI Ratio**	**Tier 1**	**ATI Ratio**	**Tier 2**	**ATI Ratio**	**Remainder**	**Total**
D. Other							
Regional Occupational Centers	0.40%	$124	0.55%	$142	0.40%	$267	$534
Physically Handicapped Minors Elementary Comp	0.28%	$86	0.38%	$99	0.28%	$185	$370
Trainable Mentally Retarded Minors Elementary Comp	0.18%	$56	0.25%	$64	0.18%	$120	$240
Childrens Institutions Tuition	0.13%	$41	0.18%	$48	0.13%	$89	$179
Development Centers for Handicapped EC56811 Elem.	0.04%	$12	0.05%	$14	0.04%	$26	$52
Chula Vista Project (19/84602)	0.03%	$10	0.04%	$12	0.03%	$22	$44
Chula Vista Project (19/84601)	0.02%	$5	0.02%	$6	0.02%	$11	$22
Autistic Pupils Minors Elementary Comp	0.01%	$3	0.01%	$3	0.01%	$6	$11
County Service Area No 135 Regional 800MHZ Radio	0.00%	$0	0.00%	$0	0.00%	$0	$0
County Service Area No 135 Imperial Beach 800MHZ	0.00%	$0	0.00%	$0	0.00%	$0	$0
Educational Revenue Augmentation Fund	0.00%	$0	0.00%	$0	0.00%	$0	$0
San Diego Unified Port	0.00%	$0	0.00%	$0	0.00%	$0	$0
Total Other	1.09%	$337	1.50%	$387	1.09%	$727	$1,451
E. Total Property Tax	**100.00%**	**$30,750**	**100.00%**	**$25,830**	**100.00%**	**$66,420**	**$123,000**

(1) KMA estimates.

NOTE: No assurances are provided by KMA as to the certainty of the projected property tax revenues shown in this document. While we believe our estimates to be reasonable, actual taxable values will vary from the amounts assumed in the projection.

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WORKSHEET A-3

ESTIMATE OF CONSTRUCTION EMPLOYMENT - ESTIMATED DEVELOPMENT COSTS
9TH AND PALM
CITY OF IMPERIAL BEACH

Project Description					
Gross Building Area (GBA)			Site Area	4.75	Acres
Market	14,800	SF		206,910	SF
Shops	15,100	SF			
Retail	16,300	SF			
Total GBA	46,200	SF			

Development Costs	**Totals**		**Comments**
I. Direct Costs (1)			
Off-Site Improvements (2)	$1,350,000	$7	Per SF Land
On-Site Improvements	$2,200,000	$11	Per SF Land
Parking	$0		Included in On-Sites
Shell Construction	$2,795,000	$89	Per SF GBA - Excluding Market
Tenant Improvements	$211,000	$14	Per SF GBA - Shops
Amenities/FF&E	$100,000		Allowance
Contingency	$359,000	5.4%	of Directs
Total Direct Costs	**$7,015,000**	**$152**	**Per SF GBA - Total**
		$223	**Per SF GBA - Excluding Market**
II. Indirect Costs			
Architecture & Engineering	$550,000	7.8%	of Directs
Permits & Fees (2)	$100,000	$2	Per SF GBA - Total
Legal & Accounting	$225,000	3.2%	of Directs
Taxes & Insurance	$130,000	1.9%	of Directs
Developer Fee	$350,000	5.0%	of Directs
Marketing/Lease-Up	$370,000	$8	Per SF GBA - Total
Contingency	$86,000	5.0%	of Indirects
Total Indirect Costs	**$1,811,000**	**25.8%**	**of Directs**
III. Financing Costs			
Loan Fees	$112,000	1.6%	of Directs
Interest during Construction/Lease-Up	$309,000	4.4%	of Directs
Total Financing Costs	**$421,000**	**6.0%**	**of Directs**
IV. Total Development Costs	**$9,247,000**	**$200**	**Per SF GBA - Total**
		$294	**Per SF GBA - Excluding Market**

(1) Includes the payment of prevailing wages.
(2) Per Developer. Not verified by KMA or City.

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WORKSHEET A-4

ESTIMATE OF CONSTRUCTION EMPLOYMENT - LOCAL EXPENDITURES
9TH AND PALM
CITY OF IMPERIAL BEACH

	Direct Costs		Indirect Costs		Total
I. Development Costs					
Project Costs - Sudberry	$7,015,000		$2,232,000	32% of Directs	$9,247,000
Market Costs - Tesco	$1,850,000	$125 /SF	$555,000	30% of Directs	$2,405,000
Public Improvements - City	$1,913,000		$287,000	15% of Directs	$2,200,000
Total Development Costs	$10,778,000		$3,074,000		$13,852,000
II. County Capture	90.0%		90.0%		----
III. Total Local Expenditures	**$9,700,000**		**$2,767,000**		**$12,467,000**

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WORKSHEET A-5

ESTIMATE OF CONSTRUCTION EMPLOYMENT IMPACTS
9TH AND PALM
CITY OF IMPERIAL BEACH

			Direct Impacts	Regional Multiplier[2]	Indirect & Induced Impact	Total Direct, Indirect, and Induced Impacts
I. Economic Output from Construction						
From Direct Construction			$9,700,000 [1]	1.336	$3,263,000	$12,963,000
From Indirects			$2,767,000 [1]	1.981	$2,714,000	$5,481,000
Total Development Costs			**$12,467,000** [1]		**$5,230,000**	**$17,000,000**
II. Construction Payroll						
From Direct Construction	30% of cost	[3]	$2,910,000	1.238	$694,000	$3,604,000
From Indirects	35% of cost	[3]	$968,000	1.796	$771,000	$1,739,000
Total Development Costs			**$3,878,000**		**$1,465,000**	**$5,343,000**
III. Construction Employment						
From Direct Construction	$52,000 avg pay	[4]	56 person years [5]	1.331	19 person years [5]	74 person years [5]
From Indirects	$83,000 avg pay	[4]	12 person years [5]	2.007	12 person years [5]	23 person years [5]
Total Development Costs			**68 person years** [5]		**30 person years** [5]	**98 person years** [5]
Number of Years to Construct			1.0 Year		1.0 Year	1.0 Year
Average Annual Employment During Construction Period (rounded)			**68 workers**		**30 workers**	**98 workers**

(1) Based on cost of Project inclusive of direct construction and soft costs.

(2) Bureau of Economic Analysis RIMS II multipliers for the region defined as Imperial County. Multiplier for direct construction based on North American Industrial Classification System (NAICS) Code 230000 which corresponds to the construction industry. Multipliers for soft costs based on average for representative NAICS codes: 541300 (architecture, engineering, and related), 524100 (insurance carriers), 541100 (legal).

(3) Based on the 2007 Economic Census. Percentage for construction based on ratio of net value of construction to gross payroll for commercial building construction contractors. Ratio for soft costs based on ratio of gross receipts to payroll for architecture / engineering firms, legal services, and insurance.

(4) Based on California Employment Development Department (EDD) data on average annual pay levels for the San Diego County (San Diego-Carlsbad-San Marcos MSA) in 2011. For construction, estimate based on construction and extraction occupations. For soft costs, average pay represents an approximation based on EDD averages for relevant occupation categories including A&E, insurance, and legal.

(5) A person year of employment is equivalent to full time employment of one person for one year.

Sources: Bureau of Economic Analysis, California Employment Development Department, and 2007 Economic Census

Prepared by: Keyser Marston Associates, Inc.
Filename i:\Imperial Beach_9th & Palm_DOF_v3;8/8/2012;lag

DISPOSITION AND DEVELOPMENT AGREEMENT
[9th and Palm]

by and between

CITY OF IMPERIAL BEACH ("CITY")

and

SUDBERRY-PALM AVENUE LLC, a California limited liability company

("DEVELOPER")

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DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") by and between the CITY OF IMPERIAL BEACH ("City") and SUDBERRY-PALM AVENUE, a California limited liability company ("Developer") is dated for identification purposes only as of December __, 2011.. In this Agreement, each of the Developer and the City is sometimes individually referred to as a "Party" and collectively as the "Parties". For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

PART 1. SUBJECT OF AGREEMENT

SECTION 101 Purposes of this Agreement

a. The purpose of this Agreement is to effectuate the redevelopment plan for the Palm Avenue/Commercial Redevelopment Project Area (the "Project Area") which was adopted by the City Council of the City of Imperial Beach (the "City Council") on February 6, 1996 by Ordinance No. 96-901, as subsequently amended (the "Redevelopment Plan").

b. The City and the Imperial Beach Redevelopment Agency ("Redevelopment Agency") have entered into that certain Cooperation Agreement dated February 16, 2011 (the "Cooperation Agreement"), pursuant to which the City has agreed to aid and cooperate with the Redevelopment Agency in the planning, undertaking, construction or operation of redevelopment projects in the Project Area in accordance with Section 33220 of the California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*, as it may be amended from time to time) (the "Redevelopment Law").

c. Pursuant to the Cooperation Agreement, among other things, the Redevelopment Agency has granted to the City fee title to certain real property constituting an approximately 3.9 acre site in the Project Area, located generally at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street (the "Site"), consisting of two properties, described below in this Agreement and referred to as "Property 1" and "Property 2", and the City has taken title to the Site for purposes of aiding and cooperating with the Redevelopment Agency in the redevelopment of the Site in accordance with the Redevelopment Plan.

d. Pursuant to the Cooperation Agreement, among other things, the City has agreed to develop and construct certain public improvements for the purpose of aiding and cooperating with the Redevelopment Agency in the redevelopment of the Site, including, but not limited to, intersection improvements to allow vehicular access to the Site from State Route 75, and the Redevelopment Agency has agreed to reimburse City for the public improvements from net available tax increment, as defined in the Cooperation Agreement, including but not limited to tax allocation bond proceeds (the "Cooperation Agreement Revenues").

e. As more fully described in this Agreement, below, the purposes of this Agreement include providing for the following:

(i) the sale of the Site (consisting of Property 1 and Property 2, as defined below) by City to Developer for an amount that is not less than the re-use value of the Site in light of the terms and conditions of this Agreement and upon the satisfaction of conditions and subject to the terms of this Agreement, below;

(ii) Developer's concurrent grant to the City of an option with respect to Property 2 to ensure the timely redevelopment of Property 2 in accordance with this Agreement, to be exercised by the City in accordance with the terms of this Agreement;

(iii) construction of certain off-site Public Improvements (defined below) by Developer, including the Highway 75 Improvements (defined below) and the Ninth Street Improvements (defined below), and payment to or for the benefit of or reimbursement to Developer by City for the cost of the offsite improvements, using the Cooperation Agreement Revenues; and

(iv) Developer's redevelopment of the Site with approximately 46,200 square feet of retail/commercial space plus parking, landscaping and related improvements, as described in the Scope of Development and this Agreement, below, including:

(A) the preparation of building pads on Property 1 and Property 2 by Developer (designated Parcels "A" through "G", as depicted on the Site Map attached to this Agreement as Attachment No. 1);

(B) the construction by Developer of retail/commercial buildings on Parcels "B", "C" and "D" (as defined below) and, if Developer elects to do so, on Parcel "E" and Parcel "G", and, if Developer elects to do so, on Parcel "F" (in lieu of the assignment and conveyance described in clauses (E) and (F) of this paragraph (iv), below);

(C) the assignment by Developer to the Approved Parcel "A" Assignee of Developer's rights and obligations under this Agreement as to Parcel "A";

(D) the further conveyance by Developer (by sale, ground lease or other conveyance) of Parcel "A" to, and the construction of a retail/commercial building on Parcel "A" by, the Approved Parcel "A" Assignee;

(E) if applicable, the assignment by Developer to the Approved Parcel "F" Assignee of Developer's rights and obligations under this Agreement as to Parcel "F"; and

(F) if applicable, the further conveyance by Developer (by sale, ground lease or other conveyance) of Parcel "F" to, and the construction of a retail building on Parcel "F" by, the Approved Parcel "F" Assignee.

f. The Parties to this Agreement acknowledge that the public funds expended by City and the Redevelopment Agency to acquire and clear the Site and relocate the former occupants from the Site exceed the Purchase Price (such differential plus the Remaining Public Improvement Funds (defined below) plus the cost of the Ninth Street Improvements being referred to herein as the "Public Subsidy"). The Public Subsidy shall be in consideration for the following: (i) the construction by Developer and/or its Assignees of an approximately 46,200 square foot retail/commercial center on the Site ("the Project"), in accordance with all the terms and conditions of this Agreement and any permits for development issued by the City; (ii) Developer's satisfactory construction of the Public Improvements required to be constructed under this Agreement, including the Public Improvements described in Section 219.a. and the Ninth Street Improvements; and (iii) Developer's and/or its Assignees' maintenance and operation of the Project in accordance with the Grant Deed for the Site and the Agreement Containing Covenants to be recorded concurrently with the conveyance of the Site to Developer.

g. The development and use 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 Imperial Beach and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

h. As provided in California Health and Safety Code Section 33437.5, this Agreement is entered into for the purpose of redeveloping the Site and not for speculation in landholding.

i. The Parties to this Agreement hereby acknowledge that they will each obtain valuable benefits from this Agreement and that, in entering into this Agreement, each Party is relying on the obligation of the other Party to perform under this Agreement.

j. The City acknowledges that performance by Developer of its obligations and the development and use of the Site pursuant to this Agreement will further the purposes set forth in the Redevelopment Law by helping to remedy and prevent the recurrence of the physical and economic conditions of blight that existed and currently exist in the Project Area, generating construction jobs in the development of the Project and permanent jobs in its operation, providing fresh food choices and other retail and commercial opportunities to people who live and work in and around the Project Area, and encouraging further private investment that will benefit the entire Project Area.

k. Developer acknowledges that performance by the City of its obligations pursuant to this Agreement will provide to Developer and its principals significant and valuable financial benefits and that City's performance of these obligations is in consideration of Developer's compliance with the requirements of this Agreement in the development, construction, operation and use of the Project.

l. The Parties hereby acknowledge that the recitals of fact contained in this Section 101 are true and correct.

SECTION 102 City's Role in Transaction

a. The Parties acknowledge and agree that: (i) on or about March 10, 2011, the Imperial Beach Redevelopment Agency transferred to the City fee title ownership of the Site by recorded grant deed, and (ii) through an assignment agreement executed in connection with such property transfer, the Redevelopment Agency assigned to the City, and the City assumed, all of the Redevelopment Agency's rights, title, interest and obligations under all assets, agreements, contracts, permits and entitlements, and other documents relating directly or indirectly to the use, management, repair, maintenance, development and operation of the Site.

b. Notwithstanding any provision of this Agreement to the contrary, if, prior to the conveyance of the Site to Developer pursuant to this Agreement, the Redevelopment Agency's prior transfer of the Site to City is nullified, rescinded or invalidated for any reason whatsoever, then it is understood and agreed that (i) fee title to the Site shall automatically re-vest in the Imperial Beach Redevelopment Agency (or its applicable successor, which may include the City), and (ii) all assets, agreements, contracts, permits and entitlements, and other documents previously assigned from the Redevelopment Agency to City relating to the Site shall automatically be re-assigned to the Redevelopment Agency (or its applicable successor, which may include City) and it is the intention of the Parties that, to the extent authorized by law, the Redevelopment Agency shall fulfill all obligations of the "City" pursuant to this Agreement; however, if, following the conveyance of the Site to Developer pursuant to this Agreement, the Redevelopment Agency's prior transfer of the Site to the City is nullified, rescinded or invalidated for any reason whatsoever, then it is the intention of the Parties that the conveyance to Developer shall not be affected and the Redevelopment Agency shall be entitled to exercise all of the rights and shall be obligated to perform all of the obligations of the "City" hereunder.

c. Developer acknowledges and agrees that to the extent that the City has any financial obligation to Developer pursuant to this Agreement, such financial obligation is and shall be a special limited obligation, payable solely from the funds that have been transferred or pledged by the Redevelopment Agency to the City, and allocated for the Public Improvements and the Ninth Street Improvements, pursuant to the Cooperation Agreement (defined in paragraph b. of Section 101, above), and is not and shall not be a pledge of or obligation payable through the City's general fund. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in this Agreement.

d. City agrees to exercise its rights and carry out its obligations under the Cooperation Agreement in a manner reasonably designed to carry out the Project and the Public Improvements described in this Agreement, including but not limited to not taking any action under the provisions of the Cooperation Agreement permitting City and Redevelopment Agency to modify the list of projects and amount of funds committed to various projects in such a way as to adversely affect City's obligations under this Agreement.

e. Subject to the provisions of Section 512.b., by execution of this Agreement, Developer hereby waives, releases and discharges the City and the Imperial Beach

Redevelopment Agency ("Agency"), and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the City's inability to meet its financial or other obligations under this Agreement as a result of State action with respect to Assembly Bill ("AB") x1 26 and AB x1 27 which were passed by the State Legislature on June 15, 2011 and signed by the Governor on June 28, 2011 and any future or current litigation related thereto, including California Redevelopment Association v. Matosantos (S194861). Notwithstanding Part 5 of this Agreement, the City's failure to meet its financial or other obligations under this Agreement as a result of State action with respect to AB x1 26 and AB x1 27 and any future or current litigation related thereto, including California Redevelopment Association v. Matosantos (S194861), shall not constitute a default by the City under this Agreement.

Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor".

To the extent of the release set forth in this Section 102.d., Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

SECTION 103 Definitions

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

"Acceptance and Maintenance Agreement" shall mean an Acceptance and Maintenance Agreement for Public Improvements substantially in the form attached to this Agreement as Attachment No. 17, which is incorporated herein by this reference.

"Acquisition and Development Costs" means properly documented costs incurred by Developer in connection with the acquisition of the Site and the entitlement, design, financing and construction of the Improvements, as set forth in the Project Budget.

"Affiliate" means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or

control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. It shall also be a presumption that the manager of a limited liability company controls such limited liability company.

"Agreement" shall mean this Disposition and Development Agreement.

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

"Approved Parcel "A" Assignee" shall mean, in the event of an assignment of this Agreement as to Parcel "A" by Developer and conveyance of Parcel "A" to the Assignee, the following: (i) Fresh & Easy Property Company LLC, a Delaware limited liability company; (ii) an Affiliate of Tesco plc; or (iii) another City-approved grocery store developer/end-user of Parcel "A".

"Approved Parcel "F" Assignee" shall mean, in the event of an assignment of this Agreement as to Parcel "F" by Developer and conveyance of Parcel "F" to the Assignee, the following: (i) the Assignee approved by the City; (ii) an Affiliate of the Assignee; or (iii) another City-approved developer/end-user of Parcel "F".

"Approved Plans" shall mean the Plans approved by the City pursuant to Section 306 of this Agreement.

"Approved Title Conditions" shall have the meaning set forth in Section 205.c. of this Agreement.

"Assignee" shall mean any Person to whom or to which Developer assigns its interests in this Agreement as to all or any portion of the Site, which assignment shall be subject to the approval of City as provided in this Agreement, which shall include, without limitation, the Approved Parcel "A" Assignee, which is hereby approved by City, and the Approved Parcel "F" Assignee.

"Assignment and Assumption Agreement" means an instrument to be negotiated and executed by Developer, the Parcel "A" Assignee and City as a condition precedent to the Phase 1 Closing (defined below), and the Developer, the Parcel "F" Assignee and City as a condition precedent to the Phase 2 Closing (defined below), by which Developer shall assign to such Assignee, and such Assignee shall assume, certain rights and obligations of the Developer pursuant to this Agreement as to Parcel "A" and Parcel "F", respectively, which shall be subject to the approval of the City Manager on behalf of the City, in his or her sole discretion (which phrase, as used in this Agreement (and the related documents being executed in connection herewith) shall mean without the requirement of any additional approval or consent by the City

Council – but does not affect the obligation of the City Manager to act reasonably in granting such approval.

"Building Pads" shall mean the foundations, platforms and structural forms necessary for the construction of the markets, shops and retail buildings to be constructed on the Site, and shall include Building Pads "A" through "G" inclusive, as shown on the Site Map.

"Building Permit" shall mean all grading and building permits required to be obtained from the City for the construction of the Improvements.

"Business Day" means a week day, and shall specifically exclude those days described in California Civil Code Section 7.1, as amended from time to time.

"CC&R's" shall have the meaning set forth in Section 407 of this Agreement.

"City" means the City of Imperial Beach, California, and any assignee or successor to its rights, powers and responsibilities.

"City Deed of Trust" shall mean the instrument substantially in the form attached to this Agreement as Attachment No. 16, which is hereby incorporated herein by this reference, to be recorded against the Site (with the exception of Parcel "A') at the Close of Escrow, and released from Parcel "F" if and as provided in Section 201, below.

"City Manager" refers to the City Manager of the City of Imperial Beach or his or her designee.

"Close of Escrow" shall mean the escrow closing for the sale of the Site to Developer pursuant to Section 202 of this Agreement.

"Closing" shall mean either of the following (as defined herein): (a) the Phase 1 Closing; and (b) the Phase 2 Closing, as applicable and as the context may require.

"Completion" means the completion of construction of the Improvements as required by all the requirements of this Agreement, evidenced by the occurrence of all of the following:

(1) Either of the following: (a) for any Private Improvements, the issuance by the City of a certificate of occupancy; or (b) for any Public Improvements, the execution and recordation of an Acceptance and Maintenance Agreement (as defined in this Agreement);

(2) recordation of a Notice of Completion by Developer, its Assignee or contractor relating to the Improvements;

(3) certification or equivalent by the project architect that construction of the Improvements (with the exception of minor "punch-list" items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications;

(4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered; and

(5) completion to the reasonable satisfaction of the City Manager of development of the Site (or portion thereof within, or directly serving, the applicable Phase) in accordance with this Agreement, the Scope of Development and plans approved by the City pursuant to this Agreement.

Completion shall occur by Phase, so that the Completion of Phase 1 is sometimes referred to as the "Phase 1 Completion" and the Completion of Phase 2 is sometimes referred to as the "Phase 2 Completion". Notwithstanding the foregoing, Completion may also occur Parcel by Parcel.

"Construction Lender" means the maker of any Construction Loan or beneficiary of any Construction Loan Deed of Trust.

"Construction Loan" means a Source of Financing in the form of a loan made to the Developer or an Assignee for construction of the Improvements, secured against one or more Parcels, by a Construction Loan Deed of Trust.

"Construction Loan Deed of Trust" means a deed of trust securing a Construction Loan.

"Conversion" means the date upon which a Construction Loan is converted to (or refinanced with) a Permanent Loan.

"Cooperation Agreement Revenues" shall mean the revenues transferred or pledged by the Redevelopment Agency to the City and allocated for payment of the Public Improvement Costs and Ninth Street Costs pursuant to the Cooperation Agreement, described in Section 101.c. of this Agreement, which shall include but not be limited to tax allocation bond proceeds.

"Developer" shall have the meaning set forth in the Preamble to this Agreement and Section 107 of this Agreement.

"Developer Equity" shall mean any Source of Financing needed to pay Acquisition and Development Costs that is provided by Developer and not secured by a deed of trust on the Site or any portion thereof.

"Developer's Title Policy" shall have the meaning set forth in Section 211 of this Agreement.

"Effective Date" means the date, after this Agreement shall have been executed by the Developer and approved by the City Council in accordance with the procedure set forth in California Health and Safety Code Section 33433, that this Agreement is executed on behalf of the City, which date shall be the latest date set forth on the signature page of this Agreement.

"Entitlements" shall mean all applicable land use approvals and all conditions of approval, legally required by the City of Imperial Beach or other governmental authority as a condition of subdivision of the Site, development of the Project and construction of the Improvements in accordance with this Agreement, including, without limitation, a Map and Building Permits.

"Environmental Indemnity" means an instrument that is mutually acceptable in form and substance to the Developer and City Manager, an example of which is attached to this Agreement as Attachment No. 10, which is incorporated herein by this reference (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument).

"Escrow Agent" means Chicago Title Company or another escrow agent mutually acceptable to the City and Developer.

"Excess Funds" shall have the meaning set forth in Section 219.c.3. of this Agreement.

"Final Construction Drawings" shall have the meaning set forth in Section 305 of this Agreement.

"Force Majeure Delay" shall have the meaning set forth in Section 602 of this Agreement.

"General Instructions" shall have the meaning set forth in paragraph k. of Section 202 of this Agreement.

"Grant Deed" means an instrument by which the City shall convey title to one or more Parcels to Developer, that is mutually acceptable in form and substance to the Developer and City Manager, an example of which is attached to this Agreement as Attachment No. 8, which is hereby incorporated by this reference (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument).

"Hazardous Substances" shall have the meaning set forth in paragraph a.1. of Section 216 of this Agreement.

"Horizontal Improvements" shall mean the public improvements and utilities required to be constructed or installed by Developer on or in connection with the development of the Site and Site preparation in anticipation of construction of Vertical Improvements, as provided in the Scope of Development, Approved Plans and Entitlements for the Project, not including the Vertical Improvements.

"Improvements" shall collectively refer to the commercial retail shopping center to be constructed on the Site, consisting of the Horizontal Improvements and Vertical Improvements

more particularly described in the Scope of Development, and including the Private Improvements and the Public Improvements.

"Increased Costs" shall have the meaning set forth in Section 311 of this Agreement.

"Instrument Terminating Option" shall mean an instrument that is mutually acceptable, in form and substance, to the Developer and City Manager, a sample of which is attached to the Option Agreement as Exhibit "D", which shall be recorded against Property 2 upon the Phase 2 Closing (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument).

"Insurance Policies" shall have the meaning set forth in Section 309 of this Agreement.

"Legal Description" means the legal description of the Site attached to this Agreement as Attachment No. 2.

"Manager" means Sudberry Development, Inc., a California corporation, its successors and assigns.

"Map" shall mean a final subdivision map meeting the requirements of the California Subdivision Map Act and all applicable City of Imperial Beach ordinances, which shall be in recordable form and which shall, *inter alia*, define Parcels "A", "B", "C", "D", "E", "F" and "G" as separate legal lots.

"Memorandum of Option" means an instrument that is mutually acceptable, in form and substance, to Developer and City Manger, an example of which is attached to the Option Agreement as Exhibit "C", which is incorporated herein by this reference (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument), to be recorded against Property 2 at the Phase 1 Closing.

"Method of Financing" means Attachment No. 3 to this Agreement, which is incorporated herein by this reference.

"Ninth Street Improvements" shall mean the resurfacing and improvement of 9th Street, between Palm Avenue and Donax Avenue, as required by the City as a condition of the approval of the Entitlements.

"Notice of Completion" shall have the same definition as set forth in California Civil Code section 3093.

"Official Records" means the Official Records of the Office of the County Recorder for San Diego County, California.

"Option" shall mean the right of the City, in its sole discretion, to purchase back Property 2 from the Developer, as set forth in the Option Agreement and memorialized in the Memorandum of Option.

"Option Agreement" shall mean an Option Agreement and Joint Escrow Instructions, that is mutually acceptable, in form and substance, to Developer and City Manager, granting to the City an option to purchase Property 2 from Developer, an example of which is attached to this Agreement as Attachment No. 12, which is incorporated herein by this reference (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument).

"Parcel A" shall mean the parcel created by the Map for Building Pad "A" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Parcel B" shall mean the parcel created by the Map for Building Pad "B" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Parcel C" shall mean the parcel created by the Map for Building Pad "C" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Parcel D" shall mean the parcel created by the Map for Building Pad "D" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Parcel E" shall mean the parcel created by the Map for Building Pad "E" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Parcel F" shall mean the parcel created by the Map for Building Pad "F" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Parcel "G" shall mean the parcel created by the Map for Building Pad "G and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Participation Component" shall mean that component of the Purchase Price equal to one and one-half percent (1.5%) of the gross proceeds of sale of the Retail Center, excluding Parcel "A" and, subject to the conditions set forth in Section 201, below, excluding Parcel "F", as described in Section 201, below.

"Parties" shall have the meaning set forth in the Preamble to this Agreement.

"Payment Agreement" shall mean a document that is mutually acceptable, in form and substance, to Developer and City Manager, an example of which is attached to this Agreement as Attachment No. 15, which is incorporated herein by this reference (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith,

upon the final form and substance of such instrument), evidencing Developer's obligation to pay to City the Participation Component of the Purchase Price.

"Permanent Lender" means the maker of any Permanent Loan or beneficiary of any Permanent Loan Deed of Trust.

"Permanent Loan" means a Source of Financing in the form of a permanent loan to be made to the Developer or an Assignee at Conversion, secured by a Permanent Loan Deed of Trust recorded against one or more Parcels.

"Permanent Loan Deed of Trust" means a deed of trust securing a Permanent Loan.

"Permitted Deed of Trust" means a mortgage or deed of trust approved by the City as a Source of Financing for the Project, including Construction Loan Deeds of Trust and Permanent Loan Deeds of Trust.

"Permitted Financing Purposes" shall have the meaning set forth in Section 318 of this Agreement.

"Permitted Lender" means the holder of a Permitted Deed of Trust, including a Construction Lender or Permanent Lender.

"Permitted Transfer" means any of the following:

(i) A conveyance of a security interest in the Site, or one or more Properties or one or more Parcels in connection with any Permitted Deed of Trust and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith, provided that Developer shall have no authority to encumber any portion of the Site until the occurrence of the Phase 1 Closing and the Close of Escrow, and shall have no authority to encumber Property 2 or any portion of Property 2 until the occurrence of the Phase 2 Closing;

(ii) A conveyance of the Site, or one or more Parcels to any Affiliate of Developer or a sale back from such Affiliate to Developer, including, but not limited to, a conveyance to a limited liability company or limited partnership in which Developer, or an Affiliate, is the manager or general partner, as the case may be;

(iii) The inclusion of equity participation by Developer by addition of investor members or limited partners to Developer's limited liability company or limited partnership, as the case may be, or similar mechanisms, the purchase of any such membership or partnership interests by the manager or general partner and the withdrawal and/or replacement of such investor members or limited partners;

(iv) The removal for cause of any general partner by the limited partners of the Developer's partnership, or the removal for cause of the manager of the Developer's limited liability company, as the case may be, and the replacement thereof with a new general partner or manager, as the case may be;

(v) Developer's assignment to Approved Parcel "A" Assignee of Developer's rights and obligations under this Agreement with regard to Parcel "A" pursuant to an Assignment and Assumption Agreement for Parcel "A", and the conveyance by Developer, by sale, ground lease or other form of conveyance, at the time of the Phase 1 Closing, of Parcel "A" to the Approved Parcel "A" Assignee pursuant to a purchase and sale agreement or ground lease, as applicable, approved by City, for the operation of an approximately 14,800 square foot Fresh & Easy or comparable grocery store or supermarket;

(vi) Developer's assignment to Approved Parcel "F" Assignee of Developer's rights and obligations under this Agreement with regard to Parcel "F" pursuant to an Assignment and Assumption Agreement for Parcel "F" and the conveyance by Developer, by sale, ground lease or other form of conveyance, at the time of the Phase 2 Closing, of Parcel "F" to the Approved Parcel "F" Assignee pursuant to a purchase and sale agreement or ground lease, as applicable, approved by City, for the operation of an approximately 5,000 – 15,000 square foot retail single-tenant or multi-tenant building; and

(vii) The granting of easements, licenses, rights of entry or permits to facilitate the development of the Site in accordance with this Agreement.

Any transfer described in clauses (i) through (vii) above shall be subject to the reasonable approval of the City Manager for conformance with this Agreement; provided, however that the City Manager shall approve any such transfer as a Permitted Transfer upon delivery of documentation to the City Manager demonstrating that such transfer qualifies as a Permitted Transfer.

"Permitted Transferee" means the transferee of a Permitted Transfer.

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

"Phase 1" shall mean the first development phase of the Project, consisting of the following: (a) construction of the Public Improvements (except to the extent any of the Public Improvements which are already completed prior to the Phase 1 Closing or which are deferred until Phase 2 in accordance with Section 219 of this Agreement); (b) construction of all Horizontal Improvements on Property 1 and, to the extent reasonably necessary for the operation of Phase 1 or otherwise deemed advisable by Developer, Horizontal Improvements on Property 2; (c) construction of all Building Pads and related improvements on Parcels "A", "B", "C" and "D" on Property 1; and (d) the construction of the Vertical Improvements to be constructed on Parcels "A", "B", "C" and "D" on Property 1, with related on-site utilities, improvements, landscaping, lighting, parking and driveways, all as described in the Scope of Development.

"Phase 1 Closing" shall mean the point in time when all conditions precedent to the escrow closing as set forth in Section 208 of this Agreement have been satisfied or waived in writing by the Party benefiting from such condition; the Map has been approved and recorded; and the Grant Deed(s) and Agreement(s) Containing Covenants for Property 1 and Property 2,

the Phase 1 Construction Loan Deed of Trust and all other Phase 1 Recorded Documents, as set forth in Section 202 have been recorded.

"Phase 1 Closing Date" means the date scheduled for the Phase 1 Closing, which shall be not later than nineteen (19) months after the Effective Date.

"Phase 1 Improvements" shall mean the Improvements to be constructed as part of Phase 1, as described in the Scope of Development.

"Phase 2" shall mean the second development phase of the Project, consisting of the construction of any remaining Horizontal Improvements and any of the Public Improvements deferred by Developer until Phase 2 in accordance with Section 219 of this Agreement, the preparation of Building Pads and related improvements on Parcels "E", "F" and "G" on Property 2, and the buildings on Parcel "E" (if Developer elects to construct the building on Parcel "E"), Parcel "F" (if Developer elects to construct the building on Parcel "F" – it being acknowledged that such building may be constructed by either Developer or the Approved Parcel "F" Assignee), and Parcel "G" (if Developer elects to construct the building on Parcel "G"), as described in the Scope of Development.

"Phase 2 Closing" shall mean the point in time when (i) all conditions precedent to the termination and release of the Option as set forth in Section 220 of this Agreement have been satisfied or waived in writing by the City; (ii) the City executes and record the Instrument Terminating Option, releasing Property 2 from the Option; and (iii) the Phase 2 Construction Loan Deeds of Trust and all other Phase 2 Recorded Documents, as set forth in Section 220 have been recorded.

"Phase 2 Closing Date" means the date described in Section 220 of this Agreement, which shall be not later than forty-two (42) months after the Effective Date of this Agreement, subject to Force Majeure Delay.

"Phase 2 Improvements" shall mean any remaining Horizontal Improvements deferred by Developer until after the Phase 2 Closing, any Pubic Improvements deferred by Developer to Phase 2, and the Vertical Improvements to be constructed on Property 2, as described in the Scope of Development.

"Plans" shall mean the plans and drawings prepared on behalf of Developer or an Assignee, and required to be submitted to City pursuant to Sections 303, 304 and 305 of this Agreement.

"Pre-existing Site Conditions" shall mean the environmental condition of the Site, including any Hazardous Substances present in, on or under the Site, as of date of the Close of Escrow.

"Private Improvements" shall mean the portion of the Improvements described in the Scope of Development that will be developed and constructed at no cost or expense to the City, located on the Site, and be owned by Developer or an Assignee.

"Project" refers to the design and construction of the Improvements (or if Phase 2 is not developed, then the Project shall refer to the design and construction of the Phase 1 Improvements).

"Project Budget" means, initially, the table attached to this Agreement as Attachment No. 6, which shall be replaced prior to the Phase 1 Closing with an updated Project Budget and schedule of sources and uses, as described in Section 208 of this Agreement.

"Property 1" shall mean the portion of the Site depicted as Property 1 on the Site Map, containing Parcels "A", "B", "C" and "D" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Property 2" shall mean the portion of the Site depicted as Property 2 in the on the Site Map, containing Parcels "E", "F" and "G" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

"Public Improvements" shall mean the off-site publicly-owned Improvements described in Section 219 of this Agreement and the Scope of Development (including, but not limited to the intersection improvements at Delaware, Palm and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements) that are required to be developed and constructed at the cost and expense of Developer, subject to the obligation of the City to disburse the Remaining Public Improvement Funds as provided in Section 219 of this Agreement.

"Public Improvement Budget" shall have the meaning set forth in Section 219.e.1. of this Agreement.

"Public Improvement Costs" shall mean the cost of designing, permitting, constructing and installing the Public Improvements as provided in Section 219 of this Agreement.

"Public Improvement Funds" shall mean $2,200,000 of Cooperation Agreement Revenue, of which the City has disbursed a portion (the "Disbursed Funds"), the amount of which shall be documented in the "Disbursed Funds Memorandum" to be signed by the Developer and City Manager prior to the disbursement of any of the Remaining Public Improvement Funds.

"Purchase Price" shall mean the monetary consideration payable by Developer to City for the Site as described in Section 201 of this Agreement, and shall include the following two components: (a) the payment of the sum of $1.00, in cash, at the Close of Escrow; and (b) payment to City of the Participation Component in accordance with the Payment Agreement.

"Redevelopment Agency" shall mean the Imperial Beach Redevelopment Agency, a public body corporate and politic, and any assignee or successor to such agency's rights, powers and responsibilities, by assignment, transfer, force of law or otherwise.

"Redevelopment Law" shall have the meaning set forth in Section 101 of this Agreement.

"Redevelopment Plan" shall mean the redevelopment plan for the Palm Avenue/Commercial Redevelopment Project Area, which was adopted by the City Council of the City of Imperial Beach on February 6, 1996 by Ordinance No. 96-901, including subsequent amendments.

"Release of Construction Covenants" means the certificate, substantially in the form attached to this Agreement as Attachment No. 13, which is incorporated herein by this reference, to be issued by the City for a Parcel or Parcels upon Completion of all the construction and development required by this Agreement as to such Parcel or Parcels.

"Remaining Public Improvement Funds" shall mean the portion of the $2,200,000 in Cooperation Agreement Revenue committed by City for the Public Improvements that remains undisbursed as of the Effective Date, which shall be disbursed by City to pay or reimburse Developer for the cost of plans for, permitting, construction and installation of the Public Improvements as provided in Section 219 of this Agreement and the Public Improvement Disbursement Agreement (Attachment No. 11 to this Agreement).

"Retail Center" shall have the meaning set forth in Section 401.b. of this Agreement.

"Right of Entry" shall mean a Right of Entry Agreement that is mutually acceptable, in form and substance, to the Developer and City Manager, an example of which is attached to this Agreement as Attachment No. 18, which is incorporated herein by this reference (but which example has not been approved as to form and substance by either City or Developer and is not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument) .

"Schedule of Performance" means the document attached to this Agreement as Attachment No. 5, which is incorporated herein by this reference.

"Scope of Development" means the document attached to this Agreement as Attachment No. 4, which is incorporated herein by this reference.

"Site" means the real property described in Section 104 of this Agreement, as depicted on the Site Map and described in the Legal Description, consisting of Property 1 (which shall include Parcels "A", "B", "C" and "D") and Property 2 (which shall include Parcels "E", "F" and "G").

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

"Site Preparation" shall mean the demolition and other work expressly described in Section 216.f. of this Agreement.

"Source of Financing" means a source of financing the Project which has been approved by the City, as more specifically described in the Method of Financing.

"Subordination Agreement" shall mean a subordination agreement in form and content acceptable to any Permitted Lender closing financing as of the Phase 1 Closing (or Phase 2 Closing as the case may be), which subordinates the lien of the City Deed of Trust and all obligations of the Payment Agreement secured thereby to the lien of any deed of trust, mortgage, encumbrance or other security instrument created against the Site by or on behalf of such Permitted Lender.

"Title Company" means Chicago Title Company or another title insurance company mutually acceptable to City and Developer.

"Title Report" means the Preliminary Title Report, dated November 1, 2011, attached to this Agreement as Attachment No. 7, which is incorporated herein by this reference.

"Vertical Improvements" shall mean all of the buildings, structures, landscaping, lighting, parking areas and other improvements to be constructed or installed on or in connection with the development of the Site, as provided in the Scope of Development, Approved Plans and Building Permits for the Project, not including the Horizontal Improvements and Public Improvements.

SECTION 104 The Redevelopment Plan

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

SECTION 105 The Site

The "Site" is located on the south side of Palm Avenue, between 7th and 9th Streets, in the City of Imperial Beach, California. The Site is depicted on the Site Map attached to this Agreement as Attachment No. 1. The legal description of the Site is set forth in the Legal Description attached to this Agreement as Attachment No. 2. Upon the approval and recordation of the Map, the Site shall consist of two separate components, designated in this Agreement as "Property 1" and "Property 2", as depicted generally on the Site Map. The description of the Site shall be subject to revision upon approval and recordation of the Map, which shall be subject to the reasonable consent of the City. Upon approval and recordation of the Map, the attached Legal Description shall be replaced, as appropriate, with a Legal Description that reflects the Map for the Site.

SECTION 106 City

a. City is a municipal corporation, exercising governmental functions and powers, and organized and existing under the laws of the State of California and the Imperial Beach Municipal Code. The City is entering into and carrying out this Agreement for the purpose of aiding and cooperating in the implementation of the Redevelopment Plan pursuant to California Health and Safety Code Sections 33205 and 33220 and other pertinent provisions of the

Redevelopment Law. The address of the City for purposes of receiving notices pursuant to this Agreement shall be:

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: City Manager
Tel: 619-423-0314
Fax: 619-628-1395

With a copy to: McDougal, Love, Eckis, Boehmer & Foley
8100 La Mesa Boulevard, Suite 200
La Mesa, CA 91942
Attn: Jennifer Lyon
Tel: 619-440-4444
Fax: 619-440-4907

With a copy to: Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, California 90071
Attn: Susan Y. Cola
Tel: 213-617-0480
Fax: 213-625-0931

SECTION 107 Developer

a. Developer is Sudberry-Palm Avenue LLC, a California limited liability company, whose Manager is Sudberry Development, Inc., a California corporation. The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

Sudberry-Palm Avenue LLC
c/o Sudberry Properties
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attn: Colton T. Sudberry
Tel: (858) 546-3000
Fax: (858) 546-3009

And a copy of each such notice sent to Developer shall be transmitted by email to Gerald I. Solomon, Esq. of Solomon Minton Cardinal LLP addressed as follows: gis@smclawoffices.com

b. Whenever the term "Developer" is used herein, such term means and includes the Developer as of the date hereof, and any Assignee (but excluding the Approved Parcel "A" Assignee and the Approved Parcel "F" Assignee) pursuant to an Assignment and Assumption

Agreement, and any successor to the rights, powers and responsibilities of Developer or Assignee as permitted by this Agreement.

SECTION 108 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping the Site as provided in this Agreement, and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the City, in light of the following: (1) the importance of the development 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 (as defined below) 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 City is entering into the Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly permitted herein.

b. Prior to recordation of a Release of Construction Covenants with respect to any Parcel or Parcels, Developer shall not assign all or any part of this Agreement or any interest herein, or transfer, convey, sell or lease such Parcel or Parcels or any portion thereof, without the prior written approval of the City, which the City may grant or withhold in its sole discretion; provided, however, that City shall approve any Permitted Transfer upon delivery of documentation to the City demonstrating that such assignment or transfer qualifies as a Permitted Transfer and provided further that the leasing of individual tenant premises within a building constructed or to-be-constructed on the Site (as opposed to ground leasing a Parcel) will not require the prior consent of City. Provided, however, that nothing contained in the previous sentence shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted, and/or as amended from time to time) of the City, its departments, commissions, agencies or boards and the officers thereof, to approve proposed uses pursuant to the City's zoning code or other land use or zoning ordinances, any applicable business tax license/certificate process or any of the City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City in the furtherance of the public health, welfare and safety of the inhabitants thereof.

c. For the reasons cited above, Developer further represents and agrees for itself and any successor in interest that prior to recordation of one or more Releases of Construction Covenants with respect to the entire Site, without the prior written approval of the City, there shall be no significant change in the ownership of Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means (other than such changes occasioned by the death or incapacity of any individual), except if it is a Permitted Transfer.

d. Any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer, other than Permitted Transfers, shall require the approval of the City. To the extent City approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, the City shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of this Agreement ("Transfer Criteria"), including, without limitation, (i) the proposed transferee's current experience in owning and operating retail centers similar to the Project, and (ii) the proposed transferee's financial commitments and resources are reasonably satisfactory to the City. In addition, except for a Permitted Transfer described in clause (v) of the definition of the term "Permitted Transfer" in Section 103 of this Agreement relating to Parcel "A", or a Permitted Transfer described in clause (vi) of the definition of the term "Permitted Transfer" in Section 103 of this Agreement relating to Parcel "F", the City shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer that results in payment of consideration to any Person prior to the issuance of the Release of Construction Covenants for the portion of the Site so assigned or transferred and that is not conditioned upon the issuance of the Release of Construction Covenants for the portion of the site so assigned or transferred. With respect to the Permitted Transfers relating to Parcel "A" and Parcel "F", any consideration received by Developer prior to the issuance of the Release of Construction Covenants for such Parcel shall be used by Developer as Developer Equity to pay Acquisition and Development Costs set forth in the Project Budget, and for no other purpose prior to Completion. Notwithstanding any provision of this Agreement to the contrary, City shall have the right to enforce this paragraph d. by any means available at law or equity, including but not limited to seeking damages and/or injunctive relief, to ensure that until Completion of the applicable Parcel any such consideration shall be used only to pay Acquisition and Development Costs as provided in the Project Budget and for no other purpose.

e. Developer shall promptly notify the City of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in ownership or control of Developer or Developer's Manager (other than such changes occasioned by the death or incapacity of any individual), prior to Completion, and such change is not remedied within the cure periods set forth in Section 501.d., below.

f. Permitted Transfers and any other assignments or transfers approved by the City in conformance with this Agreement shall be evidenced by the execution and delivery by Developer, Assignee and City of an Assignment and Assumption Agreement.

g. The restrictions of this Section 108 shall terminate as to any portion of the Site upon the recordation of a Release of Construction Covenants for such portion of the Site.

h. For purposes of this Section 108, the term "significant change" shall mean an addition, deletion, substitution or any other change in the identity or number of the natural person or persons or corporate entity or entities constituting or controlling any general partner of

a partnership, or manager of a limited liability company (or where a limited liability company is managed by its members, then any such change affecting the members), or controlling shareholder(s) of a corporation, or other controlling owner of any business entity, in any tier of ownership of Developer, such that the authority to make binding board-level business decisions for Developer after such change is controlled by or may be directed by a different natural person or persons or a different corporate entity or entities (unless such corporate entity or entities remain controlled by the same natural person or persons) than the person(s) or entity(ies) that controlled such authority prior to such change.

i. Nothing contained in this Agreement shall prohibit or restrict in any way an assignment or transfer between the City and the Redevelopment Agency relating to any real or personal property, or any rights or obligations under this Agreement.

SECTION 109 Method of Financing.

The Project shall be financed with a combination of sources of financing to be determined by Developer and obtained when needed for the development of the Site as required by this Agreement. The Parties anticipate that the financing for the Project will include loans and equity. Prior to the Phase 1 Closing, Developer and City Manager shall agree upon a method of financing in the form attached to this Agreement as Attachment No. 3, with estimated dollar amounts to be agreed upon. Notwithstanding anything to the contrary set forth in this Agreement, City agrees and acknowledges that the sources of financing for the development of the Site have not been committed as of the Effective Date and that Developer has made no representation or warranty that any such source will ultimately be available for the financing of the Project. Without limiting Developer's obligations under this Agreement, Developer's failure to secure any particular source of financing for the development of the Project shall not be an event of default hereunder provided that Developer has timely and diligently applied in good faith to secure such source of financing. For purposes of this Agreement, the phrase "timely and diligently applied in good faith" (or substantially similar language therein) shall mean that Developer has submitted a complete application before the expiration of the applicable deadline, has responded promptly to any requests for supplemental information or follow-up questions and has attended and participated in all meetings, conference calls and the like as reasonably necessary to accommodate the efficient processing of the application.

SECTION 110 Submission of Evidence of Financing

Within the time periods provided in the Schedule of Performance (subject to Force Majeure Delay as set forth in Section 602 of this Agreement), Developer (or Assignee, as applicable) shall submit to City evidence reasonably satisfactory to the City Manager that Developer has obtained or arranged for the financing necessary for the development of the Site (or relevant portion thereof) in accordance with this Agreement. Such evidence of financing shall include the following:

1. A copy of the commitment or commitments (or term sheet, if a term sheet rather than a formal commitment is obtained) obtained by Developer or Assignee, as applicable,

for a Construction Loan, including a final Project Budget approved by the City Manager and all other commitments (all as described in the Method of Financing) to finance the construction of the Improvements, certified by Developer to be a true and correct copy or copies thereof. Developer and Assignee shall use commercially reasonable efforts to obtain commercially competitive Construction Loans;

2. A copy of the contract for the construction of the Improvements, certified by Developer or Assignee, as applicable, to be a true and correct copy thereof. The proposed process of conducting trade bids shall be a transparent process (as between the Parties) and be subject to the review and approval of the City Manager;

3. A copy of substantially complete Construction Loan documents (*e.g.*, notes, deeds of trust, mortgages, indentures and loan agreements);

4. A copy of the purchase and sale agreement, if any, for Parcel A and for Parcel F, certified by Developer and the applicable Assignee to be a true and correct copy thereof, setting forth all consideration payable to Developer by such Assignee for conveyance of the applicable Parcel prior to Completion.

5. Documentation reasonably acceptable to the City Manager of sources of additional capital sufficient to demonstrate that Developer or Assignee, as the case may be, has adequate equity funds committed to provide the amount of Developer Equity required by the Method of Financing.

The City Manager shall reasonably approve or disapprove such evidence of financing within ten (10) Business Days after receipt. Such approval shall not be unreasonably withheld, conditioned or delayed. Subject to the provisions of Section 602 of this Agreement, failure of the City Manager to approve or disapprove the adequacy of the submission of evidence of financing within such ten (10) Business Day period shall be deemed an approval. If City Manager shall disapprove any such evidence of financing, then City Manager shall do so by written notice to Developer or Assignee, as the case may be, stating the reasons for such disapproval. At any time prior to the times provided in this Agreement for submission of evidence of financing, Developer may submit to the City Manager for review and comment any loan applications to be made by Developer or pro forma loan documentation provided by the proposed lender; provided, that review, comments and approval, if any, by the City Manager shall be for the sole purpose of determining and advising Developer whether such loan applications or pro forma loan documents are consistent with the requirements of this Agreement. All comments and approvals, if any, shall be in writing. Any items so submitted and approved by the City Manager in writing shall not be subject to subsequent disapproval. City shall cooperate reasonably with Developer and any Approved Assignee in Developer/Approved Assignee's efforts to obtain financing, including, without limitation, executing commercially reasonable documentation consistent with this Agreement relating to the lender's rights in the event of default by Developer or Approved Assignee. City shall promptly and diligently respond to any request from a lender and shall not unreasonably withhold its approval of any request for

execution or cooperation from a lender if such request will not result in a material modification of this Agreement or is not inconsistent with this Agreement.

SECTION 111 Entitlements

Without incurring any out-of-pocket expenses, and subject to Section 215.c. of this Agreement, the City shall cooperate with Developer in Developer's efforts to obtain the Entitlements.

PART 2. SALE OF SITE AND REIMBURSEMENT FOR PUBLIC IMPROVEMENTS

SECTION 201 Sale and Purchase

a. In accordance with and subject to all the terms, covenants and conditions of this Agreement, City agrees to sell to Developer and Developer agrees to purchase the Site for the Purchase Price.

b. The Purchase Price shall consist of the following: (i) the nominal sum of $1.00, payable in cash, upon the Close of Escrow; and (ii) an amount equal to one and one-half percent (1.5%) of the gross sales price from the first arm's-length sale of each portion of the Site by Developer (the "Participation Component"), in any number of transactions over any period of time, if any, excluding the sale of Parcel "A" if Developer sells Parcel "A" to the Approved Parcel "A" Assignee and the Approved Parcel "A" Assignee assumes certain obligations hereunder (but not any obligation relative to the Purchase Price) relative to Parcel "A" pursuant to an Assignment and Assumption Agreement approved by City, and excluding the sale of Parcel "F" if, prior to that date which is one year after issuance of the certificate of occupancy for the Parcel "F" Vertical Improvements by Developer, Developer enters into a purchase and sale agreement, long-term ground lease, option to purchase, or like agreement with the Approved Parcel "F" Assignee, and consummates such transaction (by the conveyance – by deed or long-term ground lease - of Parcel "F" and, if then constructed, the Parcel "F" Vertical Improvements) prior to that date which is three years after the issuance of the certificate of occupancy for the Parcel "F" Vertical Improvements, and the Approved Parcel "F" Assignee assumes certain obligations hereunder (but not any obligation relative to the Purchase Price) relative to Parcel "F" pursuant to an Assignment and Assumption Agreement approved by City (an "Exempt Parcel "F" Sale"). Except for an Exempt Parcel "F" sale as provided in the previous sentence, in the event Developer constructs Vertical Improvements on Parcel "F" and subsequently sells Parcel "F", the gross sales price from such sale shall be subject to the 1.5% Participation Component.

c. For purposes of this Section 201, "arm's length sale" shall mean a transaction in which Developer and the buyer act independently and have no relationship to each other, as reasonably determined by the City Manager.

d. For purposes of this Section 201, "gross sales price" shall mean all compensation payable to Developer for the sale, directly or indirectly, less costs of sale payable by Developer.

e. For purposes of this Section 201, the Payment Agreement and the City Deed of Trust, a "sale" of Parcel "A" or Parcel "F" shall mean a transfer of substantially all of Developer's interests in the applicable parcel, whether by grant deed, long-term ground lease or other form of conveyance, without regard to the technical form of such conveyance.

f. Developer's obligation to pay City the Participation Component of the Purchase Price shall be set forth in the Payment Agreement, and shall be secured by the City Deed of Trust, which shall be recorded against the Site (excluding Parcel "A") at the Close of Escrow, as a lien that is junior and subordinate to any Permitted Deeds of Trust, and released from Parcel "F", if at all, upon the occurrence of an Exempt Parcel "F" Sale described in paragraph b. of this Section 201. For purposes of this Agreement "payment of the Purchase Price" shall mean payment of the nominal amount described in clause (i) and execution and recordation of the City Deed of Trust.

SECTION 202 Escrow

a. City agrees to open an escrow for conveyance of the Site with the Escrow Agent, as escrow agent, within the time provided therefore in the Schedule of Performance. City and Developer shall provide such 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 City and to Developer within five (5) Business Days after opening of the escrow, the Escrow Agent shall carry out its duties as Escrow Agent hereunder.

b. City and Developer shall execute and deliver to the Escrow Agent, as applicable, the documents and instruments described in paragraphs o. and p. of this Section 202 (the "Closing Documents"). Upon delivery of the fully executed Closing Documents described in paragraph o. of this Section 202, to the Escrow Agent, the Escrow Agent shall record the instruments described in paragraph o. of this Section 202 in accordance with these escrow instructions provided that title to the Site can be vested in Developer in accordance with the terms and provisions of this Agreement and all other conditions to the Closing have either been satisfied or waived in writing. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any insurance policies governing the Site are not to be transferred unless otherwise agreed in writing by the Parties.

c. Developer shall also pay in escrow to the Escrow Agent the cash portion of the Purchase Price and the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not earlier than 3 days prior to the scheduled date for the conveyance of the Site nor later than one business day prior to such conveyance:

1. One-half of the escrow fee;

2. The premiums for the Developer's Title Policy in excess of the cost of a standard form CLTA owner's policy as set forth in Section 211 of this Agreement and

3. Recording fees, if any.

d. [Intentionally Omitted].

e. City shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified City of the amount of such fees, charges and costs, but not earlier than 3 days prior to the scheduled date for the conveyance of the Site nor later than one business day prior to such conveyance:

1. The portion of the Title Insurance premium described in Section 211.f. of this Agreement;

2. One-half of the escrow fee;

3. Any State, County or City documentary stamps or transfer tax;

4. Costs necessary to place the title to the Site in the condition for conveyance required by the provisions of this Agreement; and

5. Ad valorem taxes and assessments, if any, upon the Site or upon this Agreement or any rights hereunder, prior to the conveyance of title of the Site to Developer.

f. City shall timely and properly execute, acknowledge and deliver a Grant Deed conveying to Developer title to all the Parcels in the Site in accordance with the requirements of this Agreement, together with an estoppel certificate certifying that Developer has completed all acts (except payment of the Purchase Price), necessary to entitle Developer to such conveyance, if such be the fact, and all documentation and authorizations reasonably required by Title Company to permit the issuance of title insurance, including, without limitation, a standard owner's affidavit, an indemnity agreement and other documents customarily required by Title Company.

g. The Escrow Agent is authorized and directed to do all of the following:

1. Record the Grant Deed and the other Closing Documents which are to be recorded pursuant to paragraph o. of this Section 202 in the Official Records of San Diego County, California, and deliver the conformed copies of such Grant Deed and documents, and the other (unrecorded) documents to the Parties entitled thereto in accordance with the terms and provisions of this Agreement.

2. Pay, and charge City and Developer, respectively, for any fees, charges and costs payable under this Section 202. Before such payments are made, the Escrow Agent shall notify City and Developer of the fees, charges and costs necessary to clear title and close the escrow in the form of a closing statement approved and executed by both Developer and City (the "Settlement Statement").

3. Disburse funds in accordance with the Settlement Statement when the conditions of this escrow have been fulfilled by City and Developer or waived in writing by the party benefitting therefrom. The Purchase Price shall not be delivered by the Escrow Agent unless and until it has recorded the Grant Deed and the Title Company has issued or is irrevocably committed to issue Developer's Title Insurance Policy.

h. All funds received in this escrow shall be deposited by the Escrow Agent in a fully government insured general escrow account with any state or national bank doing business in the State of California and reasonably approved by Developer and City.

i. If this escrow is not in a condition to close by the time for conveyance set forth in the Schedule of Performance (as it may be amended or extended by the Parties from time to time in accordance with this Agreement), then 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 Site 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, then the escrow shall be closed as soon as possible.

j. If objections are raised as above provided for, then the Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both City and 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, then the Escrow Agent shall immediately return the demanded money, papers or documents.

k. The Parties understand they may be required to execute additional forms 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 would refuse to execute General Instructions which (i) purport to relieve the Escrow Agent of liability for negligence or intentional wrong-doing, (ii) excuse the Escrow Agent from strict compliance with each and all of the provisions of this document and the General Instructions or (iii) 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 these escrow instructions shall be in writing and executed by both City and Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

l. Prorations

1. General. Rentals, revenues and other income, if any, from the Site, and

operating expenses, if any, affecting the Site shall be prorated as of 11:59 P.M. on the day preceding the Close of Escrow as shown on the Settlement Statement.

2. Taxes and Assessments. Taxes and assessments shall be prorated as set forth in Section 212, below, as shown on the Settlement Statement.

3. Operating Expenses. Any other expenses incurred in operating the Site that City customarily pays, and any other costs incurred in the ordinary course of business or the management and operation of the Site shall be prorated on an accrual basis. City shall notify Developer in writing of such operating expenses and, at the option of Developer, shall cancel any and all related contracts and agreements that would be binding on the Site post-Closing. City shall pay all such expenses that accrue prior to the date of the Close of Escrow and all such expenses that Developer disapproved which accrue after the Close of Escrow. To the extent any such expenses were approved by Developer prior to Closing and Developer assumes any related contracts and agreements at Closing, Developer shall pay such expenses accruing on the date of the Close of Escrow and thereafter during the period of Developer's ownership of the Site.

4. Method of Proration. All prorations shall be made in accordance with customary practice in San Diego County, except as expressly provided herein. City and Developer agree to cause their accountants or agents to prepare a schedule of tentative prorations prior to the Closing Date and submit the same to Escrow Agent for inclusion on the Settlement Statement as required below. Such prorations, if and to the extent known and agreed upon as of the Close of Escrow, shall be paid into escrow by the respective Parties as necessary and in accordance with the Settlement Statement. A copy of the schedule of prorations as agreed upon by City and Developer to be incorporated into the Settlement Statement shall be delivered to Escrow Agent at least 3 business days prior to the Closing Date. With respect to any prorations not determined or not agreed upon as of the Close of Escrow, the Parties shall meet and confer in good faith after the Closing Date in an effort to reach mutual agreement as to the affected prorations within 60 days after the Closing Date (the "Final Reconciliation Date"). Developer or City, as appropriate, shall make a one-time adjustment payment promptly after the mutual agreement on prorations has been reached. If the allocation of any prorations remains unresolved as of the Final Reconciliation Date, then the Parties shall submit the dispute to a nationally-recognized accounting firm which is neutral and disinterested in the matter, which shall render a conclusive determination to the Parties within 20 days after the date of submittal of the dispute. The Parties shall equally share the expenses of the accounting firm selected to resolve the dispute.

m. City and Developer shall each pay their respective legal, professional and consultant fees relating to this transaction.

n. All communications from the Escrow Agent to City or Developer shall be directed to the addresses set forth in Sections 106 and 107 of this Agreement, and in the manner set forth in Section 601 of this Agreement for notices between the Parties.

o. The following documents shall be recorded in the following order at the Close of

Escrow at the Phase 1 Closing:

1. The Map, if the Map has not already been recorded (to be recorded against the Site);

2. The Grant Deed(s) for all of the Parcels;

3. Agreement Containing Covenants (to be recorded against the Site);

4. CC&Rs (to be recorded against the Site);

5. Memorandum of Option (to be recorded against the Parcels constituting Property 2);

6. As applicable, Parcel "A" grant deed from Developer to Approved Parcel "A" Assignee (to be recorded against Parcel "A");

7. Recordable Construction Loan documents (to be recorded against Parcel "A" or Parcel "BDC", as the case may be, but not against Parcel "E" or Parcel "F" or Parcel "G" on Property 2);

8. City Deed of Trust (to be recorded against Parcels "B", "C", "D", "E", "F" and "G";

9. Subordination Agreement; and

10. Such other instruments as the Parties may mutually agree to be recorded at the Close of Escrow.

p. The following documents shall be recorded in the following order at the Phase 2 Closing:

1. Instrument Terminating Option, releasing the Parcels in Property 2 from the Option (to be recorded against all Parcels in Property 2);

2. If applicable, Parcel "F" grant deed from Developer to Approved Parcel "F" Assignee (to be recorded against Parcel "F");

3. Recordable Construction Loan documents (to be recorded against Parcel Parcel "E" or Parcel "F" or Parcel "G" on Property 2, as the case may be); and

4. Subordination Agreement.

The Parties shall each promptly deliver to Escrow Agent the items and funds to be delivered by them, when and as required in this Agreement.

SECTION 203 Conveyance of Title and Delivery of Possession

a. Subject to any mutually agreed upon extension of time, City shall convey title to the Site to Developer on or before the Phase 1 Closing Date (so long as all conditions precedent have been satisfied or waived by the Party benefitting therefrom), or such later date mutually agreed to in writing by City Manager and Developer and communicated in writing to the Escrow Agent.

b. Except as otherwise provided herein, possession of the Site shall be delivered to Developer at the Close of Escrow. Developer shall accept title and possession to the Site upon the Close of Escrow subject only to the Approved Title Conditions.

SECTION 204 Form of Deed

City shall convey to Developer title to the Parcels in the condition provided in Section 205 of this Agreement by recordation of a Grant Deed, substantially in the form attached to this Agreement as Attachment No. 8. The Parties may elect to convey title to Property 1 and Property 2 by means of one or more Grant Deeds covering one or more Parcels in each Property. Upon reasonable request by Developer, the City Manager shall make such non-material modifications to the form of the Grant Deed as the City Manager may deem necessary or appropriate to carry out the purposes of this Agreement.

SECTION 205 Condition of Title

a. City shall convey to Developer fee simple title to the Site free and clear of all liens, encumbrances, assessments, easements, leases and taxes except the Approved Title Conditions.

b. City has caused the Title Company to deliver to Developer a Preliminary Title Report dated November 1, 2011 (the "Title Report") with respect to title to the Site, together with copies of the documents underlying the exceptions set forth in the Title Report. By executing this Agreement, Developer hereby approves the exceptions of record set forth in the Title Report, except for those disapproved title exceptions, if any, set forth in writing delivered to the City Manager within thirty (30) days following the Effective Date. The Parties shall cooperate in good faith to cause the Title Company to remove from title any of the disapproved title exceptions prior to the Close of Escrow.

c. The Parties acknowledge that on October 4, 2011, the City filed in San Diego Superior Court a Complaint for Quiet Title, Cancellation of Instruments and Declaratory Relief to quiet title as to any adverse claims by Davies Motors, Inc., to the Site, Case No. 37-2011-00079079-CU-OR-SC ("Complaint"). The City agrees to prosecute the Complaint to final conclusion at no cost to Developer.

d. City shall defend, indemnify and hold Developer harmless from and against any and all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fee and court costs) arising from or as a result of any right, title, estate, lien or interest to the Site arising

out of an executor's deed of the First National Trust and Savings Bank of San Diego, a corporation, as executor of the Estate of Frank B. Beyer, also known as F.B. Beyer, deceased, recorded on January 13, 1939 at 9:00 a.m., in Book 872, pages 7-8, in the Official Records of San Diego County, California, or a corporation grant deed from Davies Motors, Inc. to C.E. Norcross and John E. Frier, recorded on January 17, 1949 in Book 3081, page 189, in the Official Records of San Diego County, California. City's duty to indemnify and hold harmless shall not include any claims or liabilities arising from the active negligence or willful misconduct of the Developer, its agents, officers or employees.

e. The exceptions approved by Developer in Section 205.b, above, together with the covenants of the Grant Deed conveying the Site to Developer (which incorporates by reference the covenants contained in this Agreement, the Redevelopment Plan and the Agreement Containing Covenants), the documents to be recorded that are listed in paragraph o. of Section 202 of this Agreement, and other documents expressly required or permitted to be recorded by this Agreement, which appear on the pro forma title policy for Developer's Title Policy and are acceptable to Developer shall hereinafter collectively be referred to as the "Approved Title Conditions". Developer shall have the right to approve or disapprove any further exceptions (which are not created by Developer) reported by the Title Company. City shall not create and shall use its best efforts not to allow any new exceptions to title following the Effective Date.

SECTION 206 Time and Place for Delivery of Deed

Subject to any mutually agreed-upon extension of time, City shall deposit the Grant Deed with the Escrow Agent at least one Business Day before the Phase 1 Closing Date.

SECTION 207 Payment of Purchase Price and Recordation of Grant Deeds

Developer shall deposit the cash portion of the Purchase Price with the Escrow Agent at least one Business Day before the Close of Escrow, provided that Escrow Agent shall have notified Developer in writing that the Grant Deed(s) conveying the Site to Developer, properly executed and acknowledged by the City Manager have been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with this Agreement. The Escrow Agent shall record the documents and instruments listed in paragraph o. of Section 202, above, and deliver the Purchase Price to City immediately following the delivery to Developer of the Developer's Title Policy or confirmation that the Title Company is irrevocably committed to issue the Developer's Title Policy and the recordation of the Grant Deed(s) in the Official Records.

SECTION 208 Conditions Precedent to Close of Escrow and Phase 1 Closing

The obligation of the City to disburse the Initial Deposit of the Remaining Public Improvement Funds is not subject to the satisfaction of the conditions precedent to the Close of Escrow but is subject to the satisfaction of the condition set forth in paragraph f.1. of Section 219 of this Agreement, below. The obligation of the City to disburse the Remaining Public Improvement Funds (other than the Initial Deposit) is not subject to the satisfaction of the

conditions precedent to the Close of Escrow but is subject to the satisfaction of the conditions precedent set forth in paragraph e. of Section 219 of this Agreement, below. The City's obligations to convey the Site to Developer for the Purchase Price, and to provide to Developer the Remaining Public Improvement Funds pursuant to Section 219 of this Agreement, constitute the City's subsidy for the Project ("Public Subsidy"). Subject to the notice and cure provisions of Sections 501 through 510, inclusive, of this Agreement and to the Force Majeure Delay provisions of Section 602 of this Agreement, the City at its option may terminate this Agreement pursuant to Section 510 and not provide any part of the Public Subsidy if any of the applicable conditions precedent for the benefit of City are not satisfied by the Developer or waived in writing by the City within the time limits set forth in the Schedule of Performance. The Close of Escrow and the obligations of City and Developer with respect to the conveyance of the Site hereunder are subject to the satisfaction or waiver by the Party benefitting therefrom 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 in this Section 208. Until the satisfaction of all of the conditions set forth in this Section 208, Developer shall not have the right to transfer, assign, convey by deed or lease, record any deed of trust or other instrument on or otherwise encumber any portion of the Site or interest therein. Developer and City shall use their commercially reasonable best efforts to cause all of the following conditions precedent to the Phase 1 Closing to be satisfied with due diligence, and in all events not later than nineteen (19) months after the Effective Date of this Agreement, and the Phase 1 Closing shall occur within thirty (30) days thereafter (the "Phase 1 Closing Date"). If Developer or City is unable to satisfy any of such conditions precedent despite its good faith efforts, such Party will not be in default hereunder. The following shall be conditions precedent to the Phase 1 Closing and Close of Escrow:

a. Subdivision (benefits Developer and City). The Developer shall cause a Map creating legal parcels for the conveyance, financing and development of the Site in accordance with this Agreement, including Parcels "A", "B", "C", "D", "E", "F" and "G", to be duly approved and recorded in the Official Records in accordance with all applicable governmental requirements. Notwithstanding anything to the contrary contained herein, the Phase 1 Closing shall not occur until such Map is recorded, and the recording of such Map shall be a non-waivable condition precedent to the Phase 1 Closing.

b. Final Construction Drawings (benefits City). Developer shall have submitted and City Manager shall have approved the Final Construction Drawings.

c. Project Budget (benefits City). Developer shall have delivered to City, and the City Manager shall have approved, which approval shall not be unreasonably withheld, conditioned or delayed, a final Project Budget or any revisions to the Project Budget, and a Method of Financing, demonstrating to the reasonable satisfaction of the City Manager the availability of sufficient funds to pay all Acquisition and Development Costs.

d. Construction Contract (benefits City). Developer shall have delivered to City, and the City Manager shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed), one or more construction contracts, covering all Phase 1 construction

(other than the Public Improvements) required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the final City-approved Project Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction and complete fixturization of the development of Phase 1 of the Project, demonstrating that construction of Phase 1 will be commenced within thirty (30) days after the Phase 1 Closing and completed (subject to Force Majeure Delay) within the time provided in the Schedule of Performance, and such contract(s) shall have been executed by each of the parties thereto. City's review and approval of the construction contract pursuant to this Section shall be limited to determining if it: (i) provides for the performance of the construction work in accordance with all Entitlements and approved Final Construction Drawings; (ii) provides for costs of construction within the final City-approved Project Budget; and (iii) otherwise complies with the terms of this Agreement, including but not limited to insurance, bonding, disbursement procedures and similar matters, and shall be for the benefit of the City alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, City makes no representation or warranty, express or implied, regarding the construction contract, the contractor, the work to be performed or any other matter.

e. Public Improvement Contract (benefits City). Developer shall have delivered to City, and the City Manager shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed), one or more construction contracts, covering all of the Public Improvements to be constructed by Developer (unless deferred to Phase 2), required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the final City-approved Public Improvement Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction of the Public Improvements, demonstrating that construction of the Public Improvements will be commenced within thirty (30) days after the deposit of the Remaining Public Improvement Funds (other than the Initial Deposit) into escrow, and completed (subject to Force Majeure Delay) within the time approved in writing by the City Manager prior to disbursement of funds, and such contract shall have been executed by each of the parties thereto. The Public Improvement Contract shall include a provision giving to the City the right but not the obligation to assume Developer's rights and obligations under the Public Improvement Contract in the event Developer abandons the Public Improvement work, or ceases to perform its obligations under the Public Improvement Disbursement Agreement or this Agreement. City's review and approval of the construction contract pursuant to this Section shall be limited to determining if it: (i) provides for the performance of the construction work in accordance with all Entitlements and approved construction drawings; (ii) provides for costs of construction within the final City-approved Public Improvement Budget; (iii) complies with applicable State prevailing wage requirements; (iv) is with a contractor or contracting firm that is licensed in the State of California, is not an Affiliate of Developer, has demonstrated experience in completing similar public works projects and is otherwise reasonably acceptable to City; and (v) otherwise complies with the terms of this Agreement, including but not limited to the requirements of this paragraph, insurance, bonding, disbursement procedures and similar matters, and shall be for the benefit of City alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, City makes no

representation or warranty, express or implied, regarding the construction contract, the contractor, the work to be performed or any other matter.

f. Evidence of Financing (benefits City). Developer shall have submitted and the City Manager shall have approved evidence relating to all Sources of Financing relating to Phase 1, and all documents required to be executed in connection with such financing shall have been duly executed, acknowledged and delivered. Such evidence shall include:

(1) a copy of all Construction Loan documents relating to the Phase 1 Improvements, certified by Developer and/or Approved Parcel "A" Assignee, as the case may be, to be a true and correct copy or copies thereof; and

(2) evidence of immediately available funds in a construction escrow account for the Project in the total amount (beyond (i) those to be loaned pursuant to the Construction Loan, (ii) those to be provided by City, and (iii) those being generated by the sale of Parcel "A") necessary to finance the construction of Phase 1 to Completion, including the Public Improvements (that have not been deferred to Phase 2) and the Private Improvements, in accordance with a Project Budget approved, in writing, by the City.

City shall cooperate reasonably with Developer and the Approved Parcel "A" Assignee in Developer/Approved Parcel "A" Assignee's efforts to obtain financing, including, without limitation, executing commercially reasonable documentation consistent with this Agreement relating to the lender's rights in the event of default by Developer or the Approved Parcel "A" Assignee. City shall promptly and diligently respond to any request from a lender and shall not unreasonably withhold its approval of any request for execution or cooperation from a lender that does not materially modify the provisions of this Agreement or is not inconsistent with this Agreement.

g. Evidence of Property 1 Tenant Commitments (benefits City). Developer shall have submitted and the City Manager shall have reasonably approved evidence of binding commitments from (i) the Approved Parcel "A" Assignee, to construct and operate for at least one Business Day an approximately 14,800 square foot Fresh & Easy or comparable grocery store or supermarket reasonably acceptable to the City Manager on Parcel "A"; and (ii) retail tenants committing to lease not less than 5,000 square feet, in any combination of the buildings to be constructed on Building Pads "B", "C" and "D". The City Manager's review shall be limited to confirming that such leases are not inconsistent with this Agreement.

h. Insurance (benefits City). Developer shall have submitted to City, and the City Manager shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed), evidence of the Insurance Policies required by this Agreement, naming as additional insureds the following:

> "The City of Imperial Beach and its elected officials, officers, officials, employees, attorneys, contractors and agents."

i. CC&Rs (benefits City and Developer). Developer shall have submitted to City,

and the City Manager shall have approved, which approval shall not be unreasonably withheld, conditioned or delayed, the CC&Rs, and such CC&Rs shall have been executed by each of the parties thereto. The City Manager's review shall be limited to confirming that the CC&Rs are not inconsistent with this Agreement.

j. Parcel "A" Purchase and Sale Agreement (benefits Developer and City). The purchase and sale agreement (or agreement to lease, or other agreement regarding conveyance, as the case may be) for Parcel A, shall have been executed by each of the parties thereto, and any revisions or amendments to the form of such agreement previously submitted to City (and any other pertinent agreements) shall have been submitted to City, and the City Manager shall have approved such revisions and amendments (and other pertinent agreements). The City Manager's review shall be limited to confirming that such documents are not inconsistent with this Agreement. Prior to submitting such agreement or amendments, Developer may redact economic deal terms and other confidential information not intended for public disclosure or which Developer may not disclose without breaching a contractual obligation or proscription, except to the extent necessary for the City Manager to determine the compensation to be paid to Developer, if any, prior to the Completion of the Parcel "A" Improvements.

k. Parcel "A" Assignment and Assumption Agreement (benefits City). The Developer and the Approved Parcel "A" Assignee shall have executed an Assignment and Assumption Agreement that is reasonably acceptable to the City Manager.

l. Permits (benefits City and Developer). Developer shall not be required to obtain Building Permits prior to the Close of Escrow, but the following shall be a condition precedent to the Phase 1 Closing: (1) Developer shall have delivered to City the list of permits required for grading and the construction of the Phase 1 Improvements; (2) Developer shall have obtained all applicable plan check approvals for the Phase 1 Improvements; (3) Developer shall have obtained all applicable variances (if any) and Entitlements for the issuance of such Permits; (4) all conditions for the issuance of all such Building Permits have been satisfied (with the exception of payment of Permit fees, which payment is provided for in the approved Project Budget and the Construction Loan or other funds to be made available to Developer at the Phase 1 Closing); (5) there are no changes (other than changes approved by the City Manager) to the Construction Drawings approved by the City Manager in accordance with paragraph b. of this Section 208 between the time of City Manager's approval and the time of issuance of the Building Permits other than minor changes required by the City's Building Department in connection with the plan check approvals for the Phase 1 Improvements; and (6) in any event, the Building Permits are issued not later than ten (10) Business Days after the Phase 1 Closing, which the City Manager may extend, but in no event later than thirty days after the Phase 1 Closing.

m. No Challenges (benefits Developer and City). With regard to the Entitlements and all permits required for grading and the construction of the Phase 1 Improvements, all administrative appeals periods shall have expired; with regard to compliance with CEQA (as required), the statutes of limitation therefor shall have expired; and with regard to each, no unresolved challenge thereto shall be in existence.

n. Joint Supplemental Instructions (benefits Developer and City). City and Developer counsel/special counsel shall have prepared such joint supplemental instructions for the Title Company as may be necessary to close the transaction contemplated herein.

o. Closing Certificate (benefits Developer). City shall have submitted to Developer a certificate stating that all conditions precedent to the Phase 1 Closing have been satisfied or waived, if such be the case.

p. Documents (benefits Developer and City, as applicable). City, Developer and other parties, as appropriate, shall have executed and delivered to the Escrow Agent in recordable form as necessary the documents and instruments listed in paragraph o. of Section 202 of this Agreement and the following non-recordable documents:

(1) Payment Agreement (to be executed by Developer and City);

(2) Environmental Indemnity (to be executed by Developer);

(3) Option Agreement (to be executed by Developer and City);

(4) If not already executed, the Public Improvement Disbursement Agreement (to be executed by Developer, City and Escrow Agent);

(5) Parcel "A" Assignment and Assumption Agreement (to be executed by Developer, Approved Parcel "A" Assignee and City); and

(6) Such other documents as the Parties may request to be delivered through Escrow.

q. Representations, Warranties and Covenants (benefits City). Developer shall have duly performed each and every obligation to be performed by Developer hereunder to be performed prior to the Phase 1 Closing and Developer's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Phase 1 Closing.

r. Covenants of City (benefits Developer). City shall have duly performed each and every obligation to be performed by City hereunder to be performed prior to the Phase 1 Closing and City's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Phase 1 Closing.

s. Deliveries (benefits City). Developer shall have delivered the items to be delivered by Developer prior to the Phase 1 Closing, when and as required in this Agreement.

t. Deliveries (benefits Developer). City shall have delivered the items and funds to be delivered by City prior to the Phase 1 Closing, when and as required in this Agreement.

u. Grocery Project (benefits City and Developer). All conditions precedent to the

close of escrow set forth in the Parcel "A" purchase and sale agreement shall have been satisfied or waived.

v. Condition of Site (benefits Developer). City shall have completed all demolition on the Site as provided in Section 216.f. of this Agreement.

w. No Impeding Litigation (benefits Developer and City). With regard to this Agreement and the transactions contemplated hereunder, no unresolved challenge thereto that would impede the timely development of the Project shall be in existence.

x. No default (benefits City). Developer shall not be in default of this Agreement.

y. No default (benefits Developer). City shall not be in default of this Agreement.

z. Feasibility (benefits Developer). Developer has not provided written notice to the City that Developer has determined, in Developer's sole good faith discretion, that the Project is not financially feasible, due to any of the following: (i) Developer has failed, despite commercially reasonable efforts, to enter into a commercially viable purchase and sale agreement with the Approved Parcel "A" Assignee, as determined by Developer, or has been unable, despite commercially reasonable efforts, to negotiate an Assignment and Assumption Agreement for Parcel "A" with the Approved Parcel "A" Assignee that is reasonably acceptable to the Developer and the City Manager, or such purchase and sale agreement has terminated due to any act or omission by the Approved Parcel "A" Assignee (including, without limitation, a termination pursuant to any contingency in favor of the Approved Parcel "A" Assignee contained therein); (ii) Developer has failed, despite commercially reasonable efforts, to obtain financing for the development of the Project on terms reasonably satisfactory to Developer; or (iii) the costs of developing the Project or of completing the Public Improvements are materially different than those anticipated by Developer as of the Effective Date (including, without limitation, any variance of more than ten percent (10%) from the amounts reflected on the table attached to this Agreement as Attachment No. 6); or (iv) there is litigation pending (including, but not limited to the Quiet Title Action) or legislation pending or adopted which, in Developer's reasonable determination, makes it infeasible to obtain financing for the development of the Project on commercially reasonable terms or will make it reasonably likely that the City will not, or will not be able to, satisfy its obligations hereunder.

aa. Feasibility (benefits City). Subject to the liquidated damages provision set forth in Section 512 of this Agreement, City has not provided written notice to the Developer prior to April 1, 2012 that the City has determined, in City's sole and absolute discretion, exercised in good faith, that the Project is not feasible, due to changes in circumstances since the Effective Date that have caused a legal or financial impediment to the performance by City of any of its obligations hereunder.

bb. Developer's Title Policy (benefits Developer). Title Company shall be irrevocably committed to issue the Developer's Title Policy to Developer, as provided in this

Agreement.

cc. Developer Formation Documents (benefits City). Except as otherwise provided below, Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Developer, as the case may be (and if Developer is a limited partnership, its general partners, and if Developer is a limited liability company, its manager), including, without limitation and as applicable: limited partnership agreement and any amendments thereto, articles of incorporation, State of California Limited Liability Company Articles of Organization (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 this Agreement 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. If requested by City, then Developer shall provide to City the operating agreement of Developer (or the portions thereof evidencing authority). In addition, if requested by City, then Developer shall provide to City formation and good standing certificates filed with, or issued by, the State of California for Developer's manager or general partner, as the case may be, but shall not provide any other formation documents which are not of public record (such as, for example, operating agreements or bylaws) for such entity. City shall keep such documents strictly confidential and shall not disclose the contents of such documents except to the extent that such documents are part of the public record or such disclosure is otherwise required under applicable law. Moreover, City agrees that Developer may redact the financial details of any such information prior to any such disclosure.

dd. Joint Supplemental Escrow Instructions (benefits Developer and City). City and Developer counsel/special counsel shall have prepared such joint supplemental instructions for the Escrow Agent as may be necessary to close the transaction contemplated herein.

ee. Closing Certificate (benefits Developer). City shall have submitted to Escrow Agent a certificate stating that all conditions precedent to the recording of documents and the Close of Escrow have been satisfied or waived, if such be the case.

ff. Representations, Warranties and Covenants (benefits City). Developer shall have duly performed (or City will have waived) each and every obligation to be performed by Developer hereunder to be performed prior to the Close of Escrow 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.

gg. Covenants of City (benefits Developer). City shall have duly performed (or Developer will have waived) each and every obligation to be performed by City hereunder to be performed prior to the Close of Escrow and City's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Close of Escrow in all material respects.

hh. Deliveries (benefits City). Developer shall have deposited into escrow the cash portion of the Purchase Price, and delivered the items and funds to be delivered by Developer prior to the Closing, when and as required in this Agreement.

ii. Deliveries (benefits Developer). City shall have delivered the items and funds to be delivered by City prior to the Closing, when and as required in this Agreement.

jj. No Impeding Litigation (benefits Developer and City). With regard to this Agreement and the transactions contemplated hereunder, no unresolved challenge thereto that would impede the timely development of the Project shall be in existence.

kk. No default (benefits City). Developer shall not be in default of this Agreement.

ll. No default (benefits Developer). City shall not be in default of this Agreement.

SECTION 209 Failure of Conditions to Close of Escrow

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

1. Either Party shall have the right to terminate this Agreement, the escrow and the rights and obligations of City and Developer hereunder to the extent that such Party is intended to be benefited by the applicable condition precedent;

2. If this Agreement is terminated as provided herein, then Escrow Agent is hereby instructed to promptly return to Developer and City 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 Section 209.b. of this Agreement, below); and

3. If this Agreement is terminated as provided herein, then neither Party shall have any further rights or obligations hereunder except those that survive termination of this Agreement as expressly provided herein.

b. Cancellation Fees and Expenses. In the event that the escrow terminates in accordance with Section 209.a. of this Agreement, above, the cancellation charges, if any, required to be paid by and to Escrow Agent and the Title Company shall be borne equally by Developer and the City and all other charges shall be borne by the Party incurring same.

SECTION 210 Disbursements and Other Actions to be taken by Escrow Agent.

At the Close of Escrow, Escrow Agent shall promptly undertake all of the following in the manner hereinbelow indicated:

a. Cause the documents to be recorded that are listed in paragraph o. of Section 202 of this Agreement (documents numbered 1-10), and any other documents which the Parties may mutually direct, to be recorded in the Official Records, and obtain conformed copies thereof for distribution to City and Developer.

b. Disburse the cash portion of the Purchase Price to City, and deliver the fully executed Payment Agreement to the City.

c. Distribute to the City and Developer executed copies of the non-recorded documents listed in paragraph p. of Section 208 of this Agreement (documents numbered 1-6).

d. Direct the Title Company to issue the Developer's Title Policy to Developer and deliver the original thereof to Developer within two weeks after the Closing.

e. Prepare and distribute to Developer and City 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 City shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue Developer's Title Policy in accordance with this Agreement.

SECTION 211 Title Insurance

a. Concurrently with the recordation of the Grant Deed, Title Company shall provide and deliver to Developer an owner's policy of Title Insurance, issued by the Title Company, insuring that the fee interest of the Site is vested in Developer in the condition required by Section 205 of this Agreement, together with any endorsements as the Developer may reasonably request ("Developer's Title Policy"). The Title Company shall provide City and Developer with a copy of the Developer's Title Policy. The Developer's Title Policy shall be in such reasonable amount as the Developer may request, subject to the approval of the City Manager. If Title Company is unable or unwilling to deliver the Developer's Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Developer, Developer may terminate this Agreement pursuant to Section 509.

b. City shall pay only the premium for a standard form CLTA owner's policy. Any extended coverage and endorsements requested by Developer shall be at no cost or expense to City.

SECTION 212 Taxes and Assessments

Ad valorem taxes and assessments, if any, on the Site, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period, commencing prior to conveyance of title of the Site to Developer, shall be borne by City. All *ad valorem* taxes and assessments levied or imposed for any period commencing after conveyance of title of the Site to Developer shall be paid (as between City and Developer) by Developer. Developer's and City's obligations under this Section 212 shall survive the termination of this Agreement and shall

continue to remain in effect after any or all of the following events: Closing, Completion and recordation of the Release of Construction Covenants.

SECTION 213 Contests

a. Absent manifest error, Developer shall refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Site; provided, however, that such prohibition shall not apply to an appeal, challenge or contesting of the erroneous assessment for property tax purposes of the Site, and further provided that Developer shall not be prohibited from appealing, challenging or contesting any increases in assessment of the Site for property tax purposes over and above the current 2% per annum permitted amount.

b. Developer agrees that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Developer shall give City prompt notice in writing of any such contest at least ten (10) days before filing any contests. Developer may only exercise its right to contest an imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the imposition so contested, or the sale of the Site, or any part thereof, to satisfy the same, and only if Developer shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by City from time to time in order to insure the payment of such imposition to prevent any sale, foreclosure or forfeiture of the Site, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Developer, Developer shall, before any fine, interest, penalty or cost may be added to this Agreement for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Developer and, after such payment and discharge by Developer, City will promptly return to Developer such security as City shall have received in connection with such contest.

c. City shall cooperate reasonably in any such contest permitted by this Section 213, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Developer shall be prosecuted by Developer at Developer's sole cost and expense; and Developer shall indemnify and save harmless City (as a Party to this Agreement) against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by City (as a Party to this Agreement) in connection therewith.

SECTION 214 Occupants of the Site

Title to the Site shall be conveyed free of any possession or right of possession except that of Developer, unless waived by Developer in writing.

SECTION 215 Land Use Requirements for the Site

a. Entitlements. It shall be a condition of the Close of Escrow that Developer obtain all Entitlements and permits (other than ministerial permits, such as Building Permits, which are not required to be obtained prior to the Close of Escrow, subject to paragraph l. of Section 208 of this Agreement) necessary for the construction of the Phase 1 Improvements. Developer shall promptly and in good faith apply for, and diligently pursue obtaining the Entitlements. Without limiting Developer's obligations under this Section 215.a., Developer's failure to obtain the Entitlements shall not be an event of default hereunder, provided that Developer promptly applied in good faith for, and diligently pursued obtaining the Entitlements (or caused others to do so on Developer's behalf). City shall have no responsibility to verify that zoning of the Site and all applicable City land use requirements will be, at the applicable 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. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Site, or waive any applicable City requirements relating thereto. This Agreement does not (i) grant any Entitlement to Developer; (ii) supersede, nullify or amend any condition which may be imposed by City in connection with approval of the development described herein; (iii) guarantee to Developer or any other party any profits from the development of the Site; or (iv) amend any City laws, codes or rules. This is not a Development Agreement as provided in California Government Code Section 65864. Developer shall comply with all applicable conditions of approval required by City. Without cost to City, City shall reasonably cooperate and provide appropriate technical assistance to Developer, as necessary, in connection with Developer's obtaining all necessary Entitlements and permits for the construction of the Improvements.

b. Indemnification. To the extent permitted by law, Developer shall protect, defend, indemnify and hold City and each of its elected officials, officers, representatives, agents, employees, contractors and attorneys (the "Indemnified Parties") harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Developer's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly connected with any work or activity performed by or on behalf of Developer, its officers, employees, invitees, guests, agents and contractors pursuant to the Entitlements and permits obtained pursuant to Section 215.a. of this Agreement, above, and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. If City, in good faith, determines that its interests are not adequately protected by being provided a defense by Developer, City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Developer shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. In connection therewith, the reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with the prevailing market rates charged by attorneys in private practice for such services. The foregoing defense, indemnification and hold harmless obligations shall not apply to the proportional extent that the

matter giving rise to such claims, liability, damages or injuries is due to the negligence or willful misconduct of City (or any of the Indemnified Parties), but shall survive the termination of this Agreement and shall continue to remain in effect after any or all of the following events: Closing, Completion and recordation of any Release of Construction Covenants.

c. Police Power. Developer acknowledges that the City is a Party to this Agreement only in its capacity as the assignee of the Redevelopment Agency. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted, and/or as amended from time to time) of the City, its departments, commissions, agencies or boards and the officers thereof, including without limitation any redevelopment plan or general plan or any zoning ordinances, or any of the City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City in the furtherance of the public health, welfare and safety of the inhabitants thereof, including, without limitation, the right under law to make and implement independent judgments, decisions and/or acts with respect to planning, development and/or redevelopment matters (including, without limitation, approval or disapproval of plans and/or issuance or withholding of entitlements or building permits) whether or not consistent with the provisions of this Agreement, any attachments to this Agreement or documents contemplated by this Agreement (collectively, the "City Rules and Powers"). In the event of any conflict, inconsistency or contradiction between any terms or provisions of this Agreement, any attachments to this Agreement or documents contemplated by this Agreement, on the one hand, and any such City Rules and Powers, on the other hand, the City Rules and Powers shall prevail and govern in each case. In addition, nothing herein shall require the City to reach a particular result in any matter that requires a public hearing or the exercise of future discretion as specified herein. This Section shall be interpreted for the benefit of the City.

SECTION 216 Condition of Site

a. Developer's Site Investigation

1. "Hazardous Substance," as used in this Agreement means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to

Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety. "Hazardous Substances" do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all laws.

2. City makes no representation or warranty, express or implied, regarding any conditions of the Site, except that City represents and warrants to Developer that City has disclosed and provided to Developer all information in City's possession or known to City relating thereto; including true, correct and complete copies of studies, reports, investigations and contracts; and other obligations concerning or related to the Site which are in City's possession or which are known by and available to City, including, without limitation, correspondence, studies, reports and investigations concerning the Site's environmental condition and the presence or absence of Hazardous Substances in, on or under the Site and its compliance with environmental laws. Notwithstanding anything to the contrary contained herein, City shall indemnify, defend and hold Developer (and any Assignee(s)) harmless from and against any action, claim, demand, expense, or liability arising out of the presence of Hazardous Substances in, on or under the Site and its compliance with environmental laws if such presence or any non-compliance with environmental laws is the result of any act or omission by City or any of its employees, agents, or contractors first occurring after the Effective Date.

3. It shall be the sole responsibility of Developer, at Developer's sole cost and expense, to investigate and determine all conditions of the Site and its suitability for the use to which the Site is to be put in accordance with this Agreement. Developer shall have the right, at its own expense, and in consultation with City, to employ a qualified soils engineer, geologist and/or environmental consultant (collectively, "Consultant") for the purpose of investigating the soil and water condition of the Site, and the suitability of the Site for economically feasible development thereon by Developer in accordance with this Agreement. Developer shall also provide City 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 City; provided, however, that Developer makes no representation or warranty regarding such reports, and it shall have no liability whatsoever for any errors or omissions contained therein. Developer shall have the right, not later than July 1, 2012, to terminate this Agreement if Developer determines, on the basis of the report or any of the due diligence performed by Developer, that the environmental condition on the Site is not suitable for the economically feasible development of the Site as contemplated herein. If Developer does not terminate this Agreement by written notice to City on or before July 1, 2012, then this condition shall be deemed waived.

4. If Developer does not terminate this Agreement and acquires title to the Site, but the conditions of the Site are not in all respects entirely suitable for the use or uses to

which the Site will be put under the terms of this Agreement, then it is the sole responsibility and obligation of Developer without cost or expense to the City (subject to the terms of paragraph b. of this Section 216), to take such action as may be necessary to place the Site in all material respects in a condition suitable for its development and use in accordance with this Agreement.

b. Remediation Costs. In the event Developer incurs any costs to remove or remediate any Hazardous Substances from the Site ("Remediation Costs"), the City shall not have any responsibility to pay for Remediation Costs, including those arising from Pre-existing Site Conditions, except for those arising from the negligence or willful misconduct of City or any of its employees, agents or contractors, if any.

c. Conveyance of Site. The Site shall be conveyed to Developer in an "as is" physical condition, with no warranty, express or implied by the City as to the presence of Hazardous Substances, or the condition of the soil (or water), its geology or the presence of known or unknown seismic faults.

d. Waiver and Release. Subject to paragraphs a. and b. of this Section 216, from and after the Effective Date of this Agreement, Developer hereby waives, releases and discharges the City and its elected officials, officers, representatives, agents, employees, contractors and attorneys, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the use, maintenance, ownership or operation of the Site or any portion thereof, any Hazardous Substances on the Site or the existence of Hazardous Substances contamination in any state on the Site, however the Hazardous Substances came to be placed there, except that arising out of the negligence or willful misconduct of the City or any of its employees, agents or contractors. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

To the extent of the release set forth in this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

e. Environmental Indemnity. From and after the Closing, Developer (and, upon the Approved Parcel "A" Assignee obtaining title to Parcel "A", the Approved Parcel "A" Assignee, and, upon the Approved Parcel "F" Assignee obtaining title to Parcel "F", the Approved Parcel "F" Assignee – with each indemnity relating only to such party's owned property), shall defend, indemnify and hold harmless the City and its elected officials, officers, representatives, agents, employees, contractors and attorneys in accordance with the Environmental Indemnity substantially in the form of Attachment No. 10 to this Agreement, which is incorporated herein by this reference. As a condition to the Phase 1 Closing, Developer shall execute and deliver to City the Environmental Indemnity as to the Site excepting Parcel "A" upon the Approved Parcel

"A" Assignee obtaining title to Parcel "A", in which case such Approved Parcel "A" Assignee shall execute and deliver to City the Environmental Indemnity as to Parcel "A".

f. Site Preparation.

Prior to the Close of Escrow, without cost to Developer, City shall prepare the Site for development. Such site preparations ("Site Preparation") shall consist of the following:

(1) Complete demolition and removal to the surface elevation of the adjoining ground of all existing buildings, other structures and Improvements including the removal all asphalt concrete, concrete, bricks, lumber, pipes, equipment and other material, as well as complete removal of the palm trees currently located on the Site, and all debris and rubbish resulting from such demolition.

(2) Complete removal of all subsurface improvements, foundations, building walls, slabs, basements, tanks and abandoned utilities on the Site, except to the extent Developer allows any of the same to remain.

(3) Disconnection, capping and removal of utility lines, installations, facilities and related equipment within or on the Property.

All of items (1) through (3) inclusive shall be completed prior to the Close of Escrow.

SECTION 217 Preliminary Work by Developer

a. Until the Close of Escrow, representatives of Developer shall at all reasonable times have the right of access to and entry upon the Site, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement and to perform work on the Site specifically approved by the City Manager or designee, subject to and in accordance with a Right of Entry Agreement substantially in the form attached to this Agreement as Attachment No. 18, which is incorporated herein by this reference.

b. To the extent permitted by law, Developer shall protect, defend, indemnify and hold City and each of its elected officials, officers, representatives, agents, employees, contractors and attorneys (the "Indemnified Parties") harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Developer's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with any work or activity of Developer, its officers, employees, invitees, guests, agents and contractors permitted pursuant to Section 217.a. of this Agreement, above (excluding any such matter arising out of the mere discovery by Developer of a Pre-existing Site Condition), and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. The foregoing defense, indemnification and hold harmless obligations shall not apply to the proportional extent that the matter giving rise to such claims, liability, damages or injuries is due to the negligence or willful misconduct of City (or any of the Indemnified Parties). If City, in good faith, determines

that its interests are not adequately protected by being provided a defense by Developer, City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Developer shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. In connection therewith, the reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with the prevailing market rates charged by attorneys in private practice for such services. The foregoing defense and indemnification obligations shall survive the termination of this Agreement and shall continue to remain in effect after any or all of the following events: Closing, Completion and recordation of any Release of Construction Covenants.

SECTION 218 Interim Restrictions

From the Effective Date of this Agreement until the Close of Escrow, the City shall not (i) bring, use, release or dispose of, or permit to be brought, used, released or disposed of, any Hazardous Substances on the Site without the prior written consent of Developer, (ii) impose or permit the imposition of any lien, encumbrance or restriction on the Site (other than Approved Title Conditions), (iii) enter into any agreement affecting the Site which would survive the Closing (other than those contemplated by this Agreement) or (iv) lease any portion of the Site without the prior written consent of Developer. City shall maintain the Site in a safe and secure condition, and shall not permit any use of the Site without Developer's prior written consent.

SECTION 219 Public Improvements

a. Public Improvements. The Public Improvements shall consist of the design, permitting, construction and installation of the work reflected on the approved construction drawings for the Public Improvements, including without limitation, the following, all of which shall meet all applicable City standards:

1. The intersection improvements at Delaware, Palm and State Route 75 (the "Highway 75 Access Improvements") including, without limitation, the following;

   (a) Removal of existing median and pavement between Palm Avenue and Site entrance;

   (b) Removal of existing curb/gutter, median and pavement along southern side of Palm Avenue, between 7th Avenue and State Route 75;

   (c) Construction of new curb/gutter, pavement and median on Palm Avenue between 7th Avenue and State Route 75;

   (d) Installation of landscaping and irrigation and storm water treatment "garden";

(e) Installation of new street lights; and

(f) Any other Cal-Trans requirements relating to the foregoing.

2. Moving of traffic signals and interconnection of traffic signals and construction of curbs, gutters, sidewalks and landscaping on Palm Avenue and 9th Street;

3. All existing and proposed utilities within the boundary of the Site, or within any right-of-way abutting the boundary shall be placed underground (conversion) to the reasonable satisfaction of the City Engineer. Developer is responsible for complying with the requirements and make such arrangements with each serving and impacted utility company for the conversion or additional installation of such facilities (the "Underground Utilities");

4. Removal and replacement of the concrete alley at the south end of the Site to the reasonable satisfaction of the City Engineer, including the adjustment to grade and/or replacement of all utility covers in such alley. The concrete section shall be designed to support the imposed load of fire apparatus to withstand a minimum 95,000 pound vehicle load ("Alley Improvements"); and

5. The existing traffic signal pole signaling left turns from Westbound Silver Strand Boulevard to Palm Avenue shall be removed and replaced to the reasonable satisfaction of the City Engineer ("New Traffic Signal").

b. Ninth Street Improvements. The Public Improvements shall also include the Ninth Street Improvements.

c. Payment for Public Improvement Costs. Subject to the conditions precedent set forth in Section 219.e., below, City shall pay to or for the benefit of or reimburse Developer for the cost of designing, permitting, constructing and installing the Public Improvements described in this Section 219.c., below (the "Public Improvement Costs"), not to exceed the amount described in this Section 219.c. City has committed the sum of $2,200,000 (the "Public Improvement Funds") for the Public Improvements described in Section 219.a.1., above. Prior to the Effective Date, City has incurred and disbursed to Project Design Consultants a portion of that amount for the preparation of plans for the Public Improvements, which is estimated to be $43,152 (the "Disbursed Funds"). Prior to the disbursement of any additional Public Improvement Funds, the City Manager and Developer shall agree on the actual amount of the Disbursed Funds by a written memorandum (the "Disbursed Funds Memorandum"). For purposes of this Agreement, the amount of the Public Improvement Funds remaining after disbursement of the Disbursed Funds shall be referred to as the "Remaining Public Improvement Funds". As an example, if the Disbursed Funds equal $43,152, the Remaining Public Improvement Funds would equal $2,156,848. The actual Remaining Public Improvement Funds

shall be agreed upon and set forth in the Disbursed Funds Memorandum. In addition to the obligation to disburse the Remaining Public Improvement Funds for the Public Improvements as described in this Section 219.c., City shall disburse to or for the benefit of or reimburse Developer for the Ninth Street Improvements, an additional amount, estimated to be $200,000 (the "Ninth Street Funds"), as provided in clause 4 of this Section 219.c., below. The City shall disburse the Remaining Public Improvement Funds and the Ninth Street Funds as follows:

1. City's obligation shall be to first reimburse Developer, from the Remaining Public Improvement Funds, for the cost to construct the Highway 75 Access Improvements.

2. Upon completion of construction of the Highway 75 Access Improvements, Developer shall provide to the City Manager a written certification that all costs for the completion of the Highway 75 Access Improvements have been paid in full.

3. To the extent any portion of the Remaining Public Improvement Funds remains available after paying the costs for the Public Improvements listed in Section 219.a.1., above, (such portion being referred to as the "Excess Funds"), the City shall disburse such Excess Funds to the extent necessary to pay or reimburse Developer for the cost of the Public Improvements described in paragraphs 2 through 5 of Section 219.a., above, in accordance with the procedures set forth in the Public Improvement Disbursement Agreement. Escrow Agent shall remit to City any Excess Funds remaining after paying for all the Public Improvements listed in Section 219.a.

4. In addition to funding the Remaining Public Improvement Funds, the City shall disburse the Ninth Street Funds to the extent necessary to pay or reimburse Developer for the cost of the Ninth Street Improvements described in Section 219.b., above, in accordance with the procedures set forth in the Public Improvement Disbursement Agreement. To the extent the cost to complete the Ninth Street Improvements in Section 219.b. exceeds the estimated Ninth Street Funds described in this Section 219.c., above, the City shall deposit into the Construction Escrow additional funds equal to the amount needed to pay for all the costs of the Ninth Street Improvements, in excess of the estimated sum of $200,000.

d. Right to Defer Some Public Improvements. Upon written notice to the City Manager not later than thirty (30) days prior to the Scheduled Phase 1 Closing Date, Developer may defer until the Phase 2 Closing the construction of the Public Improvements described in paragraph a.3 (Underground Utilities), a.4 (Alley Improvements) and a.5 (New Traffic Signal) of this Section 219.

e. Conditions Precedent to Disbursement of Remaining Public Improvement Funds.

Except for the costs to be paid with the Initial Disbursement described in paragraph f. of this Section 219, below, City shall have no obligation to pay to or on behalf or, or reimburse, Developer for the cost of Public Improvements unless and until all of the following conditions shall have been satisfied:

1. Public Improvement Budget. Developer shall have prepared and submitted to the City Manager, and the City Manager shall have approved, a line item budget for the Public Improvement Costs (the "Public Improvement Budget") setting forth all eligible costs and expenses for the planning, construction and installation of the Public Improvements. The Public Improvement Budget shall not include any amounts to be paid to Developer or any Affiliate of Developer as a management fee, contractor's fee or for overhead or general conditions, regardless of how characterized. The City Manager shall approve or disapprove the Public Improvement Budget within twenty (20) days of a complete submittal. The City Manager shall not unreasonably withhold, condition or delay approval of the Public Improvement Budget. The Public Improvement Budget may be amended from time-to-time upon the written approval of the Parties, provided that City's contribution for the Public Improvements shall not exceed the Remaining Public Improvement Funds as set forth in the Disbursed Funds Memorandum described in Section 219.c., above, plus the additional amount needed, if any, for the Ninth Street Inprovements, estimated to be $200,000.

2. Public Improvement Contract. Developer and its general contractor shall have executed the Public Improvement Contract described in Section 208 of this Agreement, approved by the City Manager.

3. No default. City shall determine that Developer is not in default of any material obligation under this Agreement or any related instrument or agreement.

f. Disbursement.

1. Promptly following the mutual execution of the Disbursed Funds Memorandum establishing the amount of the Disbursed Funds and the Remaining Public Improvement Funds as required by Section 219.c., above, the City shall open a construction escrow account ("Construction Escrow") with Wells Fargo Bank or other lending institution that is mutually acceptable to the Developer and City Manager ("Disbursement Agent"), and deposit into the Construction Escrow the sum equal to the amount by which $200,000 exceeds the Disbursed Funds described in Section 219.c., above (the "Initial Deposit").

2. As a condition precedent to the disbursement from escrow of any portion of the Initial Deposit, City, Developer and Escrow Agent shall execute a disbursement agreement ("Disbursement Agreement") substantially in the form attached to this Agreement as Attachment No. 11, which is incorporated herein by this reference.

3. Not later than the date which is five (5) Business Days after the satisfaction of the conditions precedent set forth in paragraph e. of this Section 219, above, City shall deposit the $2,000,000 balance of the Remaining Public Improvement Funds (plus the estimated $200,000 for the Ninth Street Improvements as provided in paragraph c.3. of this Section 219, above).

4. Promptly after the City deposits into Escrow the funds described in paragraph 3 of this Section 219.f., Developer shall process the first application for payment to pay for the cost of the following:

a. Bond. Developer shall obtain and pay the premium for a contractor's bond (the "Bond") covering labor, materials and faithful performance for construction of the Public Improvements and Ninth Street Improvements in an amount equal to one hundred percent (100%) of the construction price set forth in the Public Improvement Contract. Prior to the commencement of construction of the Public Improvements and Ninth Street Improvements, the Bond shall have been approved in writing by the City Manager as to content, form and amount. Developer shall, prior to the commencement of construction of the Public Improvements and Ninth Street Improvements deliver to City a certificate or certificates from the bonding company issuing the Bond, naming the City as an additional obligee under the Bond. Notwithstanding the foregoing, the requirement of this paragraph 4 shall be deemed satisfied in full by any Bond meeting the requirements of the City of Imperial Beach for public improvements; and

b. Insurance. Developer shall obtain and pay the premium for the Insurance Policies required by Section 309 of this Agreement, with respect to the construction of the Public Improvements and Ninth Street Improvements by Developer. Developer shall, prior to the commencement of construction of the Public Improvements and Ninth Street Improvements deliver to City a certificate or certificates from the insurance company issuing the insurance policies, naming the City as an additional insured.

c. Other Costs. The City Manager may, in his sole discretion, approve as part of the first application for payment other Public

Improvement Costs and Ninth Street Costs, provided such costs are of a minor nature, such as permit costs.

5. City shall direct the Disbursement Agent to make disbursements of the Remaining Public Improvement Funds in accordance with the executed Public Improvement Disbursement Agreement. Notwithstanding anything to the contrary contained in this Agreement, in the event the Construction Escrow is opened and this Agreement is terminated for any reason, City shall have the right in its sole and absolute discretion to direct the Disbursement Agent to remit to City any amounts on deposit in the Construction Escrow.

g. Acceptance of Public Improvements. All Public Improvements and Ninth Street Improvements shall be designed and constructed to the satisfaction of the City's Public Works Director. Developer's obligation to construct the Public Improvements and Ninth Street Improvements pursuant to this Agreement shall be satisfied upon the satisfaction of the following conditions and mutual execution and recordation of an Acceptance and Maintenance Agreement for Public Improvements and Ninth Street Improvements substantially in the form attached to this Agreement as Attachment No. 17: (1) approval of the Public Improvements and Ninth Street Improvements by the City's Public Works Director, which approval shall not be unreasonably conditioned, delayed or withheld; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by an authorized representative of each designer of each of the respective Public Improvements and Ninth Street Improvements that construction has been completed in a good and workmanlike manner and substantially in accordance with plans and specifications approved by the City; and (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered. Developer shall promptly remedy at the Developer's cost and expense any condition or conditions which prevent the City from accepting the Public Improvements and Ninth Street Improvements as provided by this paragraph.

SECTION 220 Phase 2 Closing.

Until the occurrence of the Phase 2 Closing, Developer shall not have the right to transfer, assign, convey by deed or lease, record any deed of trust or other instrument on or otherwise encumber Parcels "E", "F" or "G" in Property 2, or any portion thereof or interest therein. City and Developer shall use their commercially reasonable best efforts to cause all of the following conditions precedent to the Phase 2 Closing to be satisfied not later than 30 days prior to the forty-second (42nd) month after the Effective Date of this Agreement, and the Phase 2 Closing shall occur within thirty (30) days thereafter (the "Phase 2 Closing Date"). If Developer or City is unable to satisfy any of such conditions precedent despite its good faith efforts, such Party will not be in default hereunder. The following shall be conditions precedent to the Phase 2 Closing:

a. Final Construction Drawings (benefits City and Developer). City Manager shall

have approved any changes to the previously approved Final Construction Drawings as they pertain to the Phase 2 Improvements.

b. Project Budget (benefits City and Developer). Developer shall have delivered to City, and the City Manager shall have approved, which approval shall not be unreasonably withheld, conditioned or delayed, any revisions to the Project Budget, demonstrating to the reasonable satisfaction of the City Manager the availability of sufficient funds to pay all Acquisition and Development Costs for the Phase 2 Improvements.

c. Construction Contract (benefits City and Developer). Developer shall have delivered to City, and the City Manager shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed), one or more construction contracts, covering all Phase 2 construction required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the final City-approved Project Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction and complete fixturization of the development of Phase 2 of the Project, demonstrating that (subject to Force Majeure Delays) construction of Phase 2 will be commenced within thirty (30) days after the Phase 2 Closing and completed within the time provided in the Schedule of Performance, and such contract(s) shall have been executed by each of the parties thereto. City's review and approval of the construction contract pursuant to this Section shall be limited to determining if it: (i) provides for the performance of the construction work in accordance with all Entitlements and approved Final Construction Drawings; (ii) provides for costs of construction within the final City-approved Project Budget; and (iii) otherwise complies with the terms of this Agreement, including but not limited to insurance, bonding, disbursement procedures and similar matters, and shall be for the benefit of the City alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, City makes no representation or warranty, express or implied, regarding the construction contract, the contractor, the work to be performed or any other matter.

d. Public Improvement Contract for Deferred Public Improvements (benefits City). Developer shall have delivered to City, and the City Manager shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed), a construction contract, covering all of the Public Improvements to be constructed by Developer that were deferred to Phase 2, if any, as required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the final City-approved Project Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction of such deferred Public Improvements, demonstrating that construction of such deferred Public Improvements will be commenced within thirty (30) days after the Phase 2 Closing and completed (subject to Force Majeure Delays) within the time provided in the Schedule of Performance, and such contract shall have been executed by each of the parties thereto. City's review and approval of the construction contract pursuant to this Section shall be limited to determining if it: (i) provides for the performance of the construction work in accordance with all Entitlements and approved construction drawings; (ii) provides for costs of construction within the final City-approved

project budget; (iii) complies with applicable State prevailing wage requirements; (iv) is with a contractor or contracting firm that is licensed in the State of California, is not an Affiliate of Developer, has demonstrated experience in completing similar public works projects and is otherwise reasonably acceptable to City; and (v) otherwise complies with the terms of this Agreement, including but not limited to insurance, bonding, disbursement procedures and similar matters, and shall be for the benefit of City alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, City makes no representation or warranty, express or implied, regarding the construction contract, the contractor, the work to be performed or any other matter.

e. Evidence of Financing (benefits City and Developer). Developer shall have submitted and the City Manager shall have approved evidence relating to all Sources of Financing relating to Phase 2, and all documents required to be executed in connection with such financing shall have been duly executed, acknowledged and delivered. Such evidence shall include:

(1) a copy of all Construction Loan documents relating to the Phase 2 Improvements, certified by Developer and/or Approved Parcel "F" Assignee, as the case may be, to be a true and correct copy or copies thereof; and

(2) evidence of immediately available funds in a construction escrow account for the Project in the total amount (beyond (i) those to be loaned pursuant to the Construction Loan, (ii) those to be provided by City for Public Improvements, and (iii) those being generated by the sale of Parcel "F") necessary to finance the construction of Phase 2 to Completion (excluding Parcel "F" if Parcel "F" is to be developed by the Parcel "F" Assignee), in accordance with a Project Budget approved, in writing, by the City, which funds shall include all Developer Equity needed to pay all Acquisition and Development Costs for Phase 2, including but not limited to, if applicable, any consideration to be paid to Developer by the Parcel "F" Assignee for the sale of Parcel "F" prior to the Completion of the Parcel "F" Improvements. Notwithstanding the foregoing, if Developer elects to defer construction of Vertical Improvements on Parcel "E" and/or Parcel "G", as provided in Section 220.f., below, the required evidence of financing will not have to include funds for such construction.

City shall cooperate reasonably with Developer and the Approved Parcel "F" Assignee in Developer/Approved Parcel "F" Assignee's efforts to obtain financing, including, without limitation, executing commercially reasonable documentation consistent with this Agreement relating to the lender's rights in the event of default by Developer or the Approved Parcel "F" Assignee. City shall promptly and diligently respond to any request from a lender and shall not unreasonably withhold its approval of any request for execution or cooperation from a lender if such request will not result in a material modification of or is not inconsistent with this Agreement.

f. Evidence of Property 2 Tenant Commitments (benefits City and Developer). Developer shall have submitted and the City Manager shall have approved evidence of binding commitments from (i) the Approved Parcel "F" Assignee, to construct (unless being constructed

by Developer) and operate all or a portion of an approximately 5,000 – 15,000 square foot retail building on Parcel "F", if applicable; and (ii) commitments from retail tenants to lease space in Parcel "E" and Parcel "G", if any, and Parcel "F" (if Developer does not elect to assign Parcel "F" to an Approved Parcel "F" Assignee as provided in paragraph g., below), provided that commitments to lease any portion of Parcel "E" or Parcel "G" shall not be a condition precedent to the Phase 2 Closing. Developer shall have the right, in Developer's sole discretion, to elect not to immediately construct Vertical Improvements on Parcel "E" and/or Parcel "G", such election to be made, if at all, in writing, not later than the Phase 2 Closing. If, following such election, Developer or any assignee of Developer does construct Vertical Improvements on Parcel "E" or Parcel "G" such construction shall be subject to all applicable provisions of this Agreement, regardless of when such construction occurs. City's review and approval of binding commitments from tenants pursuant to this Section shall be for the benefit of the City alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the tenant commitments, City makes no representation or warranty, express or implied, regarding the character, fitness, quality, credit-worthiness or any other matter relating to any tenant or any other matter. Developer shall not be required to disclose any confidential economic deal terms and other confidential information not intended for public disclosure or which Developer may not disclose without breaching a contractual obligation or proscription.

g. Insurance (benefits City). Developer shall have submitted to City, and the City Manager shall have approved (which approval shall not be unreasonably withheld, conditioned or delayed), evidence of the Insurance Policies required by this Agreement, naming as additional insureds the following:

> "The City of Imperial Beach and its elected officials, officers, representatives, agents, employees, contractors and attorneys."

h. Parcel "F" Purchase and Sale Agreement (benefits Developer and City). If Developer elects to assign Parcel "F" to an Approved Parcel "F" Assignee, the purchase and sale agreement (or agreement to lease or other agreement regarding conveyance, as the case may be) for Parcel "F" shall have been executed by each of the parties thereto, and any revisions or amendments to the form of such agreement previously submitted to City (and any other pertinent agreements) shall have been submitted to City, and the City Manager shall have approved such revisions and amendments (and other pertinent agreements). The City Manager's review and approval shall be limited to confirming that such documents are not inconsistent with this Agreement. Prior to submitting such agreement or amendments, Developer may redact economic deal terms and other confidential information not intended for public disclosure or which Developer may not disclose without breaching a contractual obligation or proscription, except to the extent necessary for the City Manager to determine the compensation to be paid to Developer, if any, prior to the Completion of the Parcel "F" Improvements.

i. Permits (benefits City and Developer). Developer shall have delivered to City the list of permits required for construction of the Phase 2 Improvements (excluding those relative to Vertical Improvements on Parcel "E" and/or Parcel "G", if Developer elects to defer construction of Vertical Improvements on Parcel "E" and/or Parcel "G", as provided in Section 220.f.,

below), demonstrating to the reasonable satisfaction of the City Manager that all variances (if any) and Entitlements therefor have been obtained and that all conditions for the issuance of all such permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget).

j. No Challenges (benefits Developer and City). With regard to the Entitlements and all permits required for grading and the construction of the Phase 2 Improvements, all administrative appeals periods shall have expired; with regard to compliance with CEQA (as required), the statutes of limitation therefor shall have expired; and with regard to each, no unresolved challenge thereto shall be in existence.

k. Joint Supplemental Instructions (benefits Developer and City). City and Developer counsel/special counsel shall have prepared such joint supplemental instructions for the Title Company as may be necessary to close the transaction contemplated herein.

l. Closing Certificate (benefits Developer). City shall have submitted to Escrow Agent a certificate stating that all conditions precedent to recording of the documents have been satisfied or waived, if such be the case.

m. Documents (benefits Developer and City, as applicable). City, Developer and other parties, as appropriate, shall have executed and delivered to the Escrow Agent in recordable form as necessary the following documents:

Documents to be recorded:

1. If applicable, Parcel "F" grant deed (to be executed and acknowledged by Developer for benefit of Approved Parcel "F" Assignee); and

2. Recordable Construction Loan documents (to be recorded against Parcel "E", "F" and/or "G", as applicable;

3. Instrument terminating Option Agreement and Memorandum of Option (to be executed and acknowledged by City); and

4. Subordination Agreement.

Non-recorded documents:

5. If applicable, Parcel "F" Assignment and Assumption Agreement (to be executed by Developer, Approved Parcel "F" Assignee and City).

PART 3. DEVELOPMENT OF THE SITE

SECTION 301 Land Use Approvals

It is the responsibility of Developer, without cost to City, to ensure that zoning of the Site and all applicable City land use requirements will 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. Prior to the Phase 1 Closing, Developer shall submit and City Manager shall approve complete Final Construction Drawings and Developer shall obtain all entitlements, approvals, variances and permits necessary for the construction of the Phase 1 Improvements, as set forth in Section 208 of this Agreement. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Site, or waive any applicable City requirements relating to this Agreement. 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 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.

SECTION 302 Scope of Development

The Site shall be developed in accordance with and within the parameters established in the Scope of Development.

SECTION 303 Basic Concept Drawings

a. Developer has prepared basic concept and schematic drawings and related documents for the development of the Site, which have been approved by the City.

b. The Site shall be developed as established in the basic concept and schematic drawings and related documents except as changes may be mutually and reasonably agreed upon between Developer and the City Manager. Any such changes shall be within the limitations of the Scope of Development.

SECTION 304 Landscaping and Grading Plans

a. Developer shall prepare and submit to the City 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. Developer shall grade the Site to match the approximate existing grade of the Palm Avenue/State Route 75 right-of-way.

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 Developer's architect. Within the times established in the

Schedule of Performance, Developer shall submit to the City for approval the name and qualifications of its architect, landscape architect and civil engineer.

SECTION 305 Construction Drawings and Related Documents

a. Developer (or Assignee, as the case may be) shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the City for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a Building Permit.

b. Approval of progressively more detailed Plans will be promptly granted by the City Manager if developed as a logical evolution of previously approved Plans. Any items so submitted and approved by the City Manager shall not be subject to subsequent disapproval.

c. During the preparation of all Plans, the City Manager and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents. The City Manager and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

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

SECTION 306 Approval of Plans

a. Subject to the terms of this Agreement, the City shall have the right to review (including without limitation architectural review) and approve or disapprove all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by City. Upon receipt of any disapproval, Developer shall revise the Plans, and shall resubmit to the City Manager as soon as possible but in no event later than sixty (60) days after receipt of the notice of disapproval. The City shall approve or disapprove the Plans referred to in Sections 303, 304 and 305 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 City Manager requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. Developer, upon receipt of a disapproval based upon powers reserved by the City hereunder shall revise the Plans, and shall resubmit to the City Manager as soon as possible but in no event later than sixty (60) days after receipt of the notice of disapproval.

b. If Developer desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the City Manager for approval. For purposes of this Section, "Substantial" shall mean any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of

the Project. Nothing herein shall be interpreted as altering, modifying, waiving, amending, or reducing any requirements of any governmental permit required by any local, state or federal permitting authority for the development contemplated herein.

SECTION 307 Cost of Construction

Except for the Site Preparation to be performed by City as expressly provided in Section 216.f. of this Agreement, the payment or reimbursement for Public Improvement Costs as expressly provided in Section 219 of this Agreement, and the cost, if any, to prepare the Site to be delivered to Developer in the condition required by Sections 205 and 216, the cost of designing and developing the Site and constructing the Improvements, including, without limitation, pre-development costs and any offsite or onsite Improvements required by the City in connection therewith, whether Developer has commenced such design, development and/or construction prior to or after Close of Escrow, or at any time, shall be the responsibility of Developer, without any cost to City.

SECTION 308 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 (subject to Force Majeure Delays), and if no such time is provided, within a reasonable time consistent with the Schedule of Performance. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the City and Developer; provided, however, that the City Manager shall have the authority and discretion, which shall not be unreasonably withheld, to grant up to two 60-day extensions of the Phase 1 Closing Date and the Phase 2 Closing Date, as applicable, in order to carry out the purposes of this Agreement.

b. After each Closing, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the applicable Improvements as provided herein and in the Schedule of Performance, including but not limited to completion of construction of the Phase 1 Improvements (subject to Force Majeure Delays) not later than two (2) years after the Close of Escrow.

c. During periods of construction, Developer shall submit to the City a written report of the progress of construction when and as reasonably requested by the City, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the City and shall include a reasonable number of construction photographs (if requested) taken since the last report by Developer. If City utilizes the services of a construction monitor (at City's cost), Developer shall reasonably cooperate with the City's monitor to coordinate inspections.

SECTION 309 Indemnification and Insurance

a. Developer's Indemnity. To the maximum extent permitted by law, and in addition to any other provisions of this Agreement, including without limitation, the

Environmental Indemnity, independently requiring Developer to defend, indemnify, and hold harmless the Redevelopment Agency, the City and their respective elected officials, members, officers, representatives, agents, employees, contractors and attorneys (referred to in this Section as the "Indemnified Parties"), Developer agrees to and shall defend, indemnify and hold harmless the Indemnified Parties from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided the foregoing defense, indemnification and hold harmless obligations shall not apply to the proportional extent that the matter giving rise to such claims, liability, damages or injuries is due to the negligence or willful misconduct of City (or any of the Indemnified Parties):

1. The existence, release, presence or disposal on, in, or under the Site of a ny Hazardous Substances resulting from the acts or omissions of Developer, an Assignee, their respective contractors, subcontractors, agents or other persons acting on Developer's or Assignee's behalf (other than the mere discovery thereof) (individually, "Indemnifying Party," and collectively, "Indemnifying Parties");

2. The development, construction, marketing, use, operation or condition of the Site (other than Pre-Existing Conditions) and the Improvements by any Indemnifying Party;

3. Any accident, personal injury or casualty on the Site or the Improvements resulting from the acts or omissions of any Indemnifying Party;

4. Any plans or designs for Improvements (collectively, "Plans") prepared by or on behalf of any Indemnifying Party, including without limitation any errors or omissions with respect to such plans or designs, except in the event that (i) none of the Indemnifying Parties develops the Site pursuant to this Agreement, and (ii) upon assignment of the Plans to City, City uses the Plans or causes such Plans to be used to develop the Site; and

5. Any loss or damage to the Indemnified Parties resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any material breach or default by Developer, under this Agreement.

Notwithstanding the foregoing, Developer's indemnity, defense and hold harmless obligations under this Agreement shall not include or apply to any matter caused or permitted by any Assignee (or their respective contractors, subcontractors, agents or other persons acting on such Assignee's behalf) who executes an Assignment and Assumption Agreement; it being agreed that the City shall have the right to disapprove any Assignment and Assumption Agreement which does not contain indemnity protections on behalf of the City that are acceptable to the City Manager.

If City, in good faith, determines that its interests are not adequately protected by being provided a defense by Developer, City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Developer shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. In connection therewith, the reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services. Developer understands, acknowledges and agrees that nothing in this Section shall be deemed or interpreted as a limitation, modification or waiver of any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the City and its elected officials, officers, representatives, agents, employees, contractors and attorneys.

b. Insurance Policies.

1. Commencing upon the Phase 1 Closing, and at all times prior to the Completion of the entire Project ("the Term"), Developer shall maintain in effect and deliver to City duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(a) 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, excluding earthquake(s). Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) 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 City, and (3) 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 Site, 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;

(b) Liability Insurance: Developer shall maintain or cause to be maintained general liability insurance or an equivalent owner contractors protective policy, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Site and the business of Developer on the Site, 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 Site, 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 City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Four Million Dollars ($4,000,000), Four Million Dollars ($4,000,000) Products and Completed Operations Aggregate, and Two Million Dollars ($2,000,000) each Occurrence. Developer shall deliver to City a Certificate of Insurance and endorsements evidencing such insurance coverage prior to the occurrence of the Closing. 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 City 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. To the extent that Developer maintains increased or additional insurance coverage during the Term, in excess of the minimum coverage requirements prescribed by paragraphs (b)(1)(b) and (b)(1)(c) of this Section 309, Developer shall ensure that the additional insureds specified in paragraph (b)(3) of this Section 309 derive the benefit of such increased or additional insurance coverage.

(c) Automobile Insurance: Developer shall maintain or cause to be maintained automobile insurance on any automobiles owned by Developer, maintained in full force and effect in an amount of not less than Two Million Dollars ($2,000,000) per accident.

(d) Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance, if required, for any employees of Developer, 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 to this Agreement or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Developer in connection with the Site and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Site or the operation thereof by 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 City evidence that such self-insurance has been approved by the appropriate State authorities.

2. 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 City. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the City and Developer as insureds, additional insureds, and/or loss payable parties as their interests may appear.

3. The Insurance Policies shall name as additional insureds the following:

"The City of Imperial Beach and its elected officials, 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 and endorsements evidencing such insurance to City 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 and endorsements evidencing the existence thereof, shall be submitted to City. 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.

4. If Developer fails or refuses to procure or maintain insurance as required by this Agreement, City shall have the right, but not the obligation, at City's election, and upon ten (10) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by City 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. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

SECTION 310 Nondiscrimination

Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. After the Effective Date, this language shall be incorporated into all contracts between Developer and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers providing material services relative to the Site.

SECTION 311 Local, State and Federal Laws

a. The Developer and any Assignees shall carry out development and construction (as defined by applicable law) of the Improvements required by this Agreement, including without limitation, the Horizontal Improvements and the Vertical Improvements, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, provisions of the State Labor Code relating to payment of prevailing wages).

b. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work)

which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law.

c. Developer shall indemnify, protect, defend and hold harmless the City and its elected officials, officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer, its general contractor or any subcontractor of any tier of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (3) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (4) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law.

d. Developer hereby expressly acknowledges and agrees that City has never previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, that the Project is not a "public work," as defined in Section 1720 of the Labor Code. It is agreed by the Parties that, in connection with the development and construction (as defined by applicable law) of the Improvements, including, without limitation, any public work (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 Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of 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. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion and the recordation of the Release of Construction Covenants.

SECTION 312 <u>Condition of Site during Construction</u>.

At all times after the Close of Escrow and prior to the completion of construction, Developer shall secure and maintain the Site or cause the Site to be secured and maintained in a safe, neat and orderly condition to the extent practicable and in accordance with industry health and safety standards for construction sites consistent with the degree of construction permitted for portions of the Site in accordance with this Agreement.

SECTION 313 <u>Permits</u>

Before commencement of grading, construction or development of the Site, any building pads, buildings, structures or other work of improvement upon any portion of the Site, 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 with oversight for, or affected by, such construction, development or work.

SECTION 314 Rights of Access

a. Commencing upon the Phase 1 Closing, representatives of the City shall have the reasonable right of access to the Site, upon 24 hours' written notice to Developer (except in the case of an emergency, in which case, City 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 City shall be those who are so identified in writing by the City Manager. Such access and inspection rights shall be undertaken in a manner which does not interfere with Developer's activities or cause damage to property or improvements.

b. The Developer has the right to designate representatives to accompany the City representatives on such inspections. The City agrees to coordinate with Developer to schedule such inspections so that Developer's representative may attend the inspections, in the discretion of Developer.

SECTION 315 Disclaimer of Responsibility

The City 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, 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 City 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 City shall not be responsible for any of the work of construction, improvement or development of the Site.

SECTION 316 Taxes, Assessments, Encumbrances and Liens

Commencing upon the Phase 1 Closing, Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Site or any portion thereof. Developer shall not place, or allow to be placed, against the Site or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement until issuance of the Release of Construction Covenants relative to the Site or such portion thereof in accordance with Section 324 of 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. Under no circumstances whatsoever shall the Developer record or allow any security instruments to be recorded against Property 1 or Property 2 prior to the applicable Closing for such Property.

SECTION 317 Reserved.

SECTION 318 No Encumbrances Except Permitted Deed of Trusts

a. Upon and after the Phase 1 Closing, Developer shall have the right to encumber Property 1, and upon and after the Phase 2 Closing, Developer shall have the right to encumber Property 1 and Property 2, with Permitted Deed of Trusts, but only for the purpose of securing loans of funds to be used for financing and refinancing the Acquisition and Development Costs and other expenditures necessary and appropriate to develop the Site under this Agreement, consistent with the amounts set forth in the Method of Financing ("Permitted Financing Purposes"). Developer has no authority to encumber Property 1 or any portion thereof prior to the Phase 1 Closing. Developer has no authority to encumber Property 2 or any portion thereof prior to the Phase 2 Closing. The maker of any loan approved by the City pursuant to this Section 318 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, Developer shall promptly notify the City of any security interest created or attached to the Site whether by voluntary act of Developer or otherwise. The City Manager or his or her designee agrees to make reasonable modifications of Sections 318 through 322 that may be requested by a Permitted Lender, provided such modification does not adversely affect the receipt of any material benefit by City hereunder. Upon the reasonable request of a Permitted Lender, the City Manager or his or her designee shall execute from time-to-time such estoppel certificates, subordination agreements and other requested documents to the extent they are consistent with the terms of this Agreement. The City Manager shall respond to any request under this Section 318.b. within ten (10) days after receipt of the request if accompanied by sufficient information as may be reasonably required in order for the City Manager to act on such request.

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

d. The restrictions on financing and encumbrance contained in this Section 318 shall not apply to any Parcel after the issuance of a Release of Construction Covenants as to such Parcel.

SECTION 319 Lender Not Obligated to Construct Improvements

No lender shall 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 320 Notice of Default to Lenders; Right of Lender to Cure Defaults

Whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Improvements, the City shall at the same time deliver the notice or demand to each Permitted Lender that requests such notice or demand, in writing, from the City and provides its contact information for the notice or demand. Each such Permitted Lender shall (insofar as the rights of the City 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 Permitted Lender upon obtaining possession of the encumbered property, such Permitted Lender shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety- (90) day period, such Permitted Lender shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity not to exceed one hundred and eighty (180) days, unless the City agrees to further extensions in its reasonable discretion; and provided further that such Permitted Lender shall not be required to remedy or cure any non-curable default of Developer. Any Permitted Lender who forecloses on its Permitted Deed of Trust, or is assigned or otherwise succeeds to Developer's rights under this Agreement, or, subject to the reasonable approval of the City Manager, the successful bidder at a foreclosure sale, shall have the right to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the City by which such Permitted Lender expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by City. Any such Permitted Lender properly completing such improvements shall be entitled, upon written request made to the City, to a Release of Construction Covenants from the City.

SECTION 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by Developer, a Permitted Lender has not elected to complete construction of the Improvements, or, if it has elected to complete the Improvements, it has not proceeded diligently with construction, the City may purchase the Permitted Deed of Trust by payment to the Permitted Lender of the full amount of the unpaid principal debt, plus any accrued and unpaid interest and other charges secured by the mortgage instrument approved by the City.

SECTION 322 Right of the City to Cure Defaults

In the event of a default or breach by Developer of a Permitted Deed of Trust prior to Completion and prior to completion of a foreclosure by a Permitted Lender, and the Permitted

Lender has not commenced to complete the development, the City may cure the default at any time prior to completion by a Permitted Lender of any foreclosure under its security. In such event, the City shall be entitled to reimbursement from Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the applicable portion of the Site, subordinate to the liens of any Permitted Lender, to the extent of such costs and disbursements.

SECTION 323 Right of the City to Satisfy Other Liens on the Site

Prior to Completion and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Site, the City shall have the right, without obligation, to satisfy any such liens or encumbrances. In such event, the City shall be entitled to reimbursement from Developer of all costs and expenses incurred by the City in satisfying any such liens or encumbrances. The City shall also be entitled to a lien upon the Site to the extent of such costs and expenses, subordinate to the liens of any Permitted Lender, to the extent of such costs and expenses.

SECTION 324 Release of Construction Covenants

a. Promptly after Completion of the Improvements relative to any portion of the Site as required by this Agreement, City shall deliver to Developer a Release of Construction Covenants relative to such portion of the Site, upon written request therefor by Developer. In addition to the other provisions of this Agreement, which, by their terms cease to be applicable relative to any portion of the Site following the City's issuance of a Release of Construction Covenants relative to such portion of the Site, the City's issuance of the Release of Construction Covenants shall signify Developer's satisfaction of Sections 302-308 and 312-314 of this Agreement with respect to the portion of the Site described in the Release of Construction Covenants. The City 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 of the Improvements required by this Agreement with respect to the portion of the Site described in the Release of Construction Covenants. Upon request of Developer, the City Manager shall consider in good faith including in the Release of Construction Covenants any other covenants contained in this Agreement, to indicate that such covenants have been fully satisfied by the completion of construction of such portion of the Site, if such be the case.

b. The Release of Construction Covenants shall be substantially in the form attached to this Agreement as Attachment No. 13 so as to permit it to be recorded in the Official Records.

c. If City fails to deliver the Release of Construction Covenants within ten (10) days after written request from Developer, City shall provide Developer with a written statement of its reasons (the "Statement of Reasons") within that ten (10)-day period. The statement shall also set forth the steps 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 City, City will issue the Release of Construction

Covenants upon delivery to the City by Developer of a bond or other security that is acceptable to City in the City Manager's sole discretion, in an amount representing City's reasonable 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 Developer to any Senior Lender, or any insurer of a mortgage securing money loaned to finance the Improvements, nor any part thereof. Such Release of Construction Covenants is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

PART 4. USE OF THE SITE

SECTION 401 Uses

a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Developer, such successors and such assignees shall use the Site only for the uses specified in the applicable Agreement Containing Covenants and this Agreement. No change in the use of the Site shall be permitted without the prior written approval of City.

b. Notwithstanding the generality of subsection (a), above, Developer, its successors and assigns, shall use the Site and/or Improvements only for the development and operation of a retail center ("Retail Center") generally consistent with the information submitted as part of Developer's May 6, 2009 proposal to the Redevelopment Agency, as revised pursuant to the latest submitted site plan dated December 5, 2011 (the "Proposal"), as more particularly described in and/or modified by this Agreement, the Scope of Development, the Agreement Containing Covenants and the Plans approved by the City pursuant to this Agreement.

c. The type and quality of tenants allowed in the Retail Center shall be generally consistent with the type and quality of tenants in other projects developed by Developer as described in the Proposal, but shall specifically include an approximately 14,800 square foot Fresh and Easy market or comparable grocery store or supermarket approved in writing by the City Manager on Parcel "A" and an approximately 5,000 – 15,000 square foot retail building approved in writing by the City Manager on Parcel "F".

d. The Retail Center shall specifically exclude those prohibited uses listed in the Agreement Containing Covenants.

SECTION 402 Maintenance

Developer shall maintain the Site or cause the Site to be maintained in accordance with the requirements of the applicable Grant Deed and Agreement Containing Covenants. Upon and at all times after Completion of Construction, the Project shall be well maintained as to both external and internal appearance of all buildings, landscaping, common areas, and parking areas, conforming to the standards maintained by Developer at its other similar retail developments in

San Diego County in existence as of the Effective Date.

SECTION 403 Obligation to Refrain from Discrimination

Developer covenants by and for itself, its heirs, executors, administrators 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 Site, 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 Site. The foregoing covenants shall run with the land.

SECTION 404 Form of Nondiscrimination and Nonsegregation Clauses

All deeds, leases or contracts made relative to the Site, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) (a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, 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 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) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the above paragraph.

(2) (a) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 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."

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph.

SECTION 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of and enforceable against the original Developer and successors in interest by the City for a period of fifty (50) years, except that non-discrimination covenants shall remain in effect in perpetuity. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Close of Escrow and shall be set forth in the applicable Grant Deed and Agreement Containing Covenants.

SECTION 406 Agreement Containing Covenants

As a material part of the consideration for this Agreement, Developer covenants and agrees that it shall execute in recordable form the Agreement Containing Covenants for each Property. The Agreement Containing Covenants shall be recorded against the Site in first priority position senior to any liens or encumbrances (including, without limitation, any Approved Loan). Developer shall obtain and cause to be recorded (as applicable), at Developer's sole cost and expense, any instruments necessary and/or appropriate to subordinate to the Agreement Containing Covenants (to the reasonable satisfaction of the City Manager) any deeds of trust, mortgages, security instruments, other liens, leases, subleases and/or other agreements affecting title to or possession of or providing a security interest in the Site which otherwise are or might be senior to the Agreement Containing Covenants (other than title items existing as of the Close of Escrow which were not created by Developer; Developer shall have no obligation to cause such items to be subordinated).

SECTION 407 CC&Rs

Developer shall prepare and submit a set of covenants, conditions and restrictions by and

among Developer and all other owners of any portion of the Site within the Retail Center addressing, *inter alia*, parking, access driveways, pedestrian walkways and/or the maintenance of such areas ("CC&Rs") to City, for review and written approval by the City Manager within the time established in the Schedule of Performance. Such CC&Rs shall provide, *inter alia*, (i) for damage and destruction provisions that are customary in the industry, (ii) that City is a third party beneficiary of certain provisions thereof as deemed reasonably necessary by City to protect its interests; (iii) for reciprocal easements to permit encroachments to accommodate imperfections in construction as compared to the boundaries for each parcel set forth in the Map; and (iv) such reciprocal easements as may be necessary for the effective operation of the Retail Center in the event one or more Parcels are and continue to be owned separately, including but not limited to the exercise by City of the Option and the operation of the Retail Center if City or its assignee owns Property 2, and Developer and/or its assignee(s) own Property 1. The City Manager's review shall be limited to confirming that the CC&Rs address the foregoing topics in this Section 407 and confirming that the CC&Rs are not inconsistent with this Agreement.

SECTION 408 Designation as Point of Sale

Developer and its successors and assigns shall maintain such licenses and permits as may be required by any governmental agency to conduct taxable sales arising from any project on the Site and, to the extent permitted by law, shall designate the City of Imperial Beach as the "point of sale" for all taxable sales and lease transactions occurring from any project on the Site in all reports to the California State Board of Equalization in accordance with the Bradley-Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code 72000 *et seq.*), as it may be amended or substituted from time to time, and on sales tax returns to the State of California for all taxable sales occurring at any project on the Site.

PART 5. DEFAULTS AND REMEDIES

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 commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence following written notice from the other Party, as provided below.

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 thirty (30) 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 after such notice is received, and the Party in default (1) initiates corrective action within said period, and (2) 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, but in any event no more than one hundred and twenty (120) days of receipt of such notice of default from the injured Party.

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 Developer against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against Developer, service of process on Developer shall be made by personal service upon Developer or upon the Developer's Manager, or any officer of the Developer or Manager, 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

If a 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. Neither Party shall be entitled to, and both Parties hereby waive, any right to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

SECTION 507 Specific Performance

If a 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 Reserved.

SECTION 509 Termination by Developer

a. Prior to the Phase 1 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 City, in the event of (i) an uncured default by City, or (ii) the failure of any condition precedent to the Phase 1 Closing that benefits the Developer.

b. Prior to the Phase 2 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 City and reconveying title to Property 2 to City, free and clear of any encumbrances, in the event of (i) an uncured default by City, or (ii) the failure of any condition precedent to the Phase 2 Closing that benefits the Developer.

SECTION 510 Termination by City

a. Prior to the Phase 1 Closing, subject to the notice and cure provisions of Section 501, City shall have the right to terminate this Agreement, by providing written notice to Developer, in the event of (i) an uncured default by Developer, or (ii) the failure of any condition precedent to the Phase 1 Closing that benefits the City to be satisfied as of the latest date for the Phase 1 Closing.

b. Prior to the Phase 2 Closing, subject to the notice and cure provisions of Section 501, City shall have the right to terminate this Agreement, by providing written notice to the Developer, in the event of (i) an uncured default by Developer, or (ii) the failure of any condition precedent to the Phase 2 Closing that benefits the City to be satisfied as of the latest date for the

Phase 2 Closing. Upon which termination, Developer shall reconvey title to Property 2 to City, free and clear of any encumbrances, other than any City-approved encumbrances (such as entitlements and easements) and matters affecting title as of the Close of Escrow.

c. After the Close of Escrow, but before Completion of a Phase, and subject to the notice and cure provisions of Section 501, City shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

1. Subject to Force Majeure Delays, Developer fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 501 of this Agreement, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to Section 602 hereof; or

2. Developer abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided Developer has not obtained an extension or postponement to which Developer may be entitled to pursuant to Section 602 hereof; or

3. Except for Permitted Transfers, 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 the time provided in Section 501 of this Agreement; or

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

SECTION 511 <u>Power of Termination and Right of Reverter</u>

a. The Parties agree that the Completion of the Improvements by Developer, as provided in this Agreement, is a condition subsequent to which the fee simple estate in the Site granted to Developer by City is subject. Therefore, if this Agreement is terminated by City pursuant to Section 510.c. of this Agreement following the Close of Escrow but prior to the Completion of construction as evidenced by issuance of the Release of Construction Covenants for a Property or Parcel(s), City shall have the additional right, in its sole and absolute discretion, in addition to any other rights and remedies granted in this Agreement, to exercise a power of termination as described in California Civil Code Section 885.010, to terminate and revest in City the estate in the Site previously conveyed to Developer pursuant to this Agreement and to re-enter and take possession of the Site with any Improvements thereon; provided, however, in such circumstance (i) all obligations of Developer under this Agreement (and the instrument and documents being executed in accordance herewith) will terminate, except for any obligation of Developer to indemnify City, and (ii) City shall take title to the Site subject to any Permitted Financing. City's rights pursuant to this Section shall terminate and be of no further force and effect upon the issuance of the Release of Construction Covenants for the subject Property, Parcel or Parcels.

b. City's power of termination shall be limited by and shall not defeat, render invalid or limit: (1) any Permitted Deed of Trust with respect to a Property, Parcel or Parcels; or (2) any rights or interests provided in this Agreement for the protection of Permitted Lenders with respect to a Property, Parcel or Parcels.

c. Upon revesting in City title to a Property, Parcel or Parcels as provided in this Section, City shall, pursuant to its rights and responsibilities under the Redevelopment Law and the Redevelopment Plan, use its best efforts to reconvey the subject Property, Parcel or Parcels as soon as possible, in a commercially reasonable manner and consistent with the objectives of the Redevelopment Law and the Redevelopment Plan, to a qualified and responsible developer (as determined by City) who will assume the obligation of making or completing such Improvements as are acceptable to City in accordance with the uses specified for the Site in the Redevelopment Plan and in a manner that is satisfactory to City. Upon such resale of the subject Property, Parcel or Parcels, any proceeds of such sale shall be applied as follows:

1. First, to reimburse City on its own behalf for all reasonable costs and expenses incurred by City, including but not limited to pro-rata salaries of City staff and legal fees incurred in connection with the recapture, management and resale of the subject Property, Parcel or Parcels (but less any income derived by City from any part of the Site in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Site; any payments made or required to be made to discharge any encumbrances or liens existing on the Site at the time of revesting of title in City (other than those existing as of the Close of Escrow that were not created by Developer) or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; expenditures made or obligations incurred with respect to any improvements made or completed by City on the Site or any part thereof in accordance with this Agreement, the Scope of Development and the Plans; and any amounts otherwise owing to City by Developer and its successors or transferees.

2. Second, to reimburse any Permitted Lender for disbursements of a Construction Loan to pay Acquisition and Development Costs.

3. Third, to reimburse Developer for any Developer equity disbursed to pay Acquisition and Development Costs, less any gains or income withdrawn or made by Developer from the Site or the Improvements thereon. Notwithstanding the foregoing, the sum of the amounts calculated pursuant to subsections (2) and (3) shall not exceed the fair market value of the Improvements on the Site as of the date of the default or failure which gave rise to City's exercise of its power of termination.

4. Any balance remaining after such reimbursements shall be retained by City as its property.

d. The rights established in this Section 511 are authorized by Section 33438 of the Redevelopment Law and are to be interpreted in light of the fact that City will convey the Site to Developer for redevelopment and not for speculation.

SECTION 512. Termination for Reasons of Infeasibility

a. This Agreement shall be subject to termination by Developer prior to the Phase 1 Closing, as a failure of a condition and not as an event of default, in the event Developer delivers the written notice to City described in paragraph z. of Section 208 of this Agreement ("Developer's Notice of Infeasibility"). From and after giving Developer's Notice of Infeasibility, Developer shall no longer be obligated to perform its obligations under this Agreement and City shall have no cause of action or claim against Developer arising out of such election to terminate.

b. This Agreement is subject to termination by City prior ~~to the Phase 1 Closing~~ to April 1, 2012 HB, as a failure of a condition and not as an event of default, in the event City delivers the written notice to Developer described in paragraph aa. of Section 208 of this Agreement ("City's Notice of Infeasibility"). From and after giving City's Notice of Infeasibility, City shall no longer be obligated to perform its obligations under this Agreement. Notwithstanding any provision to the contrary contained in this Agreement, as a condition to such a termination by the City the City must accompany any such City's Notice of Infeasibility to Developer with a termination fee, which fee shall be treated as liquidated damages in the amount of $50,000.

CITY AND DEVELOPER, BY THIS AGREEMENT, MUTUALLY AGREE THAT IF CITY EXERCISES ITS RIGHT OF TERMINATION PURSUANT TO THE FOREGOING PARAGRAPH AND SECTION 208.aa., THEN THE RESULTING DAMAGES TO DEVELOPER WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. BECAUSE OF THIS DIFFICULTY, THE PARTIES AGREE THAT, IN THE EVENT CITY DELIVERS TO DEVELOPER CITY'S NOTICE OF INFEASIBILITY, CITY MUST PAY TO DEVELOPER THE SUM OF FIFTY THOUSAND DOLLARS ($50,000) AS LIQUIDATED DAMAGES, WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER, AND DEVELOPER SHALL BE ENTITLED TO SUCH LIQUIDATED DAMAGES INSTEAD OF AND EXCLUSIVE OF ANY OTHER REMEDY AGAINST CITY FOR ANY TERMINATION OF THIS AGREEMENT PURSUANT TO THE FOREGOING PARAGRAPH AND SECTION 208.aa.

City: _____ **Developer:** _____

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

Formal notices, demands and communications between City 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 or electronic mail 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 FedEx, or by U.S. Postal Service), to the addresses set forth in Sections 106 and 107 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 or electronic mail 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 Enforced Delay: Extension of Time of Performance

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 or any other public or governmental agency or entity (except that acts or failure to act of City shall not excuse performance of City), or any causes beyond the control or without the fault of the Party claiming an extension of time to perform (except that delay in obtaining, or the failure to obtain, tenant commitments or construction or permanent financing shall not excuse performance of Developer unless such delay or failure results from any of the foregoing causes).

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 within the foregoing thirty (30) day period, 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 City and Developer.

SECTION 603 Conflict of Interest

a. No elected official, member, officer or employee of City 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she 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 City Officials and Employees

No elected official, officer, representative, agent, employee, contractor or attorney of City shall be personally liable to Developer, any Assignee or any successor in interest in the event of any default or breach by City or for any amount which may become due or on any obligation under the terms of this Agreement. No officer, director, stockholder, member, limited partner, representative, agent, employee, contractor or attorney of Developer shall be personally liable to City or any successor in interest in the event of any default or breach by Developer for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 605 Inspection of Books and Records

City shall have the right at all reasonable times to inspect and copy the books and records of Developer 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 (which includes both approvals and consents and words of similar meaning contained herein) required of City or Developer in this Agreement, including the attachments to this Agreement, shall not be unreasonably withheld, conditioned or delayed. All approvals shall be in writing. Except as otherwise expressly provided in this Agreement, failure by either Party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and, except as otherwise expressly provided in this Agreement, 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 City shall be deemed granted by the written approval of the City Manager or designee. City agrees to provide notice to Developer of the name of any designee of the City Manager on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the City Manager may, in his or her sole discretion, refer to the City Council any item requiring City approval provided that such referral to the City Council will not be deemed to extend any timeframe for City performance specified herein or in the Schedule of Performance that is not approved by Developer; otherwise, "City approval" means and refers to approval by the City Manager. Developer shall consider in good faith and not unreasonably (in light of all the

circumstances) withhold, condition or delay approval of any request by City Manager to extend any such timeframe for City performance specified herein or in the Schedule of Performance if City Manager in good faith determines that a particular matter requiring City approval should be referred to City Council.

c. The Parties acknowledge that the forms of those Attachments appended to this Agreement as of the Effective Date that are identified in Section 103 of this Agreement as "examples", are examples of forms of documents which have not been approved as to form and substance by either City or Developer and are not intended as binding on either Party – with each Party reserving the right to negotiate and agree, in good faith, upon the final form and substance of such instrument. Developer and City Manager shall use commercially reasonable best efforts to complete and approve the final forms of the Attachments (including but not limited to the following: Attachment No. 8 (Grant Deed); Attachment No. 10 (Environmental Indemnity); Attachment No. 12 (Option Agreement); Attachment No. 15 (Payment Agreement); and Attachment No. 18 (Right of Entry Agreement)), by that date which is thirty (30) days after the expiration of the condition described in paragraph aa. of Section 208 of this Agreement or thirty (30) days after the date on which such condition is waived by City, whichever occurs first. The City Manager, with the concurrence of the City Attorney, shall have the right from time-to-time, in his or her sole discretion, to approve changes to the attachments to this Agreement deemed reasonably necessary or appropriate to carry out the purposes of this Agreement.

SECTION 607 Real Estate Commissions; Finder's Fee

The City shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The City and Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

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 to this Agreement 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 either 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 to this

Agreement 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 to this Agreement (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 to this Agreement" (or language of like import) means, 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 similar relationship between the Parties to this Agreement or cause City to be responsible in any way for the debts or obligations of Developer or any other Person.

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 development and use of 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 City be a Party to this Agreement or not, that Developer, lessee or permittee has violated any such ordinance or statute in the development and use of the Site shall be conclusive of that fact as between City 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 to this Agreement 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 City 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 to this Agreement 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.

SECTION 617 Severability

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

SECTION 618 Attorneys' Fees

If any lawsuit is commenced to challenge the validity of this Agreement or enforce any of the terms of this Agreement, the prevailing party shall have the right to recover its attorneys' fees, not to exceed a reasonable amount, and costs of suit from the other Party.

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended to this Agreement, constitutes the entire understanding and agreement of the Parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental to this Agreement, 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 City or Developer, and all amendments to this Agreement must be in writing and signed by the appropriate authorities of City and Developer.

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY AND CITY

This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City within sixty (60) days after date of signature by Developer or this Agreement may be terminated by Developer upon written notice to City.

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

[SIGNATURES APPEAR ON NEXT PAGE]

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a California corporation, its Manager

Dated: 12-14-11

By: _____
Colton T. Sudberry, President

[SIGNATURES CONTINUE ON NEXT PAGE]

CITY OF IMPERIAL BEACH

Dated: 11/14/11

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By: _____
Susan Y. Cola

ATTACHMENT NO. 1

SITE MAP

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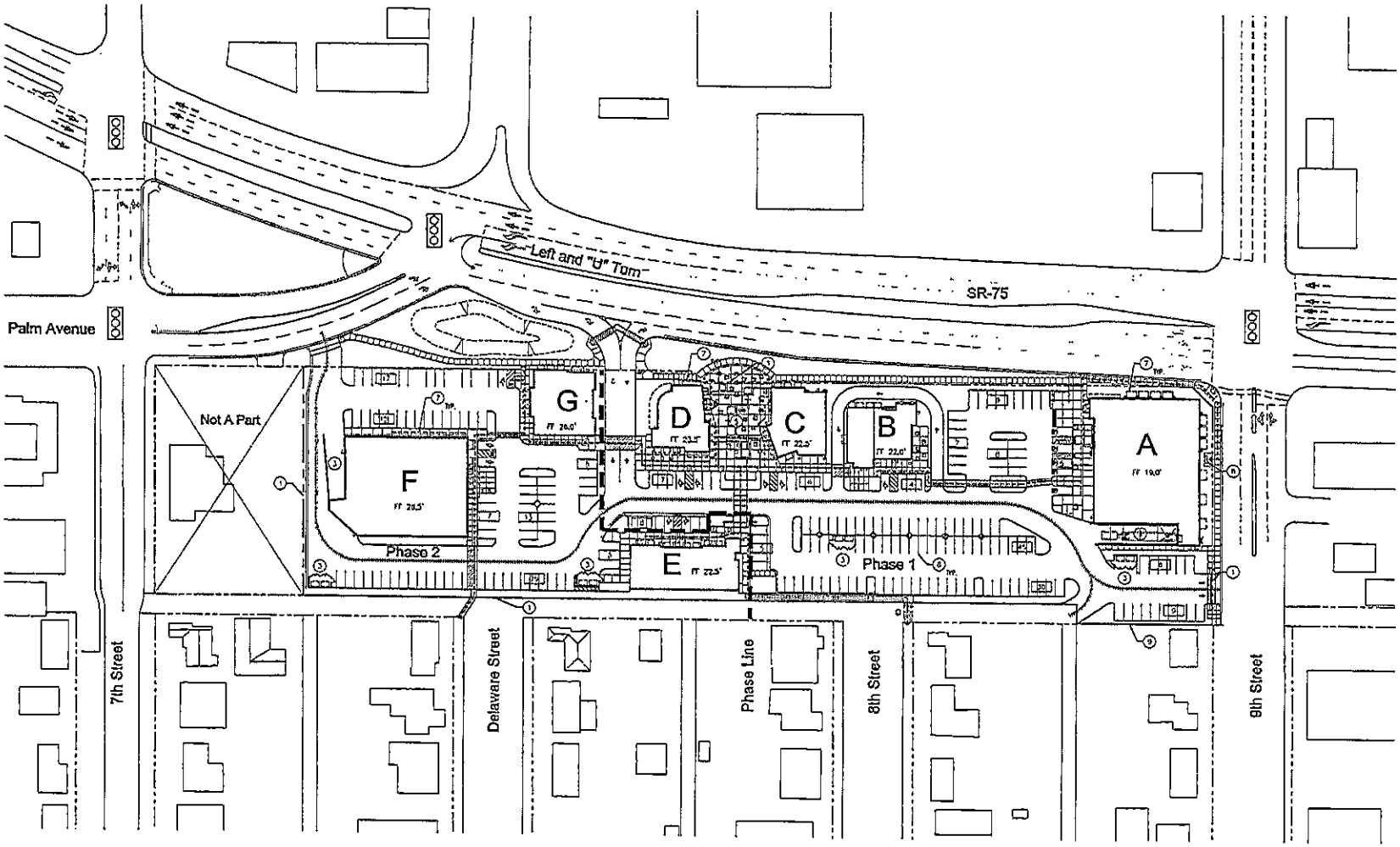


LEGEND

KEYNOTES

1. EXISTING PROPERTY LINE
2. NOT USED
3. REFUSE & RECYCLING
4. LOADING & UNLOADING AREA
5. PLAZA
6. PARKING STRIPING
7. CANOPY OR AWNING ABOVE
8. BUS STOP TO MEET CITY REQUIREMENTS
9. CMU WALL 4' HIGH FOR 15' 20' FROM PROPERTY LINE, THEN 8' HIGH

NOTES

1. THE PROJECT WILL EXCEED THE PARKING RATIO OF 1/250 SF OF NET FLOOR AREA, PLUS ONE SPACE PER 2 EMPLOYEES.
2. SIDEWALK SHALL NOT EXCEED 5% IN THE DIRECTION OF TRAVEL AND 2% CROSS SLOPE.

Project Summary

Site Area	4.75 acres
Building Area	46,200 sf
Parking	238 Stalls (5.1/1,000 sf)

Building Summary

A)	Market	14,800 sf
B)	Shops	3,900 sf
C)	Shops	3,500 sf
D)	Shops	3,000 sf
E)	Shops	4,700 sf
F)	Retail	12,300 sf
G)	Retail / Financial	4,000 sf

Site Plan

OCTOBER 17, 2011 A-1

Andrew Hill Stevenson Architects

Breakwater

Imperial Beach, California

Sudberry Development

ATTACHMENT NO. 2

LEGAL DESCRIPTION

[behind this page]

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 626-250-03, 04, 05 & 06

PARCEL A: APN 626-250-03

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTH CORONADO MANOR; ACCORDING TO MAP THEREOF NO. 2450; FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY JANUARY 20, 1948 AND LYING WEST OF THE CENTER LINE OF DELAWARE STREET, FORMERLY 13TH STREET AS SHOWN ON MAP OF R. MERIDEATH JONES ADDITION TO SOUTH SAN DIEGO BEING MAP NO. 1145, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY JULY 29, 1908.

EXCEPTING THAT PORTION THEREOF WHICH LIES WESTERLY OF THE LOCATION AND NORTHERLY PROLONGATION OF THE CENTER LINE OF THE ALLEY IN BLOCK 3 OF SAID R. MERIDEATH JONES ADDITION, AS SHOWN ON SAID MAP NO. 1145.

SAID LAND IS ALSO SHOWN AS A PORTION OF BLOCK 3 OF MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908 AND VACATED MARCH 22, 1923, BY DECREE IN SUPERIOR COURT ACTION NO. 38686.

PARCEL B: APN'S 626-250-04 THRU 06

THAT PORTION OF THE NORTHWEST QUARTER OR THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTH CORONADO MANOR AS SHOWN ON MAP THEREOF NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20, 1948, AND LYING EAST OF THE CENTER LINE OF DELAWARE STREET, FORMERLY 13TH STREET, AND WEST OF THE CENTER LINE OF 8TH STREET, FORMERLY 12TH STREET, AND THAT PORTION LYING WEST OF THE WEST LINE OF 9TH STREET, FORMERLY 11TH STREET AND EAST OF THE EAST LINE OF 8TH STREET, FORMERLY 12TH STREET, AS SAID STREETS ARE SHOWN ON MAP OF R. MERIDEATH JONES' ADDITION TO SAOUTH SAN DIEGO, BEING MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE NORTH 50.00 FEET OF THE EAST 550.50 FEET OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29 AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 24, 1943 IN BOOK 1526, PAGE 405 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED JUNE 20, 1955 AS FILE NO. 79513 IN BOOK 5685, PAGE 513 OF OFFICIAL RECORDS, AS FOLLOWS:

EXHIBIT "A"
Legal Description

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, DESCRIBEDAS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF 9TH STREET (SHOWN AS 11TH STREET ON MAP 1145 OF R. MERIDEATH JONES' ADDITION TO SOUTH SAN DIEGO) WITH THE SOUTHERLY LINE OF THE NORTH 50.00 FEET OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 29; THENCE ALONG SAID SOUTHERLY LINE WESTERLY 20.00 FEET; THENCE IN A STRAIGHT LINE SOUTHEASTERLY TO A POINT ON THE SAID WESTERLY LINE SOUTHERLY 20.00 FEET FROM SAID POINT OF BEGINNING; THENCE NORTHERLY 20.00 FEET TO THE POINT OF BEGINNING.

SAID LAND IS ALSO SHOWN AS LOTS 1 TO 10 INCLUSIVE AND 31 TO 39 INCLUSIVE AND A PORTION OF LOT 40 IN BLOCK 2, LOTS 2 TO 10 INCLUSIVE AND LOTS 31 TO 39 INCLUSIVE AND A PORTION OF LOTS 1 AND 40, IN BLOCK 1 OF R. MERIDEATH JONES' ADDITION TO SOUTH SAN DIEGO, BEING MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908 AND VACATED MARCH 22, 1923 BY DECREE IN SUPERIOR COURT ACTION 38686

ATTACHMENT NO. 3

METHOD OF FINANCING

[behind this page]

METHOD OF FINANCING

Any terms not otherwise defined herein shall have the meaning ascribed to them in the Disposition and Development Agreement (as amended from time to time, the "Agreement") to which this Method of Financing is attached as Attachment No. 3.

1. **Total Acquisition and Development Costs**. The Parties estimate that the cost to Developer to acquire the Site and develop and construct the Improvements is approximately $11,647,000 (the "Total Acquisition and Development Costs"), which includes $9,247,000 in Developer costs and approximately $2,400,000 in Public Improvement Costs (including an estimated $200,000 for the Ninth Street Improvements) to be provided by City.

a. Phase 1 Development Costs. The Parties estimate that the Acquisition and Development Costs allocable to Phase 1 will be in an amount to be determined prior to the Phase 1 Closing ("Phase 1 Development Costs").

b. Phase 2 Development Costs. The Parties estimate that the Acquisition and Development Costs allocable to Phase 2 will be in an amount to be determined prior to the Phase 1 Closing ("Phase 2 Development Costs").

2. **Sources and Uses of Funds**. The Parties anticipate that the Total Acquisition and Development Costs shall be financed with a combination of sale revenue, loans and Developer Equity. The financing scenario for each of Phase 1 and Phase 2 shall be set forth in a schedule of Sources and Uses provided by Developer and approved by City prior to the Phase 1 Closing (the "Sources and Uses"). The schedule of Sources and Uses shall be based on the following assumptions and requirements, and shall be subject to revision to reflect alternatives as permitted by the Agreement:

(a) The Approved Parcel "A" Assignee shall pay a purchase price to Developer for the sale of Parcel "A". In the event Developer enters into a lease for Parcel "A" instead of a sale, the schedule of Sources and Uses shall be revised accordingly. Developer shall deposit such sales proceeds with the Construction Lender to be used to pay Acquisition and Development Costs.

(b) The Approved Parcel "F" Assignee shall pay a purchase price to Developer for the sale of Parcel "F". In the event Developer enters into a lease for Parcel "F" instead of a sale, the schedule of Sources and Uses shall be revised accordingly. Developer shall deposit such sales proceeds with the Construction Lender to be used to pay Acquisition and Development Costs.

(c) The City shall be responsible for providing $2,200,000 for the planning, permitting, construction and installation of the Public Improvements (the "Public Improvement Reimbursement Amount"), of which an amount described in Section 219.c. of the Agreement as the "Disbursed Funds" has previously been disbursed. City shall also provide an additional amount estimated to be $200,000, as needed for the Ninth Street Improvements, in accordance with Section 219 of the Agreement. To the extent Developer defers construction of any of the Public Improvements to Phase 2, the Sources and Uses shall be revised accordingly.

(d) There will be one Construction Loan to be made by a bank or other lender for all the Phase 1 Improvements in an amount to be determined. In the event the Approved Parcel "A" Assignee obtains a separate Construction Loan for the construction of the Parcel "A" Improvements, the Sources and Uses shall be revised accordingly.

(e) There will be one Construction Loan to be made by a bank or other lender for all the Phase 2 Improvements in a principal amount to be determined. In the event the Approved Parcel "F" Assignee obtains a separate Construction Loan for the construction of the Parcel "F" Improvements, the Sources and Uses shall be revised accordingly.

(f) Equity shall be provided by Developer ("Developer Equity"), in an amount to be determined. Developer Equity consists of funds provided by Developer, in addition to the Parcel "A" and/or Parcel "F" sales proceeds, that are not secured by any deed of trust.

(g) Developer shall be responsible for providing all funds which may be needed to pay for cost overruns and contingencies not otherwise funded by the funding sources described in this Section 2. Until Completion, Developer shall not withdraw or disburse any of the Parcel "A" or Parcel "F" sales proceeds except to pay Acquisition and Development Costs.

3. **Project Budget**. The Parties anticipate that all Development Costs shall be as set forth in the Project Budget attached to the Agreement as Attachment No. 6 (the "Project Budget"), which is hereby incorporated herein by this reference. The Project Budget shall be subject to change from time-to-time, subject to the prior written approval of material changes by the City Manager (which approval shall not be unreasonably withheld), upon which approval, the Project Budget shall be replaced by the approved revised Project Budget.

4. **Evidence of Financing**. The sum of the sources of funds described in Section 2 of this Method of Financing shall be sufficient at all times to pay all Development Costs as set forth in the most recently approved Project Budget. Pursuant to Section 110 of the Agreement, Developer shall submit to the City Manager for approval, evidence of such financing, including copies of all documents required by any proposed lender relating to a proposed Construction Loan, and all documents required for any other funding source. The City Manager shall not unreasonably withhold approval thereof. On or before the applicable Closing Date, Developer shall provide written certification to the City that such financing documents are correct copies of the actual documents to be executed by Developer. To the extent that the sum of the sources of funds described in Section 2 of this Method of Financing is insufficient to pay all corresponding Development Costs, Developer shall demonstrate to the reasonable satisfaction of the City Manager the availability of additional Developer Equity sufficient to pay such costs.

5. **Developer's Purchase Price**.

a. Developer shall pay to the City the Purchase Price for the Site in the amount of one dollar ($1.00), plus the Participation Component described below.

b. The Purchase Price has been established in accordance with the Redevelopment Law as the value of the Site, determined at the use and with the conditions,

covenants and development costs required by the Agreement, reflecting the current anticipated market and the amounts in land price which the development of the Site can now bear.

c. The Purchase Price to be paid for the Site by Developer shall be deposited into escrow within the time and in the manner required by the Agreement.

6. **Participation Component**.

a. Pursuant to Section 201.b. of the Agreement, Developer shall also pay to the City as a portion of the Purchase Price an amount equal to one and one-half percent (1.5%) of the gross sales price from the first arm's-length sale of each portion of the Site by Developer (the "Participation Component"), in any number of transactions over any period of time, if any, excluding the sale of Parcel "A" if Developer assigns and sells Parcel "A" to the Approved Parcel "A" Assignee pursuant to an Assignment and Assumption Agreement approved by City, and excluding the sale of Parcel "F" if, within one year after completion of the Parcel "F" Vertical Improvements by Developer, Developer enters into a purchase and sale agreement, long-term ground lease, option to purchase or like agreement with the Approved Parcel "F" Assignee, and consummates such transaction (by the conveyance – by deed or ground lease – of Parcel "F" and, if then constructed, the Parcel "F" Vertical Improvements) prior to that date which is three years after completion of the Parcel "F" Vertical Improvements, and the Approved Parcel "F" Assignee assumes certain obligations hereunder relative to Parcel "F" pursuant to an Assignment and Assumption Agreement approved by City (an "Exempt Parcel "F" Sale"). Except for an Exempt Parcel "F" sale as provided in the previous sentence, in the event Developer constructs vertical improvements on Parcel "F" and subsequently sells Parcel "F", the gross sales price from such sale shall be subject to the 1.5% Participation Component.

b. For purposes of calculating the Participation Component, "arm's length sale" shall mean a transaction in which Developer and the buyer act independently and have no relationship to each other, as reasonably determined by the City Manager.

c. For purposes of calculating the Participation Component, "gross sales price" shall mean all compensation payable to Developer for the sale, directly or indirectly, less costs of sale payable by Developer.

d. For purposes of calculating the Participation Component, a "sale" of Parcel "A" or Parcel "F" shall mean a transfer of substantially all of Developer's interests in the applicable parcel, whether by grant deed, long-term ground lease or other form of conveyance, without regard to the technical form of such conveyance.

e. Developer's obligation to pay City the Participation Component of the Purchase Price shall be secured by the City Deed of Trust, which shall be recorded against the Site at the Close of Escrow.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

[behind this page]

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

A. General

1. This Scope of Development establishes the responsibilities of the Developer for development of the Site. Any capitalized term not otherwise defined in this Scope of Development shall have the meaning ascribed to such term in the Disposition and Development Agreement ("DDA") to which this Scope of Development is attached as Attachment No. 4.

2. Development of the Project shall conform to the provisions, design criteria and property development standards set forth in this Scope of Development and all conditions of approval for all development permits and project entitlements and those required in satisfaction of the California Environmental Quality Act. Such provisions, design criteria and property development standards may be modified from time to time by the City to enhance overall Project design. It shall be the Developer's responsibility to conform to the objectives and provisions of this Scope of Development. Any changes from the provisions, criteria, standards and approved drawings, including change orders with deviations from the approved drawings, must be submitted to the City staff for approval. Any substantial changes to the approved drawings shall require City approval.

3. The development is planned to be on the Site described in the DDA, which is approximately 4.75 acres located at State Route 75/Palm Avenue, between 7th Street and 9th Street, more specifically described in Attachment No. 1 (Site Map) and Attachment No. 2 (Legal Description) attached to the DDA.

4. The Project (assuming both Phase 1 and Phase 2 are completed) shall consist of new construction of a town center development that combines retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated Parcels "A" through "G"), surface parking consisting of 238 parking stalls, landscaping, hardscaping, lighting and driveways.

5. The Project shall be developed in phases, as described in the DDA.

B. Urban Design Standards, Architectural Standards, Building Material and Off-Site Improvements

1. The proposed development, including its architectural design concepts, landscape features and off-site improvements, shall be subject to design review by City staff in accordance with the terms of the DDA. The following specific conditions will be used as a basis for evaluating the development through all stages of the design review process.

2. The architecture of the development shall establish a high quality of design and complement the goals and design principles of the City of Imperial Beach. In addition, development of the Project shall be guided by the following design objectives and standards:

a. Developer shall develop a first class, Project consisting of commercial/retail, including parking, open space, lighting and landscaping, that incorporates high quality features, and reflects high level architectural and development standards in terms of style, form, materials and execution consistent with other similar projects developed by Developer such as the Village Walk at Eastlake in Chula Vista.

b. The Project shall be planned and designed in a manner that relates it to its surroundings. This shall include providing pedestrian and vehicular circulation and appropriate transitions in architectural style and scale, linking the Project functionally, architecturally and visually with neighboring developments and uses.

c. Developer shall design and develop the Project to enhance pedestrian and street level activity, provide and promote daytime and evening use and activity in the area, reinforce and enhance activities in the area and complement other development and uses in the area.

d. Developer shall design the Project incorporating massing, scale and materials as well as architectural features, signage and landscaping/hardscaping that are compatible with the surrounding neighborhoods and uses.

e. The Project shall take advantage of the temperate Southern California climate through active and passive use of open space and building configuration.

f. Developer shall design a pedestrian friendly Project including an attractive, active and secure pedestrian environment on the Site and adjacent public rights-of-way with consideration given to such factors as open space and walkway location, configuration and widths, arrangement of building massing and accessible open areas, lighting and landscape/hardscape design and materials.

3. Off-Site Public Improvements. The Public Improvements shall consist of the design, permitting, construction and installation of the public improvements described in Section 219 of the DDA and shall meet all applicable City standards:

C. Site Preparation by Developer. Developer shall take such actions as may be necessary to prepare and grade the Site for development of the Project, including raising the grade of the existing property to match the approximate existing grade of the Palm Avenue/State Route 75 right-of-way.

D. Removal and/or Remedy of Soil and/or Water Contamination. Developer shall remove and/or otherwise remedy as required by law and implementing rules and regulations,

and as required by appropriate governmental authorities, any contaminated or hazardous soil and/or water conditions on the Site. Such work may include without limitation the following:

1. If applicable, remove (and dispose of) and/or treat any contaminated soil and/or water on the Property necessary to comply with applicable governmental standards and requirements.

2. If applicable, design and construct all Improvements in a manner which will assure protection of occupants and all improvements from any contamination, whether in vapor or other form, and/or from the direct and indirect effects thereof.

E. Land Use: The Project shall consist of first class commercial/retail town center, situated in a richly landscaped setting with major open space elements designed for appropriate active and passive uses. The Project shall be designed in such a manner as to create a desirable and distinctive commercial/retail environment that is buffered but not isolated from the other uses. The Project must be compatible with the adjacent uses, and the design must orient both the uses and architectural features to be sensitive to the immediate neighboring developments.

F. Density, Height and Massing: The Project shall not exceed the density and height deemed allowable by the City of Imperial Beach and shall be articulated through the use of architectural detailing; finish materials, textures and colors; varying setbacks. Building massing shall be designed to avoid a "box-like" appearance. Careful attention shall be paid to the exterior elevations to minimize bulk and maximize opportunities to create a pedestrian-oriented environment. Special attention in the Project design shall be given to those elevations visible to view corridors along surrounding streets. Wall openings, landscape berms, and architectural articulations shall be used to minimize the mass of blank walls. The Project shall be stepped and setback to allow for transition between the tallest elements of the Project and the lower uses nearby if necessary.

G. Building Design: The Project shall be designed and constructed to first class standards. Landscape and hardscape designs shall be carefully integrated to provide ease of access, shading, secure circulation and a pedestrian-friendly design. The street frontage at Palm Avenue/State Route 75 and 9th Street shall be designed to enhance the pedestrian and aesthetic experience through such features as the inclusion of landscaping, special street- and pedestrian-level lighting and special attention to visible paving materials. Building setbacks shall be designed to accommodate outdoor activities as appropriate. Any recreation open space elements shall be richly landscaped with appropriately sized and designed, both common and private, and shall be separate and secure. Shade trees, landscape screens, and flowering plants shall enhance the overall design and pedestrian orientation of the complex. Design of the building, including roof profiles and building details and finishes must create a visual interest and enhance the aesthetic quality of the development. The access points for the development for vehicles and pedestrians shall be designed to appear pedestrian friendly, both day and night.

H. Interior and Exterior Building Materials and Finishes: The building shall incorporate luxury quality materials and details. Maximum use of recycled content materials, sustainably produced materials, pre-coated building materials and non-VOC architectural coatings, as well as durability and minimal maintenance shall be key determinants in selecting all building materials and systems. Exotic hardwoods and similar non-renewable products shall

not be used. Exterior roof membrane material shall have a minimum Solar Reflectance Index (SRI) of 90%.

I. Mechanical and Rooftop Structures Design and Screening: All mechanical equipment shall be enclosed within the building, concealed from view or incorporated and treated as architectural features. Careful design of the building rooftop is required. All mechanical equipment, rooftop features, roof surfaces and other necessary elements shall be attractively designed and arranged in a sensitive and orderly manner. All equipment and non-architectural elements shall be painted to match the roof or background color. Rooftop screening shall be incorporated into roof designs to block views from the pedestrian level and from adjacent buildings to the greatest extent feasible. All equipment shall serve exclusively the needs of tenants located in the Project and shall be removed when no longer required for service. Telecommunications facilities, intended for general public use, such as cellular telephone antennae, equipment and any other wireless telecommunication facilities, shall not be permitted. Billboard structures and "supergraphic" signs shall not be permitted on any wall, rooftop or portion of the property.

J. Illumination: All illumination shall be designed to minimize glare, control valent light spillover, and provide ambient and safety lighting along the street frontage, publicly accessible open areas, plazas and parking facilities with particular attention paid to pedestrian and vehicular entrances. All illumination shall be energy efficient and shall incorporate "smart system" technology.

K. Pedestrian Circulation: Pedestrian circulation in front of the development shall be designed to encourage a pedestrian-friendly environment. Attractively designed walkways, enhanced paving materials, landscaping, lighting, decorative and informational graphics and other pedestrian amenities shall reinforce the pedestrian-friendly nature of the Project while integrating it into the existing street pedestrian infrastructure and community.

L. Vehicular Access, Circulation and Parking: The Project shall be designed to provide safe and efficient vehicular access, circulation and parking for tenants, guests, patrons and employees. Pedestrian and automobile circulation zones will be clearly delineated to provide easy access while minimizing conflicts. Parking shall be provided as required by any applicable rules or guidelines of the City and shall be located off-street. Parking shall be well lit, using "smart system" technology and energy efficient lighting as well as natural light and ventilation where possible, with extensive internal directional signage and graphics to provide ease of access, identification of each parked vehicle location, and way-finding to pedestrian entrances and exits. Any mechanical ventilation shall employ "smart system" technology and maximize energy efficiency. Approximately 238 parking spaces shall be provided for the Project.

M. Driveways, Vehicular Ramps and Drop-off Lanes: Driveway locations shall not conflict with traffic movements in the streets. All vehicular entries into the Project shall be given careful design consideration and treated to minimize their visual impact. Driveway design and location shall be subject to City approval. All vehicular entries and exits from the site must be designed to minimize impacts between vehicular and pedestrian traffic.

N. Service and Loading Areas: Service and loading areas shall be provided in accordance with City requirements. All building services and loading space and activities, including recycling and refuse collection, shall be located off the any available alleys or recessed on the property.

O. Signage. A coordinated Signage Plan for all exterior identification, information and directional signage shall be prepared by the Developer for the Project. The Signage Plan, which shall include the location, size, color, lighting, materials and design of all signs, shall be compatible with the high quality of the Project. Signage shall be designed in collaboration with the Project Architect and shall occupy appropriate fields and constitute an integral component of building design and surfaces. The Signage Plan shall be subject to approval concurrently with the building design. Developer shall not allow or permit any billboards, supergraphics or other similar forms of commercial off-site advertising to be placed on the Site.

P. Security: The design and operational management of the Project shall be responsive to the security needs of tenants, patrons, employees and the general public. All such areas shall be designed, including lighting design, in such a manner as to allow continual visual surveillance to discourage nuisance activities and conduct. The building and parking shall incorporate appropriate security technology for access control. Any exterior security devices shall be integral to and compatible with the design of the Project. The Project shall incorporate exterior lighting that reinforces entrances, provides a safe level of illumination and is compatible with the design of the buildings. Sufficient security lighting shall be provided in all public areas, including outdoor open spaces, side and rear yards, staircases, parking areas, trash rooms, laundry rooms along the public sidewalk and behind bushes.

Q. Utilities: All on-site and off-site utilities, including data carrier infrastructure, utility connections and related equipment shall be underground, concealed within the building or screened from view with landscaping or an enclosure which is architecturally compatible with the development. All utility work, including removal and relocation of existing utilities, is the Developer's responsibility.

R. Energy Conservation: The Developer shall to the greatest extent feasible, taking into account estimated initial costs, operational savings and incentive program benefits, minimize the energy required to operate the Project over its lifetime and to incorporate "smart building" technology and alternative energy sources. Such energy efficiency shall be accomplished through innovative and state-of-the-art concepts in design and construction. The Developer shall strictly observe and incorporate all energy conservation recommendations and mandated codes such as California Title 24 and Title 15 of the Municipal Code of the City of Imperial Beach and shall seek to significantly exceed such statutory and regulatory requirements to the greatest extent feasible. The Developer shall make commercially reasonable and economically feasible efforts to exceed the requirements of California Title 24 and Title 15 of the Municipal Code of the City of Imperial Beach. Insulation opportunities, solar shading and solar energy design, building placement and orientation, energy-efficient building cooling, heating, ventilating and lighting strategies and technologies and other energy conservation measures shall be included in the design

requirements. The Developer shall prepare and submit to the City Manager for approval or disapproval, in conjunction with the submission of 50% Complete Construction Documents, an Energy Conservation Plan including: 1) documentation of energy conservation measures incorporated in the Project to meet state requirements; and 2) documentation of additional measures incorporated to exceed state requirements. The Developer shall submit status reports, as reasonably requested by City staff, on energy systems design progress including interim Title 24 reports, and on implementation of the Energy Conservation Plan.

S. Landscaping, Water Conservation and Surface/Storm Water Management: All outdoor spaces and common areas, including dedication areas, setback areas, courtyards and gardens, shall be attractively landscaped with a variety of treatments, furnishings and lighting suitable for a first-class town center development. Landscaping and irrigation shall be designed to be aesthetically attractive, high-quality, durable, low maintenance and water conserving and to maximize site retention of surface and storm water run-off. Any surface/storm water discharge from the site shall be treated as needed on-site prior to discharge to avoid downstream pollution. The landscaping and irrigation plans shall incorporate drought-resistant plant materials along with water-saving drip/buried-tube irrigation and state-of-the-art water management control systems. Large grass/turf areas and high water usage plants shall be avoided if possible. Landscaping, lighting and furnishings shall include, but not be limited to, street trees, on-site trees and other plant materials, sidewalk, walkway and plaza treatments, street and pedestrian lighting, seating, decorative and information graphics. Dark colored paving materials shall be avoided. The landscape/hardscape design shall be coordinated with and shall be compatible in design and consistent in quality with completed and planned public improvement and streetscape programs in the area. Landscaping shall be installed and maintained in accordance with the City-approved Landscape Plan. Landscaping over the building deck shall consist of built-in planters installed with irrigation and drainage systems. A complete and permanent irrigation system shall be installed for all landscaped areas. All landscaping shall be maintained by the owners, successors or assignees, and shall include maintenance of adjacent street trees where provided by the City.

T. Waste Reduction/Recycling: A Waste Reduction and Recycling Program Plan shall be prepared by the Developer and implemented for the Project and for the management and operation of all occupancies. Facilities shall be provided to accommodate the physical requirements for these identified programs. Implementation shall include education and outreach programs for all project occupants and employees to reduce the output of solid waste, including yard waste, through recycling and reduction of waste at the source. The Waste Reduction and Recycling Program Plan shall be subject to review and approval by the City.

U. Urban Heat Island Effect: To reduce its cooling load and its impact on micro-climate, the project shall (a) install trees, vines, overhangs and other shading devises to maximize shaded areas on the building envelope and parking lot, (b) apply light colored or high-reflective finishes to roofs, exterior walls and ground pavement for parking lots and driveways, and (c) plant faster-growing trees and shrubs that consume carbon dioxide

through photosynthesis quicker than slower growing plants shall be sought for general landscaping as well as shading purposes.

V. Lighting: All lighting shall be shielded and directed onto the site and no floodlighting shall be located so as to be seen directly by the adjacent areas. This condition shall not preclude the installation of low-level security lighting.

W. Development Identification Signs

Prior to commencement of construction on the Site, Developer shall prepare and install, at its cost and expense, one sign on the barricades around the Site which identifies the development. The sign shall be at least four (4) feet by six (6) feet and be viable to passing pedestrian and vehicular traffic. The design shall at minimum include:

____ Illustration of the development
____ Developer's name
____ The phrase: "A project of the City of Imperial Beach "
____ Names of the Mayor and City Council Members
____ Name of the City Manager
____ Completion date
____ The number to call for information

Developer shall obtain a current roster of City Council Members and City Manager before signs are manufactured.

X. Compliance with Americans with Disabilities Act (ADA) and other requirements relating to accessibility and reasonable accommodations

Developer shall comply with all applicable requirements of state, local and federal rules, laws and regulations relating to accessibility and reasonable accommodations for persons with disabilities, including without limitation, the following, to the extent applicable to the Project: the Americans with Disabilities Act (42 U.S.C. Sections 12131 *et seq.* and 12181 *et seq.* and implementing regulations at 28 CFR Parts 35 and 36); the Fair Housing Act (42 U.S.C. Section 3601 *et seq.* and implementing regulations at 24 CFR Part 100); the Fair Employment and Housing Act (California Government Code Section 12926); Title 24 of the California Building Code; and Title 15 of the Municipal Code of the City of Imperial Beach. Developer shall ensure that all construction plans for the Project comply with all applicable requirements of law and that Project construction is carried out in conformity with approved plans.

Y. Fees and Assessments

Developer shall be responsible for all fees required by the City or other City for the construction of the proposed project.

Z. Applicable City Codes and Ordinances

Notwithstanding the approval of the project plans by City pursuant to the Disposition and Development Agreement, the Project must meet all requirements of the California Building Code, California Fire Code, Chapters 15.06 and 15.20 of the Municipal Code of the City of Imperial Beach, and all applicable City Codes and Ordinances, as more particularly provided in Section 215.c. of the Disposition and Development Agreement.

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

[behind this page]

ATTACHMENT NO. 5

TO DISPOSITION AND DEVELOPMENT AGREEMENT

SCHEDULE OF PERFORMANCE

	Action to be Taken	**Time of Performance**
	Actions relating to Design Requirements	
1.	Submission – Basic Concept/Schematic Design Drawings. Developer shall submit Basic Concept Drawings for the Project.	Concurrently with execution and delivery to the City of the DDA by Developer.
2.	Approval – Basic Concept/Schematic Design Drawings. City shall review and approve or disapprove the Basic Concept/Schematic Design Drawings.	Concurrently with approval of the DDA by the City Council.
3.	Submission – Design Development Drawings, Landscape Plan and Grading Plans. Developer (or Assignee, if applicable) shall submit Design Development Drawings, landscape and grading plans for the applicable Phase.	Phase 1: Not later than 180 days after approval of the DDA by the City Council. Phase 2: Not later than 180 days prior to Phase 2 Closing Date.
4.	Approval – Design Development Drawings, Landscape Plan and Grading Plans. City shall review and approve or disapprove Design Development Drawings, landscape and grading plans.	Not later than fifteen (15) days after receipt of complete submittal; fifteen (15) days for resubmittals and revisions.

	Action to be Taken	Time of Performance
5.	Submission – Final Construction Drawings. Developer (or Assignee, if applicable) shall submit Final Construction Drawings for the applicable Phase.	Not later than 180 days after approval of Design Development Drawings.
6.	Approval – Final Construction Drawings. City shall review and approve or disapprove the Final Construction Drawings.	Not later than thirty (30) days after receipt of complete submittal; fifteen (15) days for resubmittals and revisions.
7.	Approvals and Permits. Developer (and Assignee, if applicable) shall obtain and submit to City evidence of all permits and approvals necessary for the construction of the Improvements in the applicable Phase.	Not later than ten (10) days after the Closing, which may be extended to up to thirty (30) days after the Closing of the applicable Phase of the Project, subject to paragraph l. of Section 208.
Actions relating to Conditions Precedent		
8.	Submission – Evidence of Financing. Developer shall submit the Evidence of Financing for the applicable Phase as required by DDA Section 110.	Phase 1: Not later than ten (10) Business Days prior to the scheduled Phase 1 Closing Date. Phase 2: Not later than ten (10) Business Days prior to the scheduled Phase 2 Closing Date.
9.	Review of Evidence of Financing. City Manager or designee shall approve or disapprove evidence of financing. DDA Section 110.	Not later than ten (10) Business Days after complete submittal; five (5) Business Days for resubmittals and revisions.
10.	CC&R's. Developer shall submit CC&Rs to the City for review pursuant to DDA Section 407.	Not later than thirty (30) days prior to the scheduled Close of Escrow.
11.	Review of CC&Rs. City Manager shall approve or disapprove of CC&Rs.	Not later than thirty (30) days after complete submittal; fifteen (15) days for resubmittals and revisions.

	Action to be Taken	Time of Performance
12.	Submission – Evidence of Satisfaction of Conditions Precedent to Close of Escrow and Phase 1 Closing. Developer shall submit documentation that all Conditions Precedent to the Close of Escrow and Phase 1 Closing set forth in DDA Section 208 have been satisfied.	Unless specifically provided otherwise in the DDA or this Schedule of Performance, not later than thirty (30) days prior to the Phase 1 Closing Date.
13.	Review of Evidence of Conditions Precedent for Close of Escrow and Phase 1 Closing. City Manager or designee shall approve or disapprove the evidence of satisfaction of all Phase 1 Conditions Precedent.	Not later than thirty (30) days after complete submittal.
14.	Submission – Evidence of Satisfaction of Conditions Precedent to Phase 2 Closing. Developer shall submit documentation that all Conditions Precedent to the Phase 2 Closing set forth in DDA Section 220 have been satisfied.	Unless specifically provided otherwise in the DDA or this Schedule of Performance, not later than thirty (30) days prior to the Phase 2 Closing Date.
15.	Review of Evidence of Conditions Precedent for Satisfaction of Conditions Precedent to Phase 2 Closing. City Manager or designee shall approve or disapprove the evidence of satisfaction of all Conditions Precedent to the Phase 2 Closing.	Not later than thirty (30) days after complete submittal.
Actions relating to Closings		
16.	Open Escrow. City and Developer to open Escrow for the conveyance of the Site.	Not later than thirty (30) days prior to the scheduled Close of Escrow.

	Action to be Taken	Time of Performance
17.	**Phase 1 Closing Date**. The Close of Escrow and the Phase 1 Closing shall occur.	Upon satisfaction of all Conditions Precedent to the Close of Escrow and the Phase 1 Closing, but in no event later than nineteen (19) months after the Effective Date of the DDA, subject to extension by the City Manager pursuant to DDA Section 308.a.
18.	**Phase 2 Closing Date**. The Phase 2 Closing shall occur.	Upon satisfaction of all Conditions Precedent to the Phase 2 Closing, but in no event later than forty-two (42) months after the Effective Date of the DDA.
	Actions relating to Construction	
19.	Commencement of Construction of Phase 1 Public Improvements. Developer shall commence construction of the Public Improvements.	Not later than thirty (30) days after Close of Escrow.
20.	Completion of Construction of Phase 1 Public Improvements. Developer shall complete the construction of all Public Improvements, except those deferred to Phase 2 pursuant to DDA Section 219.c.4.	Not later than the scheduled Phase 1 Completion Date.
21.	Commencement of Construction of Phase 1 Improvements. Developer (and Assignee, if applicable) shall commence construction of the Phase 1 Improvements and thereafter prosecute such construction to completion.	Not later than thirty (30) days after the Close of Escrow and the Phase 1 Closing.

	Action to be Taken	Time of Performance
22.	Completion of Construction of Phase 1 Improvements ("Phase 1 Completion Date"). Developer (and Assignee, if applicable) shall complete construction of the Phase 1 Improvements.	Not later than twenty-four (24) months after the Close of Escrow.
23.	Commencement of Construction of Phase 2 Improvements. Developer (and Assignee, if applicable) shall commence construction of the Phase 2 Improvements as required by the DDA and thereafter prosecute such construction to completion.	Not later than thirty (30) days after the Phase 2 Closing, but not later than forty-three (43) months after the Effective Date.
24.	Completion of Construction of Phase 2 Improvements ("Phase 2 Completion Date"). Developer (and assignee, if applicable) shall complete construction of the Phase 2 Improvements as required by the DDA.	Not later than eighteen (18) months after the Phase 2 Closing (i.e., 60 months after Effective Date).

ATTACHMENT NO. 6

PROJECT BUDGET

[behind this page]

TABLE 3

ESTIMATED DEVELOPMENT COSTS
9TH AND PALM
CITY OF IMPERIAL BEACH

Development Costs	Totals	Comments
I. Direct Costs (1)		
Off-Site Improvements (2)	$1,350,000	$7 Per SF Land
On-Site Improvements	$2,200,000	$11 Per SF Land
Parking	$0	Included In On-Sites
Shell Construction	$2,795,000	$89 Per SF GBA - Excluding Market
Tenant Improvements	$211,000	$14 Per SF GBA - Shops
Amenities/FF&E	$100,000	Allowance
Contingency	$359,000	5.4% of Directs
Total Direct Costs	**$7,015,000**	**$152 Per SF GBA - Total**
		$223 Per SF GBA - Excluding Market
II. Indirect Costs		
Architecture & Engineering	$550,000	7.8% of Directs
Permits & Fees (2)	$100,000	$2 Per SF GBA - Total
Legal & Accounting	$225,000	3.2% of Directs
Taxes & Insurance	$130,000	1.9% of Directs
Developer Fee	$350,000	5.0% of Directs
Marketing/Lease-Up	$370,000	$8 Per SF GBA - Total
Contingency	$386,000	5.0% of Indirects
Total Indirect Costs	**$1,811,000**	**25.8% of Directs**
III. Financing Costs		
Loan Fees	$112,000	1.6% of Directs
Interest during Construction/Lease-Up	$309,000	4.4% of Directs
Total Financing Costs	**$421,000**	**6.0% of Directs**
IV. Total Development Costs	**$9,247,000**	**$200 Per SF GBA - Total**
		$294 Per SF GBA - Excluding Market

DRAFT

(1) Includes the payment of prevailing wages.
(2) Per Developer. Not verified by KMA or City.

Prepared by: Keyser Marston Associates, Inc.
Filename: I:Imperial Beach/9th and Palm/Sudberry - 2011_REVISED 7-12-11;11/28/2011;wcl

ATTACHMENT NO. 7

TITLE REPORT

[behind this page]

Preliminary Report

PRELIMINARY REPORT FORM

Issued By:

CHICAGO TITLE COMPANY

Preliminary Report Number:

73711013733

In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate of interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(ies) of title insurance to be issued hereunder will be policy(ies) of Chicago Title Insurance Company, a Nebraska corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Chicago Title Insurance Company

Dated: November 1, 2011

By:

President

Countersigned By:

Authorized Officer or Agent

Attest:

Secretary

ORDER NO. 73711013733

ISSUING OFFICE:	FOR SETTLEMENT INQUIRIES, CONTACT:
Title Officer: Patty Meredith Chicago Title Company 2365 Northside Drive, Suite 600 San Diego, CA 92108 Phone: (619)521-3449 Fax: (619)528-1671 Main Phone: (619)521-3502 Email: patty.meredith@ctt.com	

PROPERTY ADDRESS(ES): Palm Avenue, Imperial Beach, CA

EFFECTIVE DATE: November 1, 2011 at 07:30AM

THE FORM OF POLICY OR POLICIES OF TITLE INSURANCE CONTEMPLATED BY THIS REPORT IS:

CLTA Standard Coverage Policy 1990

ALTA Loan Policy 2006

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

   Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

   The City of Imperial Beach

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

   SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 626-250-03, 04, 05 & 06

PARCEL A: APN 626-250-03

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTH CORONADO MANOR, ACCORDING TO MAP THEREOF NO. 2450, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY JANUARY 20, 1948 AND LYING WEST OF THE CENTER LINE OF DELAWARE STREET, FORMERLY 13TH STREET AS SHOWN ON MAP OF R. MERIDEATH JONES ADDITION TO SOUTH SAN DIEGO BEING MAP NO. 1145, FILED IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY JULY 29, 1908.

EXCEPTING THAT PORTION THEREOF WHICH LIES WESTERLY OF THE LOCATION AND NORTHERLY PROLONGATION OF THE CENTER LINE OF THE ALLEY IN BLOCK 3 OF SAID R. MERIDEATH JONES ADDITION, AS SHOWN ON SAID MAP NO. 1145.

SAID LAND IS ALSO SHOWN AS A PORTION OF BLOCK 3 OF MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908 AND VACATED MARCH 22, 1923, BY DECREE IN SUPERIOR COURT ACTION NO. 38686.

PARCEL B: APN'S 626-250-04 THRU 06

THAT PORTION OF THE NORTHWEST QUARTER OR THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTH CORONADO MANOR AS SHOWN ON MAP THEREOF NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20, 1948, AND LYING EAST OF THE CENTER LINE OF DELAWARE STREET, FORMERLY 13TH STREET, AND WEST OF THE CENTER LINE OF 8TH STREET, FORMERLY 12TH STREET, AND THAT PORTION LYING WEST OF THE WEST LINE OF 9TH STREET, FORMERLY 11TH STREET AND EAST OF THE EAST LINE OF 8TH STREET, FORMERLY 12TH STREET, AS SAID STREETS ARE SHOWN ON MAP OF R. MERIDEATH JONES' ADDITION TO SAOUTH SAN DIEGO, BEING MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE NORTH 50.00 FEET OF THE EAST 550.50 FEET OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29 AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 24, 1943 IN BOOK 1526, PAGE 405 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED JUNE 20, 1955 AS FILE NO. 79513 IN BOOK 5685, PAGE 513 OF OFFICIAL RECORDS, AS FOLLOWS:

EXHIBIT "A"
Legal Description

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, DESCRIBEDAS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF 9TH STREET (SHOWN AS 11TH STREET ON MAP 1145 OF R. MERIDEATH JONES' ADDITION TO SOUTH SAN DIEGO) WITH THE SOUTHERLY LINE OF THE NORTH 50.00 FEET OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 29; THENCE ALONG SAID SOUTHERLY LINE WESTERLY 20.00 FEET; THENCE IN A STRAIGHT LINE SOUTHEASTERLY TO A POINT ON THE SAID WESTERLY LINE SOUTHERLY 20.00 FEET FROM SAID POINT OF BEGINNING; THENCE NORTHERLY 20.00 FEET TO THE POINT OF BEGINNING.

SAID LAND IS ALSO SHOWN AS LOTS 1 TO 10 INCLUSIVE AND 31 TO 39 INCLUSIVE AND A PORTION OF LOT 40 IN BLOCK 2, LOTS 2 TO 10 INCLUSIVE AND LOTS 31 TO 39 INCLUSIVE AND A PORTION OF LOTS 1 AND 40, IN BLOCK 1 OF R. MERIDEATH JONES' ADDITION TO SOUTH SAN DIEGO, BEING MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908 AND VACATED MARCH 22, 1923 BY DECREE IN SUPERIOR COURT ACTION 38686

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

FOLLOWING MATTERS AFFECT PARCEL A:

1. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation Code of the State of California.

2. Rights of the public to any portion of the Land lying within the area commonly known as

   any roads, streets or highways .

3. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

   Granted to: F. D. Warner
   Purpose: water pipe line
   Recording Date: October 7, 1925
   Recording No.: Book 1109, page 212 of Deeds
   Affects: the exact location and extent of said easement is not disclosed of record.

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

   Granted to: Imperial Beach Sanitation District
   Purpose: sewers
   Recording Date: May 11, 1951
   Recording No.: Book 4095, page 353 Official Records
   Affects: the route thereof affects a portion of said land and is more fully described in said document.

5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

   Granted to: County of San Diego
   Purpose: public road
   Recording Date: August 9, 1951
   Recording No.: Book 4198, page 174 Official Records
   Affects: the South 20 feet of said land

   Said instrument additionally contains the privilege and right to extend structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof.

6. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

   Recording Date: May 5, 1952
   Recording No.: Book 4457, page 294 Document No. 54854 Official Records

7. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

   Granted to: San Diego Gas & Electric Company
   Purpose: public utilities and incidental purposes
   Recording Date: July 25, 1984
   Recording No.: File No. 84-281556 Official Records
   Affects: the exact location and extent of said easement is not disclosed of record.

8. A Notice of Assessment for Assessment District No. 67-m recorded June 23, 1992 as File No. 1992-0389944 Official Records.

9. A Notice of Assessment for Assessment District No. 68 (alleys) recorded July 8, 1994 as File No. 1994-0428705 Official Records.

10. The Land described herein is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the Redevelopment Plan) as disclosed by a document.

Redevelopment Agency: City of Imperial Beach
Recording Date: February 8, 1996
Recording No.: File No. 1996-0065030 and February 27, 1996 as File No. 1996-0094070 both Official Records

11. A Resolution of the City Council of the City of Imperial Beach, confirming the diagram and assessment and providing for the levy of the annual assessment in a special maintenance district recorded August 28, 2000 as File No. 2000-0459549 Official Records.

12. The Land described herein is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the Redevelopment Plan) as disclosed by a document.

Redevelopment Agency: City of Imperial Beach (Palm Avenue Commercial redevelopment Project Area)
Recording Date: July 27, 2007
Recording No.: File No. 2007-0502890 Official Records

13. A deed of trust which purports to secure performance of an agreement referred to therein, and any other obligations secured thereby

Dated: not shown
Trustor/Grantor: Redevelopment Agency of the City of Imperial Beach
Trustee: First American Title Company
Beneficiary: City of Imperial Beach
Recording Date: March 10, 2011
Recording No.: File No. 2011-0131265 Official Records

Affects: The herein described Land and other land.

14. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: March 10, 2011
Recording No.: File No. 2011-0131286 Official Records

15. Matters contained in that certain document

Entitled: Memorandum of Option Agreement
Executed by: Redevelopment Agency of the City of Imperial Beach and the City of Imperial Beach
Recording Date: March 10, 2011
Recording No.: File No. 2011-0131442 Official Records

Reference is hereby made to said document for full particulars.

16. Approval of the Policy or Commitment by the Regional Counsel is required prior to recordation of the instruments required to complete this transaction, and issuance of the Title Insurance Policy. The right is reserved to make additional exceptions and/or requirements upon their review.

17. Any rights, interests, or claims of parties in possession of the Land not shown by the public records.

18. Any rights, interests or claims, which are not shown by the public records but which could be ascertained by an inspection of the Land or which may be asserted by persons in possession thereof.

FOLOWING MATTERS AFFECT PARCEL B:

19. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation Code of the State of California.

20. Rights of the public to any portion of the Land lying within the area commonly known as

any roads, streets or highways .

21. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	F. D. Warner
Purpose:	water pipe line
Recorded:	October 7, 1925
Recording No.:	Book 1109, page 212 of Deeds
Affects:	the exact location and extent of said easement is not disclosed of record.

22. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Davies Motors, Inc.
Purpose:	road
Recording Date:	January 17, 1949
Recording No.:	Book 3081, page 189 Official Records
Affects:	the route thereof affects a portion of said land and is more fully described in said document.

23. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Imperial Beach Sanitation District
Purpose:	sewers
Recording Date:	May 11, 1951
Recording No.:	Book 4095, page 353 Official Records
Affects:	the route thereof affects a portion of said land and is more fully described in said document.

24. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	County of San Diego
Purpose:	public road
Recording Date:	August 9, 1951
Recording No.:	Book 4198, page 174, Official Records
Affects:	the route thereof affects a portion of said land and is more fully described in said document.

Said instrument additionally contains the privilege and right to extend structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof.

25. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: May 5, 1952
Recording No.: Book 4457, page 417 Official Records

26. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Purpose: ingress and egress for road
Recording Date: July 30, 1953
Recording No.: Book 4938, page 199 Official Records
Affects: the route thereof affects a portion of said land and is more fully described in said document.

27. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: San Diego Gas & Electric Company
Purpose: public utilities and incidental purposes
Recording Date: June 3, 1980
Recording No.: File No. 80-178475 Official Records
Affects: the exact location and extent of said easement is not disclosed of record.

28. Matters contained in that certain document

Entitled: Underground Agreement
Executed by: City of Imperial and Sam Dimenstein
Recording Date: November 18, 1981
Recording No.: File No. 81-364713 Official Records

Reference is hereby made to said document for full particulars.

29. The Land described herein is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the Redevelopment Plan) as disclosed by a document.

Redevelopment Agency: Redevelopment Agency of the City of Imperial Beach (Palm Avenue/Commercial Redevelopment Project)
Recording Date: February 8, 1996
Recording No.: File No. 1996-0065030 and July 27, 2007 as File No. 2007-0502890 and February 27, 1996 as File No. 1996-0094070 all Official Records

30. Matters contained in that certain document

Entitled: Notice of Intent to Lien
Recording Date: September 19, 1997
Recording No.: File No. 1997-0461749 Official Records

Reference is hereby made to said document for full particulars.

31. A deed of trust which purports to secure performance of an agreement referred to therein, and any other obligations secured thereby

Dated:	not shown
Trustor/Grantor:	Redevelopment Agency of the City of Imperial Beach
Trustee:	First American Title Company
Beneficiary:	City of Imperial
Recording Date:	March 10, 2011
Recording No.:	File No. 2011-0131285 Official Records

Affects: The herein described Land and other land.

32. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date:	March 10, 2011
Recording No.:	File No. 2011-0131286 Official Records

33. Matters contained in that certain document

Entitled:	Memorandum of Option Agreement
Executed by:	Redevelopment Agency of the City of Imperial Beach and the City of Imperial Beach
Recording Date:	March 10, 2011
Recording No.:	File No. 2011-0131442 Official Records

Reference is hereby made to said document for full particulars.

34. A pending court action as disclosed by a recorded notice:

Plaintiff:	City of Imperial Beach
Defendant:	Davies Motors, Incorporated
County:	San Diego
Court:	Superior
Case No.:	37-2011-00079079
Nature of Action:	real property claim
Recording Date:	October 19, 2011
Recording No.:	File No. 2011-0550218 Official Records

35. Approval of the Policy or Commitment by the Regional Counsel is required prior to recordation of the instruments required to complete this transaction, and issuance of the Title Insurance Policy. The right is reserved to make additional exceptions and/or requirements upon their review.

36. Any rights, interests, or claims of parties in possession of the Land not shown by the public records.

37. Any rights, interests or claims, which are not shown by the public records but which could be ascertained by an inspection of the Land or which may be asserted by persons in possession thereof.

NOTES

1. Note: The current owner does NOT qualify for the $20.00 discount pursuant to the coordinated stipulated judgments entered in actions filed by both the Attorney General and private class action plaintiffs, for the herein described Land.

2. If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

3. If this company is requested to disburse funds in connection with this transaction, Chapter 598, Statutes of 1989 mandates hold periods for checks deposited to escrow or sub-escrow accounts. The mandatory hold period for cashier's checks, certified checks and teller's checks is one business day after the day deposited. Other checks require a hold period of from two to five business days after the day deposited. In the event that the parties to the contemplated transaction wish to record prior to the time that the funds are available for disbursement (and subject to Company approval), the Company will require the prior written consent of the parties. Upon request, a form acceptable to the company authorizing said early recording may be provided to Escrow for execution.

   Wire Transfers

   There is no mandated hold period for funds deposited by confirmed wire transfer. The Company may disburse such funds the same day.

   Chicago Title will disburse by Wire (Wire-out) only collected funds or funds received by confirmed Wire (Wire-In). Wiring Instructions for Chicago Title Company, San Diego, CA, are as follows:

Receiving Bank:	Union Bank 1980 Saturn Street Monterey Park, CA 91755
ABA Routing No.:	122000496
Credit Account Name:	Chicago Title Company
Credit Account No.:	9101051077
Escrow No.:	73711013733

   These wiring instructions are for this specific transaction involving the Title Department of the San Diego office of Chicago Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

4. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

5. Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the seller/borrower must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.

6. This Company will require evidence of compliance with the statutory limitations incident to the governmental agency named below, with reference to any conveyance of an interest in the Land this Company will be asked to record and/or rely upon in the issuance of any form of title insurance.

   Governmental agency: City of Imperial Beach

7. In order to complete this report, the Company requires a Statement of Information to be completed by the following party(ies),
   Party(ies): all parties

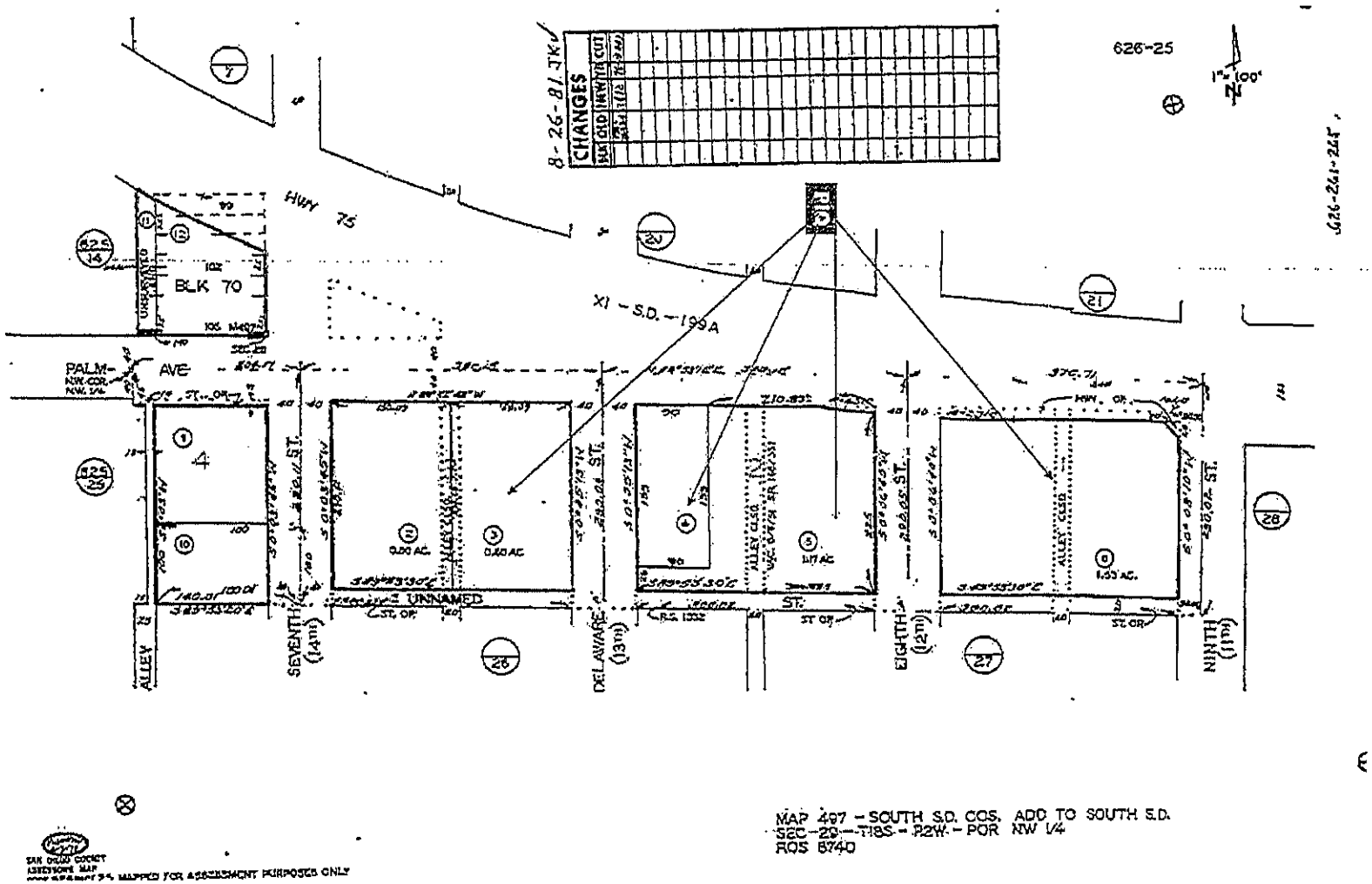
   The Company reserves the right to add additional items or make further requirements after review of the requested Statement of Information.

   NOTE: The Statement of Information is necessary to complete the search and examination of title under this order. Any title search includes matters that are indexed by name only, and having a completed Statement of Information assists the Company in the elimination of certain matters which appear to involve the parties but in fact affect another party with the same or similar name. Be assured that the Statement of Information is essential and will be kept strictly confidential to this file.

8. Note: The only conveyance(s) affecting said Land, which recorded within 24 months of the date of this report, are as follows:

Grantor:	City of Imperial Beach Redevelopment Agency
Grantee:	City of Imperial Beach
Recording Date:	March 10, 2011
Recording No.:	File No. 2011-0131286 Official Records

END OF NOTES



MAP 497 - SOUTH S.D. COS. ADD TO SOUTH S.D.
SEC-29--T18S--R2W--POR NW 1/4
ROS 6740

SAN DIEGO COUNTY
ASSESSOR'S MAP
MAPPED FOR ASSESSMENT PURPOSES ONLY

"This plat is for your aid in locating your land with reference to streets and other parcels. While this plan is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon.

ATTACHMENT ONE

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87) EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at policy date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowledge of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and the expenses resulting from:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any easements or liens not shown by the public records. This does not limit the lien coverage in Item 8 of Covered Title Risks.
3. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This does not limit the forced removal coverage in Item 12 of Covered Title Risks.
4. Any water rights or claims or title to water in or under the land, whether or not shown by the public records.

ATTACHMENT ONE
(CONTINUED)

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims, or other matters:

   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

SCHEDULE B, PART I
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ATTACHMENT ONE
(CONTINUED)

FORMERLY AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92) WITH A.L.T.A. ENDORSEMENT-FORM 1 COVERAGE
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims, or other matters:

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

   (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or

   (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or

   (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

      (a) to timely record the instrument of transfer; or

      (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ATTACHMENT ONE
(CONTINUED)

2006 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ATTACHMENT ONE
(CONTINUED)

FORMERLY AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims, or other matters:

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy, or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

   (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

      (a) to timely record the instrument of transfer; or

      (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.

In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ATTACHMENT ONE
(CONTINUED)

2006 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage.
In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ATTACHMENT ONE
(CONTINUED)

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10-22-03)
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
   a. building
   b. zoning
   c. Land use
   d. improvements on Land
   e. Land division
   f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
   a. notice of exercising the right appears in the Public Records at the Policy Date; or
   b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8,d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 14:	1.00% of Policy Amount or $2,500.00 (whichever is less)	$10,000.00
Covered Risk 15:	1.00% of Policy Amount or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 16:	1.00% of Policy Amount or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 18:	1.00% of Policy Amount or $2,500.00 (whichever is less)	$5,000.00

ATTACHMENT ONE
(CONTINUED)

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$5,000.00

ATTACHMENT ONE
(CONTINUED)

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvements now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) created, suffered, assumed or agreed to by the Insured Claimant;

   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

   (c) resulting in no loss damage to the Insured Claimant;

   (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or

   (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.

5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.

6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.

7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.

8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:

   (a) The time of the advance; or

   (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.

9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

ATTACHMENT ONE
(CONTINUED)

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07/26/10)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   (i) the occupancy, use, or enjoyment of the Land;

   (ii) the character, dimensions, or location of any improvement erected on the Land;

   (iii) the subdivision of land; or

   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

   (a) created, suffered, assumed, or agreed to by the Insured Claimant;

   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

   (c) resulting in no loss or damage to the Insured Claimant;

   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or

   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.

6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.

8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured mortgage, is

   (a) a fraudulent conveyance or fraudulent transfer, or

   (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

NOTICE

You may be entitled to receive a Twenty And No/100 Dollars ($20.00) discount on escrow services if you purchased, sold or refinanced residential property in California between May 19, 1995 and November 1, 2002. If you had more than one qualifying transaction, you may be entitled to multiple discounts.

If your previous transaction involved the same property that is subject of your current transaction, you do not have to do anything; the Company will provide the discount, provided you are paying for escrow or title services in this transaction.

If your previous transaction involved property different from the property that is subject of your current transaction, you must - prior to the close of the current transaction - inform the Company of the earlier transaction, provide the address of the property involved in the previous transaction, and the date or approximate date that the escrow closed to be eligible for the discount.

Unless you inform the Company of the prior transaction on property that is not the subject of this transaction, the Company has no obligation to conduct an investigation to determine if you qualify for a discount. If you provide the Company information concerning a prior transaction, the Company is required to determine if you qualify for a discount which is subject to other terms and conditions.

FIDELITY NATIONAL FINANCIAL

PRIVACY STATEMENT

Effective Date: May 1, 2008

Order No.: 73711013733--LB

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

PERSONAL INFORMATION COLLECTED

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

DISCLOSURE OF PERSONAL INFORMATION

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures. Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

PRIVACY STATEMENT

Effective Date: May 1, 2008
(continued)

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Disclosure to Affiliated Companies:
We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties:
We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

CONFIDENTIALITY AND SECURITY OF PERSONAL INFORMATION

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

ACCESS TO PERSONAL INFORMATION / REQUESTS FOR CORRECTION, AMENDMENT, OR DELETION OF PERSONAL INFORMATION

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

CHANGES TO THIS PRIVACY STATEMENT

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.

ATTACHMENT NO. 8

FORM OF GRANT DEED

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

SUDBERRY-PALM AVENUE, LLC
c/o Sudberry Properties
5465 Morehouse Drive, Suite 260
San Diego, California 92121

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: _____

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF IMPERIAL BEACH, duly formed, validly existing and in good standing under the laws of the State of California, herein called "Grantor"), hereby grants to SUDBERRY-PALM AVENUE, LLC, a California limited liability company, 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. The Property is conveyed in accordance with and subject to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, which was approved and adopted by ordinance of the City Council of the City of Imperial Beach (the "Redevelopment Plan"), the Imperial Beach Redevelopment Agency's Five-Year Implementation Plan, as amended from time to time (the "Implementation Plan") with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization, and that certain Disposition and Development Agreement dated December ___, 2011 by and between the Grantor (City of Imperial Beach therein) and Grantee (the "Agreement"). The Redevelopment Plan, Implementation Plan and Agreement are on file in the office of the City Clerk. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Agreement.

2. INTENTIONALLY OMITTED.

3. Grantor excepts and reserves any existing street, proposed street or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

4. The Grant herein is specifically made at a purchase price herein called "Purchase Price", determined in accordance with the uses permitted in the Agreement. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any interest therein or any portion thereof that, upon and after the Close of Escrow, Grantee and its successors and assigns, shall develop, maintain and use the Property only as provided in that certain Agreement Containing Covenants Affecting Real Property previously recorded against the Property or being recorded concurrently herewith and is further subject to the following:

(a) No change in the use of the Property from the used permitted by the Redevelopment Plan, the Agreement (including the Scope of Development) and the Agreement Containing Covenants shall be permitted without the prior written approval of Grantor.

(b) Grantee shall maintain the Improvements and landscaping on the Property, and shall keep the Property free from any accumulation of debris or waste materials, as provided in the Agreement Containing Covenants.

(c) Grantee, its successors, assigns and every successor in interest to the Property shall, one year from the date of recordation of this Grant Deed and annually thereafter, file with Grantor a report on the operation and maintenance of the Property and will furnish, as requested, such other pertinent data evidencing continuous use of the Property for the uses described in this Section 4.

(d) Grantee, its successors, assigns, and every successor in interest, shall comply with all applicable Federal, State, municipal, and local laws, rules, orders, ordinances, and regulations in the occupation, use, and operation of the Property.

5. The terms and conditions of this Grant Deed shall continue in effect for the following respective periods of time, and survive any sale, transfer, assignment, lease, conveyance, or other disposal of the Property, or portion or portions thereof: (a) Except for Sections 6, 7, 8 and 9, the terms and conditions of this Grant Deed shall remain in effect for fifty (50) years from the date of recordation of this Grant Deed; (b) the terms and conditions of Sections 6 and 7 shall remain in effect until the issuance by the City of the Release of Construction Covenants with respect to the entire Property or such portion of the Property in accordance with Section 324 of the Agreement; and (c) the terms and conditions of Sections 8 and 9 shall remain in effect in perpetuity.

6. The following shall apply to the Property and every portion thereof prior to the issuance of the Release of Construction Covenants with respect to the entire Property or such portion of the Property in accordance with Section 324 of the Agreement:

(a) Prior to recordation of a Release of Construction Covenants with respect to any Parcel or Parcels, Grantee shall not assign all or any part of the Agreement or any interest therein, or transfer, convey, sell or lease such Parcel or Parcels or any portion thereof, without the prior written approval of the Grantor, which the Grantor may grant or withhold in its sole discretion; provided, however, that Grantor shall approve any Permitted Transfer upon delivery

of documentation to the Grantor demonstrating that such assignment or transfer qualifies as a Permitted Transfer and provided further that the leasing of individual tenant premises within a building constructed or to-be-constructed on the Property (as opposed to ground leasing a Parcel) will not require the prior consent of Grantor. Provided, however, that nothing contained in the previous sentence shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted, and/or as amended from time to time) of the City of Imperial Beach, its departments, commissions, agencies or boards and the officers thereof, to approve proposed uses pursuant to the City of Imperial Beach's zoning code or other land use or zoning ordinances, any applicable business tax license/certificate process or any of the City of Imperial Beach's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City of Imperial Beach in the furtherance of the public health, welfare and safety of the inhabitants thereof.

(b) For the reasons cited above, Grantee further represents and agrees for itself and any successor in interest that prior to recordation of one or more Releases of Construction Covenants with respect to the entire Property, without the prior written approval of the Grantor, there shall be no significant change in the ownership of Grantee or in the relative proportions thereof, or with respect to the identity of the parties in control of Grantee or the degree thereof, by any method or means (other than such changes occasioned by the death or incapacity of any individual), except if it is a Permitted Transfer.

(c) Any assignment or transfer of the Agreement or any interest therein or significant change in ownership of Grantee, other than Permitted Transfers, shall require the approval of the Grantor. To the extent Grantor approval of an assignment or transfer is required by the Agreement, in granting or withholding its approval, the Grantor shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of the Agreement ("Transfer Criteria"), including, without limitation, (i) the proposed transferee's current experience in owning and operating retail centers similar to the Project, and (ii) the proposed transferee's financial commitments and resources are reasonably satisfactory to the Grantor. In addition, except for a Permitted Transfer described in clause (v) of the definition of the term "Permitted Transfer" in Section 103 of the Agreement relating to Parcel "A", or a Permitted Transfer described in clause (vi) of the definition of the term "Permitted Transfer" in Section 103 of the Agreement relating to Parcel "F", the Grantor shall not approve any assignment or transfer of the Agreement or any interest herein or significant change in ownership of Grantee that results in payment of consideration to any Person prior to the issuance of the Release of Construction Covenants for the portion of the Property so assigned or transferred and that is not conditioned upon the issuance of the Release of Construction Covenants for the portion of the Property so assigned or transferred. With respect to the Permitted Transfers relating to Parcel "A" and Parcel "F", any consideration received by Grantee prior to the issuance of the Release of Construction Covenants for such Parcel shall be used by Grantee as Developer Equity to pay Acquisition and Development Costs set forth in the Project Budget, and for no other purpose prior to Completion. Notwithstanding any provision of the Agreement to the contrary, Grantor shall have the right to enforce this paragraph (c) by any means available at law or equity, including but not limited to seeking damages and/or injunctive relief, to ensure that

until Completion of the applicable Parcel any such consideration shall be used only to pay Acquisition and Development Costs as provided in the Project Budget and for no other purpose.

(d) Grantee shall promptly notify Grantor of any and all changes whatsoever in the identity of the parties in control of Grantee or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, the Agreement may be terminated by the Grantor if there is any significant change (voluntary or involuntary) in ownership or control of Grantee or Grantee's Manager (other than such changes occasioned by the death or incapacity of any individual), prior to Completion, and such change is not remedied within the cure periods set forth in Section 501.d. of the Agreement.

(e) Permitted Transfers and any other assignments or transfers approved by the Grantor in conformance with the Agreement shall be evidenced by the execution and delivery by Grantee, Assignee and Grantor of an Assignment and Assumption Agreement.

(f) The restrictions of this Section 6 shall terminate as to any portion of the Property upon the recordation of a Release of Construction Covenants for such portion of the Property.

(g) For purposes of this Section 6, the term "Permitted Transfer" shall mean any of the following:

(i) A conveyance of a security interest in the Property, or one or more Properties or one or more Parcels in connection with any Permitted Deed of Trust and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith, provided that Grantee shall have no authority to encumber any portion of the Property until the occurrence of the Phase 1 Closing and the Close of Escrow, and shall have no authority to encumber Property 2 or any portion of Property 2 until the occurrence of the Phase 2 Closing;

(ii) A conveyance of the Property, or one or more Parcels to any Affiliate of Grantee or a sale back from such Affiliate to Grantee, including, but not limited to, a conveyance to a limited liability company or limited partnership in which Grantee, or an Affiliate, is the manager or general partner, as the case may be;

(iii) The inclusion of equity participation by Grantee by addition of investor members or limited partners to Grantee's limited liability company or limited partnership, as the case may be, or similar mechanisms, the purchase of any such membership or partnership interests by the manager or general partner and the withdrawal and/or replacement of such investor members or limited partners;

(iv) The removal for cause of any general partner by the limited partners of the Grantee's partnership, or the removal for cause of the manager of the Grantee's limited liability company, as the case may be, and the replacement thereof with a new general partner or manager, as the case may be;

(v) Grantee's assignment to Approved Parcel "A" Assignee of Grantee's rights and obligations under this Agreement with regard to Parcel "A" pursuant to an Assignment and Assumption Agreement for Parcel "A", and the conveyance by Grantee, by sale, ground lease or other form of conveyance, at the time of the Phase 1 Closing, of Parcel "A" to the Approved Parcel "A" Assignee pursuant to a purchase and sale agreement or ground lease, as applicable, approved by City, for the operation of an approximately 14,800 square foot Fresh & Easy or comparable grocery store or supermarket;

(vi) Grantee's assignment to Approved Parcel "F" Assignee of Grantee's rights and obligations under this Agreement with regard to Parcel "F" pursuant to an Assignment and Assumption Agreement for Parcel "F" and the conveyance by Grantee, by sale, ground lease or other form of conveyance, at the time of the Phase 2 Closing, of Parcel "F" to the Approved Parcel "F" Assignee pursuant to a purchase and sale agreement or ground lease, as applicable, approved by City, for the operation of an approximately 5,000 – 15,000 square foot retail single-tenant or multi-tenant building; and

(vii) The granting of easements, licenses, rights of entry or permits to facilitate the development of the Property in accordance with this Agreement.

Any transfer described in clauses (i) through (vii) above shall be subject to the reasonable approval of the Grantor's City Manager for conformance with the Agreement; provided, however that the City Manager shall approve any such transfer as a Permitted Transfer upon delivery of documentation to the City Manager demonstrating that such transfer qualifies as a Permitted Transfer.

(h) In the event that Grantee does sell, transfer, convey or assign any part of the Property or buildings or structures thereon, without Grantor's prior written approval, in violation of this Grant Deed, Grantor shall be entitled to increase the Purchase Price paid by Grantee by the amount that the consideration payable for such sale, transfer, conveyance or assignment is in excess of the Purchase Price paid by Grantee, and the cost of improvements and development theretofore made to the Property, 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 Grantor and until so paid Grantor shall have a lien on the Property and any portion thereof for such amount. Nothing in this paragraph shall apply to nor shall this prohibition be deemed to prevent the granting of easements or permits to facilitate the development or occupancy of the Property.

(i) Without the prior written consent of Grantor, Grantee: (1) shall not place or suffer to be placed on the Property or any portion thereof any lien or encumbrance, other than mortgages, deeds of trust, conveyances and leases back or any other form of conveyance required for any reasonable method of financing the acquisition of the Property, the construction of the improvements on the Property, and any other encumbrances necessary and appropriate to develop or occupy the Property as permitted by the Agreement ("Permitted Financing Purposes"); and (2) shall (x) notify Grantor in advance of any encumbrance recorded against the Property; and (y) not enter into any such deed of trust or other encumbrance without prior written approval of Grantor, which approval Grantor agrees to give if any such conveyance is for Permitted Financing Purposes and to a responsible financial or lending institution or other

reasonably acceptable person or entity. Notwithstanding the foregoing, Grantee shall have no authority to encumber any portion of the Property until the occurrence of the Phase 1 Closing (as defined in the Agreement), and shall have no authority to encumber Property 2 or any portion of Property 2 until the occurrence of the Phase 2 Closing (as defined in the Agreement) and recordation of the Instrument Terminating Option. In the event that Grantee does sell, transfer, convey or assign any part of the Property or buildings or structures thereon, without Grantor's prior written approval, in violation of this Grant Deed, Grantor shall be entitled to exercise all available remedies, including, without limitation, foreclosure of any Deed of Trust in favor of Grantor, exercise of the Option and/or exercise of Grantor's right pursuant to Section 7 of this Grant Deed, below.

7. Grantor and Grantee agree that the timely completion of construction of the Improvements on the Property by Grantee as required by the Agreement is a condition subsequent, to which the fee simple estate in the Property granted to Grantee by this Grant Deed is subject. Prior to the Completion of construction of the Improvements to be constructed on the Property, or any part thereof, which shall be evidenced by recordation of a Release of Construction Covenants pursuant to Section 324 of the Agreement, the following shall apply:

(a) Grantor shall have the right, in its sole and absolute discretion, in addition to any other rights and remedies granted in the Agreement, to exercise a power of termination as described in California Civil Code Section 885.010 to terminate and revest in Grantor the estate in the Property (or any portion thereof) conveyed to Grantee pursuant to this Grant Deed, with all improvements thereon, and to re-enter and take possession of the Property with any improvements thereon, in the event Grantor terminates the Agreement in accordance with Section 510.c. of the Agreement as the result of any of the following:

(i) Subject to Force Majeure Delays, Grantee, its successor or assignee fails to commence construction of the Improvements as required by the Agreement and such breach is not cured within the time provided in Section 501 of the Agreement, provided that Grantee shall not have obtained an extension or postponement to which Grantee may be entitled pursuant to Section 602 of the Agreement; or

(ii) Grantee, its successor or assignee abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of the Agreement, provided Grantee has not obtained an extension or postponement to which Grantee may be entitled to pursuant to Section 602 of the Agreement; or

(iii) Except for Permitted Transfers, Grantee, its successor or assignee assigns or attempts to assign the Agreement, or any rights therein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of the Agreement, and such breach is not cured within the time provided in Section 501 of the Agreement; or

(iv) Grantee, its successor or assignee otherwise materially breaches the Agreement, and such breach is not cured within the time provided in Section 501 of the Agreement.

(b) Grantor's rights under this Section 7 of this Grant Deed shall be limited by and shall not defeat, render invalid or limit:

(i) Any Permitted Deed of Trust with respect to the Property, as defined in the Agreement, or any portion thereof; or

(ii) Any rights or interests provided in the Agreement for the protection of any beneficiary of a Permitted Deed of Trust with respect to the Property, or any portion thereof.

(c) In the event title to the Property or any part thereof is revested in Grantor as provided in this paragraph (7), Grantor shall, pursuant to its rights and responsibilities under the Redevelopment Law, use its best efforts to reconvey the subject Property as soon as possible in a commercially reasonable manner and consistent with the objectives of the Redevelopment Law and the Redevelopment Plan, to a qualified and responsible developer (as determined by Grantor) who will assume the obligation of making or completing the improvements as are acceptable to Grantor in accordance with the uses specified for such Property or part thereof in the Redevelopment Plan and in a manner that is satisfactory to the Grantor. Upon such resale of the subject Property or portion thereof, any proceeds of such sale shall be applied as follows:

(i) First, to reimburse Grantor on its own behalf for all reasonable costs and expenses incurred by Grantor, including but not limited to pro rata salaries of Grantor's staff and legal fees incurred in connection with the recapture, management and resale of the subject Property or portion thereof (but less any income derived by Grantor from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Property or portion thereof; any payments made or required to be made to discharge any encumbrances or liens existing on the Property or portion thererof at the time of revesting of title in Grantor (other than those existing as of the Close of Escrow that were not created by Grantee) or 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 any improvements made or completed by Grantor on the Property or any part thereof in accordance with the Agreement, the Scope of Development and the Plans; and any amounts otherwise owing to Grantor by Grantee and its successor or transferee;

(ii) Second, to reimburse any Permitted Lender for disbursement of a Construction Loan to pay Acquisition and Development Costs;

(iii) Third, to reimburse Grantee for any Developer equity disbursed to pay Acquisition and Development Costs, less any gains or income withdrawn or made by Grantee from the Property or the Improvements thereon. Notwithstanding the foregoing, the sum of the amounts calculated pursuant to subsections (ii) and (iii) above shall not exceed the fair market value of the Improvements on the Property as of the date of the default or failure which gave rise to Grantor's exercise of its right of termination;

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

The foregoing provisions are agreed to in recognition of the public interest in the redevelopment of the Property and the substantial investment by Grantor both in money and staff time for the completion of the Project. Grantor's rights pursuant to this Section shall terminate and be of no further force and effect upon the execution and recordation by Grantor of the Release of Construction Covenants for the subject Property or portion thereof. This power of termination is authorized by California Health and Safety Code Sections 33437 and 33438. The rights established in this Section 7 and in Section 511 of the Agreement are to be interpreted in light of the fact that Grantor is conveying the Property to Grantee for redevelopment and not for speculation in undeveloped land.

8. Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Grant Deed is made and accepted upon and subject to the following conditions: 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 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 Property. The foregoing covenants shall run with the land.

9. All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, 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 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."

Notwithstanding the paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the above paragraph.

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 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."

   Notwithstanding the above paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph.

3. In contracts entered into by the Agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the Agency within any survey area of redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

10. For the respective periods of time set forth in Section 5 of this Grant Deed, 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, 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.

11. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed the beneficiary of the agreements and covenants provided hereinabove 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 Grantor, and such covenants shall run in favor of Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether 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 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.

12. 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; 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.

13. None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instruments between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Grant Deed.

14. For the respective periods of time set forth in Section 5 of this Grant Deed, the covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except for the covenants and conditions contained in Sections 6 and 7 of this Grant Deed.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this ____ day of _____, 2011.

[SIGNATURES ON NEXT PAGE]

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

GRANTOR:

GRANTOR OF IMPERIAL BEACH

By: _____
Gary Brown
Grantor Manager

ATTEST:

_____
Jacqueline M. Hald
Grantor Clerk

APPROVED AS TO FORM

By:_____
Jennifer Lyon
Grantor Attorney

KANE, BALLMER & BERKMAN
Special Counsel

By: _____

GRANTEE:

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

State of California)
)
County of San Diego)

On _____, 2011 before me, _____(here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capaGrantor(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

[Seal]

State of California)
)
County of San Diego)

On _____, 2011 before me, _____(here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capaGrantor(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

[Seal]

EXHIBIT A

LEGAL DESCRIPTION

Real property in the Grantor of Imperial beach, County of San Diego, State of California, described as follows:

Also more commonly known as Assessor's Parcel Number [insert].

DRAFT

ATTACHMENT NO. 9

FORM OF AGREEMENT CONTAINING COVENANTS

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attention: 9th and Palm Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (this "Agreement") is entered into as of _____, 20____ by and between the CITY OF IMPERIAL BEACH, a municipal corporation ("City") and SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Developer").

A. Developer is the owner of that certain real property located in the City of Imperial Beach, County of San Diego, State of California, legally described in the "Legal Description" attached hereto as Exhibit "A" and incorporated herein by this reference (the "Property").

B. The Property is within the Palm Avenue/Commercial Redevelopment Project Area (the "Project Area") in the City of Imperial Beach and is subject to the provisions of the redevelopment plan for the Project Area, which was approved and adopted on February 6, 1996, by the City Council of the City of Imperial Beach by Ordinance 96-901, including subsequent amendments (the "Redevelopment Plan").

C. In furtherance of the Redevelopment Plan, Redevelopment Agency and City have entered into that certain Cooperation Agreement dated February 16, 2011, pursuant to which, on March 10, 2011, Redevelopment Agency conveyed title to the Property to City and City has agreed to aid and assist Redevelopment Agency in carrying out the Redevelopment Plan.

D. In furtherance of the Redevelopment Plan, City has ent ered into that certain Disposition and Development Agreement, dated _____, 20____ (the "DDA"), with Developer, which is incorporated herein by this reference, pursuant to which City has conveyed title to the Property to Developer. "DDA" as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments or attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

D. Pursuant to the DDA, Developer is obligated to develop certain improvements on the Property (the "Improvements").

E. This Agreement is entered into and recorded in accordance with the Redevelopment Plan, the DDA and the California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the "Redevelopment Law").

NOW, THEREFORE, CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, as follows:

(1) Developer, such successors and such assignees shall use the Property only for the uses specified in the Redevelopment Plan, the DDA (including the Scope of Development) and this Agreement. No change in the use of the Property from the uses specified in the Redevelopment Plan, the DDA (including the Scope of Development) and this Agreement) shall be permitted without the prior written approval of City. The Improvements shall comply with the current California Building Code and Building Code of the City of Imperial Beach.

(2) Without limiting the generality of the foregoing, Developer, such successors and such assignees shall use the Property for the development and operation of a town center development ("Retail Center") that combines retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings, surface parking consisting of 238 parking stalls, landscaping, hardscaping, lighting and driveways, all as described in the Scope of Development, in accordance with the requirements of and as more particularly described in this Agreement.

(3) The type and quality of tenants allowed in the Property shall be generally consistent with the type and quality of tenants described in Developer's Proposal to Redevelopment Agency dated May 6, 2009. Without limiting the generality of the foregoing, Developer, such successors and such assignees, shall use that portion of the Property depicted in the DDA as Parcel "A", for the construction and operation of an approximately 14,800 square foot Fresh & Easy market (or other fresh format or limited-assortment grocery store emphasizing perishables and center-store assortments that differ from traditional retailers, especially in the areas of ethnic, natural and/or organic foods, or other similar grocery store acceptable to the City Manager in his or her sole discretion) which shall be comparable to other "Fresh & Easy" neighborhood grocery stores in Southern California with respect to: services and amenities; quality, type and amounts of food and merchandise (including, but not limited to, bakery, dairy, deli, frozen foods, general grocery, meat, pharmacy, produce, seafood, snacks and beverages); prices; customer service; and environmental sustainability. For purposes of this paragraph and the preceding paragraph, "operation" shall mean open for business and operating for at least one day.

(4) The Property shall specifically exclude any offensive or incongruent uses including, without limitation, the following (unless prior written consent therefor by the City Manager has been granted, which consent may be granted or withheld in his or her sole discretion):

(i) Excepting those odors, noises or sounds that are customarily associated with a restaurant use or with a typical grocery store providing prepared and made-to-order foods, no use shall be permitted in the Retail Center which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building on the Site;

(ii) Any noxious materials, and any toxic or caustic, or corrosive fuel or gas in violation of applicable law;

(iii) Any dust, dirt or particulate matter in excessive quantities;

(iv) Any unusual fire, explosion, or other damaging or dangerous hazard;

(v) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling (excluding a microbrewery, winery and/or distiller of fine spirits operated as an ancillary part of a restaurant), refining, smelting, agricultural or mining operation;

(vi) Any surplus store or pawn shop;

(vii) Other than a grocery store or national credit drug store, any retail outlet that sells alcoholic beverages for off-site consumption;

(viii) Any mobile home park, trailer court, labor camp, junkyard or stockyard, provided, however, that this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance;

(ix) Any dumping, disposing, incineration or reduction of garbage, provided, however, that this prohibition shall not be applicable to garbage compactors located near the rear of any building, grease traps and collection for restaurants, or consumer trash or recycling collection receptacles/areas;

(x) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(xi) Any central laundry or dry cleaning plant, provided, however, that this prohibition shall not be applicable to: (A) nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same

may be found in retail shopping centers in the metropolitan area where the Site is located; and (B) so-called "green" cleaners;

(xii) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation, provided, however, that nothing contained herein shall preclude the use of the Retail Center for car shows or similar special events for the temporary marketing of automobiles;

(xiii) Any veterinary hospital or animal raising or boarding facility, provided, however, that this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the building; and the combined incidental veterinary and boarding facilities shall occupy no more than 15% of the floor area of the pet shop;

(xiv) Any mortuary or funeral home;

(xv) Any adult-oriented business or facility as defined and regulated in City's Municipal Code. Such uses include, without limitation, massage establishments (to the extent defined and regulated in such Code as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters and paraphernalia businesses;

(xvi) Any establishment selling or exhibiting "obscene" material, except that this provision shall not prohibit (A) first class videotape (for purposes hereof, the term "videotape" shall include DVDs, CDs and other media used to show motion pictures now or in the future) retailers with a national presence which primarily rent or sell "G" to "R"-rated videotapes but which also rent or sell "non-rated or NC-17 videotapes" for off-premises viewing only, provided that such retailers do not rent or sell "X-rated videotapes", (B) first-class book stores with a national presence which are not perceived to be, nor hold themselves out as "adult book" stores, but which incidentally sell books, magazines and other periodicals which may contain pornographic materials, so long as such sale is not from any special or segregated section in the store and provided further that such pornographic materials are not considered

objectionable or offensive to accepted standards of decency within the local community or (C) a first-class, first-run movie theatre that may show or display "R"-rated or "NC-17" rated films or telecasts or "X"-rated films or telecasts; provided, however, that (1) such operator believes, in its reasonable business judgment, that such "X"-rated motion picture or telecast has artistic merit or is a so-called "legitimate" film and (2) such operator, as a general policy, does not exhibit "X"-rated films and telecasts;

(xvii) Any establishment which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff;

(xviii) Laboratories, excluding any which are necessary to medical uses in the Retail Center;

(xix) Social services agencies occupying more than an aggregate total of 4,000 square feet of the Site;

(xx) Nursing homes;

(xxi) Any establishment selling or exhibiting drugs or drug-related paraphernalia (*e.g.*, medical marijuana and smoke shops);

(xxii) Any medical marijuana distribution facility that is (1) a facility or location, whether fixed or mobile, where marijuana is made available, sold, transmitted, given or otherwise provided to two or more persons with identification cards or qualified patients, or primary caregivers, as defined in California Health and Safety Code Section 11362.5 *et seq.* as amended from time to time, or (2) any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code Section 11362.5 *et seq.*;

(xxiii) Check cashin g businesses;

(xxiv) Fraternal organizations;

(xxv) Fortunetelling businesses;

(xxv) Tattoo parlors occupying more than an aggregate total of 2,000 square feet in the Retail Center; and

(xxvi) Any gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns.

Pursuant to California Health and Safety Code Section 33437(d), the restrictions in this Section 1.a.(4) are deemed necessary by the City to carry out the purposes of the California Community Redevelopment Law, including the elimination and prevention of the recurrence of blight in the community, and are intended to run with the land for the benefit of the community and all subsequent owners and tenants of the Property and any part thereof.

b. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, 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, subtenants, sublessees or vendees of the Property. Developer, specifically and more particularly, covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators 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 California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Developer or any person claiming under or through it, 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 of the Property.

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall also apply to the preceding paragraph.

c. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property 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, subtenants, sublessees or vendees of the Property. All

deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds:

"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators 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 California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the California Government Code, in the 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."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall also apply to the preceding paragraph.

(2) In leases:

"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the California Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the 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."

Notwithstanding the preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the California Government Code nor be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the California Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the California Civil Code and subdivisions (n), (o) and (p) of Section 12955 of the California Government Code shall also apply to the preceding paragraph.

(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 California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the California Government Code, in the 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."

d. (1) Developer, 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 that City issues a Release of Construction Covenants pursuant to the DDA, reasonable wear and tear and casualty damage 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, graffiti removal, fencing, walls, equipment, *etc.*, as necessary; emptying of trash receptacles and removal of litter; sweeping of any 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 building(s) on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; and maintaining security devices in good working order.

(2) If City gives written notice to Developer that the maintenance or condition of the Property, the Project or any portion thereof or any other improvements thereon does not comply with this Agreement, then Developer shall correct, remedy or cure the deficiency within thirty (30) days following the date of such notice, unless the notice states that the deficiency is an urgent matter relating to public health and safety, in which case, Developer shall cure such deficiency within 48 hours following the date of the notice. Notwithstanding the foregoing, if any such matter cannot reasonably be corrected within the specified time, and Developer is proceeding with due diligence, and in good faith, to correct same, then the foregoing timeframes shall be extended, as reasonably necessary in order to allow Developer to

complete such work of correction. In the event that Developer fails to cure any such deficiencies within the applicable period described above, City shall have, in addition to any other rights and remedies hereunder, the right to enter onto the Property and correct such deficiencies or to contract for the correction of any deficiencies, and Developer shall be responsible for payment of all such costs actually and reasonably incurred by City, and such payment shall constitute a lien on the Property until paid by Developer pursuant to California Civil Code Section 2881. Any such lien shall be subordinate and subject to the lien of any Approved Loan.

e. Developer shall be responsible for the operation of the Improvements either by direct management or by contracting its managerial functions to a third party property manager reasonably acceptable to City, which property manager will be charged with managing the Improvements on behalf of Developer. Unless such property manager is an affiliate of Developer, City shall have the right to review and approve any such entity prior to its selection by Developer. Such approval shall not be unreasonably withheld or delayed. Developer shall include in any such property management agreement a provision providing for the termination of the agreement in the event that the property manager violates any federal, state or local health and safety laws and regulations which are not cured within thirty (30) days following the giving of notice of such violations by City or any other governmental entity; provided, however, that in the case of a violation that cannot be cured within such thirty (30)-day period, that such cure shall be commenced within thirty (30) days of notification and shall be diligently prosecuted to completion.

2. a. In accordance with California Civil Code Section 1461 *et seq.*, all conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land for the respective periods of time set forth in Section 5, below. The parties acknowledge and agree that the conditions, covenants and restrictions directly benefit the Property and benefit property that the City owns or will own (including, without limitation, underlying interests in streets) within the Project Area 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 City and its successors and assigns and any property the City owns, now or in the future, (including, without limitation, underlying interests in streets) within the Project Area, against Developer, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. City shall be deemed the beneficiary of the covenants, conditions and restrictions of this Agreement both for and in its own right and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest therein in the Property or the Project Area. Except as provided in the preceding sentences and in applicable law (as now exists or as hereinafter may be amended), the covenants, conditions and restrictions contained herein shall not be enforceable by any third party.

b. In addition to the authority provided under California Civil Code Section 1461 *et seq.*, the parties hereto acknowledge and agree that California Health and Safety Code Sections 33435, 33436, 33437, 33438 and 33439 provide legal authority, separate and apart from California Civil Code Section 1461 *et seq.*, for establishing the covenants running with the land

set forth herein. City deems the covenants, conditions and restrictions in this Agreement to be necessary to prevent speculation and to carry out the purposes of the Redevelopment Law.

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

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage permitted by the DDA.

5. The non-discrimination covenants, conditions and restrictions contained in Sections 1.b. and 1.c. of this Agreement shall remain in effect in perpetuity. Every other covenant, condition and restriction contained in this Agreement shall remain in effect for fifty (50) years from Completion, at which point in time it shall automatically terminate and be of no further force or effect.

6. Prior to exercising any remedies hereunder, City shall give Developer notice of such default. Except as otherwise set forth herein, if a non-monetary default is reasonably capable of being cured within 30 days, then Developer shall have such period to effect a cure prior to exercise of remedies by City. If the non-monetary default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (i) initiates corrective action within said period and (ii) diligently, continually (subject to force majeure events) 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 City; provided, however, that in no event shall City be precluded from exercising remedies if City's security in the Property becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given. Monetary defaults shall be cured within ten (10) days.

a. No lender shall 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.

b. Whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by Developer, the City shall at the same time deliver the notice or demand to each Permitted Lender (as defined in the DDA) that requests such notice or demand, in writing, from the City and provides its contact information for the notice or demand. Each such Permitted Lender shall (insofar as the rights of the City 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 Permitted Lender upon obtaining possession of the encumbered property, such Permitted Lender shall seek to obtain possession with diligence and continuity through a receiver or

otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety- (90) day period, such Permitted Lender shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity not to exceed one hundred and eighty (180) days, unless the City agrees to further extensions in its reasonable discretion; and provided further that such Permitted Lender shall not be required to remedy or cure any non-curable default of Developer. Any Permitted Lender who forecloses on its Permitted Deed of Trust, or is assigned or otherwise succeeds to Developer's rights under this Agreement, or, subject to the reasonable approval of the City Manager, the successful bidder at a foreclosure sale, shall have the right to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the City by which such Permitted Lender expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by City. Any such Permitted Lender properly completing such improvements shall be entitled, upon written request made to the City, to a Release of Construction Covenants from the City.

7. If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth in Section 6, above, then City and its successors and assigns, without regard to whether City 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.

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

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the dates set opposite their signatures.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a California corporation, its manager

Dated:_____

By:_____
Colton T. Sudberry, President

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

Exhibit "A"

Legal Description

[behind this page]

ATTACHMENT NO. 10

FORM OF ENVIRONMENTAL INDEMNITY

[behind this page]

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity"), dated as of _____, 20____, is made by _____, a _____ ("Developer"), whose address for purposes of giving notices is _____, in favor of the CITY OF IMPERIAL BEACH, CALIFORNIA, a municipal corporation ("City") and IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic, its successors and assigns ("Redevelopment Agency" and collectively with City, the "Indemnified Parties"), whose address for purposes of giving notices is 825 Imperial Beach Boulevard, Imperial Beach, California 91932.

WITNESSETH

WHEREAS, Developer is the owner of real property in the City of Imperial Beach, California, as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, and the improvements thereon (collectively referred to as the "Property");

WHEREAS, the Developer acquired the Property from the City pursuant to the terms of that certain Disposition and Development Agreement between City and Developer dated as of _____, 20____ (the "DDA"), concerning the development of the Property;

WHEREAS, the City previously acquired the Property from the Redevelopment Agency; and

WHEREAS, the purpose of the DDA is to effectuate the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project by providing for the disposition of the Property (which comprises a portion of the real property referred to in the DDA as the "Site") to Developer, for Developer's development and use of the Property for a grocery store ***[or insert other use of the Parcel]*** (the "Project"); and

WHEREAS, Developer agreed to execute and deliver to the Indemnified Parties this Indemnity in order to induce the Indemnified Parties to agree to convey the Property to Developer.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Developer hereby agrees with the Indemnified Parties as follows:

SECTION 1. DEFINITION

For the purpose of this Indemnity, "Hazardous Substances" shall include, without limitation, any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including,

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without limitation, any material, substance or waste which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety. "Hazardous Substances" do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all laws.

SECTION 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Developer:

2.1 Covenants.

(a) Developer covenants that while Developer is the owner of the Property or any portion thereof, that it shall comply with any and all laws, regulations and/or orders which may be promulgated, from time to time, to the extent applicable to the Property, with respect to the discharge and/or removal of Hazardous Substances, to pay immediately when due the costs of the removal of, or any other action required by law with respect to, any such Hazardous Substances, and to keep the Property free of any lien imposed pursuant to any such laws, regulations or orders. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amount of any costs, action or lien, nor to limit the remedies available to Developer in respect thereto.

(b) Developer covenants that the Property will not, while Developer is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any Hazardous Substances, except for *de minimis* quantities used at the Property in compliance with all applicable environmental laws and required in connection with the construction of a ***[INSERT APPLICABLE USE, e.g., grocery store]***, as well as the routine operation and maintenance of the Property.

(c) Developer further agrees that, while Developer is the owner of the Property or any portion thereof, it shall not release or dispose of any Hazardous Substances at the Property except in compliance in all material respects with all applicable environmental laws.

(d) The Indemnified Parties shall have the right, but not the obligation, at any time, to conduct an environmental audit of the Property at the Indemnified Parties' expense, unless Hazardous Substances are found, then at Developer's sole cost and expense, and Developer shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Indemnified Parties believe that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Developer and only in the presence of a representative of Developer. Developer shall give the Indemnified Parties and their agents and employees access to the Property to remove, or otherwise mitigate against the effects of, Hazardous Substances, or Developer shall perform such tasks itself.

(e) Developer, while Developer is the owner of the Property or any portion thereof, shall not install, or knowingly permit to be installed, on the Property friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Developer shall promptly either (i) remove or cause to be removed any material that such regulations require to be removed or (ii) otherwise comply in all material respects with such federal and state regulations, at Developer's sole cost and expense. If Developer shall fail to so do within all applicable notice and cure periods permitted under applicable law, regulation or order, then the Indemnified Parties may do whatever is commercially reasonable to comply in all material respects with the applicable law, regulation or order, at Developer's sole cost and expense (as between Developer and the Indemnified Parties) and the costs thereof shall be added to the Obligations (as hereinafter defined) of Developer under this Section 2.

(f) Developer shall immediately advise the Indemnified Parties in writing of any of the following: (i) any pending or threatened environmental claim against Developer or the Property or (ii) any condition or occurrence on the Property that (A) results in noncompliance by Developer with any applicable environmental law, (B) could reasonably be anticipated to cause the Property to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property or Developer.

2.2 Indemnity. Developer shall indemnify, protect and hold the Indemnified Parties and their respective elected officials, members, directors, officers, employees and agents harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of any nature whatsoever (collectively, the "Obligations") which may at any time be imposed upon, incurred by or asserted or awarded against the Indemnified Parties or either of them, and/or their respective elected officials, members, directors, officers, employees and agents and arising from or out of:

(1) The presence of any Hazardous Substances on, in, under or affecting all or any portion of the Property or any surrounding areas (including Hazardous Substances known or anticipated to be present), except to the extent that such Hazardous Substances: (A) were caused by the Indemnified Parties or their agents; or (B) otherwise existed on, in, under or affecting all or any portion of the Property or any surrounding areas prior to the time Developer became the owner of the Property;

(2) The breach of any covenant made by Developer in Section 2.1 hereof or

(3) The enforcement by the Indemnified Parties of any of the provisions of this Section 2.2 or the assertion by Developer of any defense to its obligations hereunder.

2.3 Notwithstanding any other provision herein, or as otherwise allowed by law, the Indemnified Parties, and each of them, and/or their respective elected officials, members, directors, officers, employees and agents may recover directly from Developer or from any other party who may be responsible for:

(1) any damages, costs and expenses incurred by the Indemnified Parties and/or their respective elected officials, members, directors, officers, employees and agents as a result of fraud or any criminal act or acts of Developer or any partner, member, shareholder, officer, director or employee of Developer, or of any general or limited partner of Developer;

(2) any damages, costs and expenses incurred by the Indemnified Parties and/or their respective elected officials, members, directors, officers, employees and agents as a result of any misappropriation of funds provided for the construction of the Project as described in the DDA, revenues from the operation of the Project, any funds on deposit, proceeds of insurance policies or condemnation proceeds;

(3) any damages, costs and expenses incurred by the Indemnified Parties and/or their respective elected officials, members, directors, officers, employees and agents as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any Hazardous Substances by the person or entity responsible therefor and/or

(4) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions.

SECTION 3. DEVELOPER'S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Developer hereby agrees that the Obligations shall be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting the DDA or affecting any of the rights of the Indemnified Parties with respect thereto. The obligations of Developer hereunder shall be absolute and unconditional irrespective of:

(1) The validity, regularity or enforceability of the DDA or any other instrument or document executed or delivered in connection therewith;

(2) Any alteration, amendment, modification, release, termination or cancellation of the DDA, or any change in any term with respect to all or any of the obligations of Developer contained in the DDA;

(3) Any waiver of, or consent to any departure from, any provision contained in the DDA; or

(4) Any other circumstance that might otherwise constitute a defense available to, or a discharge of, Developer with respect to any or all of the Obligations.

3.2 Continuation. This Indemnity (i) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations; and (ii) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Indemnified Parties upon the insolvency, bankruptcy or reorganization of Developer or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Developer's obligations under the DDA, this Indemnity shall not terminate if any of the following shall have occurred:

(1) Redevelopment Agency or City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale, exercise of option or otherwise; or

(2) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Substances laws, the effect of which may be to make a lender or mortgagee liable with respect to any of the Obligations, notwithstanding the fact that no event, circumstance or condition of the nature described in paragraph (1) above ever occurred.

SECTION 4. WAIVER.

4.1 Developer hereby waives the following:

(1) Promptness and diligence;

(2) Notice of acceptance and notice of the incurrence of any obligation by Developer;

(3) Notice of any action taken by the Indemnified Parties, Developer or any other interested party under any agreement or instrument relating to the DDA;

(4) All other notices, demands and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Developer of its Obligations hereunder;

(5) The right to a trial by jury with respect to any dispute arising under, or relating to, this Indemnity;

(6) Any requirement that Redevelopment Agency or City protect, secure, perfect or insure any security interest or lien in or on any property subject thereto;

(7) Any requirement that Redevelopment Agency or City exhaust any right or take any action against Developer or any other person or collateral; and

(8) Any defense that may arise by reason of:

(i) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(ii) The failure of Redevelopment Agency or City to file or enforce any claim against the estate (in probate, bankruptcy or any other proceedings) of any person or persons; or

(iii) Any defense based upon an election of remedies by Redevelopment Agency or City, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Developer or any other right of Developer to proceed against any party.

SECTION 5. NOTICES

Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be personally served, mailed by first-class certified mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity.

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.

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SECTION 6. MISCELLANEOUS

6.1 Developer shall make any payment required to be made hereunder in lawful money of the United States of America, and in same-day funds, to Redevelopment Agency or City, as the case may be, at their address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and executed by Developer and the Indemnified Parties, and no waiver of any provision of this Indemnity, and no consent to any departure by Developer from any provision of this Indemnity, shall be effective unless it is in writing and executed by the Indemnified Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Indemnified Parties to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Indemnified Parties provided herein and in the DDA, if applicable, are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Indemnified Parties under the DDA, if applicable, against any party thereto are not conditional or contingent upon any attempt by the Indemnified Parties to exercise any of its rights under any other document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (i) be binding upon Developer and Developer's successors and assigns and (ii) inure, together with all rights and remedies of Redevelopment Agency, City and their respective elected officials, members, directors, officers, employees and agents hereunder, to the benefit of Redevelopment Agency, City and their respective elected officials, members, directors, officers, employees and agents, any successors to Redevelopment Agency's or City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of Redevelopment Agency's or City's rights and remedies under the DDA, any successors to any such person, and all directors, officers, employees and agents of all of the aforementioned parties. Without limiting the generality of clause (ii) of the immediately preceding sentence, Redevelopment Agency and City may, subject to, and in accordance with, the provisions of the DDA, assign or otherwise transfer all or any portion of their respective rights and obligations under this or any other document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to Redevelopment Agency and City herein or otherwise. None of the rights or obligations of Developer hereunder may be assigned or otherwise transferred without the prior written consent of the Indemnified Parties.

6.6 Developer hereby (i) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (ii) waives any defense based on doctrines of venue or *forum non conveniens* or similar rules or doctrines and (iii) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Developer irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Developer agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 Nothing contained in this Indemnity shall be construed to obligate the Developer to indemnify the Indemnified Parties or any other person or entity with respect to Hazardous Substances that existed on, in, under or affecting all or any portion of the Property or any surrounding areas prior to the time Developer became the owner of the Property.

IN WITNESS WHEREOF, Developer has duly executed this Indemnity as of the date first set forth above.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____ By:_____
Colton T. Sudberry, President

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EXHIBIT "A"

LEGAL DESCRIPTION

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ATTACHMENT NO. 11

FORM OF PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT

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PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT

(Progress Payments)

THIS PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT (this "Agreement") is made as of _____, 20__ by and between CITY OF IMPERIAL BEACH, a municipal corporation ("City") and SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Developer"). In this Agreement, each of the Developer and the City are sometimes individually referred to as a "Party" and collectively as the "Parties". For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. City and Developer have entered into that certain Disposition and Development Agreement dated _____, 20__, which is incorporated herein by this reference (the "DDA"), concerning the sale to Developer of certain real property described in Exhibit "A" attached hereto (the "Property") and its development as a commercial/retail center (the "Project"). Any capitalized term not otherwise defined in this Agreement shall have the meaning ascribed to such term in the DDA.

B. As a condition to the DDA, Developer has agreed to design, permit, construct and install certain off-site Public Improvements (as defined in the DDA) needed for the development of the Project, which Public Improvements are described in Recital C, below, and City has previously expended funds (the "Disbursed Funds" described in Section 3.b., below) to commence the preparation of plans for the Public Improvements and agreed to provide additional funds (the "Remaining Public Improvement Funds" described in Section 3.b., below) to pay or reimburse Developer for the cost of designing, permitting, constructing and installing the Public Improvements (the "Public Improvement Costs").

C. The Public Improvements shall consist of the design, permitting, construction and installation of the work reflected on the approved construction drawings for the Public Improvements, including without limitation, the following, all of which shall meet all applicable City standards:

1. The intersection improvements at Delaware, Palm and State Route 75 (the "Highway 75 Access Improvements") including, without limitation, the following;

   (a) Removal of existing median and pavement between Palm Avenue and Site entrance;

(b) Removal of existing curb/gutter, median and pavement along southern side of Palm Avenue, between 7th Avenue and State Route 75;

(c) Construction of new curb/gutter, pavement and median on Palm Avenue between 7th Avenue and State Route 75;

(d) Installation of landscaping and irrigation and storm water treatment "garden";

(e) Installation of new street lights; and

(f) Any other Cal-Trans requirements relating to the foregoing.

2. Moving of traffic signals and interconnection of traffic signals and construction of curbs, gutters, sidewalks and landscaping on Palm Avenue and 9th Street;

3. All existing and proposed utilities within the boundary of the Site, or within any right-of-way abutting the boundary shall be placed underground (conversion) to the reasonable satisfaction of the City Engineer. Developer is responsible for complying with the requirements and make such arrangements with each serving and impacted utility company for the conversion or additional installation of such facilities (the "Underground Utilities");

4. Removal and replacement of the concrete alley at the south end of the Site to the reasonable satisfaction of the City Engineer, including the adjustment to grade and/or replacement of all utility covers in such alley. The concrete section shall be designed to support the imposed load of fire apparatus to withstand a minimum 95,000 pound vehicle load ("Alley Improvements"); and

5. The existing traffic signal pole signaling left turns from Westbound Silver Strand Boulevard to Palm Avenue shall be removed and replaced to the reasonable satisfaction of the City Engineer ("New Traffic Signal").

D. In addition, Developer has agreed to design, permit, construct and install the Ninth Street Improvements, consisting of the resurfacing and improvement of 9th Street, between Palm Avenue and Donax Avenue, as required by the City as a condition of the approval of the Entitlements, and City has agreed to provide the funds needed to pay all Ninth Street Costs, estimated to be $200,000.

E. City and the Imperial Beach Redevelopment Agency have entered into a Cooperation Agreement dated February 16, 2011 (the "Cooperation Agreement), pursuant to

which Redevelopment Agency has conveyed and transferred to City certain real property, money and other assets of the Redevelopment Agency (the "Redevelopment Assets"), and City has agreed to aid and cooperate in the implementation of the Redevelopment Plan and administer the Redevelopment Assets on behalf of the Redevelopment Agency. Therefore, as between the City and the Redevelopment Agency, the City shall administer this agreement on behalf of the Redevelopment Agency, and to the extent disbursement of funds to Developer is required pursuant to this Agreement, subject to Recital G., below, City shall disburse such funds.

F. Pursuant to the Cooperation Agreement, among other things, the City has agreed to develop and construct certain public improvements for the purpose of aiding and cooperating with the Redevelopment Agency in the redevelopment of the Site, including, but not limited to, intersection improvements to allow vehicular access to the Site from State Route 75, and the Redevelopment Agency has agreed to reimburse City for the public improvements from net available tax increment, as defined in the Cooperation Agreement (the "Cooperation Agreement Revenues").

G. Developer acknowledges and agrees that to the extent that the City has any financial obligations to Developer pursuant to this Agreement, such financial obligation is and shall be a special limited obligation, payable solely from the funds that have been transferred or pledged by the Redevelopment Agency to the City, and allocated for the Public Improvements and the Ninth Street Improvements, pursuant to the Cooperation Agreement, and is not and shall not be a pledge of or obligation payable through the City's general fund. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in this Agreement.

NOW, THEREFORE, City and Developer agree as follows:

1. Deposit into Construction Escrow Account.

Promptly following the mutual execution of the Disbursed Funds Memorandum (described in Section 3.b., below) establishing the amount of the Disbursed Funds and the Remaining Public Improvement Funds, City shall open a construction escrow account ("Construction Escrow") with Wells Fargo Bank or another lending institution mutually acceptable to the City Manager and Developer ("Escrow Agent"), and shall deposit into the Construction Escrow the sum equal to $200,000 less the Disbursed Funds (the "Initial Deposit").

2. Conditions Precedent.

a. Notwithstanding any provision to the contrary set forth in this Agreement, City shall have no obligation to approve disbursement of any funds from the Construction Escrow to or for Developer for the design, permitting, construction and installation of the Public Improvements or the Ninth Street Improvements, except for the Initial Deposit, unless and until the conditions precedent to Public Improvement Reimbursements set forth in this Section 2 have been satisfied in full. Prior to the satisfaction of the conditions set forth in Section 2.b., below,

City shall only be obligated to approve disbursements for eligible Public Improvement Costs that are incurred in the preparation of plans for the Public Improvements and the Ninth Street Improvements, to the extent of the Initial Deposit, as provided in this Agreement. As a condition precedent to the disbursement from escrow of any portion of the Initial Deposit, City, Developer and Escrow Agent shall execute a disbursement agreement ("Disbursement Agreement") substantially in the form of or consistent with this Agreement which shall provide for disbursement of funds by the Escrow Agent for costs incurred in the design, permitting, construction and installation of the Public Improvements, upon the written approval of such disbursements by the City Manager or his or her designee; which approval shall be limited to confirming that the requested funds have been expended (or costs incurred) for Public Improvement Costs in accordance with this Agreement.

b. Not later than five (5) Business Days after the satisfaction of the following conditions, City shall deposit the $2,000,000 balance of the Remaining Public Improvement Funds (plus the estimated $200,000 for the Ninth Street Improvements) into the Construction Escrow:

1. Public Improvement Budget. Developer shall have prepared and submitted to the City Manager, and the City Manager shall have approved, a line item budget for the Public Improvement Costs (the "Public Improvement Budget") setting forth all eligible costs and expenses for the planning, construction and installation of the Public Improvements. The Public Improvement Budget shall not include any amounts to be paid to Developer or any Affiliate of Developer as a management fee, contractor's fee or for overhead or general conditions, regardless of how characterized. The City Manager shall approve or disapprove the Public Improvement Budget within twenty (20) days of a complete submittal. The City Manager shall not unreasonably withhold, condition or delay approval of the Public Improvement Budget. The Public Improvement Budget may be amended from time-to-time upon the written approval of the Parties, provided that City's contribution for the Public Improvements shall not exceed the Remaining Public Improvement Funds as set forth in the Disbursed Funds Memorandum, plus the additional amount needed, if any, for the Ninth Street Improvements, estimated to be $200,000.

2. Public Improvement Contract. Developer and its general contractor shall have executed the Public Improvement Contract described in Section 208 of the DDA, approved by the City Manager.

3. No default. City shall determine that Developer is not in default of any material obligation under the DDA or any related instrument or agreement.

c. Promptly after the City deposits into Escrow the funds described in paragraph 2.b., above, Developer shall process the first application for payment to pay for the cost of, among other things, the following:

1. Bond. Developer shall obtain and pay the premium for a contractor's bond (the "Bond") covering labor, materials and faithful performance for construction of the Public Improvements and the Ninth Street Improvements in an amount equal to one hundred percent (100%) of the construction price set forth in the Public Improvement Contract. Prior to the commencement of construction of the Public Improvements and the Ninth Street Improvements, the Bond shall have been approved in writing by the City Manager as to content, form and amount. Developer shall, prior to the commencement of construction of the Public Improvements and the Ninth Street Improvements deliver to City a certificate or certificates from the bonding company issuing the Bond, naming the City as an additional obligee under the Bond. Notwithstanding the foregoing, the requirement of this paragraph 2.c.1, shall be deemed satisfied in full by any Bond meeting the requirements of the City of Imperial Beach for public improvements.

2. Insurance. Developer shall obtain and pay the premium for the Insurance Policies required by Section 309 of the DDA, with respect to the construction of the Public Improvements and Ninth Street Improvements by Developer. Developer shall, prior to the commencement of construction of the Public Improvements and the Ninth Street Improvements deliver to City a certificate or certificates from the insurance company issuing the insurance policies, naming the City as an additional insured.

3. Other Costs. The City Manager may, in his sole discretion, approve as part of the first application for payment other Public Improvement Costs and Ninth Street Costs, provided such costs are of a minor nature, such as permit costs.

3. Disbursements.

a. City shall direct the Disbursement Agent to make disbursements of the Remaining Public Improvement Funds and the Ninth Street Funds in accordance with the executed Public Improvement Disbursement Agreement. Notwithstanding anything to the contrary contained in this Agreement, in the event the Construction Escrow is opened and the DDA is terminated for any reason, City shall have the right in its sole and absolute discretion to direct the Disbursement Agent to remit to City any amounts on deposit in the Construction Escrow.

b. Subject to the conditions precedent set forth in Section 2, above, City shall pay to or for the benefit of or reimburse Developer for the cost of designing, permitting, constructing and installing the Public Improvements described in Recital C, above (the "Public Improvement Costs"), not to exceed the amount described in this Section 3.b. City has committed the sum of $2,200,000 (the "Public Improvement Funds") for the Public Improvements described in Recital C, above. Prior to the Effective Date, City has incurred and disbursed to Project Design Consultants a portion of that amount for the preparation of plans for the Public Improvements, which is estimated to be $43,152 (the "Disbursed Funds"). Prior to the disbursement of any

additional Public Improvement Funds, the City Manager and Developer shall agree on the actual amount of the Disbursed Funds by a written memorandum (the "Disbursed Funds Memorandum"). For purposes of this Agreement, the amount of the Public Improvement Funds remaining after disbursement of the Disbursed Funds shall be referred to as the "Remaining Public Improvement Funds". As an example, if the Disbursed Funds equal $43,152, the Remaining Public Improvement Funds would equal $2,156,848. The actual Remaining Public Improvement Funds shall be agreed upon and set forth in the Disbursed Funds Memorandum. In addition to the obligation to disburse the Remaining Public Improvement Funds for the Public Improvements, City shall disburse to or for the benefit of or reimburse Developer for the Ninth Street Improvements, an additional amount, estimated to be $200,000 (the "Ninth Street Funds"), as provided in paragraph 4 of this Section 3.b., below. The City shall disburse the Remaining Public Improvement Funds and the Ninth Street Funds as follows:

1. City's obligation shall be to first reimburse Developer, from the Remaining Public Improvement Funds, for the cost to construct the Highway 75 Access Improvements.

2. Upon completion of construction of the Highway 75 Access Improvements, Developer shall provide to the City Manager a written certification that all costs for the completion of the Highway 75 Access Improvements have been paid in full.

3. To the extent any portion of the Remaining Public Improvement Funds remains available after paying the costs for the Public Improvements listed in Section 219.a.1., above, (such portion being referred to as the "Excess Funds"), the City shall disburse such Excess Funds to the extent necessary to pay or reimburse Developer for the cost of the Public Improvements described in paragraphs 2 through 5 of Recital C.1., above, in accordance with the procedures set forth in the Public Improvement Disbursement Agreement. Escrow Agent shall remit to City any Excess Funds remaining after paying for all the Public Improvements listed in Recital C, above.

4. In addition to funding the Remaining Public Improvement Funds, the City shall disburse the Ninth Street Funds to the extent necessary to pay or reimburse Developer for the cost of the Ninth Street Improvements, in accordance with the procedures set forth in the Public Improvement Disbursement Agreement. To the extent the cost to complete the Ninth Street Improvements exceeds the sum of $200,000, the City shall deposit into the Construction Escrow additional funds equal to the amount needed to pay for all the costs of the Ninth Street Improvements, in excess of the estimated sum of $200,000.

c. Upon delivery of written notice to the Escrow Agent by the City that the conditions set forth in paragraphs 2.b. and c., above, have not been satisfied by the Phase 1

Closing Date, or that the DDA has been terminated, the Escrow Agent shall remit to City all funds on deposit in the Construction Escrow.

d. The Escrow Agent shall be authorized to disburse funds from the Construction Escrow to pay eligible Public Improvement Costs and Ninth Street Costs, not to exceed the Remaining Public Improvement Funds and the Ninth Street Funds, as follows:

1. Predevelopment Costs.

(i) At any time after execution of the Disbursement Agreement, upon application for payment by Developer approved in writing by City in accordance with the terms of this Agreement, Escrow Agent shall disburse to Developer, its contractor(s) or vendors or such other person or entity to whom such payment is due, amounts for payment to Developer or such other payee for the cost of preparing plans and related soft costs for the Public Improvements, not to exceed the Initial Deposit.

(ii) Upon satisfaction of all Conditions Precedent set forth in Section 2.b., above and application for payment by Developer approved in writing by City in accordance with the terms of this Agreement, Escrow Agent shall disburse to Developer, its contractor(s) or vendors or such other person or entity to whom such payment is due, any portion of the Remaining Public Improvement Funds or Ninth Street Funds, as applicable, intended to reimburse Developer or such other payee for any eligible Public Improvement Costs or Ninth Street Costs incurred (not including costs paid out of the Initial Deposit), not to exceed the amounts set forth for such costs in the Public Improvement Budget, as such Public Improvement Budget has been revised from time-to-time with the reasonable approval of both Developer and City Manager, and with Developer having the right, at its discretion (and without consent) to move amounts designated as contingency in such Public Improvement Budget to cover amounts incurred relative to other line items in such Public Improvement Budget (each a 'Line Item") which are in excess of such Line Item amounts, and to move excess amounts in any Line Item which Developer determines will not be needed into the contingency Line Item.

2. Disbursements for Public Improvement Costs. Developer shall not request disbursement of funds until the funds are needed to pay eligible Public Improvement Costs or Ninth Street Costs. The amount of each disbursement request shall be consistent with the approved Public Improvement Budget and limited to the amount needed. The City shall have the right to disapprove any request if the City determines the request is not consistent with the Public Improvement Budget, or is for an ineligible item or is otherwise not in compliance with or inconsistent with the DDA or this Agreement. Disbursements shall be made by the Escrow Agent upon receipt of applications for payment signed by the representative of Developer and approved by the City Manager or his or her designee, such approval not to be unreasonably withheld or delayed. Public Improvement Funds and Ninth Street Funds shall be used exclusively for the payment of or reimbursement for eligible Public Improvement Costs and Ninth Street Costs, respectively, as shown in the Public Improvement Budget, as the same may

be amended from time to time with the written approval of Developer and the City Manager or his or her designee, such payment of, or reimbursement to be made only after the same have been incurred by the Developer.

3. Draw Requests. Disbursements shall be made upon submission by Developer to City of a written itemized statement or draw request in a form that is reasonably acceptable to the City Manager or his or her designee (the "Application for Payment" or "Draw Request"), subject to the conditions set forth in this Agreement. An Application for Payment shall be submitted not more frequently than once monthly. City shall determine in its sole discretion whether or not the conditions precedent to its obligation to disburse funds have been satisfied or whether or not, in its sole discretion, to waive any condition precedent to its obligation to disburse funds which City determines has not been satisfied. City shall forward any approved Draw Requests to the Escrow Agent for disbursement of the approved amounts.

4. Description of Work. Each Application for Payment shall set forth the following: (i) a description of the work performed, material supplied and/or Public Improvement Costs or Ninth Street Costs incurred or due for which disbursement is requested with respect to any such costs shown as a Line Item in the Public Improvement Budget; and (ii) the total amount incurred, expended and/or due for each requested Line Item, less prior disbursements.

5. Invoices. Developer shall attach to the Application for Payment invoices, bills or such other appropriate documentation to evidence, document, justify and support the request, which shall be an amount within the amount of the applicable Line Item in the Public Improvement Budget.

6. Satisfaction of Requirements. Approval of each Draw Request shall be subject to satisfaction of the requirements of this Agreement and the DDA.

7. Approval of Draw Request. City shall, within fifteen (15) Business Days after receipt of an Application for Payment containing all of the items described above, determine the amount of the Application for Payment to be approved, notify Developer, and, if and as required pursuant to this Section 3.d., the Escrow Agent, who shall disburse the approved amount, by check, to Developer or to the respective contractor or subcontractor, as determined by City.

8. Disapprovals. Any item in an Application for Payment which is not specifically approved in writing within fifteen (15) Business Days shall not be deemed approved. City may disapprove all or part of a requested draw request. In the event City disapproves any portion of the amount requested by Developer in an Application for Payment (the "disapproved amount"), City shall promptly notify the Developer in writing of the disapproved amount and the reason for such disapproval and shall timely process an approval with Escrow Agent for the balance of the amount of such Application for Payment.

9. Disputes. In the event of any dispute concerning whether any item listed in

an Application for Payment should be approved for payment, City shall authorize the Escrow Agent to disburse the amount not in dispute, and shall authorize the Escrow Agent to fund any disputed amounts promptly upon resolution of the dispute. In the event City and the Developer are unable to resolve any dispute concerning the appropriateness of any item for payment in an Application for Payment, City shall not deduct the disapproved amount from the Public Improvement Reimbursement, but shall authorize the Escrow Agent to disburse the disapproved amount for other approved Public Improvement Costs in accordance with the Public Improvement Budget. City and the Developer shall seek to resolve any disputes promptly and in good faith.

10. Conditional Payments. City shall have the right to condition any disbursement by Escrow Agent upon receipt and approval of such documentation, evidence or information that City may reasonably request, including, but not limited to, vouchers, invoices and similar documentation.

11. Qualifications of Contractors. All construction and other work on the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and the City of Imperial Beach. Developer and all contractors and subcontractors working on the Project shall have a current City of Imperial Beach Business License.

12. Other costs. Except as expressly provided otherwise in this Agreement and the DDA, all costs incurred in predevelopment, development and operation of the Project shall be the responsibility and obligation of Developer without cost or expense to City.

13. Source of Reimbursement Funds. Developer acknowledges that the obligation of the City to provide the Public Improvement Funds and Ninth Street Funds to Developer is a special limited obligation, payable exclusively from Cooperation Agreement Revenues of the Imperial Beach Redevelopment Agency and that nothing in this Agreement or the DDA shall be deemed to obligate or commit the expenditure of any funds from the Imperial Beach City general fund for any purpose.

4. Conduct of Public Improvement Work. Subject to the obligation of the City to provide the Public Improvement Funds or Ninth Street Funds in accordance with this Agreement, Developer shall commence and prosecute to completion, with diligence that is reasonable under all the circumstances (including the occurrence of Force Majeur Delays), the preparation of the plans for and the permitting, construction and installation of the Public Improvements in accordance with the DDA and all of the requirements of the City relating to the Public Improvements.

5. Inspection of the Project. City shall have the right to inspect the Public Improvements, the Ninth Street Improvements and the Site during construction and agrees to deliver to the Developer copies of any inspection reports. Inspection of the Public Improvements, Ninth Street Improvements and the Site shall be for the sole purpose of ensuring compliance with the DDA

and this Agreement and is not to be construed as a representation by City that there has been compliance with plans or that any work of improvement or the Site will be free of faulty materials or workmanship. The Developer may make or cause to be made such other independent inspections as the Developer may desire for its own protection.

6. Supervision of Construction. City shall be under no obligation to perform any of the construction or installation or complete the construction or installation of the Public Improvements or Ninth Street Improvements, or to supervise any construction or installation of the Public Improvements or Ninth Street Improvements, and shall not be responsible for inadequate or deficient contractors, subcontractors, materials, equipment or supplies. City is not the agent for Developer, neither are City and Developer partners or joint venturers with each other.

7. Compliance with Laws. Developer shall comply and cause its contractor(s) to comply with all applicable laws in the construction of the Public Improvements and Ninth Street Improvements, including but not limited to laws relating to the payment of prevailing wages set forth in the California Labor Code.

8. Insurance and Indemnification.

a. Before commencing any of the Public Improvements and Ninth Street Improvements, Developer shall deliver to City and shall maintain in force until Completion the Insurance Policies required by the DDA.

b. Developer shall defend, indemnify and hold harmless Redevelopment Agency and City and their respective elected officials, members, officers, representatives, agents, employees, contractors and attorneys (the "Indemnified Parties") from and against any and all actions, third party claims, liabilities, damages, injuries and/or challenges arising from the design, construction and installation of the Public Improvements and Ninth Street Improvements or arising from this Agreement, except that the foregoing defense, indemnification and hold harmless obligations shall not apply to the proportional extent that the matter giving rise to such claims, liability, damages or injuries is due to the negligence or willful misconduct of City (or any of the Indemnified Parties). Developer further agrees that, if City, in good faith, determines that its interests are not adequately protected by being provided a defense by Developer, such indemnification obligation shall include all fees and costs reasonably incurred in the defense of the Indemnified Parties by counsel selected by Redevelopment Agency and City in their sole discretion. The foregoing defense and indemnification obligations shall survive the termination of this Agreement and shall continue to remain in effect after any or all of the following events: Closing, Completion and recordation of any Release of Construction Covenants.

9. Maintenance of Records. Developer shall retain in the County of San Diego, all books and records relating to the Public Improvements and this Agreement for a minimum of ten (10) years after the recordation of any Acceptance and Maintenance Agreement for Public Improvements or Notice of Completion applicable to the construction of Public Improvements

and Ninth Street Improvements (whichever is recorded first), including but not limited to all contractors' and subcontractors' invoices, payroll and other documentation of work performed, supplies purchased and other expenditures for which reimbursement has been requested from City. The City, and any of its representatives, shall have the right of access at all reasonable times, upon reasonable notice, to any pertinent books, documents, papers or other records of the Developer relative to the Public Improvements and Ninth Street Improvements and the Public Improvement Costs and Ninth Street Costs, in order to make audits, examinations, excerpts and transcripts.

10. Inspection and Audit Rights. City and its designated representatives, including any independent auditors engaged by City to audit the Project or any part thereof, shall have the right at all reasonable times to inspect and audit the books and records of Developer relating in any way to the Public Improvements and Ninth Street Improvements. Developer shall cooperate in all respects with any such inspections and audits. City shall give Developer notice of any audit findings. Developer shall immediately remit to City, with interest at the rate of ten percent (10%) per annum from the date of disbursement any amounts for which all or any part of any disbursement was found by the auditor to have been overpaid, ineligible for reimbursement or without adequate documentation. In the event of any such overpayment or other improper disbursement, Developer shall also remit to City an amount equal to the independent auditor's fees and expenses.

11. Integrated Agreement. This Agreement is made for the sole benefit and protection of the Parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any Party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any of the DDA and nothing in this Agreement, and no actions by any party hereunder, shall be deemed as a modification or waiver of either Party's rights under the DDA.

12. Termination of this Disbursement Agreement. Except for provisions of this Agreement that are intended to survive the termination of this Agreement, this Agreement shall terminate when the City has executed an Acceptance and Maintenance Agreement for Public Improvements, as provided in Section 219.g. of the DDA.

13. Counterparts. This Agreement may be signed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument with the same effect as if all signatories had executed the same instrument.

14. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their heirs, personal representatives, successors, and assigns, whether such succession or assignment is voluntary, involuntary, by force of law or otherwise, except as otherwise provided in this Agreement.

15. Governing Law. This Agreement has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

16. Titles and Captions. Titles or captions contained herein are inserted as a matter of conveniences and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

17. Interpretation. No provision in this Agreement is to be interpreted for or against either Party because that party or his legal representatives drafted such provision.

18. Waiver; Amendments. No breach of any provision hereof may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.

19. Further Assurances. The Parties hereto hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

20. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or enforceable, then such provision will be deemed to be severed and deleted from the agreement as a whole and neither such provision, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Agreement.

21. Independent Advice of Counsel. The Parties hereto and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.

22. Voluntary Agreement. The Parties hereto, and each of them, further represent and declare that they carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

23. Attorneys' Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing Party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.

24. Relation to DDA. The Parties agree that this Agreement is a material part of the DDA and that a default under this Agreement shall be deemed to be a default under the DDA. Subject to the notice and cure provisions of Part 5 of the DDA, a Party in default of this Agreement shall be deemed to be in default of the DDA.

25. Reasonableness Standard. Except as otherwise expressly provided in this Agreement, approvals (which includes both approvals and consents and words of similar meaning contained herein) required of City or Developer in this Agreement shall not be unreasonably withheld, conditioned or delayed. All approvals shall be in writing.

IN WITNESS WHEREOF, the City and Developer have executed this Disbursement Agreement as of the date set forth above.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

CITY OF IMPERIAL BEACH

Dated: _____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

By: _____

Exhibit "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

ATTACHMENT NO. 12

FORM OF OPTION AGREEMENT

[behind this page]

OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS
FOR PURCHASE OF "PROPERTY 2"

To: _____
_____
("Escrow Holder" and "Title Company")
_____
_____, California _____
Attn.: _____, Escrow Officer
Telephone: (____) _____-_____
Facsimile: (____) _____-_____

Escrow No.: _____
("Escrow")

This Option Agreement and Joint Escrow Instructions ("Option Agreement"), dated for reference purposes _____, 20__, is made by and between SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Developer"), and THE CITY OF IMPERIAL BEACH, a municipal corporation ("City" or "Optionee"), each a "Party" and collectively, the "Parties" to this Option Agreement.

RECITALS

A. This Option Agreement is entered into pursuant to that certain Disposition and Development Agreement dated as of _____, 2011, ("DDA"). The DDA provides for the redevelopment of certain real property described in the DDA as the "Property" with commercial and retail buildings, landscaping, parking and related improvements ("Project"), as more specifically described in the DDA. The term "DDA" as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

B. In accordance with the DDA, the City has conveyed to Developer title to the portion of the Property property referred to as "Property 2" in the DDA. The legal description of "Property 2" is set forth in the Legal Description attached to this Option Agreement as Exhibit "A" and incorporated herein by this reference.

C. Subject to the terms and conditions of this Agreement, and in accordance with the DDA, the City desires to acquire an option to purchase fee title in Property 2 from Developer and Developer desires to grant to City an option to purchase fee title in Property 2 from Developer.

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

TERMS AND CONDITIONS

1. Grant and Basic Terms of Option.

1.1 Subject to the terms and conditions of this Option Agreement, Redevelopment Agency and City shall each have the option ("Option") to purchase fee title to Property 2 more particularly described on Exhibit "A," attached hereto and incorporated herein by this reference, together with all of Developer's right, title and interest in and to all Improvements, easements, appurtenances, and other intangible property of Developer to said land (collectively, "Property 2").

1.2 The Option shall commence upon the Close of Escrow conveying title to the Property to Developer, and end at 5:00 p.m. on_____, 2015 (e.g., the date that is four (4) years after the Effective Date of the DDA), unless such date is not a Business Day, in which case the Option shall expire at 5:00 p.m. on the next succeeding Business Day (the "Option Term"). The date specified in this Section 1.2 as the date on which the Option Term shall expire shall be subject to Force Majeure delay, as defined in the DDA.

1.3 The exercise of the Option shall be subject to the Conditions Precedent to Right of Option, below.

1.4 The consideration for the Option shall be the sum of ONE DOLLAR AND NO CENTS ($1.00) ("Option Price").

1.5 The Option shall be exercised in accordance with the procedures set forth in this Option Agreement, a memorandum of which has been recorded in the official records on _____, 201_, as Instrument No. _____of the County Recorder of the County of San Diego, California (which date and instrument number shall be inserted following the recordation of such Memorandum).

2. Exercise of Option

2.1 Notice of Exercise. Upon the occurrence of either event described in Section 2.2 of this Option Agreement, below, not later than the expiration of the Option Term described in Section 1.3 of this Option Agreement, above, City shall have the right to exercise the Option, by delivering written notice (the "Option Notice") to Developer, or its successor or assignee, stating that City elects to purchase Property 2 upon the terms and conditions set forth in this Agreement. For purposes of this Option Agreement, if City delivers such Option Notice, City shall be referred to as the "Optionee".

2.2 Conditions Precedent to Right of Option. The right to exercise the Option shall be conditioned upon the occurrence of either of the following events:

(i) The default by Developer under the terms of the DDA that is not cured within the time provided in the DDA, if any, including, but not limited to, any of the events of default described in Section 510.b. of the DDA, at any time after Developer takes title

to the Property under the DDA but before the occurrence of the "Phase 2 Closing" (as defined in the DDA); and

(ii) The failure of the "Phase 2 Closing" (as defined in the DDA) to occur by _____, 2014 (e.g., the date that is three (3) years after the execution of the DDA), subject to Force Majeure delay as provided in Section 602 of the DDA.

2.3 Termination of Option. This Option Agreement shall terminate and be of no further force or effect upon the final day of the Option Term or upon the earlier occurrence of the Phase 2 Closing. Upon the final day of the Option Term or upon the earlier satisfaction of all conditions precedent to the occurrence of the Phase 2 Closing as set forth in Section 220 of the DDA, City shall execute and deposit into escrow for recording the Instrument Terminating Option substantially in the form attached to this Option Agreement as Exhibit "D" which is incorporated herein by this reference.

2.4 Opening of Escrow. Subject to Sections 2.1 and 2.2, above, the Optionee and Developer shall deliver to Escrow Holder a fully-executed duplicate original of this Agreement within five (5) business days after the Option Notice Date (as defined below). As used in this Agreement, the term "Option Notice Date" shall mean the date on which Optionee shall have delivered the Option Notice to Developer, provided that in no event shall the Optionee have the right to deliver the Option Notice prior to the satisfaction of the Conditions Precedent to Right of Option later than the expiration of the Option Term. When this Agreement, fully signed, is delivered to Escrow Holder, Escrow shall be deemed opened ("Opening of Escrow"). Escrow Holder shall immediately notify Redevelopment Agency, City and Developer, in writing, of the date of Opening of Escrow.

3. Condition of Property.

3.1. Physical Conditions. The Parties to this Option Agreement acknowledge that during the Term of this Option Agreement, Developer shall have the right and intends to construct and install Horizontal Improvements on the Property, consisting of public improvements and utilities required to be constructed or installed on or in connection with the anticipated development of the Property, as well as to conduct construction activities consistent with site preparation and preparation of building pads in anticipation of construction of Vertical Improvements, as provided in the Scope of Development, Approved Plans and Entitlements for the Project, not including the Vertical Improvement (the "Approved Work"). At all times during the Option Term, Developer shall maintain the Property or cause the Property to be maintained in a safe, neat and orderly condition to the extent practicable and in accordance with industry health and safety standards for construction sites, consistent with the Approved Work (the "Required Site Conditions"). At any time after delivery of an Option Notice, Optionee, without cost or expense to Developer, shall have the right to perform such investigation of the physical condition of the Property and the Improvements, as Optionee shall deem necessary. Upon notice from the Optionee, Developer shall promptly, without cost to the City, take such actions as may

be necessary to restore the Property to the Required Site Conditions, to the reasonable satisfaction of the Optionee.

3.2 Environmental Conditions. Reference is hereby made to that certain Environmental Indemnity dated _____, 2011, in the form attached to the DDA as Attachment No. 10 (the "Environmental Indemnity"), which was executed by Developer for the benefit of Redevelopment Agency and City. Developer shall comply with the Environmental Indemnity, and indemnify, defend and hold harmless Redevelopment Agency and City, and their respective elected officials, members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity.

3.3 Condition of Title. Unless and until this Option Agreement is terminated or expires as provided in Sections 2.3 and 2.4, above, Developer shall have no right to record any deed of trust, mortgage or other encumbrance against title to Property 2. At any time after delivery of an Option Notice, the Optionee shall have the right to obtain a Title Policy (either CLTA or ALTA, at Optionee's option), in the liability amount of the fair market value of the Property, as reasonably estimated by Optionee, at the sole cost of Developer, insuring that fee title to the Property will vest in the Optionee upon the Closing Date (described below), free and clear of all encumbrances except those reasonably approved in writing by the Optionee.

4. Closing of Escrow.

4.1 Closing Date.

4.1.1 Subject to the satisfaction of the Conditions Precedent to Right of Option, Escrow shall close on or before 5:00 p.m. on the sixtieth (60th) day after the Option Notice Date (the "Closing Date"). So long as the Option Notice is duly and properly delivered prior to the expiration of the Option Term, the Closing Date may occur either before or after the expiration of the Option Term.

4.1.2 The terms "Close of Escrow" and/or "Closing" are used in this Option Agreement to mean the time and date (which shall be as provided in Section 4.1.1) on which the Grant Deed (as defined in Section 4.3.1) is filed for recording by Escrow Holder in the Office of the San Diego County Recorder.

4.2 Deposits to be Made by City. At or before 5:00 p.m. on the last business day immediately before the Close of Escrow, Optionee shall deliver to Escrow Holder:

4.2.1 Immediately available funds in a total amount equal to the Option Price and any other sums payable by Optionee hereunder.

4.2.2 Any additional funds and/or instruments, properly executed and acknowledged by Optionee, as appropriate, as may be necessary to comply with this Agreement.

4.3 Deposits to be Made by Developer. At or before 5:00 p.m. on the last business day immediately before the Close of Escrow, Developer shall deliver to Escrow Holder:

4.3.1 A grant deed conveying fee title to the Property, properly executed and acknowledged by Developer in the form attached to this Option Agreement as Exhibit "B";

4.3.2 A Certification of Non-Foreign Status certifying, pursuant to Internal Revenue Code Section 1445, that Developer is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations), along with California Form 593-C.

4.3.3 Any additional instruments, signed and properly acknowledged by Developer if appropriate, as may be necessary to Close Escrow and comply with this Agreement.

4.3.4 Any additional funds as may be necessary to comply with this Agreement.

5. Title Policy.

5.1 At Close of Escrow, Title Company shall issue to Optionee the title policy described in Section 3.3 above (the "Title Policy"), with liability in the amount of the fair market value of the Property and insuring fee title is vested in the Optionee.

6. Termination and Cancellation of Escrow.

6.1 If Escrow fails to close by the Closing Date, then Escrow shall terminate automatically without further action by Escrow Holder or any party. Termination of Escrow, as provided in this Section 6.1, shall be without prejudice to whatever legal rights City or Developer may have against each other which may otherwise arise from the DDA in connection with that termination.

6.2 If the Close of Escrow fails to occur because of either Party's default, the defaulting party shall be liable for all Escrow cancellation and Title Company charges, in addition to any other damages or remedies due the non-defaulting party. If Close of Escrow fails to occur for any other reason, City shall pay any Escrow and Title Company cancellation charges, and this Agreement shall terminate.

7. Redevelopment Agency and City's Representations and Warranties. City hereby represents and warrants to Developer as follows, which representations and warranties are true in all material respects as of the date hereof and such representations and warranties shall be true on the Close of Escrow:

7.1 Authority. City has the legal power, right and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The individual executing

this Agreement on behalf of City has the legal power, right and actual authority to bind the City to the terms and conditions of this Agreement.

7.2 Requisite Action. As of the date hereof, all requisite action has been taken by the City in connection with the entering into of this Agreement and the consummation of the transactions contemplated hereby.

7.3 Validity. This Agreement and all documents required hereby to be executed by the City are and shall be valid, legally binding obligations of and enforceable against the City in accordance with their terms, subject to principles of equity and laws affecting creditors' rights generally.

8. Developer's Representations and Warranties. Developer hereby agrees and represents and warrants to City as follows, which representations and warranties are true in all respects as of the date hereof and shall be true on the Close of Escrow:

8.1 Authority. Developer has the legal power, right and authority to own property and to enter into this Agreement and the documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Agreement and the documents referenced herein on behalf of Developer have the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

8.2 Requisite Action. As of the date hereof, all requisite action (corporate, partnership or otherwise) has been taken by Developer in connection with the entering into of this Agreement and the documents referenced herein, and the consummation of the transactions contemplated hereby.

8.3 Validity. This Agreement and all documents required hereby to be executed by Developer are and shall be valid, legally binding obligations of and enforceable against Developer in accordance with their terms, subject to principles of equity and laws affecting creditors' rights generally.

9. Brokerage Commissions. Developer hereby represents and warrants to City that Developer has made no statement or representation to, nor entered into any agreement with, any broker, salesman or finder in connection with the transactions contemplated by this Agreement. City hereby represents and warrants to Developer that City has made no statement or representation to, nor entered into any agreement with, any broker, salesman or finder in connection with the transactions contemplated by this Agreement. Each Party agrees to indemnify, defend, protect and hold the other harmless from and against any claim, loss, damage, cost or liability for any broker's commission or salesman's or finder's fee asserted as a result of its own act or omission in connection with this transaction.

10. General Provisions.

10.1 Assignment. This Agreement and the obligations of the Developer hereunder shall be binding upon Developer and its successors and assignees as to the Property, and shall inure to the benefit of City and its representatives, successors and assigns, whether such succession or assignment is voluntary, involuntary, by force of law or otherwise. City shall have the right to assign this Agreement or any interest or right under this Agreement or under the Escrow or to appoint a nominee to act as Optionee under this Agreement. City shall have the right to assign this Agreement and its rights, duties and obligations hereunder in its sole and absolute discretion.

10.2 Attorneys' Fees. In any action between the parties arising out of this Agreement or the Escrow, or in connection with the Property, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or other relief, to its reasonable costs and expenses, including, without limitation, costs and reasonable attorneys' fees fixed by the court.

10.3 Approval and Notices. Any notice, demand, approval, consent or other communication required or desired to be given under this Agreement in writing may be given by personal service, fax (with a hard copy to follow immediately), recognized overnight air courier or by certified mail and shall be directed to the party involved at the address indicated below:

If to Developer:
Sudberry-Palm LLC
c/o Sudberry Properties
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attn: Estean H. Lenyoun
Tel: (858) 546-3000
Fax: (858) 546-3009

With a copy to:
gis@smclawoffices.com

If to City:
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: City Manager
Tel: 619-423-0314
Fax: 619-628-1395

With a copy to:
McDougal, Love, Eckis, Boehmer & Foley
8100 La Mesa Boulevard, Suite 200
La Mesa, CA 91942
Attn: Jennifer Lyon
Tel: 619-440-4444
Fax: 619-440-4907

With a copy to: Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, California 90071
Attn: Susan Cola
Tel: 213-617-0480
Fax: 213-625-0931

Any notice, demand, approval, consent or other communication given: (a) personally shall be deemed to have been given upon receipt, (b) by recognized overnight air courier, freight prepaid, shall be deemed to have been given on the next business day, (c) by certified mail shall be deemed to have been given on the third business day after it was deposited in the U.S. mail, certified and postage prepaid. Notices shall be deemed to have been validly given if given by either Redevelopment Agency's, City's or Developer's respective counsel in the manner set forth above. In any case, in order for such notice, demand, approval, consent or other communication to be given, the same shall be addressed to the party to be served at said address or at such other address of which that party may have given notice under the provisions of this Section.

10.4 General Escrow Provisions. Developer and City agree that this Agreement shall also constitute instructions to Escrow Holder. In addition, the parties agree to execute and deliver to Escrow Holder, such reasonable and customary escrow instructions in the usual form of Escrow Holder for the purpose of consummating the transaction contemplated by this Agreement; provided, however, that any standard extension provisions in such escrow instructions shall not apply, and in the event of any conflict or inconsistency between the provisions of such escrow instructions and the provisions of this Agreement, the provisions of this Agreement shall control. Escrow Holder shall perform all customary functions of an escrow holder to consummate this transaction, including, among other duties, calculation of the prorations and closing costs required by this Agreement, as well as serving as depository for all funds, instruments and documents needed for the Close of Escrow. If the requirements relating to the duties or obligations of Escrow Holder are unacceptable to Escrow Holder, or if Escrow Holder requires additional instructions, the parties agree to make any deletions, substitutions and additions, as counsel for City and Developer shall mutually approve, and which do not materially alter the terms of this Agreement. Any supplemental instructions shall be signed only as an accommodation to Escrow Holder and shall not be deemed to modify or amend the rights of City or Developer, as between City and Developer, unless those signed supplemental instructions expressly so provide.

10.5 Prorations; Refundable Deposits. Property taxes and assessments on the Property, and any rents, utilities and maintenance and other income and operating expenses for the Property, shall be paid by Developer as of Close of Escrow, based on the most current statements and information available to Escrow Holder. Developer shall be responsible for the lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5

(commencing with Section 75) of the Revenue and Taxation Code of the State of California for acts or events occurring on or after Close of Escrow.

10.6 Payment of Costs. Developer shall pay all closing costs, including without limitation, escrow fees, recording fees, title premiums.

10.7 Escrow Holder Authorized to Complete Documents. If necessary, Escrow Holder is authorized to insert the date Escrow closes as the date of documents conveying interests therein.

10.8 Recordation of Documents. Upon Close of Escrow, Escrow Holder shall cause the Grant Deed, and any other recordable instruments to be filed for recordation in the Office of the San Diego County Recorder. Escrow Holder shall supply Developer and City with conformed copies of documents submitted for recording.

10.9 Delivery of Documents and Funds. Upon Close of Escrow, Escrow Holder shall deliver to Developer and to City all documents and funds to which each is entitled and for whose benefit those documents and funds were delivered to Escrow Holder.

10.10 Performance by Escrow Holder. Escrow Holder is to be concerned only with those Sections under this Agreement where Escrow Holder is given instructions to perform certain acts or with those Sections where escrow holders generally and reasonably would be expected to act.

10.11 Damage or Destruction; Condemnation. In the event any of the Property is damaged or destroyed by any casualty or by a partial taking or condemnation under the provisions of applicable eminent domain law after the date hereof but prior to the Closing Date, Developer's obligations to repair or replace any such damage or destruction shall be in accordance with the DDA.

10.12 Interpretation. This Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Agreement. Each Party acknowledges that it has been represented by independent counsel in connection with this Agreement and that this Agreement is the result of negotiations between the parties hereto. Any uncertainty or ambiguity shall not be construed against City because City's counsel, as a matter of convenience or otherwise, prepared this Agreement in its final form.

10.13 Titles, Captions and Sections. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. References to Section numbers are to Sections as numbered in this Agreement unless expressly stated otherwise.

10.14 Gender, Etc. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. As used in this Agreement, the terms "including" and "include"

shall have their most comprehensive meanings and shall be deemed to mean "including, without limitation" and "include, without limitation," respectively.

10.15 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

10.16 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

10.17 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

10.18 Merger of Prior Agreements and Understandings. This Agreement, together with the DDA, contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements (other than those attached as exhibits to the DDA), understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force.

10.19 Time of Essence. Time is expressly made of the essence with respect to the performance by City and Developer of each and every obligation and condition of this Agreement.

10.20 Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding Agreement.

10.21 Exhibits Incorporated by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference.

10.22 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, in which case the time shall be extended to the next business day.

10.23 Further Actions. Each party agrees to sign such other and further instruments and documents and take such other and further actions as may be reasonably necessary or proper in order to accomplish the intent of this Agreement.

10.24 Preliminary Change of Ownership Report. City shall be fully responsible for all matters in connection with the filing of a Preliminary Change of Ownership Report in accordance with the California Revenue and Taxation Code Section 480.3.

10.25 No Recordation. Neither this Agreement nor any memorandum hereof shall be recorded or filed except for the Memorandum to be recorded pursuant to Section 10.27.

10.26 No Third Party Beneficiaries. This Agreement does not create, and it shall not be construed as creating, any rights enforceable by any person or entity not a party to this Agreement except to the extent such person or entity is the beneficiary of any indemnity, waiver or release contained herein.

10.27 Memorandum of Option. Concurrently with the execution of this Agreement, City and Developer shall execute in a form suitable for recordation a Memorandum of Option disclosing the grant of the Option to City, and City's right to purchase the Property pursuant to this Agreement, such Memorandum of Option to be in the form of Exhibit "C," attached hereto.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date set forth next to their respective signatures below.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
City Special Counsel

By:_____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY 2

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

EXHIBIT "B"

FORM OF GRANT DEED

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attn: City Manager

(Space Above Line for Recorder's Use Only)

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Grantor") hereby grants to THE CITY OF IMPERIAL BEACH, a municipal corporation ("Optionee") the real property described in the document attached hereto, labeled Exhibit A and incorporated herein by this reference, subject to all matters of record ("Property 2").

This Grant Deed can be executed in one or more counterparts with all counterparts taken together constituting a single document.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

CERTIFICATE OF ACCEPTANCE

Pursuant to the provisions of Government Code Section 27281, this is to certify that the interest in real property conveyed by the Grant Deed dated _____, 20__, from Sudberry-Palm Avenue, LLC ("Grantor") to the City of Imperial Beach, a municipal corporation and/or governmental agency ("Optionee"), is hereby accepted pursuant to the authority conferred by the Imperial Beach City Council on _____, 20__ and the Optionee consents to recordation thereof by its duly authorized officer.

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____
Susan Y. Cola

EXHIBIT "A"
LEGAL DESCRIPTION TO GRANT DEED
PROPERTY 2

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "C"

FORM OF MEMORANDUM OF OPTION

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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: City Manager

ABOVE SPACE FOR RECORDER'S USE ONLY

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION (this "Memorandum") is made as of _____, 2011, by and between Sudberry-Palm Avenue, LLC, a California limited liability company ("Developer"), and the City of Imperial Beach ("City"). All capitalized terms used and not otherwise defined in this Memorandum, but defined in the Option Agreement (as defined below), shall have the same meaning in this Memorandum as in the Option Agreement.

RECITALS

A. Developer and City have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Developer has granted to City the option to purchase ("Option") the real property more particularly described in Exhibit "A" attached hereto, together with all improvements thereon ("Property 2").

B. Pursuant to the Option Agreement, the parties now desire to enter into this Memorandum to provide record notice of the Option Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is hereby agreed as follows:

AGREEMENT

1. Option to Purchase. Developer hereby grants to City the option to purchase Property 2 ("Option") for the price and upon all of the terms and conditions set forth in the Option Agreement, which Option Agreement is incorporated herein by this reference.

2. Term of Option. Subject to all of the terms and conditions contained in the Option Agreement, the Option may be exercised at any time after Developer takes title to Property 2 and ending upon expiration of the Option Term or upon the earlier occurrence of the Phase 2 Closing (as those capitalized terms are defined in the Option Agreement, upon notice to Developer as specified in the Option Agreement.

3. Purpose of Memorandum of Option. This Memorandum is prepared for the purpose of recordation only, and in no way modifies the provisions of the Option Agreement. In the event that any provisions of this Memorandum are inconsistent with provisions of the Option Agreement, the provisions in the Option Agreement shall prevail.

4. Governing Law. This Memorandum shall be construed and enforced in accordance with the laws of the State of California.

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

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument as of the date first above written.

[SIGNATURES ON NEXT PAGE]

[BALANCE OF THIS PAGE INTENTIONALLY EMPTY]

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
City Special Counsel

By:_____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY 2

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

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

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "D"

FORM OF INSTRUMENT TERMINATING OPTION

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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: City Manager

ABOVE SPACE FOR RECORDER'S USE ONLY

INSTRUMENT TERMINATING OPTION

THIS INSTRUMENT TERMINATING OPTION (this "Instrument") is made as of _____, 2011, by and between Sudberry-Palm Avenue, LLC, a California limited liability company ("Developer"), and the City of Imperial Beach ("City"). All capitalized terms used and not otherwise defined in this Memorandum, but defined in the Option Agreement (as defined below), shall have the same meaning in this Memorandum as in the Option Agreement.

RECITALS

A. Developer and City have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Developer has granted to City the option to purchase ("Option") the real property more particularly described in Exhibit "A" attached hereto, together with all improvements thereon ("Property 2").

B. Pursuant to the Option Agreement, a Memorandum of Option was executed and recorded against Property 2 on _____, 2011, by Instrument No. _____ (the "Memorandum of Option").

C. Pursuant to the Option Agreement, the Option granted to City was to expire and be terminated upon the occurrence of certain events (described in the Option Agreement as the

"Phase 2 Closing") before _____, 2015 or upon the expiration of the Option Term – whichever first occurred.

D. The Phase 2 Closing conditions have occurred prior to the date set forth in Recital B., above, or the Option Term has expired, and the Parties now desire to enter into this Instrument Terminating Option to release Property 2 from any rights the City may have to exercise the Option and provide documentation of the termination of the Option Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is hereby agreed as follows:

AGREEMENT

1. The Option Agreement is hereby terminated and of no further force or effect.

2. The Memorandum of Option is hereby terminated and of no further force or effect.

3. This Instrument shall be construed and enforced in accordance with the laws of the State of California.

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

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument as of the date first above written.

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
City Special Counsel

By:_____

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY 2

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

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

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

ATTACHMENT NO. 13

FORM OF RELEASE OF CONSTRUCTION COVENANTS

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

CITY OF IMPERIAL BEACH
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attention: 9th and Palm Project Manager

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE OF CONSTRUCTION COVENANTS

[INSERT OR DELETE REFERENCES TO ASSIGNMENT OF DDA, AS APPLICABLE]

WHEREAS, the CITY OF IMPERIAL BEACH, a municipal corporation ("City") has entered into a Disposition and Development Agreement with SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Developer") dated _____, 20____ (the "DDA") relating to a development site (the "Site') in the City of Imperial Beach, County of San Diego, State of California described as set forth in Attachment No. 1 to the DDA, for the construction on the Site of a commercial/retail center (the "Project") in accordance with the terms and conditions contained in the DDA. Any capitalized term not otherwise defined in this Release shall have the meaning set forth for such term in the DDA; and

[INSERT IF APPLICABLE] WHEREAS, pursuant to the DDA and Parcel Map No. ___ recorded _____, 20__, (the "Parcel Map"), the Site has been subdivided into multiple parcels, including, but not limited to, Parcel "___" ***[or Parcels "___, ___ and ___" or "Property 1", or "Property 2", as applicable]*** described as set forth in the Legal Description attached to this Release as Exhibit "A" which incorporated herein by this reference (the "Released Property"); and

[INSERT IF APPLICABLE] WHEREAS, pursuant to that certain Assignment and Assumption Agreement dated _____, Developer has conveyed title to the Released Property to ***[INSERT NAME OF ASSIGNEE]*** ("Assignee"), and has assigned certain rights and obligations as to the Released Property to Assignee (the "Rights and Obligations"), and Assignee has assumed the rights and obligations of Developer under the DDA relating to the Released Property; and

WHEREAS, pursuant to the DDA, Developer was to construct or cause the construction of certain improvements (the "Improvements") on the Site **[or the Released Property]**; and

WHEREAS, pursuant to Section 324 of the DDA, upon the completion of the Improvements as required by the DDA, and the request of Developer ***[or Assignee, as applicable]***, City is required to issue for recordation a Release of Construction Covenants (this "Release") acknowledging the completion of the construction and development required by the DDA relating to the portion of the Site described in this Release, and releasing certain obligations and rights of Developer ***[Assignee, as applicable]*** and City set forth in the DDA; and

WHEREAS, Developer ***[or Assignee, as applicable]*** has completed the Improvements required by the DDA relating to the Site ***[or the Released Property]*** as required by the DDA and has requested that City issue this Release; and

WHEREAS, City has inspected the Site and determined that the construction and development required by the DDA relating to the Site ***[or the Released Property]*** have been satisfactorily completed and now desires to issue this Release pursuant to the terms and conditions of the DDA.

NOW THEREFORE, it is hereby acknowledged and certified by City that:

1. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

2. The construction and development of the ***[Improvements on the Released Property]*** or ***[Phase 1 Improvements]*** or ***[Phase 2 Improvements]*** is in substantial compliance with the plans, drawings and related documents referred to in the DDA.

3. Developer is ***[or Developer and Assignee are, if applicable]*** in full compliance with the terms of Section 324 of the DDA.

4. All rights of the City pursuant to Section 511 of the DDA providing the City, in the event of an uncured default prior to Completion of Improvements for a Property or a Parcel, the power of termination described in California Civil Code Section 885.010 and authorized by California Health and Safety Code Section 33438, to terminate and revest in the City the estate of the property previously conveyed pursuant to the DDA, and to re-enter and take possession of such property, are hereby extinguished and terminated, and are no longer enforceable or binding against Developer ***[and/or Assignee, if applicable]***, and/or successors and assigns.

5. The issuance and recording of this Release shall cancel and release any rights, remedies or controls that the Parties would otherwise have or be entitled to exercise under the DDA with respect to the Property as a result of a default in or breach of any provision thereof

prior to Completion of the construction and development of the Improvements on the Released Property, and the respective rights and obligations of the Parties with reference to the Released Property (or any portion thereof) shall thereafter be limited to those provided by the terms of the DDA, the Grant Deed, the Agreement Containing Covenants and the Environmental Indemnity that survive the issuance and recordation of this Release.

IN WITNESS WHEREOF, City has executed this Release as of the date set opposite its signature.

CITY OF IMPERIAL BEACH

Dated:_____ By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____

DRAFT

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

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

DRAFT

EXHIBIT "A"

Legal Description of the Released Property

[BEHIND THIS PAGE]

DRAFT

ATTACHMENT NO. 14

[INTENTIONALLY OMITTED]

ATTACHMENT NO. 15

FORM OF PAYMENT AGREEMENT

[behind this page]

PAYMENT AGREEMENT

This Payment Agreement (this "Agreement") is entered into by and between SUDBERRY-PALM AVENUE, LLC ("Developer") and the CITY OF IMPERIAL BEACH, a municipal corporation ("City"), as of _____, 20__. In this Agreement, each of the Developer and the City are sometimes individually referred to as a "Party" and collectively as the "Parties". For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. City and Developer have entered into that certain Disposition and Development Agreement dated _____, 20__, which is incorporated herein by this reference (the "DDA"), concerning the sale to Developer of certain real property described in Exhibit "A" attached hereto (the "Site") and its development as a commercial/retail center (the "Project"). Any capitalized term not otherwise defined in this Agreement shall have the meaning ascribed to such term in the DDA.

B. Pursuant to Section 219.b. of the DDA, City has agreed to advance for the benefit of Developer the cost to prepare certain Public Improvement Plans (the "Public Improvement Plan Advance"), and Developer has agreed to repay the City for the Public Improvement Plan Advance, subject to certain conditions.

C. Pursuant to Section 201 of the DDA, City has agreed to sell the Site to Developer, and Developer has agreed to pay a purchase price (the "Purchase Price") equal to: (i) the nominal sum of $1.00, to be paid upon the Close of Escrow; and (ii) a Participation Component, as defined in the DDA.

D. The Parties mutually desire to enter into this Agreement to document the Developer's obligation to repay the Public Improvement Plan Advance and Developer's obligation to pay the Participation Component (collectively, the "Obligations").

NOW, THEREFORE, City and Developer agree as follows:

1. <u>Public Improvement Plans Advance</u>.

a. Prior to the execution of this Agreement, City has entered into that certain Professional Services Agreement for Civil Engineering Consultant Services dated June ___, 2011 (the "Architecture/Engineering Agreement") with Project Design Consultants (the "Architect/Engineer'), which is incorporated herein by this reference, and has paid the sum of $206,575 (the "Public Improvement Plans Advance") to Architect/Engineer for the preparation of plans for the Public Improvements pursuant to the Architecture/Engineering Agreement.

b. Subject to this Payment Agreement, City hereby assigns to Developer and Developer hereby accepts all of City's rights and interest in, under and to the Architecture/Engineering Agreement and all plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Plans and Specifications") heretofore or hereafter prepared by the Architect/Engineer for or on behalf of City in connection with the Public Improvements. Notwithstanding the foregoing, in the event of a default by Developer as described in Section 16 of this Payment Agreement, that is not cured by Developer within the time provided in Section 16 of this Payment Agreement, all rights to the Architecture and Engineering Agreement and the Plans and Specifications hereby assigned to Developer shall revert to and revest in City, and City shall have the right, without any further consent of or consideration to Developer, to use the Plans and Specifications as City may determine, in City's sole and absolute discretion.

c. Subject to the last sentence of paragraph b., above, this assignment ("Assignment") constitutes a present and absolute assignment to Developer as of the Effective Date. City represents and warrants to Developer, as of the Effective Date, that, to the actual knowledge of City: (i) the Architecture/Engineering Agreement is in full force and effect and is enforceable in accordance with its terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to the Architecture/Engineering Agreement; (ii) all copies of the Architecture/Engineering Agreement and Plans and Specifications delivered to Developer are complete and correct copies; and (iii) City has not assigned any of its rights under the Architecture/Engineering Agreement or with respect to the Plans and Specifications.

d. The attached Consent, executed by the Architect/Engineer, confirming that City has paid in full for the Plans and Specifications, and consenting to this Assignment, is incorporated herein by this reference

e. Developer shall reimburse City for the Public Improvement Plans Advance concurrently with the Phase 2 Closing. Any portion of the Public Improvement Plans Advance not paid to City upon the Phase 2 Closing shall bear simple interest at the rate of ten percent (10%) per annum until paid.

f. In the event the Phase 2 Closing fails to occur when and as required by Section 220 of the DDA, and title in Property 2 revests in City as the result of the exercise of the Option or otherwise, Developer shall assign and release to City all of Developer's rights in and to the Architecture/Engineering Agreement and the Plans and Specifications by executing and delivering to City an "Assignment and Release" in the form attached to this Payment Agreement as Exhibit "B". Upon the revesting of title in Property 2 to the City and the execution and delivery of the "Assignment and Release", the obligation to reimburse City for the Public Improvement Plans Advance shall be deemed paid in full.

g. Developer's obligation to perform its obligations pursuant to this Payment

Agreement and reimburse City for the Public Improvement Plan Advance with interest as provided in this Section 1, shall be secured by the City Deed of Trust (in the form of Attachment No. 16 to the DDA).

2. Payment of Participation Component of Purchase Price.

a. Developer shall pay to City the Participation Component of the Purchase Price.

b. The Participation Component shall be in an amount equal to one and one-half percent (1.5%) of the gross sales price from the first arm's-length sale of each Parcel or Parcels of the Site by Developer, in any number of transactions over any period of time (each such transaction being referred to herein as a "Sale"), if any, excluding: (i) the sale of Parcel "A" if Developer assigns and sells Parcel "A" to the Approved Parcel "A" Assignee pursuant to an Assignment and Assumption Agreement approved by City; and (ii) the sale of Parcel "F" if Developer assigns and sells Parcel "F" to the Approved Parcel "F" Assignee pursuant to an Assignment and Assumption Agreement approved by City. In the event Developer constructs vertical improvements on Parcel "F" and subsequently sells or leases Parcel "F", the gross sales price from such sale shall be subject to the 1.5% Participation Component.

c. For purposes of this Payment Agreement, the term "arm's length sale" shall mean a transaction in which Developer and the buyer act independently and have no relationship to each other, as reasonably determined by the City Manager.

d. For purposes of this Payment Agreement, the term "gross sales price" shall mean all compensation payable to Developer for the Sale, directly or indirectly.

e. Developer shall pay the Participation Component concurrently with the close of escrow with respect to each Sale. Any portion of the Participation Component not paid to City upon the close of escrow with respect to any Sale shall bear simple interest at the rate of ten percent (10%) per annum until paid.

f. Developer's obligation to pay City the Participation Component of the Purchase Price shall be secured by the City Deed of Trust (in the form of Attachment No. 16 to the DDA).

3. Purpose of Payment Agreement. This Agreement is prepared for the purpose of evidencing certain Obligations of the Developer to City pursuant to the DDA, and in no way modifies or amends the provisions of the DDA. In the event that any provisions of this Agreement are inconsistent with provisions of the DDA, the provisions in the DDA shall prevail.

4. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

5. 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

6. Where and How Payable. This Payment Agreement is payable at the principal office of the City, 825 Imperial Beach Boulevard, Imperial Beach, California 91932, or at such other place as the holder hereof may inform the Developer in writing, in lawful money of the United States.

7. Security. This Payment Agreement shall be secured by the City Deed of Trust (in the form of Attachment No. 16 to the DDA). The City Deed of Trust shall be recorded against the Site. Provided, however, that the lien of the City Deed of Trust shall be reconveyed and released as to portions of the Site, as follows: (a) upon conveyance of Parcel "A" to the Approved Parcel "A" Assignee in accordance with the DDA, the lien of the City Deed of Trust shall be released from Parcel "A"; (b) upon the occurrence of the "Phase 2 Closing" in accordance with the DDA and conveyance of Parcel "F" to the Approved Parcel "F" Assignee in accordance with the DDA, if any, the lien of the City Deed of Trust shall be released from Parcel "F"; and (c) upon the sale of any Parcel of the Site not including Parcel "A" or Parcel "F" and payment to the City of the Participation Component relating to such Parcel, the lien of the City Deed of Trust shall be released from such Parcel (except that if Developer constructs vertical improvements on Parcel "F" and subsequently sells or leases Parcel "F", the lien of the City Deed of Trust shall be released from Parcel "F" upon the sale of Parcel "F" and payment to the City of the Participation Component relating to Parcel "F").

8. Interest. Except as provided in Section 1.(e) and Section 2.(e), above, the Obligations shall not bear interest.

9. Payments. Except as provided in Section 10, below, the Obligations under this Payment Agreement shall be due and payable or deemed paid in full as provided in Sections 1 and 2 of this Agreement, respectively. Any portion of the Obligation not paid in full on the date that is fifty-five (55) years after the Effective Date of the DDA shall be deemed paid in full.

10. Due Upon Event of Acceleration. The entire unpaid principal balance of this Payment Agreement and any accrued but unpaid interest shall be due and payable in full immediately upon the occurrence of either of the following events of acceleration:

(a) if the Site or any portion thereof or interest therein is sold, transferred, assigned or refinanced, without the prior written approval of the City, except as otherwise permitted in this Payment Agreement; or

(b) if there is a default by the Developer under the terms of the DDA, this Payment Agreement, the City Deed of Trust, or the Agreement Containing Covenants, which is

not cured within the respective time period provided herein and therein (except that Developer shall have no obligation to reimburse the City for the Public Improvement Plans Advance in the event of a default due to the failure of the Phase 2 Closing to occur when and as required by Section 220 of the DDA, where title to Property 2 revests in City as the result of the exercise of the Option or otherwise).

11. Application of Payments. All payments to the City shall be applied first to interest, then to reduce the principal amount owed.

12. Transfers.

(a) Prior to the satisfaction in full of the Obligations evidenced by this Payment Agreement, Developer shall not assign or attempt to assign the DDA or any interest therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Site, the Improvements thereon, or any portion thereof or interest therein (referred to hereinafter as a "Transfer"), without prior written approval of the City, except as otherwise permitted in the DDA.

(b) In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, shall be deemed to relieve the Developer or any other party from any Obligations under this Payment Agreement.

(c) In the event of a Transfer prior to the time the Obligations are satisfied in full without the prior written consent of the City, the remaining principal balance of the Obligations shall be immediately due and payable.

13. Limited Recourse. Subject to the provisions and limitations of this Section 13, the Obligations under this Payment Agreement are the non-recourse obligations of the Developer. Developer and any member of Developer's limited liability company shall not have any personal liability for the Obligations, except as provided in this Section 13. The sole recourse of City shall be the exercise of its rights against the Site and any related security for the Obligations. Provided, however, that the foregoing shall not (a) constitute a waiver of any Obligation evidenced by this Payment Agreement or the City Deed of Trust; (b) limit the right of the City to name Developer as a party defendant in any action or suit for judicial foreclosure and sale under this Payment Agreement and the City Deed of Trust or any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against Developer; (c) release or impair this Payment Agreement or the City Deed of Trust; (d) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy against the mortgaged property or any other instrument securing the Payment Agreement or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits,

insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the Payment Agreement; (f) relieve Developer of any of its obligations under any indemnity delivered by Developer to City; or (g) affect in any way the validity of any guarantee or indemnity from any person of all or any of the obligations evidenced and secured by this Payment Agreement and the City Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Developer and its successors and assigns shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Developer, its principals, shareholders, partners or its successors and assigns received rentals, other revenues, or other payments or proceeds in respect of the mortgaged property after the occurrence of such default, which rentals, other revenues, or other payments or proceeds have not been used for the payment of ordinary and reasonable operating expenses of the mortgaged property, ordinary and reasonable capital improvements to the mortgaged property, debt service, real estate taxes in respect of the mortgaged property and basic management fees, but not incentive fees, payable to an entity or person unaffiliated with Developer in connection with the operation of the mortgaged property, which are then due and payable. Notwithstanding the first sentence of this paragraph, City may recover directly from Developer or from any other party:

(a) any damages, costs and expenses incurred by City as a result of fraud or any criminal act or acts of Developer or any member, partner, shareholder, officer, director or employee of Developer, or of any member or general or limited partner of Developer, or of any general or limited partner of such member or general or limited partner;

(b) any damages, costs and expenses incurred by City as a result of any misappropriation of funds provided to pay Acquisition and Development Costs, as described in the DDA, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(c) any and all amounts owing by Developer pursuant to any indemnity set forth in the DDA, including but not limited to the indemnification regarding Hazardous Substances, and

(d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that City shall pay Developer's reasonable court costs and attorneys' fees if Developer is the prevailing party in any such enforcement or collection action).

14. Waivers. Developer waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Payment Agreement, in whole or in part, whether before or after maturity and with or without notice. Developer hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Payment

Agreement, the City Deed of Trust or any term or provision of either thereof.

15. Exercise of Rights and Remedies. Upon the failure of Developer to perform or observe any other term or provision of this Payment Agreement, upon any event of acceleration described in this Payment Agreement, or upon the occurrence of any other event of default under the terms of the City Deed of Trust, the DDA or the Agreement Containing Covenants, the holder may exercise its rights or remedies hereunder or thereunder.

16. Defaults.

(a) Subject to Force Majeure Delay as defined in the DDA, and subject to the further provisions of this Section 16, failure or delay by Developer to perform or to comply with any material term or provision of this Payment Agreement, the City Deed of Trust, the DDA or the Agreement Containing Covenants, constitutes a default under this Payment Agreement.

(b) City shall give written notice of default to Developer, specifying the default complained of by the City. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by City 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 City in asserting any of its rights and remedies shall not deprive City 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.

(d) If a monetary event of default occurs under the terms of this Payment Agreement or the City Deed of Trust, prior to exercising any remedies hereunder or thereunder City shall give Developer written notice of such default. Developer shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by City under this Payment Agreement and/or the City Deed of Trust. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of the DDA, this Payment Agreement, the City Deed of Trust, the Agreement Containing Covenants or any document implementing the DDA, prior to exercising any remedies hereunder or thereunder, City shall give Developer 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, Developer shall have such period to effect a cure prior to exercise of remedies by the City under the DDA, the Agreement Containing Covenants, this Payment Agreement and/or the City Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (i) initiates corrective action within said period, and (ii) diligently 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 City. In no event shall City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(f) 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 by Developer; 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.

(g) Developer shall pay all costs and expenses reasonably incurred by City, including without limitation, court costs and attorneys' fees, in enforcing or collecting upon this Payment Agreement (provided that City shall pay Developer's reasonable court costs and attorneys' fees if Developer is the prevailing party in any such enforcement or collection action). Until such costs and expenses are paid, they shall be added to the principal amount of this Payment Agreement, with interest at the rate specified in Sections 1 and 2 of this Payment Agreement, respectively.

17. Partial Invalidity. If the rights created by this Payment Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

18. Approvals. In any approval, consent or other determination by the Parties required under this Payment Agreement, the Parties shall act reasonably and in good faith.

19. Right to Prepay. Developer shall have the right to prepay the Obligations evidenced by this Payment Agreement, or any part thereof, without penalty.

IN WITNESS WHEREOF the Parties have executed this Payment Agreement as of the day and year set forth above.

[SIGNATURES APPEAR ON NEXT PAGE]

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

Exhibits
"A" Legal Description of Site
"B" Form of Assignment and Release

ATTACHMENT NO. 16

CITY DEED OF TRUST

[behind this page]

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: City Manager

(Space Above Line for Recorder's Use Only)

DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)

This Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of _____, 20__ by Sudberry-Palm Avenue, LLC, a California limited liability company (in this Deed of Trust referred to as "Trustor") whose address is c/o Sudberry Properties, 5465 Morehouse Drive, Suite 260, San Diego, California 92121 to Chicago Title Company (in this Deed of Trust called "Trustee"), for the benefit of the City of Imperial Beach, a municipal corporation (in this Deed of Trust called "Beneficiary"), whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932, in accordance with that certain Disposition and Development Agreement (the "DDA") dated as of _____ by and between Trustor ("Developer" therein") and Beneficiary ("City" therein).

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION, all right, title and interest of Trustor, whether now owned or hereafter acquired, in and to the following property (the "Trust Estate"):

(a) That certain real property in the City of Imperial Beach, County of San Diego, State of California more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (such interest in real property is hereafter referred to as the "Subject Property");

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "Improvements");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject

Property or the Improvements, including easements, rights-of-way and development rights (the "Appurtenances"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the "Real Property");

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the "Rents");

(e) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the "UCC"), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, theater equipment, seating, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the "Goods," and together with the Real Property, the "Property"); and

(f) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred

payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the "Intangibles").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the "Personal Property"). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided in this Deed of Trust, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9334 and 9502(b) of the UCC.

FOR THE PURPOSE OF SECURING, in such order of priority as Beneficiary may elect, the following:

(1) Due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained in this Deed of Trust or contained in that certain Payment Agreement executed by Trustor (referred to as the "Developer" therein) as of the same date as this Deed of Trust (the "Payment Agreement"), as the same may be modified, amended, extended or converted after the date of this Deed of Trust, and if and when executed by Trustor, any agreement or promissory note that amends, restates and replaces the Payment Agreement (any capitalized term not otherwise defined in this Deed of Trust shall have the meaning ascribed to such term in the Payment Agreement); and

(2) Payment of indebtedness of the Trustor to the Beneficiary in an original principal amount equal to one and one-half percent (1.5%) of the gross sales proceeds of any sale of the Property, according to the terms of the Payment Agreement.

The obligations under the Payment Agreement (collectively, referred to as the "Secured Obligations") and all of their terms are incorporated in this Deed of Trust by this reference, and this conveyance shall secure any and all extensions, amendments, modifications or renewals however evidenced, and additional advances evidenced by any promissory note reciting that it is secured by this Deed of Trust.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. That Trustor shall pay the obligations set forth in the Payment Agreement and any other instrument secured by this Deed of Trust at the time and in the manner provided in the Payment Agreement or such instrument.

2. That Trustor shall not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

3. That the Secured Obligations are incorporated in and made a part of the Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured by this Deed of Trust to be due and payable.

4. That all rents, profits and income from the Property covered by this Deed of Trust are by this Deed of Trust assigned to the Beneficiary, subject to the below-described license in favor of Trustor, for the purpose of discharging the debt secured by this Deed of Trust. Permission is by this Deed of Trust given to Trustor so long as no default exists under this Deed of Trust, after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income.

5. That upon default under this Deed of Trust or under the Payment Agreement secured by this Deed of Trust, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property and operate the same and collect the rents, profits and income from the Property.

6. That Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies shall be endorsed with standard mortgagee clause with loss payable to the Beneficiary and certificates thereof shall be deposited with the Beneficiary. Unless approved otherwise in writing by the City Manager, or his or her designee, Trustor shall maintain insurance as required by Exhibit B to this Deed of Trust, which is incorporated in this Deed of Trust by this reference.

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting the Property; to pay, when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; and to pay all costs, fees, and expenses of this Trust. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as Trustor is contesting its legality in good faith and by appropriate proceedings, and Trustor has adequate funds to pay any liabilities contested pursuant to this Section 7.

8. To keep the Property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings on the Property; to complete or restore promptly and in good and workmanlike manner any building located on the Property which may be constructed, damaged, or destroyed and to pay when due all claims for labor performed and materials furnished (subject to Trustor's right to contest the validity of any such claims); to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste; not to commit, suffer or permit any act upon the Property in violation of law and/or covenants, conditions and/or restrictions affecting the Property; not to permit or suffer any material alteration of or addition to the buildings or improvements constructed in or upon the Property after the date of this Deed of Trust without the consent of the Beneficiary.

9. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without obligation to do so, and without notice to or demand upon Trustor, and without releasing Trustor from any obligations, may make or do the same in such manner and to such extent as either may deem necessary to protect the security of this Deed of Trust. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon the Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay reasonable fees.

11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the indebtedness and obligations secured by this Deed of Trust.

12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the highest non-usurious rate of interest permitted by law.

13. That upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of the Payment Agreement, the entire indebtedness evidenced by the Payment Agreement and any

other instrument secured by this Deed of Trust shall at the option of the Beneficiary of this Deed of Trust become due and payable, regardless of anything to the contrary that is contained in this Deed of Trust.

14. Except for any Permitted Deed of Trust approved by Beneficiary as provided in the DDA, which Permitted Deed of Trust shall be senior in priority to this Deed of Trust, Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except as authorized by Beneficiary in accordance with the DDA, and further that Trustor will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after written request from Beneficiary following the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the County Recorder of San Diego County, a surety bond in the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary.

15. That any and all improvements made or about to be made upon the premises covered by the Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

16. Trustor agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the Property or any part of the Property be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, subject to the rights of any beneficiary of a deed of trust senior in priority to this Deed of Trust ("Senior Lender"), Beneficiary shall be entitled to all compensation, awards, and other payments or relief which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. Subject to the rights of any Senior Lender, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the Property or part of the Property that

was taken or damaged, including the proceeds of any policies of fire and other insurance affecting the Property, are by this Deed of Trust assigned to Beneficiary. After deducting all its expenses, including reasonable attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the Property or part of the Property that was taken or damaged, shall be applied to the amount due under the Payment Agreement. No amount applied to the reduction of the principal shall relieve the Trustor from making payments as required by the Payment Agreement.

18. Upon default by Trustor in making any payments provided for in this Deed of Trust or upon default by Trustor in making any payment required in the Payment Agreement, or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust within 30 days after written demand by Beneficiary (or, in the event that more than 30 days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), after the giving of notice and the expiration of any applicable cure period, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, any instruments and documents secured by this Deed of Trust and all documents evidencing expenditures secured by this Deed of Trust.

19. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this trust including in this Deed of Trust reasonable Trustee's fees or attorney's fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the highest rate of interest permitted by law to be paid to Beneficiary; (4) all other sums then secured by this Deed of Trust; and (5) the remainder, if any, to the person or persons legally entitled thereto.

20. Beneficiary may from time to time substitute a successor or successors to any Trustee named in this Deed of Trust or acting under this Deed of Trust to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee in this Deed of Trust named or acting under this Deed of Trust. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

21. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is by this Deed of Trust waived to the full extent permissible by law.

22. Upon written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid and all obligations secured by this Deed of Trust have been satisfied, and upon surrender of this Deed of Trust and the Payment Agreement to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held under this Deed of Trust. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trust created by this Deed of Trust is irrevocable by Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary under this Deed of Trust but also any future owner and holder including pledgees, of any instruments and documents secured by this Deed of Trust. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor under this Deed of Trust are joint and several.

25. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

26. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale under this Deed of Trust be mailed to Trustor at the address set forth in the first paragraph of this Deed of Trust.

27. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents,

profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the premises and their use as may be requested by Beneficiary.

28. Trustor agrees that the indebtedness secured by this Deed of Trust is made expressly for the purpose of financing the acquisition of the Property and plans for the construction of improvements thereon as provided in the Payment Agreement.

29. Trustor agrees that, except as otherwise provided in the Payment Agreement, upon sale or refinancing of the property, the entire indebtedness secured by this Deed of Trust shall at the option of Beneficiary be immediately due and payable.

30. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance under this Deed of Trust shall not be deemed to be in default where delays or defaults are due to: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts of the other party; acts or failure to act of the City of Imperial Beach or any other public or governmental agency or entity; or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause (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, however, notice by the party claiming such extension is sent to the other party more than thirty (30) calendar days after the commencement of the cause, the period shall commence to run only thirty (30) calendar days prior to the giving of such notice. Times of performance under this Deed of Trust may also be extended in writing by the Beneficiary and Trustor. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until Trustor delivers to Beneficiary written notice: describing the event; its cause; when and how Trustor obtained knowledge; the date the event commenced; a reasonable causal connection between the event and the need for Trustor to extend times of performance; and the estimated delay resulting from the event. Trustor shall deliver such written notice within fifteen (15) calendar days after it obtains actual knowledge of the event and the impact of such event on performance.

31. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described in this Deed of Trust, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

32. (a) Subject to the extensions of time set forth in Section 30, and subject to the further provisions of this Section 32, failure or delay by Trustor to perform any term or provision required to be performed under the Payment Agreement or this Deed of Trust constitutes a default under this Deed of Trust;

(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by Beneficiary 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 Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary 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.

(d) If a monetary event of default occurs under the terms of the Payment Agreement or under this Deed of Trust, prior to exercising any remedies under this Deed of Trust Beneficiary shall give Trustor, the holder of any senior indebtedness, and each of the members of Trustor's limited liability company, if such persons have requested in writing that Beneficiary give such persons notice of default, simultaneous written notice of such default. Trustor shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary under the Payment Agreement and/or this Deed of Trust. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of the Payment Agreement or this Deed of Trust, prior to exercising any remedies under this Deed of Trust or under such Payment Agreement, Beneficiary shall give Trustor, the holder of any senior indebtedness and each of the members of Trustor's limited liability company, if such persons have requested in writing that Beneficiary give such persons notice of default, concurrent 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, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary under this Payment Agreement and/or this Deed of Trust. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is received or deemed received.

(f) 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 FedEx, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Trustor; 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.

33. Unless expressly subordinated by a recorded instrument duly executed by the City Manager or his or her designee, this Deed of Trust shall not be subordinate to any deed of trust, mortgage or other encumbrance. Subject to the occurrence of the Phase 1 Closing (as defined in the DDA), City Manager shall execute a Subordination Agreement (as defined in the DDA) as to Property 1, and subject to the occurrence of the Phase 2 Closing (as defined in the DDA), City Manager shall execute a Subordination Agreement as to Property 2.

34. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part of the Project, Trustor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds for that purpose; provided that (a) such proceeds are sufficient to rebuild the Project in a manner that provides adequate security to Beneficiary for repayment of the obligations secured by this Deed of Trust or if such proceeds are insufficient then Trustor shall have funded any deficiency, (b) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Payment Agreement. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Secured Obligations in a manner that provides adequate security to Beneficiary for repayment of the remaining balance of the Secured Obligations.

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its manager

Dated:_____

By:_____
Colton T. Sudberry, President

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

Exhibit "A" to Deed of Trust

Legal Description

[behind this page]

Exhibit "B" to Deed of Trust

Insurance Requirements

At all times prior to the repayment in full of the obligations secured by this Deed of Trust, Trustor shall maintain in effect and deliver to Beneficiary duplicate originals of the following insurance policies (the "Insurance Policies"), complete with additional insured and loss payee endorsements, as applicable. Any capitalized term not otherwise defined in this Exhibit shall have the meaning ascribed to such term in the Deed of Trust to which this is attached.

a. Trustor and Trustor's contractors and sub-contractors hired to perform work on the Property shall maintain general liability insurance, to protect against claims due to bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the Improvements, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of the Beneficiary or Trustor or any person acting for the Beneficiary or Trustor, or under their respective control or direction, and also to protect against claims due to damage to any property of any person occurring on or about the Property and the Improvements, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of the Beneficiary or Trustor, its contractor(s) or subcontractor(s) or its tenants or any person acting for the Beneficiary or Trustor, or under their respective control or direction. Such property damage and bodily injury insurance shall also provide for and protect the Beneficiary against incurring any legal cost in defending claims for alleged loss. Such bodily injury and property damage insurance shall name The City of Imperial Beach (the "Indemnitee") as additional insured. Such bodily injury and property damage insurance shall be in minimum limits of _____ Dollars ($_____) per occurrence with a _____ Dollars ($_____) aggregate, which limits shall be increased from time-to-time to reflect increases in the Consumer Price Index from base year 2011; provided, however, the limitation on the amount of insurance shall not limit the responsibility of the Trustor to indemnify the Indemnitees or to pay damages for injury to persons or property resulting from Trustor's activities or the activities of any other person or persons for which Trustor is otherwise responsible.

b. During construction and until a Certificate of Occupancy for the completed development has been issued by the City, Trustor shall carry Builder's Risk coverage for the Improvements. After completion of construction, Trustor shall maintain property insurance in an amount not less than the full insurable value of the Improvements with extended coverage including fire, windstorm, flood, vandalism, malicious mischief, earthquake (if commercially available at reasonable rates or as otherwise required), boiler and machinery if applicable, and other such perils customarily covered by an "All Risk" policy. Such policy shall include a loss payable endorsement naming **"The City of Imperial Beach, California"** as loss payee. The term "full insurable value" as used above shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without

deduction for depreciation) of the Improvements immediately before such casualty or other loss, including the cost of rehabilitation of the Improvements, architectural and engineering fees, and inspection and supervision.

c. After the completion of construction, Trustor shall maintain or cause to be maintained loss of rental income insurance with respect to the Improvements, against the perils of fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage policies.

d. Trustor shall maintain or cause to be maintained Workers' Compensation Insurance including Employer's Liability insurance in limits of not less than _____ Dollars ($_____), increased from time-to-time to reflect increases in the Consumer Price Index from base year 2011, 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 Trustor and its contractors and subcontractors in connection with the Property and the Improvements and shall cover claims for death, bodily injury, illness, or disease made by, for or on behalf of any person incurring or suffering injury, death, illness or disease in connection with the Property or the Improvements or the operation thereof by Trustor.

e. Professional liability insurance shall be required of architects and engineers hired to perform work on the Improvements in limits of not less than _____ Dollars ($_____). Trustor shall ensure that insurance for architects and engineers is received by the Beneficiary prior to the commencement of any work on the Property.

f. Commercial automobile insurance coverage in minimum limits of not less than $_____, increased from time-to-time to reflect increases in the Consumer Price Index from base year 2011, shall be required by Trustor and/or Trustor's contractors and sub-contractors hired to perform work on the Property for owned, hired, leased, and non-owned autos and shall be received by the Beneficiary prior to the commencement of any work being performed on Property.

g. All required insurance policies shall not be subject to cancellation, reduction in coverage, or non-renewal except after notice in writing shall have been sent by registered mail addressed to the Beneficiary not less than thirty (30) days prior to the effective date thereof (ten days for nonpayment of premiums). **All policies where applicable must name "City of Imperial Beach, California" as additional insured.** The insurance policies or endorsements shall also contain a waiver of subrogation for the benefit of the Beneficiary.

h. All insurance provided under this Agreement shall be for the benefit of Trustor, the Beneficiary and City. Trustor agrees to timely pay or cause to be paid 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.

i. Trustor shall submit proof of insurance and applicable endorsements as required by this Section to the Beneficiary prior to recordation of this Deed of Trust. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies shall be submitted to the Beneficiary.

j. All insurance shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California reasonably approved by the Beneficiary.

k. Subject to the provisions of any other construction lender's and permanent lender's loan documents, all proceeds of insurance with respect to loss or damage to the Improvements during the term of the Payment Agreement shall be payable, under the provisions of the policy of insurance, jointly to Trustor and the Beneficiary, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Improvements in accordance with plans and specifications approved in writing by the Beneficiary. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied to repay the Loan. During any period when a permanent loan is outstanding, such proceeds shall be divided between the permanent lender and the Beneficiary in proportion to the balance of their respective loans. In the event of any fire or other casualty to the Improvements or eminent domain proceedings resulting in condemnation of the Improvements or any part thereof, the Trustor shall have the right to rebuild the Improvements, and to use all available insurance or condemnation proceeds to pay costs in connection with rebuilding the Improvements, provided that (a) such proceeds are sufficient to keep the Loan secured by this Deed of Trust in balance and rebuild the Improvements in a manner that provides adequate security to Beneficiary for repayment of the Loan or if such proceeds are insufficient then the Trustor shall have funded any deficiency, (b) the Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan documents. If the casualty or condemnation affects only part of the Improvements and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Beneficiary for repayment of the remaining balance of the Loan.

l. The Beneficiary reserves the right at any time during the term of this DDLA to change the amounts and types of insurance required under this Deed of Trust by giving the Trustor ninety (90) calendar days written, advance notice of such change. If such change(s) should result in substantial additional cost to the Trustor, the Beneficiary agrees to negotiate

additional compensation proportional to the increased benefit to the Beneficiary and City of Imperial Beach.

m. The City Manager shall have the right in his or her sole discretion to accept insurance policies with lower limits than the minimum limits set forth in this Attachment.

n. In the event Trustor fails to maintain or cause to be maintained the full insurance coverage required by this Deed of Trust, the Beneficiary, after at least seven (7) Business Days prior notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by the Beneficiary, together with interest thereon from the date of such advance at the highest rate of interest then allowed by applicable law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured by this Deed of Trust.

ATTACHMENT NO. 17

ACCEPTANCE AND MAINTENANCE AGREEMENT

FOR PUBLIC IMPROVEMENTS

[behind this page]

ATTACHMENT NO. 17

ACCEPTANCE AND MAINTENANCE AGREEMENT

FOR PUBLIC IMPROVEMENTS

[behind this page]

OFFICIAL BUSINESS
Document entitled to fee
Recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, California91932
Attention: 9th and Palm Project Manager

SPACE ABOVE LINE FOR RECORDER'S USE

ACCEPTANCE AND MAINTENANCE AGREEMENT

FOR PUBLIC IMPROVEMENTS

This ACCEPTANCE AND MAINTENANCE AGREEMENT ("Agreement"), dated for reference purposes as of the __ day of _____, 20__, is entered into by and between the following (collectively, the "Parties"): THE CITY OF IMPERIAL BEACH, a municipal corporation ("City"), and SUDBERRY-PALM AVENUE, LLC, a California limited partnership ("Developer").

RECITALS

A. City has conveyed to Developer that certain real property located generally on the south side of Palm Avenue (State Route 75) between 7th Street and 9th Street, in the City of Imperial Beach, California, legally described in the Legal Description attached to this Agreement as Exhibit "A" ("Property").

B. Pursuant to that certain Disposition and Development Agreement dated _____, 2011 ("DDA") by and between the City and Developer, Developer has agreed to construct or cause to be constructed an approximately 46,200 square foot town center containing retail and commercial uses, parking, landscaping, lighting and related improvements on the Property ("Project"), in accordance with the terms of the DDA. The term "DDA" as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

C. In consideration for the City's performance of its obligations under the DDA, Developer agreed to construct the following off-site improvements ("Public Improvements") to serve the Project:

[INSERT LIST OF PUBLIC IMPROVEMENTS]

D. The purpose of this Agreement is to establish the conditions for City's acceptance of the Public Improvements once completed by Developer in accordance with the DDA and all applicable City requirements.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

1.0 MAINTENANCE PENDING ACCEPTANCE OF DEDICATION. The Parties understand and agree that until such time that the City accepts the completed Public Improvements, Developer shall be obligated and responsible for the ongoing maintenance of and repairs to the Improvements.

2.0 CONDITIONS FOR CITY'S ACCEPTANCE OF PUBLIC IMPROVEMENTS. The Public Improvements shall be promptly accepted by City upon Completion. For purposes herein "Completion" means the point in time when all of the following shall have occurred: (1) approval of the Public Improvements by the City's Public Works Director, which approval shall not be unreasonably conditioned, delayed or withheld; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by an authorized representative of each designer of each of the respective Improvements that construction has been completed in a good and workmanlike manner and substantially in accordance with plans and specifications approved by the City; and (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered. Developer shall promptly remedy at the Developer's cost and expense any condition or conditions which prevent the City from accepting the Public Improvements as provided by this paragraph.

3.0 FORM OF ACCEPTANCE. The City's acceptance of the Public Improvements shall be in writing by an adopted resolution of the City Council. The Public Improvements shall become the property of the City immediately upon acceptance.

4.0 GUARANTEE. Developer hereby guarantees all work against defective workmanship and materials furnished by Developer for a period of one (1) year from the date the

Notice of Completion is filed. Developer shall promptly replace or repair in a manner satisfactory to City's Public Works Director, any such defective work, after notice to do so from City, and within the time specified in the notice. Upon the failure of Developer to make such replacements or repairs promptly, the City may perform this work and the Developer and its sureties shall be liable for the costs thereof.

5.0 INDEMNIFICATION. In addition to and without limiting any indemnity provided under the DDA, Developer shall protect, defend, indemnify and hold the Imperial Beach Redevelopment Agency ("Redevelopment Agency"), City and each of their respective elected officials, members, officers, representatives, agents, employees, contractors and attorneys (the "Indemnified Parties") harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Developer's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with the Improvements, and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. City and/or Redevelopment Agency may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City and/or Redevelopment Agency chooses as its own election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Developer shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. In connection therewith, the reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with the prevailing market rates charged by attorneys in private practice for such services. In the event a legal action covered by this Section is filed against any of the Indemnified Parties, the Developer shall submit a $20,000 deposit to pay the Indemnified Party's fees and costs in connection with a defense of such action within ten (10) days after the filing of any action and shall thereafter replenish the funds in increments of $10,000 when requested by an Indemnified Party. The foregoing defense and indemnification obligations shall survive the termination of this Agreement and shall continue to remain in effect after any or all of the following events: Closing, Completion and recordation of any Release of Construction Covenants.

6.0 SUCCESSORS AND ASSIGNS. This Agreement shall bind and inure to the benefit of the Parties and their respective, permitted heirs, successors in interest and assigns to the Property.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated:_____

By:_____
Colton T. Sudberry, President

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

EXHIBIT A

Legal Description

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

ATTACHMENT NO. 18

FORM OF RIGHT OF ENTRY AGREEMENT

[behind this page]

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT ("Agreement") is made as of this _____ day of_____, 2011 (the "Effective Date"), by and between THE CITY OF IMPERIAL BEACH, a municipal corporation (the "City"), and SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Licensee").

RECITALS

A. The City is the current owner of certain real property located in the City of Imperial Beach, San Diego County, California, as more particularly shown on the site map attached hereto as Exhibit "A" (the "Site").

B. The Site is the subject of that certain Disposition and Development Agreement dated _____, 2011 (the "DDA"), by and between the City and the Licensee ("Developer" therein), pertaining to the redevelopment of the Site with a commercial/retail development (the "Improvements"), in accordance with the terms and conditions of the DDA. The term "DDA" as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DDA.

C. Subject to the covenants and conditions set forth below, the parties desire to enter into this Agreement to provide Licensee with access to the Site for the purposes and in accordance with the terms and provisions set forth herein.

TERMS

1. Grant of License. The City hereby grants to Licensee, its employees, contractors, consultants, and agents, a temporary, nonexclusive license and right of entry to perform the following acts on the Site: (i) obtain soil samples and make surveys and tests necessary to determine the suitability of the Site for the development of the Project; (ii) conduct reasonable investigations on and beneath the Site to determine the presence of Hazardous Materials; (iii) allow Licensee's engineers and architects to obtain data for drawings, calculations, plans and specifications; (iv) establish a construction office to manage any work to be performed on the Site with necessary power and portable sanitary services; and (v) **[INSERT BRIEF DESCRIPTION OF UTILITY RELOCATION, GRADING OR OTHER WORK]**, all as more specifically described in Exhibit "B" in accordance with the drawings attached hereto as Exhibit "D" (collectively, the "Permitted Purposes"), subject to all licenses, easements, encumbrances and claims of title affecting the Site, during the Term (defined below) of this Agreement (the "License"). As used herein the phrase "Hazardous Materials" means any substance, whether in the form of a

solid, liquid, gas or any other form whatsoever, which by any governmental requirement is defined as "hazardous" or harmful to the environment. Licensee agrees that the Permitted Purposes shall be completed in accordance with any permits and authorization issued by the City or any other governmental entity having jurisdiction over the Site in connection with the Permitted Purposes. Licensee's or its duly authorized employees', agents', consultants', independent contractors' (collectively, "Licensee's Representatives") use of the Site shall not interfere with the use and enjoyment of the Site by the City or its directors, officers, members, employees, agents and independent contractors (collectively, "City's Representatives"), or anyone claiming under or through them. Licensee shall not permit any other party associated with Licensee, except Licensee's Representatives, to enter onto the Site during the term of this Agreement without the prior written consent of the City Manager or his designee, which may be withheld in his or her sole and absolute discretion. Licensee and Licensee's Representatives shall not perform any work other than the Permitted Purposes upon the Site.

2. Term. This Agreement shall commence upon the date the City executes this Agreement (the "Effective Date") and shall automatically expire upon the earliest to occur of: (i) conveyance of title to the Site to Licensee or its assignees pursuant to the DDA; (ii) termination of the DDA; or (iii) termination of this Agreement in accordance with Section 15 hereto (the "Term").

3. No Possessory Interest. Licensee acknowledges and agrees that City's grant of this License to use the Site creates no possessory interest in the Site and therefore Licensee shall abandon the use of the Site without the necessity of a judicial proceeding by the City no later than the expiration of this Agreement, or, in the event of an earlier termination of this Agreement, Licensee shall abandon the use of the Site immediately upon such earlier termination. Licensee further acknowledges and agrees that any failure to abandon the use of the Site upon expiration or termination of this Agreement shall constitute a trespass. This Term of this Agreement is intended to be for a short duration.

4. Purpose of Right of Entry. Subject to the provisions of this Agreement, Licensee and Licensee's Representatives may, during the Term, enter onto the Site at reasonable times to perform the Permitted Purposes in a good, substantial and workmanlike manner. Once undertaken, each act constituting a Permitted Purpose shall be diligently pursued to completion.

5. Permits; Compliance with Laws and Regulations. Any and all work undertaken by Licensee pursuant to this Agreement shall be performed in conformance with all laws, ordinances, codes, and regulations of, or approved by, the applicable federal, state and local governments with respect to Licensee's or Licensee's Representatives use of and activities upon the Site. Licensee, at Licensee's sole cost and expense, shall obtain all required governmental permits and authorizations for Licensee's use of and activities

upon the Site pursuant to this Agreement, and Licensee's use of and activities upon the Site shall be in conformance with any such permits and authorizations. City, in its capacity as owner of the Site, shall cooperate with Licensee in applying for such permits and authorizations, subject to the approval of City Manager or designee.

6. Reports and Studies. In consideration of the City's granting of this License, Licensee shall promptly provide the City with a copy of all reports and test results arising from this License, without creating any liability for Licensee or the preparer of such reports.

7. Condition Of The Site. The Site is licensed to Licensee in an "as is" condition, existing as of the Effective Date of this Agreement. Except for the work described in Exhibit "B", Licensee shall not construct any temporary or permanent improvements or make any material changes to the Site as part of Licensee's use of the Site without City's prior written consent, which may be withheld in its sole and absolute discretion. Such prohibition on construction of improvements or material changes to the Site shall include but shall not be limited to any signs, paving, construction of fencing, retaining walls, buildings or structures, or the removal of any living trees.

8. Maintenance and Condition of the Site. Licensee shall at all times cause its use of and activities upon the Site to be conducted in a safe, neat and orderly fashion. Licensee shall be responsible for clean-up of the Site from any activities undertaken by Licensee or any Licensee Representative on the Site, including any improvements thereon, in compliance with all zoning, building, safety, health, environmental and other laws, codes, ordinances, regulations, orders, requirements, permits or authorizations of any federal, state or local government applicable to the Permitted Purposes.

9. Restoration of Site. Upon the termination or expiration of this Agreement, and provided that the Site has not been conveyed to Licensee or its assignee(s) pursuant to the DDA, Licensee shall at its sole cost and expense, cause the Site to be restored from any damage or material change caused by Licensee or any Licensee Representative to substantially the same condition as the Site was in prior to Licensee's entry onto the Site under this Agreement, except that notwithstanding anything to the contrary herein, Licensee shall complete the work more specifically described in the attached Exhibit "B". To ensure completion of the work, as a condition precedent to the effectiveness of this License, Licensee shall cause its contractor to obtain and submit to the City the following:

   1. A "Payment Bond" (Material and Labor Bond) for one hundred percent (100%) of the contract price of work to be performed, to satisfy claims of material suppliers and of mechanics and laborers employed on the work. The bond shall be maintained by the Licensee's contractor in full force and effect until the work is accepted by the City and until all claims for materials and labor are paid, and shall otherwise comply with the Government Code and Public Contract Code.

2. A "Faithful Performance Bond" for one hundred percent (100%) of the contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects.

The bonds must remain in effect until completion of the work.

Licensee shall be responsible for any damage done to the Site by Licensee or Licensee's Representatives. Licensee shall additionally, at Licensee's sole cost and expense, remove, or cause to be removed, any garbage and debris on the Site caused by Licensee or any Licensee Representative.

10. Liens. Licensee shall not suffer or permit to be enforced against the Site, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any work performed by Licensee or Licensee's Representatives or Licensee or Licensee's use of and activities upon the Site pursuant to this Agreement. Subject to any contest undertaken by Licensee in accordance with the requirements of this Paragraph 10 to challenge payment, Licensee shall pay, or cause to be paid, all said liens, claims or demands, or post bonds sufficient to dismiss or remove such liens, before any action is brought to enforce the same against the Site. The City reserves the right at any time and from time to time to post and maintain on the Site, or any portion thereof or improvement thereon, such notices of non-responsibility as may be necessary to protect City against any liability for all such liens, claims or demands. In the event Licensee undertakes a contest of any lien, claim or demand to challenge payment, Licensee shall first deliver to the City bonds or other adequate security in form and amount approved in writing by City Manager or designee.

11. Indemnification. To the extent permitted by law, Licensee shall protect, defend, indemnify and hold City, the City's Representative and each of its elected officials, officers, representatives, agents, employees, contractors and attorneys (the "Indemnified Parties") harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Licensee's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with any work or activity of Licensee, its officers, employees, invitees, guests, agents and contractors permitted pursuant to this Right of Entry Agreement (excluding any such matter arising out of the mere discovery by Licensee of a Pre-existing Site Condition), and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Licensee shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. In connection therewith, the reasonable value of services provided by in-house counsel shall be calculated by applying

an hourly rate commensurate with the prevailing market rates charged by attorneys in private practice for such services. In the event a legal action covered by this Section is filed against any of the Indemnified Parties, the Licensee shall submit a $20,000 deposit to pay the Indemnified Party's fees and costs in connection with a defense of such action within ten (10) days after the filing of any action and shall thereafter replenish the funds in increments of $10,000 when requested by an Indemnified Party. The foregoing defense and indemnification obligations shall survive the termination of this Right of Entry Agreement or the DDA and shall continue to remain in effect after any or all of the following events: Conveyance of the Site to Licensee or its assignee(s) pursuant to the DDA, Completion and recordation of any Release of Construction Covenants, as described in the DDA.

12. Waiver Of Subrogation. Licensee hereby waives any and every claim which arises or may arise in its favor and against the City during the term of this Agreement or any extension or renewal hereof for any and all loss or damage to Licensee's property, or property of Licensee's officers, representatives, employees, agents, subcontractors, patrons or invitees covered by valid and collectible property insurance policies to the extent that such loss or damage is covered under such insurance policies. Such waiver shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement. Licensee also agrees that any insurer providing worker's compensation coverage for Licensee shall agree to waive all rights of subrogation against the City and City Representatives for losses arising from activities and operations of Licensee and the use of the Site pursuant to this Agreement.

13. Liability For Loss, Injury Or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the City's negligence or willful misconduct, Licensee agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of Licensee's equipment, materials or personal Site placed on the Site and for any injury to persons which occurs on the Site as a result of the permitted use licensed pursuant to Section 1, above, of this Agreement.

14. Insurance. Prior to commencing work, Licensee shall procure, maintain, and pay for insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by Licensee, its agents, representatives, employees or subcontractors for the duration of the License Agreement. The insurance requirements are set forth in the Insurance Requirements and Verifications, which is attached as Exhibit "C".

15. Termination. In the event that Licensee or Licensee's Representatives violate any of the terms or conditions set forth in this Agreement, the City Manager or designee, after giving Licensee written notice of such violation and a thirty (30) calendar day period within which to cure the same, shall have the right to immediately terminate this Agreement by providing written notice to Licensee of said termination. No termination

or expiration of this Agreement shall relieve Licensee of performing any of its obligations required hereunder which were either required prior to or which survive such termination or expiration.

16. Licensee As Independent Contractor. Licensee is, and at all times during the term of this Agreement shall be deemed to be, an independent contractor. City shall not be liable for any acts or omissions of Licensee, or its officers, representatives, employees, agents, subcontractors, patrons or invitees and nothing herein contained shall be construed as creating the relationship of employee and employer between Licensee and City. Licensee shall be solely responsible for all matters relating to payment of its employees, including payment of Social Security taxes, withholdings and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such employees, including any related assessments or contributions required by law or any other regulations governing such matters.

17. Assignability. This Agreement may not be assigned or transferred without the express written consent of the City Manager (which may be withheld in his or her sole and absolute discretion), whether voluntarily or involuntarily, and Licensee shall not permit the use of the Site, or any part thereof, except in strict compliance with the provisions hereof, and any attempt to do otherwise shall be null and void. Any approved assignee of this Agreement shall enter into an assignment and assumption agreement in a form reasonably approved by the City Manager. No legal title or leasehold interest in the Site is created or vested on Licensee.

18. Governing Law. The laws of the State of California shall govern this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

20. Attorneys' Fees. If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced by either party to this Agreement, then the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred in the action, proceeding or arbitration by the prevailing party.

21. City's Proprietary Capacity. Licensee agrees that City, in making and entering into this Agreement, is acting and shall be deemed to be acting solely in City's proprietary capacity for all purposes and in all respects; and nothing contained in this Agreement shall be deemed directly or indirectly to restrict or impair in any manner or respect whatsoever any of City's governmental powers or rights or the exercise thereof by City, whether with respect to the Site or Licensee's use thereof or otherwise. It is intended that Licensee shall be obligated to fulfill and comply with all such requirements as may be

imposed by any governmental City or authority of the City having or exercising jurisdiction over the Site in its governmental capacity.

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

23. Notice. Any notice provided for in this Agreement shall be given by mailing such notice by certified, return receipt mail addressed as follows:

If to Licensee:

Sudberry-Palm Avenue LLC
c/o Sudberry Properties
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attn: Colton T. Sudberry
Tel: (858) 546-3000
Fax: (858) 546-3009

With a copy to Gerald I. Solomon, Esq. of Solomon Minton Cardinal LLP, addressed as follows: gis@smclawoffices.com

If to City:

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: City Manager
Tel: 619-423-0314
Fax: 619-628-1395

With a copy to:

McDougal, Love, Eckis, Boehmer & Foley
8100 La Mesa Boulevard, Suite 200
La Mesa, CA 91942
Attn: Jennifer Lyon
Tel: 619-440-4444
Fax: 619-440-4907

With a copy to:

Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850

Los Angeles, California 90071
Attn: Susan Y. Cola
Tel: 213-617-0480
Fax: 213-625-0931

24. Time is of the Essence. Time is of the essence as to every term and condition of this Agreement.

25. Recordation. Neither party shall record this Agreement.

26. Severability. In the event that any provisions of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a California corporation, its Manager

Dated:_____

By:_____
Colton T. Sudberry, President

[SIGNATURES CONTINUE ON NEXT PAGE]

CITY OF IMPERIAL BEACH

Dated:_____

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____
Susan Y. Cola

Exhibit "A"

SITE MAP

[behind this page]

Exhibit "B"

DESCRIPTION OF WORK

[behind this page]

Exhibit "C"

INSURANCE REQUIREMENTS AND VERIFICATION

A. Minimum Limits of Insurance. Licensee shall maintain limits of no less than:

(1) Commercial General Liability.

Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury and property damage. Licensee shall indicate whether coverage provided is on a "claims made" or "occurrence" basis.

(2) Automobile Vehicle Liability Insurance.

Two Million Dollars ($2,000,000) combined single limit per accident for bodily injury or property damage. The limit shall include applicable umbrella coverages. The following coverage shall be included:

(a) Owned Vehicle (if any).

(b) Hired Vehicle.

(c) Non-owned Vehicle.

(3) Workers' Compensation and Employer's Liability.

Workers' Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars ($1,000,000) per accident.

B. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the insurer shall reduce or eliminate deductibles (limited to general and vehicle liability insurance only) or self-insured retentions as respects City, its officials, employees and volunteers or Licensee shall procure a bond guaranteeing payment of losses, related investigation, claim administration, and defense expenses.

C. Other Insurance Provisions.

(1) General Liability and Automobile Liability Coverage Only.

(a) The City of Imperial Beach, members of its City Council, boards and commissions, Agency, City Representatives and their officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of

Licensee; premises owned, leased, licensed or used by the Licensee; and premises on which Licensee is performing services, if any, on behalf of the City.

(b) Licensee's insurance coverage shall be primary insurance in respect to the City of Imperial Beach, members of its City Council, boards and commissions, Agency, City Representatives and their officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City or Agency, its officials, and employees, shall be in excess of Licensee's insurance and shall not contribute with it.

(c) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Imperial Beach, members of its City Council, boards and commissions, the City, City Representatives and their officers, agents, employees and volunteers.

(d) Coverage shall state that Licensee's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) Workers' Compensation and Employer's Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City of Imperial Beach, members of its City Council, boards and commissions, the Agency, City Representatives and their officers, agents, employees and volunteers for losses arising from work performed by Licensee for the City.

(3) All Coverage.

(a) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days prior written notice has been given to the City at the following address: **[TO BE CONFIRMED]**

City of Imperial Beach
1685 Main Street, Room 212
Imperial Beach, CA 90401.
Attention:_____

(b) If Licensee, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the failure shall be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement and obtain damages from Licensee resulting from the breach. Alternatively, City may purchase the required insurance (but has no special obligation to do so), and without further notice to Licensee, City

may deduct from sums due to Licensee any premium costs advanced by City for the insurance.

D. Acceptability of Insurers. Insurance is to be placed with insurers rated A: 6 or better by A.M. Best's rating service, unless otherwise approved by the City's Risk Manager.

E. Verification of Coverage. Licensee shall furnish City with certificates of insurance affecting coverage required by this Agreement. The certificates for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms provided by City and are to be received and approved by City before work commences. Copies of the Certificate of Insurance and endorsement forms acceptable to City are attached.

F. Licensee Contractors. Licensee shall provide to City certificates of insurance evidencing satisfactory compliance by each Licensee contractor with the insurance requirements stated herein.

(1) Professional Liability Insurance.

Licensee contractors shall maintain professional liability insurance appropriate to the Licensee contractor's profession with a limit of not less than $1,000,000 each occurrence/$1,000,000 in the annual aggregate. Architects' and engineers' coverage is to be endorsed to include contractual liability.

Exhibit "D"

DRAWINGS OF WORK

[behind this page]

ATTACHMENT 6

City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

March 15, 2012

Via Facsimile and Federal Overnight Express Signature Receipt Required

Mr. Colton T. Sudberry
Sudberry-Palm Avenue LLC
c/o Sudberry Properties
5465 Morehouse Drive; Suite 260
San Diego, California 92121

RE: 9th and Palm Avenue Project; Extension of Deadlines Set forth in DDA and Schedule of Performance

Dear Mr. Sudberry:

As you know, Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") and the City of Imperial Beach, a municipal corporation (the "City") are Parties to that certain Disposition and Development Agreement dated for identification purposes as of December 14, 2011 (the "DDA"). The DDA provides, among other matters, for the sale by the City to the Developer of certain real property described in the DDA as the "Site", for the development of the Site by the Developer as a commercial/retail center, and for the development by the Developer of certain off-Site Public Improvements, as collectively described in the DDA as the "Project". Any capitalized term not otherwise defined in herein shall have the meaning ascribed to such term in the DDA.

The DDA and the Schedule of Performance, attached to the DDA as Attachment No. 5, require that certain rights of the Parties be exercised and certain obligations of the Parties be performed on or before certain specified dates or deadlines stated therein. Although the City and the Developer have been working diligently to effectuate the DDA, the Parties mutually recognize and agree that certain dates and deadlines by which such rights shall be exercised and such obligations shall be performed are quickly approaching. To provide each of the Parties additional time within which to exercise their respective rights and perform their respective obligations pursuant to the DDA and the Schedule of Performance, the Parties desire to extend each such date and deadline set forth in the DDA and the Schedule of Performance by an additional nine (9) consecutive months from the date or deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA.

Section 602(b) of the DDA provides in pertinent part as follows: *"Times of performance under this Agreement may . . . . be extended in writing by both the City and Developer."* Thus, an extension of

the dates and deadlines set forth in the DDA and Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the dates or deadlines stated therein may be accomplished by the Parties' execution of this letter.

Section 606(b) of the DDA provides in pertinent part as follows: *"Except as otherwise expressly provided in this Agreement, approvals required of the City shall be deemed granted by the written approval of the City Manager or designee."* In addition, City Council Resolution No. 2011-7132 in which the City Council of the City approved the DDA provides in pertinent part as follows: *"The City Manager, or designee, is hereby authorized, on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the attachments and provisions of the DDA, sign all documents and take such actions that as City Manager may determine are necessary and appropriate to carry out and implement the purposes of Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement."*

Based on the authority provided to the City Manager by Sections 602(b) and 606(b) of the DDA and by the City Council Resolution approving the DDA, as described herein above, the City hereby approves the extension of each date and deadline set forth in the DDA and the Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the applicable date or deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA.

By executing below, you, on behalf of the Developer in the DDA, hereby acknowledge and agree that the Developer mutually approves the extension of each date and deadline set forth in the DDA and the Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the applicable date and deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA, as detailed above, and further acknowledge and agree that the Developer shall continue to be bound by the DDA and all its applicable Attachments, as amended in this letter.

Should you have any questions or comments, please do not hesitate to contact Greg Wade, Assistant City Manager/Community Development Director, at (619) 628-1354.

Sincerely,

CITY OF IMPERIAL BEACH,
a municipal corporation

Dated: 3/28/12

By: _____
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

CONSENT TO EXTENSION OF EACH DATE AND DEADLINE SET FORTH IN THE DDA AND THE SCHEDULE OF PERFORMANCE BY WHICH THE PARTIES SHALL EXERCISE THEIR RESPECTIVE RIGHTS AND PERFORM THEIR RESPECTIVE OBLIGATIONS BY AN ADDITIONAL NINE (9) CONSECUTIVE MONTHS FROM THE APPLICABLE DATE OR DEADLINE STATED THEREIN AS SET FORTH ABOVE

The Developer, Sudberry-Palm Avenue, LLC, a California limited liability company, hereby acknowledges, consents, and approves to the extensions stated above and agrees to continue to be bound by the DDA and all its applicable Attachments, as amended herein.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its Manager

Dated: 3/30/12

By: _____
Colton T. Sudberry, President

cc: Gerald I. Solomon, Esq.
Solomon Minton Cardinal LLP
(via email only: gis@smclawoffices.com)

MEMORANDUM OF AGREEMENT
REGARDING NINTH STREET IMPROVEMENTS
AND FUNDING FOR SITE PREPARATION DESIGN WORK

This Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work (this "Memorandum") is dated for convenience as of August 10, 2012, by and between The City of Imperial Beach ("City") and Sudberry-Palm Avenue LLC, a California limited liability company ("Developer").

1. Disposition and Development Agreement. City and Developer entered into that certain Disposition and Development Agreement dated as of December 14, 2011 (the "DDA"). Any capitalized term that is not otherwise defined in this Memorandum shall have the meaning ascribed to such term in the DDA.

2. Ninth Street Improvements.

a. Pursuant to the DDA, City and Developer agreed, among other things, that Developer would be responsible for the design and construction of off-site public improvements consisting of the resurfacing and improvement of 9th Street, between Palm Avenue and Donax Avenue (defined in the DDA as the "Ninth Street Improvements"), the cost of which design and construction work (estimated to be approximately $200,000) would be the responsibility of and paid for by the City.

b. The Parties have determined and agreed that it is in their mutual best interests, and necessary and appropriate for the implementation of the purposes of the DDA, for the City to assume all responsibility for the design and construction of and payment for the Ninth Street Improvements, without any obligation on the part of the Developer.

c. Therefore, the Parties hereby agree that the DDA and all of the attachments and exhibits attached to and/or to be prepared in accordance with the DDA are hereby amended to delete all references to the Ninth Street Improvements, and that the DDA shall be carried out as if the design, permitting, construction and installation of the Ninth Street Improvements were not a part of the DDA. Provided, however, that Developer shall remain liable for the design, permitting, construction and installation of all Public Improvements described in paragraph a. of Section 219 of the DDA in accordance with the and subject to the terms and conditions of the DDA.

3. Funding for Certain On-Site Design Work.

a. Pursuant to the DDA, City has agreed to pay to or for the benefit of or reimburse Developer for the cost of designing, permitting, constructing and installing the off-site Public Improvements described in paragraph a. of Section 219 of the DDA, not to exceed the sum of $2,200,000 (the "Public Improvement Funds"), a portion of which (the "Disbursed Funds") has been disbursed previously by City for the preparation of plans for the Public Improvements.

b. The Parties now wish to provide for the use of a portion of the Public Improvement Funds remaining after disbursement of the Disbursed Funds (the "Remaining Public Improvement Funds"), not to exceed the sum of $100,000, for the preparation of plans for certain on-site improvements relating to the grading of the Site and construction of infrastructure necessary for the development of the Site as provided in the DDA (the "Site Preparation Design Work"). The Site Preparation Design Work is more specifically described in the Scope of Work attached to this Memorandum as Exhibit "A".

c. The obligation of the City to provide funds for (i) the Site Preparation Design Work plus (ii) the planning, permitting, construction and installation of the Public Improvements described in paragraph a. of Section 219 of the DDA, shall in no event exceed the sum of $2,200,000.

d. The use of up to $100,000 of the Remaining Public Improvement Funds for the Site Preparation Design Work (the "Site Preparation Design Funds") shall be subject to the following terms and conditions:

(1) The Initial Deposit to be deposited into the Construction Escrow pursuant to paragraph f. of Section 219 of the DDA shall be increased by the sum of $100,000, so that the Initial Deposit shall consist of (A) the amount by which $200,000 exceeds the Disbursed Funds, as provided in clause 1 of paragraph f. of Section 219 of the DDA, plus (B) the sum of $100,000. Consequently, the balance of the Remaining Public Improvement Funds described in clause 3 of paragraph f. of Section 219 shall be $1,900,000, rather than $2,000,000.

(2) The disbursement of the Site Preparation Design Funds shall be subject to the conditions precedent for the disbursement of the Initial Deposit set forth in clauses 1 and 2 of paragraph f. of Section 219 of the DDA.

(3) The Site Preparation Design Funds shall be subject to and disbursed in accordance with the Disbursement Agreement to be executed by City, Developer and Escrow Agent. Disbursements of the Site Preparation Design Funds shall be subject to the approval of the City Manager in accordance with the Disbursement Agreement.

(4) City's obligation to provide the Remaining Public Improvement Funds shall be reduced by the amount disbursed for the Site Preparation Design Work. For example, if the Remaining Public Improvement Funds are equal to $2,166,021 and if $100,000 is disbursed for the Site Preparation Design Work, the balance available for the Public Improvements shall be $2,066,021. Provided, however, that Developer shall remain liable for any costs and expenses in excess of the Remaining Public Improvement Funds that are necessary for the completion of the Public Improvements described in paragraph a. of Section 219 of the DDA.

(5) Not later than thirty (30) days after completion of the Site Preparation Design Work and acceptance of the Public Improvements pursuant to paragraph g. of Section 219 of the DDA, Developer shall prepare, execute and deliver to the City a certification of costs ("Cost Certification"), setting forth the final costs of the Site Preparation Design Work and the Public Improvements, including the respective sources of funds used to pay such costs. The Cost Certification shall be subject to review and audit pursuant to the terms of the Disbursement Agreement. In the event the Cost Certification demonstrates that the sum of (i) the Public Improvement Costs paid with Disbursed Funds and/or Remaining Public Improvement Funds plus (ii) the Public Improvement Funds disbursed for the Site Preparation Design Work, is less than $2,200,000, Developer shall promptly, but in any event within thirty (30) days of written demand by the City, reimburse City for the amount by which the actual final cost is less than $2,200,000.

e. The Parties have determined and agreed that it is in their mutual best interests, and necessary and appropriate for the implementation of the purposes of the DDA, for the City to advance to Developer the Site Preparation Design Funds as provided in this Section 3.

f. Therefore, the Parties hereby agree that the DDA and all of the attachments and exhibits attached to and/or to be prepared in accordance with the DDA are hereby amended to incorporate the terms and conditions of this Section 3 of this Memorandum relating to funding for the Site Preparation Design Work.

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

5. Authority for this Memorandum. City Council Resolution No. 2011-7132, which approved the DDA, provides, in part, that the City Manager, or designee, is authorized on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the provisions of the DDA as the City Manager may determine are necessary and appropriate to carry out and implement the purposes of the DDA.

6. DDA Remains in Effect. Except as amended by this Memorandum, the DDA remains in full force and effect, including, but not limited to the respective rights and obligations of the Parties with respect to the construction of and payment for the Public Improvements as described in the DDA with the exception of the Ninth Street Improvements.

Executed as of the date set forth above.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its Manager

By: Charles J. Todd
Charles J. Todd
Chief Operating Officer

CITY OF IMPERIAL BEACH

By: Gary Brown
Gary Brown
City Manager

APPROVED AS TO FORM
City Attorney

By: Jennifer Lyon
Jennifer Lyon

KANE, BALLMER & BERKMAN
City Special Counsel

By: Keith O. Berkey