LAST MINUTE AGENDA INFORMATION
10/2/13 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the October 2, 2013 Regular meeting.)

ITEM NO.	DESCRIPTION
7.1	**PUBLIC HEARING ITEM OF THE CITY AND SUCCESSOR AGENCY TO CONSIDER:** **ADOPTION OF RESOLUTION NO. 2013-7402 OF THE CITY COUNCIL (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SUDBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, (II) APPROVING THE COMMITMENT LETTER FOR THE USE AND EXPENDITURE OF PUBLIC IMPROVEMENT FUNDS AND ASSIGNMENT OF PLANS PURSUANT TO THE PURCHASE AND SALE AGREEMENT, AND (III) APPROVING OTHER RELATED ACTIONS. (0418-50)** **ADOPTION OF RESOLUTION NO. SA-13-32 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SUDBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, AND (II) APPROVING OTHER RELATED ACTIONS. (0418-50)** a. Staff Report and attachments.

AGENDA ITEM NO. 7.1

2013 OCT -1 PM 4:53

CITY MANAGER &
CITY CLERK OFFICES

STAFF REPORT
CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AND IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

TO:	MAYOR AND COUNCILMEMBERS CHAIR AND MEMBERS OF THE SUCCESSOR AGENCY
FROM:	ANDY HALL, CITY MANAGER/EXECUTIVE DIRECTOR
MEETING DATE:	OCTOBER 2, 2013
ORIGINATING DEPT.:	COMMUNITY DEVELOPMENT/SUCCESSOR AGENCY STAFF GREGORY WADE, ASSISTANT CITY MANAGER/DEPUTY DIRECTOR
SUBJECT:	PUBLIC HEARING ITEM OF THE CITY AND SUCCESSOR AGENCY TO CONSIDER: ADOPTION OF RESOLUTION NO. 2013-7402 OF THE CITY COUNCIL (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SUDBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, (II) APPROVING THE COMMITMENT LETTER FOR THE USE AND EXPENDITURE OF PUBLIC IMPROVEMENT FUNDS AND ASSIGNMENT OF PLANS PURSUANT TO THE PURCHASE AND SALE AGREEMENT, AND (III) APPROVING OTHER RELATED ACTIONS ADOPTION OF RESOLUTION NO. SA-13-32 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SUDBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, AND (II) APPROVING OTHER RELATED ACTIONS

EXECUTIVE SUMMARY:

The Successor Agency and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") have negotiated a proposed Purchase and Sale Agreement (the "Purchase Agreement"). The Purchase Agreement is a renegotiation of all of the terms and conditions of the Disposition and Development Agreement dated December 14, 2011 and entered into by the City and the Purchaser, as the DDA was subsequently amended by the parties (collectively, the "DDA"). The DDA was assigned to the Successor Agency and City was released from its obligations under the DDA except for the City's obligations to provide to the Purchaser $2.2 Million of tax allocation bond proceeds (the "Public Improvement Funds to be used toward the Purchaser's development of the Public Improvements in conjunction with development of the Project. The property located at 741-849 Palm Avenue and 735 Palm Avenue (the "Palm Avenue Properties"), and formerly owned by the Imperial Beach Redevelopment Agency, was transferred to the City and then subsequently transferred by the City to the Successor Agency. The DDA and the Purchase Agreement provide for the sale of the Palm Avenue Properties and additional land to be vacated by the City, comprising a total of approximately 4.75 acres (the "Site"), to the Purchaser for the Purchaser's development of the Project including the Public Improvements. Upon the Effective Date of the Purchase Agreement, the Purchase Agreement will supersede and replace the DDA in its entirety, and the City, the Successor Agency and the Purchaser would have no further rights or obligations under the DDA except as expressly provided. Further, upon the Effective Date of the Purchase Agreement, the City's commitments set forth in a proposed Commitment Letter will also become effective, which commits the City to allocate the Public Improvement Funds toward the development of the Public Improvements among other obligations specified in the Purchase Agreement. The Purchase Agreement provides that the Purchaser will purchase the Site from the Successor Agency for the "Purchase Price" which includes (a) the payment of the sum of $213,000, in cash, at the Close of Escrow; and (b) the payment of a "Participation Component" equal to 1.5% of the gross sales price from the first arm's-length sale of each parcel or parcels of the Site which is completed within the first 55-years from the Effective Date of the Purchase Agreement, if any. The cash payment of $213,000 equals the appraised value of the Site determined by an Appraisal dated September 10, 2013. This appraised valued is not less than the fair reuse value of the Site as determined by the "Summary Report" dated September 2013 and prepared pursuant to H&S Section Code Section 33433. All proceeds of the Purchase Price received by the Successor Agency, including the $213,000 in cash at the Close of Escrow, will be remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act.

BACKGROUND

The Imperial Beach Redevelopment Agency (the "Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach (the "City"), duly created pursuant 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"). On February 6, 1996, the City Council of the City of Imperial Beach (the "City") adopted Ordinance No. 96-901 approving and adopting a Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project. On July 18, 2001, the City Council of the City adopted Resolution No. 2001-5477 and the Redevelopment Agency adopted Resolution No. R-01-36 approving

Amendment 1 to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (the "Project Area"). These actions expanded the original redevelopment project area boundaries adopted and established on February 7, 1996 to effectively include the entire developable area of the City (the original Redevelopment Plan and the Amendment No. 1 to the Redevelopment Plan are referred to collectively as the "Redevelopment Plan"). The Redevelopment Agency adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), which established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization.

To assist the Redevelopment Agency with certain development and economic development efforts in furtherance of the Redevelopment Plan and the Implementation Plan and in accordance with the Redevelopment Law, the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") entered into a Disposition and Development Agreement dated December 14, 2011, which was subsequently amended by a "Letter Agreement" dated March 15, 2012, by a "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" dated August 10, 2012, by a second "Letter Agreement" dated December 20, 2012, and by a third "Letter Agreement" dated September 23, 2013 (all collectively referred to as the "DDA").

On June 28, 2011, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the H&S Code. Pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment 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 expeditiously winding down the business and fiscal affairs of the former redevelopment agencies, including disposing of the former redevelopment agency's real property interests.

On January 5, 2012, pursuant to Part 1.85 of AB 26, the City Council adopted Resolution No. 2012-7136 electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (the "Successor Agency").

As part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). On September 29, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1585 ("AB 1585"), which further amended certain provisions of AB 26 as amended by AB 1484 (AB 26, AB 1484, and AB 1585 are collectively referred to herein as the "Dissolution Act").

In accordance with certain determinations rendered by the State Controller's Office under the Dissolution Act, the City's right, title, and interest in and to the real property located at 735-849 Palm Avenue (APN: 626-250-03, 04, 05, & 06), and generally located at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street within the Project Area (the "Palm Avenue Properties"), was transferred to the Successor Agency. The DDA pertains to the sale to and development by the Purchaser of the Palm Avenue Properties and additional land (certain City public rights-of-way) to be vacated by the City, comprising in total of approximately 4.75 acres (collectively defined in the DDA as the "Site").

Pursuant to the DDA, $2.2 Million in tax allocation bond proceeds constituting the "Public Improvement Funds" has been transferred to the City for use toward development of the Public Improvements on and off the Site and the City continues to hold these proceeds. To date, $40,768.43 of the Public Improvement Funds has been disbursed toward development of the Public Improvements pursuant to terms of the DDA.

The DDA was assigned by the City to the Successor Agency pursuant to an Assignment and Assumption Agreement dated December 27, 2012 (the "Assignment Agreement"). Pursuant to the Assignment Agreement, the City was released and relieved of the performance of all terms, covenants, and conditions on the part of the City to be performed, occurring, or arising under the DDA, including all Attachments attached thereto and agreements entered into by the City pursuant to the DDA, from and after the Effective Date of the Assignment Agreement. However, the City is still responsible for the financial obligations under the DDA to provide up to $2.2 Million to pay or reimburse the Purchaser for the cost of plans for permitting, construction and installation of the Public Improvements from the tax allocation bond proceeds received by the City from the Redevelopment Agency, as such funds are defined in the DDA as the "Cooperation Agreement Revenues" and "Public Improvement Funds", as long as the City has possession of such funds. The Assignment Agreement did not relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA including, without limitation, the right to terminate the DDA pursuant to Section 512(b) of the DDA.

The State Department of Finance (the "DOF"), in connection with its determinations rendered under the Dissolution Act on the Long Range Property Management Plan prepared by the Successor Agency and submitted to the Successor Agency, Oversight Board, and DOF for approval in February 2013, did not approve the manner in which the Successor Agency proposed to dispose of the Site to the Purchaser pursuant to the DDA.

ANALYSIS

Purchase and Sale Agreement:

In light of the DOF's determinations not approving the manner in which the Successor Agency proposed to dispose of the Site to the Purchaser pursuant to the DDA, the Purchaser and the Successor Agency have negotiated a proposed Purchase and Sale Agreement, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof (the "Purchase Agreement"), that is a renegotiation of all of the terms and conditions of the DDA. If and when the Purchase Agreement becomes effective, it will supersede and replace the DDA in its entirety and the City, the Successor Agency, and the Purchaser would have no further rights or obligations under the DDA except as may be expressly provided in the Purchase Agreement. The Successor Agency and City staff recommends that the Successor Agency and the City approve the proposed Purchase Agreement and take all actions necessary or desirable and appropriate for the Successor Agency to enter into the Purchase Agreement with the Purchaser for the purpose of and related to the development of the "Project" (as defined in the Purchase Agreement) on the Site and the construction of the Public Improvements.

The "Effective Date" of the Purchase Agreement will be the date upon which all of the following conditions have been satisfied:

(i) The approval of the Purchase Agreement by the Successor Agency and its Oversight Board;

(ii) The approval of the Amended Long Range Property Management Plan by the Successor Agency and its Oversight Board pursuant to the Dissolution Act;

(iii) The approval of the Amended Long Range Property Management Plan by the DOF pursuant to the Dissolution Act;

(iv) The effectiveness of the Purchase Agreement pursuant to the Dissolution Act, or the review and approval of the Purchase Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board's action approving the Purchase Agreement in accordance with the Dissolution Act; and

(v) The execution of the Purchase Agreement by both the Successor Agency and Purchaser.

The Purchase Agreement concerns the sale of the Site and the Purchaser's associated development of the Project, defined and described in detail in the Purchase Agreement and summarized as follows:

(i) A "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 in the Purchase Agreement as Parcels "A" through "G"), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (collectively 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 (collectively defined in the DDA as the "Public Improvements").

The Purchase Agreement further contemplates the City's ownership of the Public Improvements to be constructed pursuant to the Purchase Agreement.

Pursuant to California Government Code Section 65402, the acquisition and disposition of the Site for the purposes and uses proposed by the Purchaser as outlined and provided for in the Purchase Agreement conform in every respect with the adopted General Plan and Local Coastal Program of the City as reported to and confirmed by the City Council of the City by adoption of Resolution No. 2011-7131, approved and adopted on December 14, 2011.

A public hearing has been duly called, noticed and advertised as required by law for October 2, 2013, at 6:00 p.m. in the City Council Chambers of the City, which is located at 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, for the City Council and the Successor Agency to consider approval of the Purchase Agreement, as contemplated by the Redevelopment Law.

Pursuant to H&S Code Section 33433 of the Redevelopment Law, the Successor Agency has caused the preparation of a summary (the "Summary Report") which contains the following:

(A) A summary of the proposed Purchase Agreement.

(B) A summary which describes and specifies all of the following:

(i) The cost of the Purchase Agreement to the Successor Agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the Successor Agency, plus the expected interest on any loans or bonds to finance the Purchase Agreement;

(ii) The estimated value of the interest to be conveyed, determined at the highest and best uses permitted under the Redevelopment Plan;

(iii) The estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the Purchase Agreement. Since the compensation from the sale of the Site is less than the fair market value of the interest to be conveyed, determined at the highest and best use consistent with the Redevelopment Plan, the Successor Agency has caused to be provided as part of the Summary Report an explanation of the reasons for the difference; and

(iv) An explanation of why the sale of the Site will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

The Purchase Agreement contains all the provisions, terms, conditions and obligations required by state and local law, and a copy of the Purchase Agreement and the Summary Report have been available for public review and copying at the Secretary's office as required by the Redevelopment Law. The sale of the Site and the construction of the Public Improvements will assist in the elimination of blight as more fully discussed in Section VII of the Summary Report, and the development of the Site in accordance with the Purchase Agreement is consistent with the goals and objectives of the Implementation Plan.

In accordance with the appraised value of the Site as set forth in the appraisal dated September 10, 2013, and pursuant to Section 201 of the Purchase Agreement, the "Purchase Price" (the monetary consideration payable to the Successor Agency by the Purchaser) for the Site includes the following two components:

(a) The payment of the sum of $213,000, in cash, at the Close of Escrow; and

(b) The payment of the "Participation Component" in accordance with the proposed Payment Agreement attached to the Purchase Agreement, equal to 1.5% of the gross sales price from the first arm's-length sale of each parcel or parcels of the Site (or any portion thereof) by the Purchaser in any number of transactions which is completed within the first 55-years from the Effective Date of the Purchase Agreement, if any.

<u>Financial Analysis of Purchase Price of Site</u>:

A. <u>Appraisal</u>:

An appraisal of the Site was conducted on behalf of the Successor Agency. The results of the appraisal, dated September 10, 2013, took into consideration the approved entitlements for the Site, the physical constraints of the Site, and the conditions upon which the Site could be developed in accordance with local and State laws, policies and procedures. Given this information, the Site was appraised collectively at a value of $213,000. Specifically, due to the significant required on- and off-site improvement costs necessary to prepare the Site for development, together with the costs necessary to provide adequate access to the Site, the value of the Site "as is" is greatly reduced. It is clear from the appraisal that the Successor Agency disposing of the Site to the Purchaser under the proposed Purchase Agreement for $213,000 in cash at the Close of Escrow would benefit not only the Successor Agency but also the State and other affected taxing entities, and is also the best viable option for long-term economic benefits 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, retail and office rents remain relatively soft. Therefore, it is a tremendous benefit to the State and other affected taxing entities for the Successor Agency to sell the Site, which is currently vacant with no tax generation, to the Purchaser, a ready and willing developer, for its immediate development into the economically productive "Town Center Project" as described in the proposed Purchase Agreement.

B. Summary Report Per H&S Code Section 33433 of the Redevelopment Law:

In connection with the City's and the Successor Agency's anticipated approval of the proposed Purchaser Agreement, the City and the Successor Agency are required to have prepared the Summary Report detailing information relating to the sale of the Site and to make the finding, pursuant to H&S Code Section 33433 of the Redevelopment Law, that the consideration to be provided to the Successor Agency for the Site by the Purchaser 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 proposed Purchase Agreement.

Based on the Summary Report prepared by Keyser Marston Associates, Inc. ("KMA") pursuant to H&S Code Section 33433 of the Redevelopment Law, finding (2) above could be made. Specifically, on Page 6 of the Summary Report, the estimated fair market value of the Site at its highest and best use is $213,000. Although the Purchaser, under the proposed Purchase Agreement, is required to pay to the Successor Agency $213,000 to purchase the Site, the total net compensation to the Successor Agency for the Site based on a variety of factors is a *negative $1,987,000*. On Page 9 of the Summary Report, the estimated fair re-use value of the Site is a *negative $2,465,000*. On Page 10 of the Summary Report, the estimated total net compensation to the Successor Agency for the Site is a *negative $1,987,000*, which amount is not less than (or is greater than) the fair re-use value of a *negative $2,465,000*.

Disposition of Purchase Price Proceeds in Accordance with Dissolution Act:

All proceeds of the Purchase Price to be received by the Successor Agency for the sale of the Site to the Purchaser pursuant to the Purchase Agreement will be remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S

Code Section 34191.5(c)(2)(B) of the Dissolution Act. Specifically, the sale proceeds of $213,000 cash to be received by the Successor Agency from the sale of the Site to the Purchaser pursuant to the Purchase Agreement at Close of Escrow will be remitted after the Close of Escrow to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act. In addition, any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price (described above), pursuant to a qualifying sale in accordance with the proposed Payment Agreement, would likewise be remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act.

City Commitment Letter:

In connection with the anticipated effectiveness of the Purchase Agreement, the City has prepared a proposed commitment letter (the "Commitment Letter") that would commit the City to certain actions in order to facilitate the Successor Agency's implementation of the Purchase Agreement. Specifically, upon the effectiveness of the Purchase Agreement, the Commitment Letter provides the City's commitment to allocate the Remaining Public Improvement Funds toward the development of the Public Improvements pursuant to the Purchase Agreement and the Public Improvement Disbursement Agreement (attached in form as Attachment No. 11 to the Purchase Agreement) and to assign certain agreements, plans and related documents to the Purchaser as and when required by the Purchase Agreement and the Public Improvement Disbursement Agreement. To date, $40,768.43 of the $2.2 Million of Public Improvement Funds has been disbursed, leaving a total of $2,159,231.57 Million of Remaining Public Improvement Funds to be placed into the Construction Escrow, to be utilized in accordance with the applicable provisions of the Purchase Agreement and the Public Improvement Disbursement Agreement for construction of the Public Improvements necessary to facilitate the development of the Project on the Site.

In order to facilitate the Successor Agency's entry into and implementation of the Purchase Agreement, the Successor Agency and City staff recommends that the City approve, and take all actions necessary or desirable and appropriate for the City to execute and issue the Commitment Letter to the Successor Agency for the purpose of and related to the construction of the Public Improvements necessary to facilitate the development of the Project (as defined in the Purchase Agreement) on the Site.

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.

FISCAL IMPACT

Adoption of the attached City Council and Successor Agency Resolutions would cause (i) the remaining $2,159,231.57 Million in tax allocation bond proceeds (i.e. Remaining Public Improvement Funds) to be placed into a Construction Escrow, to be utilized in accordance with the applicable provisions of the Purchase Agreement and the Public Improvement Disbursement Agreement for construction of the Public Improvements necessary to facilitate the development of the Project on the Site, and (ii) the Purchase Price (as defined in the Purchase Agreement) received by the Successor Agency for the proposed sale of the Site from the Successor Agency to the Purchaser pursuant to the Purchase Agreement, including the $213,000 cash payment to be made by the Purchaser to the Successor Agency at Close of Escrow for the purchase of the Site, to be remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act.

The long term fiscal impacts from the approval and execution of the Purchase Agreement includes significant fiscal impacts/economic benefits that will result from the development of the "Town Center Project" on the Site by the Purchaser pursuant to the proposed Agreement, including the various tax generation benefits to the State, City, and other taxing entities.

RECOMMENDATION

City and Successor Agency staffs recommend that the City Council and the Successor Agency:

1) Conduct the public hearing and receive public input;

2) Adopt their respective Resolutions as follows:

    a. That the City Council of the City of Imperial Beach adopt Resolution Number 2013-7402 (i) approving a Purchase and Sale Agreement by and between the Imperial Beach Redevelopment Agency Successor Agency and Sudberry-Palm Avenue LLC for the sale of land, and confirming the use of tax allocation bond proceeds, for the development of the 9th and Palm Avenue retail/commercial space development project located at 735-849 Palm Avenue (APN 626-250-03, 04, 05 & 06) and making certain findings relating thereto, (ii) approving the Commitment Letter for the use and expenditure of public improvement funds and assignment of plans pursuant to the Purchase and Sale Agreement, and (iii) approving other related actions.

    b. That the Imperial Beach Redevelopment Agency Successor Agency adopt Resolution Number SA-13-32 (i) approving a Purchase and Sale Agreement by and between the Imperial Beach Redevelopment Agency Successor Agency and Sudberry-Palm Avenue LLC for the sale of land, and confirming the use of tax allocation bond proceeds, for the development of the 9th and Palm Avenue retail/commercial space development project located at 735-849 Palm Avenue (APN 626-250-03, 04, 05 & 06) and making certain findings relating thereto, and (ii) approving other related actions.

Attachments:

1. Proposed Purchase and Sale Agreement (including Attachments)
2. Summary Report for the Site Per H&S Code Section 33433 of the Redevelopment Law
3. Proposed City Commitment Letter
4. City Council Resolution No. 2013-7402
5. Successor Agency Resolution No. SA-13-32

PURCHASE AND SALE AGREEMENT
[9th and Palm]

by and between

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY ("SUCCESSOR AGENCY")

and

SUDBERRY-PALM AVENUE LLC, a California limited liability company
("PURCHASER")

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency") and SUDBERRY-PALM AVENUE, a California limited liability company ("Purchaser"), is dated for identification purposes only as of _____, 201__. In this Agreement, each of the Purchaser and the Successor Agency 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 Successor Agency is the owner of certain real property constituting an approximately 3.9 acre site, 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". Upon the City's vacation of adjacent rights-of-way, which will occur upon the approval and recordation of the Map, the Site will increase to approximately 4.75 acres.

b. 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 Successor Agency to Purchaser for the Purchase Price and upon the satisfaction of conditions and subject to the terms of this Agreement, below;

(ii) Purchaser's concurrent grant to the Successor Agency 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 Successor Agency in accordance with the terms of this Agreement;

(iii) construction of certain off-site Public Improvements (defined below) by Purchaser, including the Highway 75 Access Improvements (defined below), and payment to or for the benefit of or reimbursement to Purchaser for the cost of the Public Improvements, solely from Series 2010 Bond Proceeds (defined below); and

(iv) Purchaser'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 Purchaser (designated Parcels "A" through "G", as depicted on the Site Map attached to this Agreement as Attachment No. 1); and

(B) the construction by Purchaser of retail/commercial buildings on Parcels "A", "B", "C" and "D" (as defined below) and, if Purchaser elects to do so, on Parcel "E", "F", and "G".

c. The Parties to this Agreement acknowledge that the public funds expended by the City of Imperial Beach and the Successor Agency (and its predecessor-in-interest, the former Imperial Beach Redevelopment Agency) to acquire and clear the Site and relocate the former occupants from the Site exceed the Purchase Price (such differential plus the Public Improvement Funds (defined below) collectively being referred to herein as the "Public Subsidy"). The Public Subsidy shall be in consideration for the following: (i) the construction by Purchaser 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) Purchaser's satisfactory construction of the Public Improvements required to be constructed under this Agreement, including the Public Improvements described in Section 219.a.; and (iii) Purchaser'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 Purchaser.

d. 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.

e. 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.

f. 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.

g. The Successor Agency acknowledges that performance by Purchaser of its obligations and the development and use of the Site pursuant to this Agreement will help 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.

h. Purchaser acknowledges that performance by the Successor Agency of its obligations pursuant to this Agreement will provide to Purchaser and its principals significant and valuable financial benefits and that Successor Agency's performance of these obligations is in consideration of Purchaser's compliance with the requirements of this Agreement in the development, construction, operation and use of the Project.

i. The City of Imperial Beach and Purchaser entered into that certain Disposition and Development Agreement dated for identification purposes as of December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Purchaser and dated March 15, 2012, as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Purchaser and dated August 10, 2012, as further amended by that certain second "Letter Agreement" entered into by the City and the Purchaser and dated December 20, 2012, and as further amended by that certain third "Letter Agreement" entered into by the City and the Purchaser and dated September 23, 2013, all collectively referred to as the "DDA". This Agreement is a renegotiation of all of the terms and conditions of the DDA and, upon the Effective Date, this Agreement shall supersede and replace the DDA in its entirety and the City and Purchaser shall have no further rights or obligations thereunder except as may be expressly provided therein.

j. The Parties hereby acknowledge that the recitals of fact contained in this Section 101 are true and correct.

SECTION 102 <u>Dissolution Act</u>

Subject to the provisions of Section 512.b., by execution of this Agreement, Purchaser hereby waives, releases and discharges the Successor Agency and its 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 Successor Agency's inability to meet its financial or other obligations under this Agreement as a result of the Dissolution Act (defined below), and any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861). Notwithstanding Part 5 of this Agreement, the Successor Agency's failure to meet its financial or other obligations under this Agreement as a result of State action with respect to the Dissolution Act, and/or any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861), shall not constitute a default by the Successor Agency under this Agreement.

Purchaser 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.b., Purchaser hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing waiver and release, in the event of the Successor Agency's failure to meet its financial or other obligations under this Agreement as a result of State action with respect to the Dissolution Act, and/or any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861), the Parties agree to meet and confer in good faith to discuss the effects of any such failure on the benefits accruing to, or the obligations imposed upon, any Party hereunder.

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 Purchaser 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 Purchase and Sale 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 Plans" shall mean the Plans approved by the Successor Agency 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 Purchaser assigns its interests in this Agreement as to all or any portion of the Site, which assignment shall be subject to the approval of Successor Agency as provided in this Agreement.

"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.

"Close of Escrow" shall mean the escrow closing for the sale of the Site to Purchaser pursuant to Section 202 of this Agreement.

"Closing" shall mean either of the following (as defined herein): (a) the Phase 1 Closing; or (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 Purchaser, its Assignee or contractor relating to the Improvements as to the Private Improvements and by the City as to the Public 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) as to the Public Improvements only, approval of the Public Improvements by Cal-trans, as necessary;

(5) 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

(6) completion to the reasonable satisfaction of the Successor Agency Executive Director 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 Successor Agency 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 Purchaser 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.

"Dissolution Act" means AB x1 26 and AB x1 27 which were signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law, 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 California Health and Safety Code, as amended by Assembly Bill No. 1484 (Chapter 26, Statutes 2012) which was signed by the Governor of California on June 27, 2012.

"Effective Date" shall mean the date upon which all of the following conditions have been satisfied: (i) the approval of this Agreement by the Successor Agency and its Oversight Board; (ii) the approval of the Amended Long Range Property Management Plan by the Successor Agency and its Oversight Board pursuant to the Dissolution Act; (iii) the approval of the Long Range Property Management Plan by the State Department of Finance (the "DOF") pursuant to the Dissolution Act; (iv) the effectiveness of this Agreement pursuant to the

Dissolution Act, or the review and approval of this Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board's action approving this Agreement in accordance with the Dissolution Act; and (v) the execution of this Agreement by both the Successor Agency and Purchaser.

"Entitlements" shall mean all applicable land use approvals and all conditions of approval, legally required by the City 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 Purchaser and Successor Agency Executive Director, 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 Successor Agency or Purchaser 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 an escrow agent mutually acceptable to the Successor Agency and Purchaser.

"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 Successor Agency shall convey title to one or more Parcels to Purchaser, that is mutually acceptable in form and substance to the Purchaser and Successor Agency Executive Director, 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 Successor Agency or Purchaser 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 Purchaser 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 the Instrument Terminating Option substantially in the form attached to the Option Agreement as Exhibit "D", which is incorporated herein by this reference, and which shall be recorded against Property 2 upon the Phase 2 Closing.

"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" shall mean the Memorandum of Option in the form attached to the Option Agreement as Exhibit "C", which is incorporated herein by this reference, 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.

"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 Successor Agency, in its sole discretion, to purchase back Property 2 from the Purchaser prior to the recordation of the Instrument Terminating Option, as set forth in, and subject to the conditions in, the Option Agreement and memorialized in the Memorandum of Option.

"Option Agreement" shall mean an Option Agreement and Joint Escrow Instructions, substantially in the form attached to this Agreement as Attachment No. 12, which is incorporated herein by this reference.

"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 sales price from the first arm's-length sale of each Parcel or Parcels of the Site (or any portion thereof) by Purchaser in any number of transactions which is completed within the first Fifty-Five (55) years from the Effective Date of this Agreement, if any.

"Parties" shall have the meaning set forth in the Preamble to this Agreement.

"Payment Agreement" shall mean the Payment Agreement substantially in the form attached to this Agreement as Attachment No. 15, which is incorporated herein by this reference, evidencing Purchaser's obligation to pay to Successor Agency 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 Purchaser 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 Successor Agency 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 Purchaser 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 Purchaser or a sale back from such Affiliate to Purchaser, including, but not limited to, a conveyance to a limited liability company or limited partnership in which Purchaser, or an Affiliate, is the manager or general partner, as the case may be;

(iii) The inclusion of equity participation by Purchaser by addition of investor members or limited partners to Purchaser'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 Purchaser's partnership, or the removal for cause of the manager of the Purchaser'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) Intentionally omitted;

(vi) Intentionally omitted; 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 Successor Agency Executive Director for conformance with this Agreement; provided, however that the Successor Agency Executive Director shall approve any such transfer

as a Permitted Transfer upon delivery of documentation to the Successor Agency Executive Director 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 Purchaser, 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 Purchaser 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 Purchaser elects to construct the building on Parcel "E"), Parcel "F" (if Purchaser elects to construct the building on Parcel "F"), and Parcel "G" (if Purchaser 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 Successor Agency; (ii) the Successor Agency executes and records 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 Purchaser until after the Phase 2 Closing, any Pubic Improvements deferred by Purchaser 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 Purchaser or an Assignee, and required to be submitted to Successor Agency 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 Successor Agency, located on the Site, and owned by Purchaser 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 Area' shall mean the Palm Avenue/Commercial Redevelopment Project Area.

"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 Purchaser, subject to the obligation of the Successor Agency to disburse, or cause 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 which the Successor Agency has disbursed $40,768.43 (the "Disbursed Funds").

"Purchase Price" shall mean the monetary consideration payable by Purchaser to Successor Agency 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 $213,000.00, in cash, at the Close of Escrow; and (b) payment to Successor Agency of the Participation Component in accordance with the Payment Agreement.

"Purchaser" shall have the meaning set forth in the Preamble to this Agreement and Section 107 of this Agreement.

"Purchaser Equity" shall mean any Source of Financing needed to pay Acquisition and Development Costs that is provided by Purchaser and not secured by a deed of trust on the Site or any portion thereof.

"Purchaser's Title Policy" shall have the meaning set forth in Section 211 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 Successor Agency 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 $2,159,231.57, which shall be disbursed by the Successor Agency, or caused to be disbursed by the Successor Agency, to pay or reimburse Purchaser 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 substantially in the form attached to this Agreement as Attachment No. 18, which is incorporated herein by this reference.

"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.

"Series 2010 Bond Proceeds" shall mean proceeds from the Palm Avenue/Commercial Redevelopment Project Tax Allocation Bonds, 2010 Tax Allocation Bonds, approved by the Successor Agency's Oversight Board and the State Department of Finance on the Successor Agency's "ROPS 1", and allocated for the Public Improvements and currently held by the City.

"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.

"Site Preparation Design Work" shall mean 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 this Agreement. The Site Preparation Design Work is more specifically described in the Scope of Development.

"Source of Financing" means a source of financing the Project which has been approved by the Successor Agency, 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 Successor Agency 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.

"Successor Agency" means the Imperial Beach Redevelopment Agency Successor Agency, and any assignee or successor to its rights, powers and responsibilities.

"Successor Agency 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 at the Close of Escrow.

"Successor Agency Executive Director" refers to the Successor Agency Executive Director or his or her designee.

"Title Company" means a title insurance company mutually acceptable to Successor Agency and Purchaser.

"Title Report" means the Second Amended Preliminary Report, dated September 5, 2013, as amended by that certain Supplemental Report dated September 23, 2013, 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 Successor Agency. 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 Successor Agency

a. Successor Agency is a public entity, exercising governmental functions and powers, and organized and existing under the laws of the State of California. The address of the Successor Agency for purposes of receiving notices pursuant to this Agreement shall be:

Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Executive Director
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: Kendall D. Berkey
Tel: 213-617-0480
Fax: 213-625-0931

SECTION 107 Purchaser

a. Purchaser is Sudberry-Palm Avenue LLC, a California limited liability company, whose Manager is Sudberry Development, Inc., a California corporation. The address of Purchaser 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 Purchaser shall be transmitted by email to Gerald I. Solomon, Esq. of Solomon Minton Cardinal Doyle & Smith LLP addressed as follows: gis@smcdslaw.com.

b. Whenever the term "Purchaser" is used herein, such term means and includes the Purchaser as of the date hereof, and any Assignee pursuant to an assignment and assumption agreement, and any successor to the rights, powers and responsibilities of Purchaser or Assignee as permitted by this Agreement.

SECTION 108 Assignments and Transfers

a. Purchaser 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. Purchaser further recognizes that the qualifications and identity of Purchaser are of particular concern to the Successor Agency, 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 Purchaser or any other act or transaction involving or resulting in a significant change (as defined below) in ownership or control of Purchaser, is for practical purposes a transfer or disposition of the property then owned by Purchaser. Purchaser further recognizes that it is because of such qualifications and identity that the Successor Agency is entering into the Agreement with Purchaser. Therefore, no voluntary or involuntary successor in interest of Purchaser 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, Purchaser 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 Successor Agency, which the Successor Agency may grant or withhold in its sole discretion; provided, however, that Successor Agency shall approve any Permitted Transfer upon delivery of documentation to the Successor Agency 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 Successor Agency.

c. For the reasons cited above, Purchaser 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 Successor Agency, there shall be no significant change in the ownership of Purchaser or in the relative proportions thereof, or with respect to the identity of the parties in control of Purchaser 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 Purchaser, other than Permitted Transfers, shall require the approval of the Successor Agency. To the extent Successor Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, the Successor Agency 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 Successor Agency. In addition, the Successor Agency shall not approve any assignment or

transfer of this Agreement or any interest herein or significant change in ownership of Purchaser 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. Notwithstanding any provision of this Agreement to the contrary, Successor Agency 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. Purchaser shall promptly notify the Successor Agency of any and all changes whatsoever in the identity of the parties in control of Purchaser 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 Successor Agency if there is any significant change (voluntary or involuntary) in ownership or control of Purchaser or Purchaser'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 Successor Agency in conformance with this Agreement shall be evidenced by the execution and delivery by Purchaser, Assignee and Successor Agency of an assignment and assumption agreement, which agreement shall be reasonably acceptable to the Successor Agency Executive Director as to form and content pursuant to which Purchaser would assign to such Assignee and such Assignee would assume rights and obligations of Purchaser under this Agreement pertaining to the assigned portion of the Site.

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 Purchaser, such that the authority to make binding board-level business decisions for Purchaser 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 Successor Agency and the City 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 Purchaser 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, Purchaser and Successor Agency Executive Director 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, Successor Agency 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 Purchaser has made no representation or warranty that any such source will ultimately be available for the financing of the Project. Without limiting Purchaser's obligations under this Agreement, Purchaser'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 Purchaser 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 Purchaser 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), Purchaser (or Assignee, as applicable) shall submit to Successor Agency evidence reasonably satisfactory to the Successor Agency Executive Director that Purchaser 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 Purchaser or Assignee, as applicable, for a Construction Loan, including a final Project Budget approved by the Successor Agency Executive Director and all other commitments (all as described in the Method of Financing) to finance the construction of the Improvements, certified by Purchaser to be a true and correct copy or copies thereof. Purchaser 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 Purchaser 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 Successor Agency Executive Director;

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 Purchaser and the applicable Assignee to be a true and correct copy thereof, setting forth all consideration payable to Purchaser by such Assignee for conveyance of the applicable Parcel prior to Completion.

5. Documentation reasonably acceptable to the Successor Agency Executive Director of sources of additional capital sufficient to demonstrate that Purchaser or Assignee, as the case may be, has adequate equity funds committed to provide the amount of Purchaser Equity required by the Method of Financing.

The Successor Agency Executive Director 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 Successor Agency Executive Director 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; provided that the Purchaser's submission of any such submittal states in bold capitalized letters in 14 point on the cover page of such submittal that the "**SUCCESSOR AGENCY'S FAILURE TO RESPOND TO THIS DOCUMENT WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT SHALL BE DEEMED TO CONSTITUTE THE SUCCESSOR AGENCY'S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE PURCHASE AND SALE AGREEMENT**". If Successor Agency Executive Director shall disapprove any such evidence of financing, then Successor Agency Executive Director shall do so by written notice to Purchaser 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, Purchaser may submit to the Successor Agency Executive Director for review and comment any loan applications to be made by Purchaser or pro forma loan documentation provided by the proposed lender; provided, that review, comments and approval, if any, by the Successor Agency Executive Director shall be for the sole purpose of determining and advising Purchaser 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 Successor Agency Executive Director in writing shall not be subject to subsequent disapproval. Successor Agency shall cooperate reasonably with Purchaser and any Approved Assignee in Purchaser/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 Purchaser or Approved Assignee. Successor Agency 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 Successor Agency shall cooperate with Purchaser in Purchaser'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, Successor Agency agrees to sell to Purchaser and Purchaser agrees to purchase the Site for the Purchase Price.

b. The Purchase Price shall consist of the following: (i) $213,000.00, payable in cash, upon the Close of Escrow; and (ii) the payment of the Participation Component.

c. For purposes of this Section 201, "arm's length sale" shall mean a transaction in which Purchaser and the buyer act independently and have no relationship to each other, as reasonably determined by the Successor Agency Executive Director.

d. For purposes of this Section 201, "gross sales price" shall mean all compensation payable to Purchaser for the sale, directly or indirectly, less costs of sale payable by Purchaser.

e. Intentionally Omitted.

f. Purchaser's obligation to pay Successor Agency the Participation Component of the Purchase Price shall be set forth in the Payment Agreement, and shall be secured by the Successor Agency Deed of Trust, which shall be recorded against the Site at the Close of Escrow, as a lien that is junior and subordinate to any Permitted Deeds of Trust.

SECTION 202 Escrow

a. Successor Agency 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. Successor Agency and Purchaser 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 Successor Agency and to Purchaser within five (5) Business Days after opening of the escrow, the Escrow Agent shall carry out its duties as Escrow Agent hereunder.

b. Successor Agency and Purchaser 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 Purchaser 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. Purchaser 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 Purchaser 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 Purchaser'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. Successor Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Successor Agency 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 Purchaser.

f. Successor Agency shall timely and properly execute, acknowledge and deliver a Grant Deed conveying to Purchaser title to all the Parcels in the Site in accordance with the requirements of this Agreement, together with an estoppel certificate certifying that Purchaser has completed all acts (except payment of the Purchase Price), necessary to entitle Purchaser 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 Successor Agency and Purchaser, respectively, for any fees, charges and costs payable under this Section 202. Before such payments are made, the Escrow Agent shall notify Successor Agency and Purchaser 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 Purchaser and Successor Agency (the "Settlement Statement").

3. Disburse funds in accordance with the Settlement Statement when the conditions of this escrow have been fulfilled by Successor Agency and Purchaser 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 Purchaser'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 Purchaser and Successor Agency.

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 Successor Agency and Purchaser, 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 Successor Agency and Purchaser. 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 Successor Agency 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. Successor Agency shall notify Purchaser in writing of such operating expenses and, at the option of Purchaser, shall cancel any and all related contracts and agreements that would be binding on the Site post-Closing. Successor Agency shall pay all such expenses that accrue prior to the date of the Close of Escrow and all such expenses that Purchaser disapproved which accrue after the Close of Escrow. To the extent any such expenses were approved by Purchaser prior to Closing and Purchaser assumes any related contracts and agreements at Closing, Purchaser shall pay such expenses accruing on the date of the Close of Escrow and thereafter during the period of Purchaser'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. Successor Agency and Purchaser 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 Successor Agency and Purchaser 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"). Purchaser or Successor Agency, 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. Successor Agency and Purchaser shall each pay their respective legal, professional and consultant fees relating to this transaction.

n. All communications from the Escrow Agent to Successor Agency or Purchaser 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), and any other documents to be recorded, if any, to effectuate the vacation of the adjacent rights-of-way;

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. Intentionally Omitted;

7. Recordable Construction Loan documents;

8. Successor Agency Deed of Trust (to be recorded against the Site);

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. Intentionally omitted;

3. Recordable Construction Loan documents (to be recorded against Parcel Parcel "E" or Parcel "F" or Parcel "G" on Property 2, or all of the Parcels, 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, Successor Agency shall convey title to the Site to Purchaser 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 Successor Agency Executive Director and Purchaser and communicated in writing to the Escrow Agent.

b. Except as otherwise provided herein, possession of the Site shall be delivered to Purchaser at the Close of Escrow. Purchaser 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

Successor Agency shall convey to Purchaser 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 Purchaser, the Successor Agency Executive Director shall make such non-material modifications to the form of the Grant Deed as the Successor Agency Executive Director may deem necessary or appropriate to carry out the purposes of this Agreement.

SECTION 205 Condition of Title

a. Successor Agency shall convey to Purchaser fee simple title to the Site free and clear of all liens, encumbrances, assessments, easements, leases and taxes except the Approved Title Conditions.

b. Successor Agency has caused the Title Company to deliver to Purchaser a Second

Amended Preliminary Report dated September 5, 2013, as amended by that certain Supplemental Report dated September 23, 2013, (collectively, 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, Purchaser 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 Successor Agency Executive Director within one hundred twenty (120) 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. Intentionally omitted.

d. Intentionally omitted.

e. The exceptions approved by Purchaser in Section 205.b, above, together with the covenants of the Grant Deed conveying the Site to Purchaser (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 Purchaser's Title Policy and are acceptable to Purchaser shall hereinafter collectively be referred to as the "Approved Title Conditions". Purchaser shall have the right to approve or disapprove any further exceptions (which are not created by Purchaser) reported by the Title Company. Successor Agency 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, Successor Agency 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

Purchaser 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 Purchaser in writing that the Grant Deed(s) conveying the Site to Purchaser, properly executed and acknowledged by the Successor Agency Executive Director 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 Successor Agency immediately following the delivery to Purchaser of the Purchaser's Title Policy or confirmation that the Title Company is irrevocably committed to issue the Purchaser'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 Successor Agency 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. The obligation of the Successor Agency 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. 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 Successor Agency 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 Successor Agency are not satisfied by the Purchaser or waived in writing by the Successor Agency within the time limits set forth in the Schedule of Performance. The Close of Escrow and the obligations of Successor Agency and Purchaser with respect to the purchase and 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, Purchaser 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. Purchaser and Successor Agency 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 eighteen (18) 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 Purchaser or Successor Agency 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 Purchaser and Successor Agency). The Purchaser 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 Successor Agency). Purchaser shall have submitted and Successor Agency Executive Director shall have approved the Final Construction Drawings.

c. Project Budget (benefits Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency Executive Director the availability of sufficient funds to pay all Acquisition and Development Costs.

d. Construction Contract (benefits Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency-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. Successor Agency'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 Successor Agency-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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Purchaser (unless deferred to Phase 2), required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the final Successor Agency-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 Successor Agency Executive Director 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 Successor Agency the right but not the obligation to assume Purchaser's rights and obligations under the Public Improvement Contract in the event Purchaser abandons the Public Improvement work, or ceases to perform its obligations under the Public Improvement Disbursement Agreement or this Agreement. Successor Agency'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 Successor Agency-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 Purchaser, has demonstrated experience in completing similar public works projects and is otherwise reasonably acceptable to Successor Agency; 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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency). Purchaser shall have submitted and the Successor Agency Executive Director 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 Purchaser, 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, and (ii) those to be provided by Successor Agency, 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 Successor Agency.

Successor Agency shall cooperate reasonably with Purchaser in Purchaser'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 Purchaser. Successor Agency 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 Successor Agency). Purchaser shall have submitted and the Successor Agency Executive Director shall have reasonably approved evidence of binding commitments (subject to commercially customary conditions) from (i) a grocery store or supermarket reasonably acceptable to the Successor Agency Executive Director 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 Successor Agency Executive Director's review shall be limited to

confirming that such leases are not inconsistent with this Agreement.

h. Insurance (benefits Successor Agency). Purchaser shall have submitted to Successor Agency, and the Successor Agency Executive Director 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 Imperial Beach Redevelopment Agency Successor Agency, the City of Imperial Beach, and their respective elected officials, officers, officials, employees, attorneys, contractors and agents."

i. CC&Rs (benefits Successor Agency and Purchaser). Purchaser shall have submitted to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency Executive Director's review shall be limited to confirming that the CC&Rs are not inconsistent with this Agreement.

j. Intentionally Omitted.

k. Intentionally Omitted.

l. Permits (benefits Successor Agency and Purchaser). Purchaser 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) Purchaser shall have delivered to Successor Agency the list of permits required for grading and the construction of the Phase 1 Improvements; (2) Purchaser shall have obtained all applicable plan check approvals for the Phase 1 Improvements; (3) Purchaser 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 Purchaser at the Phase 1 Closing); (5) there are no changes (other than changes approved by the Successor Agency Executive Director) to the Construction Drawings approved by the Successor Agency Executive Director in accordance with paragraph b. of this Section 208 between the time of Successor Agency Executive Director's approval and the time of issuance of the Building Permits other than minor changes required by the Successor Agency'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 Successor Agency Executive Director may extend, but in no event later than thirty days after the Phase 1 Closing.

m. No Challenges (benefits Purchaser and Successor Agency). 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 Purchaser and Successor Agency). Successor Agency and Purchaser 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 Purchaser). Successor Agency shall have submitted to Purchaser 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 Purchaser and Successor Agency, as applicable). Successor Agency, Purchaser 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 Purchaser and Successor Agency);

(2) Environmental Indemnity (to be executed by Purchaser);

(3) Option Agreement (to be executed by Purchaser and Successor Agency);

(4) If not already executed, the Public Improvement Disbursement Agreement (to be executed by Purchaser, Successor Agency and Escrow Agent);

(5) Intentionally Omitted; and

(6) Such other documents as the Parties may request to be delivered through Escrow.

q. Representations, Warranties and Covenants (benefits Successor Agency). Purchaser shall have duly performed each and every obligation to be performed by Purchaser hereunder to be performed prior to the Phase 1 Closing and Purchaser'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 Successor Agency (benefits Purchaser). Successor Agency shall have duly performed each and every obligation to be performed by Successor Agency hereunder to be performed prior to the Phase 1 Closing and Successor Agency'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 Successor Agency). Purchaser shall have delivered the items to be delivered by Purchaser prior to the Phase 1 Closing, when and as required in this Agreement.

t. Deliveries (benefits Purchaser). Successor Agency shall have delivered the items and funds to be delivered by Successor Agency prior to the Phase 1 Closing, when and as required in this Agreement.

u. Intentionally omitted.

v. Condition of Site (benefits Purchaser). Successor Agency shall have completed all demolition on the Site as provided in Section 216.f. of this Agreement.

w. No Impeding Litigation (benefits Purchaser and Successor Agency). 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 Successor Agency). Purchaser shall not be in default of this Agreement.

y. No default (benefits Purchaser). Successor Agency shall not be in default of this Agreement.

z. Feasibility (benefits Purchaser). Purchaser has not provided written notice to the Successor Agency that Purchaser has determined, in Purchaser's sole good faith discretion, that the Project is not financially feasible, due to any of the following: (i) intentionally omitted; (ii) Purchaser has failed, despite commercially reasonable efforts, to obtain financing for the development of the Project on terms reasonably satisfactory to Purchaser; or (iii) the costs of developing the Project or of completing the Public Improvements are materially different than those anticipated by Purchaser 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 or legislation pending or adopted which, in Purchaser'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 Successor Agency will not, or will not be able to, satisfy its obligations hereunder.

aa. Feasibility (benefits Successor Agency). Subject to the liquidated damages provision set forth in Section 512 of this Agreement, Successor Agency has not provided written notice to the Purchaser prior to February 1, 2014, that the Successor Agency has determined, in Successor Agency'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 Successor Agency of any of its obligations hereunder.

bb. Purchaser's Title Policy (benefits Purchaser). Title Company shall be irrevocably committed to issue the Purchaser's Title Policy to Purchaser, as provided in this Agreement.

cc. Purchaser Formation Documents (benefits Successor Agency). Except as otherwise provided below, Purchaser shall have delivered documentation relating to the

corporate, partnership, limited liability or other similar status of Purchaser, as the case may be (and if Purchaser is a limited partnership, its general partners, and if Purchaser 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 Successor Agency, then Purchaser shall provide to Successor Agency the operating agreement of Purchaser (or the portions thereof evidencing authority). In addition, if requested by Successor Agency, then Purchaser shall provide to Successor Agency formation and good standing certificates filed with, or issued by, the State of California for Purchaser'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. Successor Agency 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, Successor Agency agrees that Purchaser may redact the financial details of any such information prior to any such disclosure.

dd. Joint Supplemental Escrow Instructions (benefits Purchaser and Successor Agency). Successor Agency and Purchaser 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 Purchaser). Successor Agency 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 Successor Agency). Purchaser shall have duly performed (or Successor Agency will have waived) each and every obligation to be performed by Purchaser hereunder to be performed prior to the Close of Escrow and Purchaser'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 Successor Agency (benefits Purchaser). Successor Agency shall have duly performed (or Purchaser will have waived) each and every obligation to be performed by Successor Agency hereunder to be performed prior to the Close of Escrow and Successor Agency's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Close of Escrow in all material respects.

hh. Deliveries (benefits Successor Agency). Purchaser shall have deposited into escrow the cash portion of the Purchase Price, and delivered the items and funds to be delivered

by Purchaser prior to the Closing, when and as required in this Agreement.

ii. Deliveries (benefits Purchaser). Successor Agency shall have delivered the items and funds to be delivered by Successor Agency prior to the Closing, when and as required in this Agreement.

jj. No Impeding Litigation (benefits Purchaser and Successor Agency). 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 Successor Agency). Purchaser shall not be in default of this Agreement.

ll. No default (benefits Purchaser). Successor Agency 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 Successor Agency or Purchaser, the following shall apply:

1. Either Party shall have the right to terminate this Agreement, the escrow and the rights and obligations of Successor Agency and Purchaser 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 Purchaser and Successor Agency all funds, if any, and documents deposited by them, respectively, into escrow which are held by Escrow Agent on the date of said termination (less, in the case of the Party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such Party under 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 Purchaser and the Successor Agency 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 Successor Agency and Purchaser.

b. Disburse the cash portion of the Purchase Price to Successor Agency, and deliver the fully executed Payment Agreement to the Successor Agency.

c. Distribute to the Successor Agency and Purchaser 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 Purchaser's Title Policy to Purchaser and deliver the original thereof to Purchaser within two weeks after the Closing.

e. Prepare and distribute to Purchaser and Successor Agency each, copies of both Parties' escrow closing statements and a complete copy of all documents handled by escrow.

Escrow Agent agrees that release of funds to Successor Agency shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue Purchaser'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 Purchaser an owner's policy of Title Insurance, issued by the Title Company, insuring that the fee interest of the Site is vested in Purchaser in the condition required by Section 205 of this Agreement, together with any endorsements as the Purchaser may reasonably request ("Purchaser's Title Policy"). The Title Company shall provide Successor Agency and Purchaser with a copy of the Purchaser's Title Policy. The Purchaser's Title Policy shall be in such reasonable amount as the Purchaser may request, subject to the approval of the Successor Agency Executive Director. If Title Company is unable or unwilling to deliver the Purchaser's Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Purchaser, Purchaser may terminate this Agreement pursuant to Section 509.

b. Successor Agency shall pay only the premium for a standard form CLTA owner's policy. Any extended coverage and endorsements requested by Purchaser shall be at no cost or expense to Successor Agency.

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 Purchaser, shall be borne by Successor Agency. All *ad valorem* taxes and assessments levied or imposed for any period commencing after conveyance of title of the Site to Purchaser shall be paid (as between Successor Agency and Purchaser) by Purchaser. Purchaser's and Successor Agency'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, Purchaser 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 Purchaser 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. Purchaser 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. Purchaser shall give Successor Agency prompt notice in writing of any such contest at least ten (10) days before filing any contests. Purchaser 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 Purchaser shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Successor Agency 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 Purchaser, Purchaser 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 Purchaser and, after such payment and discharge by Purchaser, Successor Agency will promptly return to Purchaser such security as Successor Agency shall have received in connection with such contest.

c. Successor Agency 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 Purchaser shall be prosecuted by Purchaser at Purchaser's sole cost and expense; and Purchaser shall indemnify and save harmless Successor Agency (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 Successor Agency (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 Purchaser, unless waived by Purchaser in writing.

SECTION 215 Land Use Requirements for the Site

a. Entitlements. It shall be a condition of the Close of Escrow that Purchaser 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. Purchaser shall promptly and in good faith apply for, and diligently pursue obtaining the Entitlements. Without limiting Purchaser's obligations under this Section 215.a., Purchaser's failure to obtain the Entitlements shall not be an event of default hereunder, provided that Purchaser promptly applied in good faith for, and diligently pursued obtaining the Entitlements (or caused others to do so on Purchaser's behalf). Successor Agency 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 Purchaser 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 Purchaser; (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 Purchaser 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. Purchaser shall comply with all applicable conditions of approval required by City. Without cost to Successor Agency, Successor Agency shall reasonably cooperate and provide appropriate technical assistance to Purchaser, as necessary, in connection with Purchaser's obtaining all necessary Entitlements and permits for the construction of the Improvements.

b. Indemnification. To the extent permitted by law, Purchaser shall protect, defend, indemnify and hold Successor Agency, City, and each of their respective elected officials, officers, representatives, agents, employees, contractors and attorneys (Successor Agency, City, and each of their respective elected officials, officers, representatives, agents, employees, contractors and attorneys may be collectively referred to herein as 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 Purchaser'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 Purchaser, 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 the Successor Agency, in good faith, determines that its interests are not adequately protected by being provided a defense by Purchaser, Successor Agency (and the other Indemnified Parties) may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the Successor Agency, on behalf of the Indemnified Parties, makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser shall pay all of the costs related thereto, including, without limitation, reasonable 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 Successor Agency (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. Purchaser acknowledges that the Successor Agency is a Party to this Agreement only in its capacity as the assignee of the former Imperial Beach 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. Purchaser'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. Successor Agency makes no representation or warranty, express or implied, regarding any conditions of the Site, except that Successor Agency represents and warrants to Purchaser that Successor Agency has disclosed and provided to Purchaser all information in Successor Agency's possession or known to Successor Agency 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 Successor Agency's possession or which are known by and available to Successor Agency, 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, Successor Agency shall indemnify, defend and hold Purchaser (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 Successor Agency or any of its employees, agents, or contractors first occurring after the Effective Date.

3. It shall be the sole responsibility of Purchaser, at Purchaser'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. Purchaser shall have the right, at its own expense, and in consultation with Successor Agency, 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 Purchaser in accordance with this Agreement. Purchaser shall also provide Successor Agency with the name(s) of the Consultant. Upon Consultant's completion of the work, a copy of the Consultant's written report(s) shall be delivered to Successor Agency; provided, however, that Purchaser makes no representation or warranty regarding such reports, and it shall have no liability whatsoever for any errors or omissions contained therein. Purchaser shall have the right, not later than June 1, 2014, to terminate this Agreement if Purchaser determines, on the basis of the report or any of the due diligence performed by Purchaser, that the environmental condition on the Site is not suitable for the economically feasible development of the Site as contemplated herein. If Purchaser does not terminate this Agreement by written notice to Successor Agency on or before June 1, 2014, then this condition shall be deemed waived.

4. If Purchaser 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 Purchaser without cost or expense to the Successor Agency (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 Purchaser incurs any costs to remove or remediate any Hazardous Substances from the Site ("Remediation Costs"), the Successor Agency 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 Successor Agency or any of its employees, agents or contractors, if any.

c. Conveyance of Site. The Site shall be conveyed to Purchaser in an "as is" physical condition, with no warranty, express or implied by the Successor Agency 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, Purchaser hereby waives, releases and discharges the Successor Agency, the City, and their respective 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 any of the Indemnified Parties. Purchaser 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, Purchaser 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, Purchaser shall defend, indemnify and hold harmless the Indemnified Parties in accordance with the Environmental Indemnity substantially in the form of Attachment No. 10 to this Agreement, which is incorporated herein by this reference (but which example has not been approved as to form and substance by either Successor Agency or Purchaser 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). As a condition to the Phase 1 Closing, Purchaser shall execute and deliver to Successor Agency the Environmental Indemnity as to the Site.

f. Site Preparation.

Prior to the Close of Escrow, without cost to Purchaser, Successor Agency 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 Purchaser 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 Purchaser

a. Until the Close of Escrow, representatives of Purchaser 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 Successor Agency Executive Director 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, Purchaser shall protect, defend, indemnify and hold 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 Purchaser'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 Purchaser, 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 Purchaser 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 any of the Indemnified Parties. If the Successor Agency, on behalf of the Indemnified Parties, in good faith, determines that its(their) interests are not adequately protected by being provided a defense by Purchaser, Successor Agency may, on behalf of the Indemnified Parties, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the Successor Agency makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser 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 Successor Agency 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 Purchaser, (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) except as required by applicable law or (iv) lease any portion of the Site without the prior written consent of Purchaser. Successor Agency shall maintain the Site in a safe and secure condition, and shall not permit any use of the Site without Purchaser'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", which shall be an ongoing maintenance obligation of Purchaser before and after acceptance of the remainder of the Public Improvements by the City;

(e) Installation of new street lights; and

(f) Any other Cal-Trans requirements relating to the Public Improvements.

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 Public Works Director. Purchaser 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 Public Works Director, including the adjustment to grade and/or replacement of all utility covers in such alley. The work shall also include combining and reconfiguring the vehicular access point to the alley and parking access on 9th Street to the satisfaction of the City Public Works Director. 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 Public Works Director ("New Traffic Signal").

b. Intentionally omitted.

c. Payment for Public Improvement Costs. Subject to the conditions precedent set forth in Sections 219.e., f. and h., below, Successor Agency shall pay, or cause the City to pay, to or for the benefit of or reimburse Purchaser for the cost of designing, permitting, constructing and installing the Public Improvements described in this Section 219.c., below (the "Public Improvement Costs") and costs for Site Preparation Design Work, not to exceed the amount described in this Section 219.c., solely from the Series 2010 Bond Proceeds, but in no event more than the sum of $2,200,000 (the "Public Improvement Funds") for the Public Improvements described in Section 219.a.1., above and costs for Site Preparation Design Work. Prior to the Effective Date, Successor Agency has incurred and disbursed to Project design consultants the sum of $40,768.43 (the "Disbursed Funds"), which is a portion of the Public Improvement Funds, for the preparation of plans for the Public Improvements. For purposes of this Agreement, the amount of the Public Improvement Funds remaining after disbursement of the Disbursed Funds, $2,159,231.57, shall be referred to as the "Remaining Public Improvement Funds". The Successor Agency shall disburse (or cause the City to disburse) the Remaining Public Improvement Funds as follows:

1. Successor Agency's obligation shall be to first reimburse Purchaser, 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, Purchaser shall provide to the Successor Agency Executive Director 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 Successor Agency shall disburse such Excess Funds to the extent necessary to pay or reimburse Purchaser 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 Successor Agency any Excess Funds remaining after paying for all the Public Improvements listed in Section 219.a.

d. Right to Defer Some Public Improvements. Upon written notice to the Successor Agency Executive Director not later than thirty (30) days prior to the Scheduled Phase 1 Closing Date, Purchaser 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 Deposit described in paragraph f. of this Section 219, below, Successor Agency shall have no obligation to pay to or on behalf or, or reimburse, Purchaser for the cost of Public Improvements unless and until all of the following conditions shall have been satisfied:

1. Public Improvement Budget. Purchaser shall have prepared and submitted to the Successor Agency Executive Director, and the Successor Agency Executive Director 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 Purchaser or any Affiliate of Purchaser as a management fee, contractor's fee or for overhead or general conditions, regardless of how characterized. The Successor Agency Executive Director shall approve or disapprove the Public Improvement Budget within twenty (20) days of a complete submittal. The Successor Agency Executive Director 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 Successor Agency's contribution for the Public Improvements shall not exceed the Remaining Public Improvement Funds;

2. Public Improvement Contract. Purchaser and its general contractor shall have executed the Public Improvement Contract described in Section 208 of this Agreement, approved by the Successor Agency Executive Director; and

3. No default. Successor Agency shall determine that Purchaser is not in default of any material obligation under this Agreement or any related instrument or agreement.

f. Disbursement.

1. Not later than five (5) Business Days after the Effective Date, the Successor Agency shall open a construction escrow account ("Construction Escrow") with Wells Fargo Bank or other lending institution that is mutually acceptable to the Purchaser and Successor Agency Executive Director ("Escrow Agent"), and deposit into the Construction Escrow $259,231.57 (the "Initial Deposit").

2. As conditions precedent to the disbursement from escrow of any portion of the Initial Deposit, (i) Successor Agency, Purchaser 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; (ii) if applicable pursuant to Section 13 of the Disbursement Agreement, Purchaser shall have executed the Assignment(s) of Agreement and Plans and Specifications (City to Purchaser) substantially in the form attached to the Disbursement Agreement as Exhibit A and incorporated herein by reference; and (iii) Purchaser and any applicable architect, engineer or other person or entity shall have executed an Assignment of Architectural Agreements and Plans and Specifications (Purchaser to City) substantially in the form attached to the Disbursement Agreement as Exhibit A and incorporated herein by 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, Successor Agency shall deposit the $1,900,000 balance of the Remaining Public Improvement Funds.

4. Promptly after the Successor Agency deposits into Escrow the funds described in paragraph 3 of this Section 219.f., Purchaser shall process the first application for payment to pay for the cost of the following:

a. Bond. Purchaser 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 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, the Bond shall have been approved in writing by the Successor Agency Executive Director as to content, form and amount. Purchaser shall, prior to the commencement of construction of the Public Improvements deliver to Successor Agency a certificate or certificates from the bonding company issuing the Bond, naming the Successor Agency 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 Successor Agency for public improvements; and

b. Insurance. Purchaser 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 by Purchaser. Purchaser shall, prior to the commencement of construction of the Public Improvements deliver to Successor Agency a certificate or certificates

from the insurance company issuing the insurance policies, naming the Successor Agency and City as additional insureds.

c. Other Costs. The Successor Agency Executive Director may, in his 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 any other party, body, or agency, but does not affect the obligation of the Successor Agency Executive Director to act reasonably in granting such approval), approve as part of the first application for payment other Public Improvement Costs, provided such costs are of a minor nature, such as permit costs.

5. Successor Agency shall direct the Escrow 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 or in the Public Improvement Disbursement Agreement, in the event the Construction Escrow is opened and this Agreement is terminated for any reason, Successor Agency shall have the right in its sole and absolute discretion to direct the Escrow Agent to remit to Successor Agency any amounts on deposit in the Construction Escrow without any additional or further consent, approval or direction of Purchaser.

g. Acceptance of Public Improvements. All Public Improvements shall be designed and constructed to the satisfaction of the City's Public Works Director. Purchaser's obligation to construct the Public Improvements pursuant to this Agreement shall be satisfied upon the satisfaction of the following conditions and City's and Purchaser's execution and recordation of an Acceptance and Maintenance Agreement for Public Improvements substantially in the form attached to this Agreement as Attachment No. 17: (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 Purchaser or its contractor; (3) certification or equivalent by an authorized representative of each designer of each of the respective Public Improvements that construction has been completed in a good and workmanlike manner and substantially in accordance with plans and specifications approved by the Successor Agency; 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. Purchaser shall promptly remedy at the Purchaser's cost and expense any condition or conditions which prevent the City from accepting the Public Improvements as provided by this paragraph.

h. Funding for Site Preparation Design Work. The Parties agree that a portion of the Remaining Public Improvement Funds, not to exceed the sum of $100,000, may be disbursed as reimbursement for costs for the Site Preparation Design Work. The obligation of the Successor

Agency to reimburse funds for costs for the Site Preparation Design Work shall be included in the Remaining Public Improvement Funds. 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 disbursement of the Site Preparation Design Funds shall be subject to the conditions precedent for the disbursement of the Initial Deposit set forth in clause 2 of Section 219.f., above.

2. The Site Preparation Design Funds shall be subject to and disbursed in accordance with the Disbursement Agreement to be executed by Successor Agency, Purchaser and Escrow Agent. Disbursements of the Site Preparation Design Funds shall be subject to the approval of the Successor Agency Executive Director in accordance with the Disbursement Agreement.

3. Successor Agency'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 $100,000 is disbursed for the Site Preparation Design Work, the balance available for the Public Improvements shall be $2,059,231.57. Provided, however, that Purchaser 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 this Agreement.

4. Not later than thirty (30) days after completion of the Site Preparation Design Work and acceptance of the Public Improvements pursuant to Section 219.g., above, Purchaser shall prepare, execute and deliver to the Successor Agency 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 Funds disbursed for all Public Improvements Costs minus the costs for the Site Preparation Design Work plus (ii) the Public Improvement Funds disbursed for the Site Preparation Design Work, is less than $2,200,000, the Escrow Agent shall promptly, but in any event within thirty (30) days of written demand by the Successor Agency, disburse to the Successor Agency from the Construction Escrow the amount by which the actual final cost is less than $2,200,000 plus any other remaining amounts in the Construction Escrow and the Construction Escrow shall be closed.

SECTION 220 <u>Phase 2 Closing</u>.

Until the occurrence of the Phase 2 Closing, Purchaser 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. Successor Agency and Purchaser 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 Purchaser or Successor Agency 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 Successor Agency and Purchaser). Successor Agency Executive Director shall have approved any changes to the previously approved Final Construction Drawings as they pertain to the Phase 2 Improvements.

b. Project Budget (benefits Successor Agency and Purchaser). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency Executive Director the availability of sufficient funds to pay all Acquisition and Development Costs for the Phase 2 Improvements.

c. Construction Contract (benefits Successor Agency and Purchaser). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency-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. Successor Agency'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 Successor Agency-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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Purchaser 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 Successor Agency-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. Successor Agency'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 Successor Agency-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 Purchaser, has demonstrated experience in completing similar public works projects and is otherwise reasonably acceptable to Successor Agency; 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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency and Purchaser). Purchaser shall have submitted and the Successor Agency Executive Director 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 Purchaser, 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, and (ii) those to be provided by Successor Agency for Public Improvements, necessary to finance the construction of Phase 2 to Completion, in accordance with a Project Budget approved, in writing, by the Successor Agency, which funds shall include all Purchaser Equity needed to pay all Acquisition and Development Costs for Phase 2. Notwithstanding the foregoing, if Purchaser 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.

Successor Agency shall cooperate reasonably with Purchaser in Purchaser'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 Purchaser.

Successor Agency 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 Successor Agency and Purchaser). Purchaser shall have submitted and the Successor Agency Executive Director shall have approved evidence of binding commitments (subject to commercially customary conditions) from (i) intentionally omitted; and (ii) retail tenants to lease space in Parcel "F", and Parcel "E" and Parcel "G", if any as to "E" and "G", provided that commitments to lease any portion of Parcel "E" or Parcel "G" shall not be a condition precedent to the Phase 2 Closing. Purchaser shall have the right, in Purchaser'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, Purchaser or any assignee of Purchaser 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. Successor Agency's review and approval of binding commitments from tenants pursuant to this Section shall be for the benefit of the Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the tenant commitments, Successor Agency 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. Purchaser shall not be required to disclose any confidential economic deal terms and other confidential information not intended for public disclosure or which Purchaser may not disclose without breaching a contractual obligation or proscription.

g. Insurance (benefits Successor Agency). Purchaser shall have submitted to Successor Agency, and the Successor Agency Executive Director 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 Imperial Beach Redevelopment Agency Successor Agency, the City of Imperial Beach, and their respective elected officials, officers, representatives, agents, employees, contractors and attorneys."

h. Intentionally omitted.

i. Permits (benefits Successor Agency and Purchaser). Purchaser shall have delivered to Successor Agency 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 Purchaser 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 Successor Agency Executive Director 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 Purchaser and Successor Agency). 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 Purchaser and Successor Agency). Successor Agency and Purchaser 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 Purchaser). Successor Agency 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 Purchaser and Successor Agency, as applicable). Successor Agency, Purchaser 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. Intentionally omitted; 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 Successor Agency); and

4. Subordination Agreement.

Non-recorded documents:

5. Intentionally omitted.

PART 3. DEVELOPMENT OF THE SITE

SECTION 301 Land Use Approvals

It is the responsibility of Purchaser, without cost to Successor Agency, 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, Purchaser shall submit and Successor Agency Executive Director shall approve complete

Final Construction Drawings and Purchaser 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 Purchaser 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 Purchaser, (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 Purchaser 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. Purchaser has prepared basic concept and schematic drawings and related documents for the development of the Site, which have been approved by the Successor Agency.

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 Purchaser and the Successor Agency Executive Director. Any such changes shall be within the limitations of the Scope of Development.

SECTION 304 Landscaping and Grading Plans

a. Purchaser shall prepare and submit to the Successor Agency for its approval preliminary and final landscaping and preliminary and finish grading plans for the Site. These plans shall be prepared and submitted within the times established in the Schedule of Performance. Purchaser 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 Purchaser's architect. Within the times established in the Schedule of Performance, Purchaser shall submit to the Successor Agency for approval the name and qualifications of its architect, landscape architect and civil engineer.

SECTION 305 Construction Drawings and Related Documents

a. Purchaser (or Assignee, as the case may be) shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the Successor Agency 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 Successor Agency Executive Director if developed as a logical evolution of previously approved Plans. Any items so submitted and approved by the Successor Agency Executive Director shall not be subject to subsequent disapproval.

c. During the preparation of all Plans, the Successor Agency Executive Director and Purchaser shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents. The Successor Agency Executive Director and Purchaser shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Successor Agency can receive prompt and speedy consideration.

d. If any revisions or corrections of Plans approved by the Successor Agency shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Site, Purchaser and the Successor Agency Executive Director 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 Successor Agency 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 Successor Agency. Upon receipt of any disapproval, Purchaser shall revise the Plans, and shall resubmit to the Successor Agency Executive Director as soon as possible but in no event later than sixty (60) days after receipt of the notice of disapproval. The Successor Agency 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 Successor Agency Executive Director requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. Purchaser, upon receipt of a disapproval based upon powers reserved by the Successor Agency hereunder shall revise the Plans, and shall resubmit to the Successor Agency Executive Director as soon as possible but in no event later than sixty (60) days after receipt of the notice of disapproval.

b. If Purchaser desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Successor Agency Executive Director 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 Successor Agency 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 Purchaser 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 Successor Agency in connection therewith, whether Purchaser has commenced such design, development and/or construction prior to or after Close of Escrow, or at any time, shall be the responsibility of Purchaser, without any cost to Successor Agency.

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 Successor Agency Executive Director and Purchaser.

b. After each Closing, Purchaser 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, Purchaser shall submit to the Successor Agency a written report of the progress of construction when and as reasonably requested by the Successor Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Successor Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by Purchaser. If Successor Agency utilizes the services of a construction monitor (at Successor Agency's cost), Purchaser shall reasonably cooperate with the Successor Agency's monitor to coordinate inspections.

SECTION 309 Indemnification and Insurance

a. Purchaser'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 Purchaser to defend, indemnify, and hold harmless the Indemnified Parties, Purchaser 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 any of the Indemnified Parties:

1. The existence, release, presence or disposal on, in, or under the Site of any Hazardous Substances resulting from the acts or omissions of Purchaser, an Assignee, their respective contractors, subcontractors, agents or other persons acting on Purchaser'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 Successor Agency, Successor Agency 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 Purchaser, or resulting from any material breach or default by Purchaser, under this Agreement.

If the Successor Agency (on behalf of the Indemnified Parties), in good faith, determines that its(their) interests are not adequately protected by being provided a defense by Purchaser, the Successor Agency may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If, pursuant to the preceding sentence, the Successor Agency makes such election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Purchaser 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 Purchaser to defend, indemnify, and hold harmless the Successor Agency 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"), Purchaser shall maintain in effect and deliver to Successor Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(a) All-Risk Policies: Purchaser 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 Purchaser 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 Successor Agency, 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: Purchaser 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 Purchaser on the Site, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Purchaser, or any person acting for Purchaser, 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 Purchaser or its tenants, or any person acting for Purchaser, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Successor Agency and any other additional insured) 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. Purchaser shall deliver to Successor Agency a Certificate of Insurance and endorsements evidencing such insurance coverage prior to the occurrence of the Closing. Purchaser agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Purchaser may be held responsible for the indemnification of any of the Indemnified Parties or the payment of

damages to persons or property resulting from Purchaser's activities, activities of its tenants or the activities of any other person or persons for which Purchaser is otherwise responsible. To the extent that Purchaser 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, Purchaser 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: Purchaser shall maintain or cause to be maintained automobile insurance on any automobiles owned by Purchaser, 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: Purchaser shall maintain or cause to be maintained workers' compensation insurance, if required, for any employees of Purchaser, 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 Purchaser 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 Purchaser. Notwithstanding the foregoing, Purchaser 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 Purchaser shall deliver to Successor Agency 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 Successor Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Successor Agency, City, and Purchaser 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 Imperial Beach Redevelopment Agency Successor Agency, the City of Imperial Beach, and their respective elected officials, officers, employees, contractors, agents and attorneys."

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

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

SECTION 310 Nondiscrimination

Purchaser 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. Purchaser 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 Purchaser 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 Purchaser 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. Purchaser hereby agrees that Purchaser 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. Purchaser hereby agrees that Purchaser 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. Purchaser shall indemnify, protect, defend and hold harmless the Indemnified Parties, with counsel reasonably acceptable to Successor Agency, 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 Purchaser, 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 Purchaser 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 Purchaser 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. Purchaser hereby expressly acknowledges and agrees that Successor Agency has never previously affirmatively represented to the Purchaser 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), Purchaser 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 Condition of Site during Construction.

At all times after the Close of Escrow and prior to the completion of construction, Purchaser 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 Permits

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, Purchaser shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the Successor Agency 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 Successor Agency shall have the reasonable right of access to the Site, upon 24 hours' written notice to Purchaser

(except in the case of an emergency, in which case, Successor Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the Successor Agency shall be those who are so identified in writing by the Successor Agency Executive Director. Such access and inspection rights shall be undertaken in a manner which does not interfere with Purchaser's activities or cause damage to property or improvements.

b. The Purchaser has the right to designate representatives to accompany the Successor Agency representatives on such inspections. The Successor Agency agrees to coordinate with Purchaser to schedule such inspections so that Purchaser's representative may attend the inspections, in the discretion of Purchaser.

SECTION 315 Disclaimer of Responsibility

The Successor Agency neither undertakes nor assumes nor will have any responsibility or duty to Purchaser or to any third party to review, inspect, supervise, pass judgment upon or inform Purchaser 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. Purchaser 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 Purchaser or to any third party by the Successor Agency in connection with such matter is for the public purpose of redeveloping the Site, and neither Purchaser (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Successor Agency 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, Purchaser shall pay when due all real estate taxes and assessments assessed and levied on or against the Site or any portion thereof. Purchaser 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, Purchaser 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 Purchaser 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, Purchaser shall have the right to encumber Property 1, and upon and after the Phase 2 Closing, Purchaser 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"). Purchaser has no authority to encumber Property 1 or any portion thereof prior to the Phase 1 Closing. Purchaser 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 Successor Agency 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, Purchaser shall promptly notify the Successor Agency of any security interest created or attached to the Site whether by voluntary act of Purchaser or otherwise. The Successor Agency Executive Director 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 Successor Agency hereunder. Upon the reasonable request of a Permitted Lender, the Successor Agency Executive Director 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 Successor Agency Executive Director 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 Successor Agency Executive Director 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 <u>Lender Not Obligated to Construct Improvements</u>

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 <u>Notice of Default to Lenders; Right of Lender to Cure Defaults</u>

Whenever the Successor Agency shall deliver any notice or demand to Purchaser with respect to any breach or default by Purchaser in completion of construction of the Improvements, the Successor Agency shall at the same time deliver the notice or demand to each Permitted Lender

that requests such notice or demand, in writing, from the Successor Agency and provides its contact information for the notice or demand. Each such Permitted Lender shall (insofar as the rights of the Successor Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such 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 Successor Agency 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 Purchaser. Any Permitted Lender who forecloses on its Permitted Deed of Trust, or is assigned or otherwise succeeds to Purchaser's rights under this Agreement, or, subject to the reasonable approval of the Successor Agency Executive Director, 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 Successor Agency by which such Permitted Lender expressly assumes Purchaser's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Successor Agency. Any such Permitted Lender properly completing such improvements shall be entitled, upon written request made to the Successor Agency, to a Release of Construction Covenants from the Successor Agency.

SECTION 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by Purchaser, 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 Successor Agency 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 Successor Agency.

SECTION 322 Right of the Successor Agency to Cure Defaults

In the event of a default or breach by Purchaser 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 Successor Agency may cure the default at any time prior to completion by a Permitted Lender of any foreclosure under its security. In such event, the Successor Agency shall be entitled to reimbursement from Purchaser of all costs and expenses incurred by the Successor Agency in curing the default. The Successor Agency 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 Successor Agency to Satisfy Other Liens on the Site

Prior to Completion and after Purchaser has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Site, the Successor Agency shall have the right, without obligation, to satisfy any such liens or encumbrances. In such event, the Successor Agency shall be entitled to reimbursement from Purchaser of all costs and expenses incurred by the Successor Agency in satisfying any such liens or encumbrances. The Successor Agency 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, Successor Agency shall deliver to Purchaser a Release of Construction Covenants relative to such portion of the Site, upon written request therefor by Purchaser. 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 Successor Agency's issuance of a Release of Construction Covenants relative to such portion of the Site, each 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 and a release of all other obligations in this Agreement relating to such portion of the Site—it being understood that once a Release of Construction Covenants has been recorded as to the entire Site, this Agreement shall be of no further force or effect. The Successor Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the construction 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 Purchaser, the Successor Agency Executive Director 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 Successor Agency fails to deliver the Release of Construction Covenants within ten (10) days after written request from Purchaser, Successor Agency shall provide Purchaser 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 Purchaser 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 Successor Agency, Successor Agency will issue the Release of Construction Covenants upon delivery to the Successor Agency by Purchaser of a bond or other security that is acceptable to Successor Agency in the Successor Agency Executive Director's sole discretion, in an amount representing Successor Agency'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 Purchaser 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. Purchaser covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Purchaser, 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 Successor Agency.

b. Notwithstanding the generality of subsection (a), above, Purchaser, 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 Purchaser's May 6, 2009 proposal to the former Imperial Beach 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 Successor Agency 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 Purchaser as described in the Proposal, but shall specifically include an approximately 14,800 square foot grocery store or supermarket approved in writing by the Successor Agency Executive Director on Parcel "A" and an approximately 5,000 – 15,000 square foot retail building approved in writing by the Successor Agency Executive Director on Parcel "F".

d. The Retail Center shall specifically exclude those prohibited uses listed in the Agreement Containing Covenants.

SECTION 402 Maintenance

Purchaser shall maintain the Site or cause the Site to be maintained in accordance with the requirements of the 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 Purchaser at its other similar retail developments in San Diego County in existence as of the Effective Date.

SECTION 403 Obligation to Refrain from Discrimination

Purchaser 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 Purchaser, or if the Purchaser is no longer the owner, then against its permitted successors in interest which have been expressly approved in writing by the Successor Agency in accordance with the terms and conditions of this Agreement by the Successor Agency 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, Purchaser 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). Purchaser shall obtain and cause to be recorded (as applicable), at Purchaser's sole cost and expense, any instruments necessary and/or appropriate to subordinate to the Agreement Containing Covenants (to the reasonable satisfaction of the Successor Agency Executive Director) 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 Purchaser; Purchaser shall have no obligation to cause such items to be subordinated).

SECTION 407 CC&Rs

Purchaser shall prepare and submit a set of covenants, conditions and restrictions by and among Purchaser 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 Successor Agency, for review and written approval by the Successor Agency Executive Director 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 Successor Agency is a third party beneficiary of certain provisions thereof as deemed reasonably necessary by Successor Agency 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 Successor Agency of the Option and the operation of the Retail Center if Successor Agency or its assignee owns Property 2, and Purchaser and/or its assignee(s) own Property 1. The Successor Agency Executive Director'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

Purchaser 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 Purchaser against the Successor Agency, service of process on the Successor Agency shall be made by personal service upon the Successor Agency Executive Director or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Successor Agency against Purchaser, service of process on Purchaser shall be made by personal service upon Purchaser or upon the Purchaser's Manager, or any officer of the Purchaser 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 Estoppels

Upon written request from Purchaser, Successor Agency shall provide, within fifteen (15) days from receipt of the written request, to Purchaser and any lender, prospective lender, or prospective purchaser, an estoppel certificate by which Successor Agency confirms whether or not any defaults then exist hereunder or in connection herewith, along with confirmation of such other factual matters as such recipient may reasonably require and which is within the knowledge of the Successor Agency. Purchaser shall pay all reasonable costs and expenses of Successor Agency in providing any such estoppel certificate.

SECTION 509 Termination by Purchaser

a. Prior to the Phase 1 Closing, subject to the notice and cure provisions of Section 501, Purchaser shall have the right to terminate this Agreement, by providing written notice to the Successor Agency, in the event of (i) an uncured default by Successor Agency, or (ii) the failure of any condition precedent to the Phase 1 Closing that benefits the Purchaser.

b. Prior to the Phase 2 Closing, subject to the notice and cure provisions of Section 501, Purchaser shall have the right to terminate this Agreement, by providing written notice to the Successor Agency and reconveying title to Property 2 to Successor Agency, free and clear of any encumbrances, in the event of (i) an uncured default by Successor Agency, or (ii) the failure of any condition precedent to the Phase 2 Closing that benefits the Purchaser.

SECTION 510 Termination by Successor Agency

a. Prior to the Phase 1 Closing, subject to the notice and cure provisions of Section 501, Successor Agency shall have the right to terminate this Agreement, by providing written notice to Purchaser, in the event of (i) an uncured default by Purchaser, or (ii) the failure of any condition precedent to the Phase 1 Closing that benefits the Successor Agency 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, Successor Agency shall have the right to terminate this Agreement, by providing written notice to the Purchaser, in the event of (i) an uncured default by Purchaser, or (ii) the failure of any condition precedent to the Phase 2 Closing that benefits the Successor Agency to be satisfied as of the latest date for the Phase 2 Closing. Upon which termination, Purchaser shall reconvey title to Property 2 to Successor Agency, free and clear of any encumbrances, other than any Successor Agency-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, Successor Agency 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, Purchaser 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 Purchaser shall not have obtained an extension or postponement to which Purchaser may be entitled pursuant to Section 602 hereof; or

2. Purchaser 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 Purchaser has not obtained an extension or postponement to which Purchaser may be entitled to pursuant to Section 602 hereof; or

3. Except for Permitted Transfers, Purchaser 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. Purchaser otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

SECTION 511 Power of Termination and Right of Reverter

a. The Parties agree that the Completion of the Improvements by Purchaser, as provided in this Agreement, is a condition subsequent to which the fee simple estate in the Site granted to Purchaser by Successor Agency is subject. Therefore, if this Agreement is terminated by Successor Agency 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), Successor Agency 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 Successor Agency the estate in the Site previously conveyed to Purchaser 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 Purchaser under this Agreement (and the instrument and documents being executed in accordance herewith) will terminate, except for any obligation of Purchaser to indemnify the Indemnified Parties, and (ii) Successor Agency shall take title to the Site subject to any Permitted Deed of Trust. Successor Agency'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. Successor Agency'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 Successor Agency title to a Property, Parcel or Parcels as provided in this Section, Successor Agency shall, pursuant to its rights and responsibilities 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 Plan, to a qualified and responsible developer (as determined by Successor Agency) who will assume the obligation of making or completing such Improvements as are acceptable to Successor Agency in accordance with the uses specified for the Site in the Redevelopment Plan and in a manner that is satisfactory to Successor Agency. Upon such resale of the subject Property, Parcel or Parcels, any proceeds of such sale shall be applied as follows:

1. First, to reimburse Successor Agency on its own behalf for all reasonable costs and expenses incurred by Successor Agency, including but not limited to pro-rata salaries of Successor Agency 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 Successor Agency 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 Successor Agency (other than those existing as of the Close of Escrow that were not created by Purchaser) or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Purchaser, its successors or transferees; expenditures made or obligations incurred with respect to any improvements made or completed by Successor Agency 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 Successor Agency by Purchaser and its successors or transferees.

2. Second, to reimburse any Permitted Lender for amounts owing under its Construction Loan.

3. Third, to reimburse Purchaser for any Purchaser Equity disbursed to pay Acquisition and Development Costs, less any gains or income withdrawn or made by Purchaser 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 Successor Agency's exercise of its power of termination.

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

d. The rights established in this Section 511 are authorized by Section 33438 of the California Health and Safety Code and are to be interpreted in light of the fact that Successor Agency will convey the Site to Purchaser for redevelopment and not for speculation.

SECTION 512. Termination for Reasons of Infeasibility

a. This Agreement shall be subject to termination by Purchaser prior to the Phase 1 Closing, as a failure of a condition and not as an event of default, in the event Purchaser delivers the written notice to Successor Agency described in paragraph z. of Section 208 of this Agreement ("Purchaser's Notice of Infeasibility"). From and after giving Purchaser's Notice of Infeasibility, Purchaser shall no longer be obligated to perform its obligations under this Agreement and Successor Agency shall have no cause of action or claim against Purchaser arising out of such election to terminate.

b. This Agreement is subject to termination by Successor Agency prior to February 1, 2014, as a failure of a condition and not as an event of default, in the event Successor Agency delivers the written notice to Purchaser described in paragraph aa. of Section 208 of this Agreement ("Successor Agency's Notice of Infeasibility"). From and after giving Successor Agency's Notice of Infeasibility, Successor Agency 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 Successor Agency the Successor Agency must accompany any such Successor Agency's Notice of Infeasibility to Purchaser with a termination fee, which fee shall be treated as liquidated damages in the amount of $50,000.

SUCCESSOR AGENCY AND PURCHASER, BY THIS AGREEMENT, MUTUALLY AGREE THAT IF SUCCESSOR AGENCY EXERCISES ITS RIGHT OF TERMINATION PURSUANT TO THE FOREGOING PARAGRAPH AND SECTION 208.aa., THEN THE RESULTING DAMAGES TO PURCHASER WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. BECAUSE OF THIS DIFFICULTY, THE PARTIES AGREE THAT, IN THE EVENT SUCCESSOR AGENCY DELIVERS TO PURCHASER SUCCESSOR AGENCY'S NOTICE OF INFEASIBILITY, SUCCESSOR AGENCY MUST PAY TO PURCHASER THE SUM OF FIFTY THOUSAND DOLLARS ($50,000) AS LIQUIDATED DAMAGES, WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER, AND PURCHASER SHALL BE ENTITLED TO SUCH LIQUIDATED DAMAGES INSTEAD OF AND EXCLUSIVE OF ANY OTHER REMEDY AGAINST SUCCESSOR AGENCY FOR ANY TERMINATION OF THIS AGREEMENT PURSUANT TO THE FOREGOING PARAGRAPH AND SECTION 208.aa.

Successor Agency: _____ **Purchaser: _____**

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

Formal notices, demands and communications between Successor Agency and Purchaser 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 Successor Agency shall not excuse performance of Successor Agency), 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 Purchaser 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.

c. Times of performance under this Agreement may also be extended in writing by the Successor Agency and Purchaser.

SECTION 603 Conflict of Interest

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

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

b. Purchaser 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 Successor Agency Officials and Employees

No elected official, officer, representative, agent, employee, contractor or attorney of Successor Agency shall be personally liable to Purchaser, any Assignee or any successor in interest in the event of any default or breach by Successor Agency 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 Purchaser shall be personally liable to Successor Agency or any successor in interest in the event of any default or breach by Purchaser for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 605 Inspection of Books and Records

Successor Agency shall have the right at all reasonable times to inspect and copy the books and records of Purchaser 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 Successor Agency or Purchaser 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 or consents required of the Successor Agency (under this Agreement and the related documents being executed in connection herewith) shall be deemed granted by the written approval or consent of the Successor Agency Executive Director or designee without the requirement of any additional approval or consent by the Successor Agency Board or any other party, body, or agency, except as otherwise required by applicable law. Successor Agency agrees to provide notice to Purchaser of the name of any designee of the Successor Agency Executive Director on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Successor Agency Executive Director may, in his or her sole discretion, refer to the Successor Agency Board any item requiring Successor Agency approval or consent provided that such referral to the Successor Agency Board will not be deemed to extend any timeframe for Successor Agency performance

specified herein or in the Schedule of Performance that is not approved by Purchaser; otherwise, "Successor Agency approval" means and refers to approval by the Successor Agency Executive Director. Purchaser shall consider in good faith and not unreasonably (in light of all the circumstances) withhold, condition or delay approval of any request by Successor Agency Executive Director to extend any such timeframe for Successor Agency performance specified herein or in the Schedule of Performance if Successor Agency Executive Director in good faith determines that a particular matter requiring Successor Agency approval should be referred to Successor Agency Board.

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 Successor Agency or Purchaser 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. Purchaser and Successor Agency Executive Director 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); and Attachment No. 10 (Environmental Indemnity) 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 Successor Agency, whichever occurs first. The Successor Agency Executive Director, with the concurrence of the Successor Agency legal counsel, 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 Successor Agency shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The Successor Agency and Purchaser 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 Successor Agency to be responsible in any way for the debts or obligations of Purchaser or any other Person.

SECTION 611 Compliance with Law

Purchaser 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 Purchaser or any lessee or permittee in any action or proceeding against them, or any of them, whether Successor Agency be a Party to this Agreement or not, that Purchaser, 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 Successor Agency and Purchaser.

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.

If Successor Agency ceases to exist without first assigning its rights and obligations hereunder (including, without limitation, the power of consent and approval as to any matters requiring the consent or approval of the Successor Agency of Successor Agency Executive Director) and notifying Purchaser of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Purchaser shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Successor Agency) for information regarding who has succeeded to such rights and obligations and shall be entitled to rely on the written statement of the City Manager as to such matter, or (b) if the City Manager does not provide Purchaser with satisfactory evidence regarding such matter, Purchaser may seek relief from the Superior Court of the State of California for a declaration as to who has authority to act in the role of the Successor Agency hereunder.

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 Successor Agency and Purchaser, 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

Purchaser hereby represents that the persons executing this Agreement on behalf of Purchaser have full authority to do so and to bind Purchaser 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 Successor Agency or Purchaser, and all amendments to this Agreement must be in writing and signed by the appropriate authorities of Successor Agency and Purchaser.

IN WITNESS WHEREOF, Successor Agency and Purchaser 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:_____ By:_____
Colton T. Sudberry, President

[SIGNATURES CONTINUE ON NEXT PAGE]

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

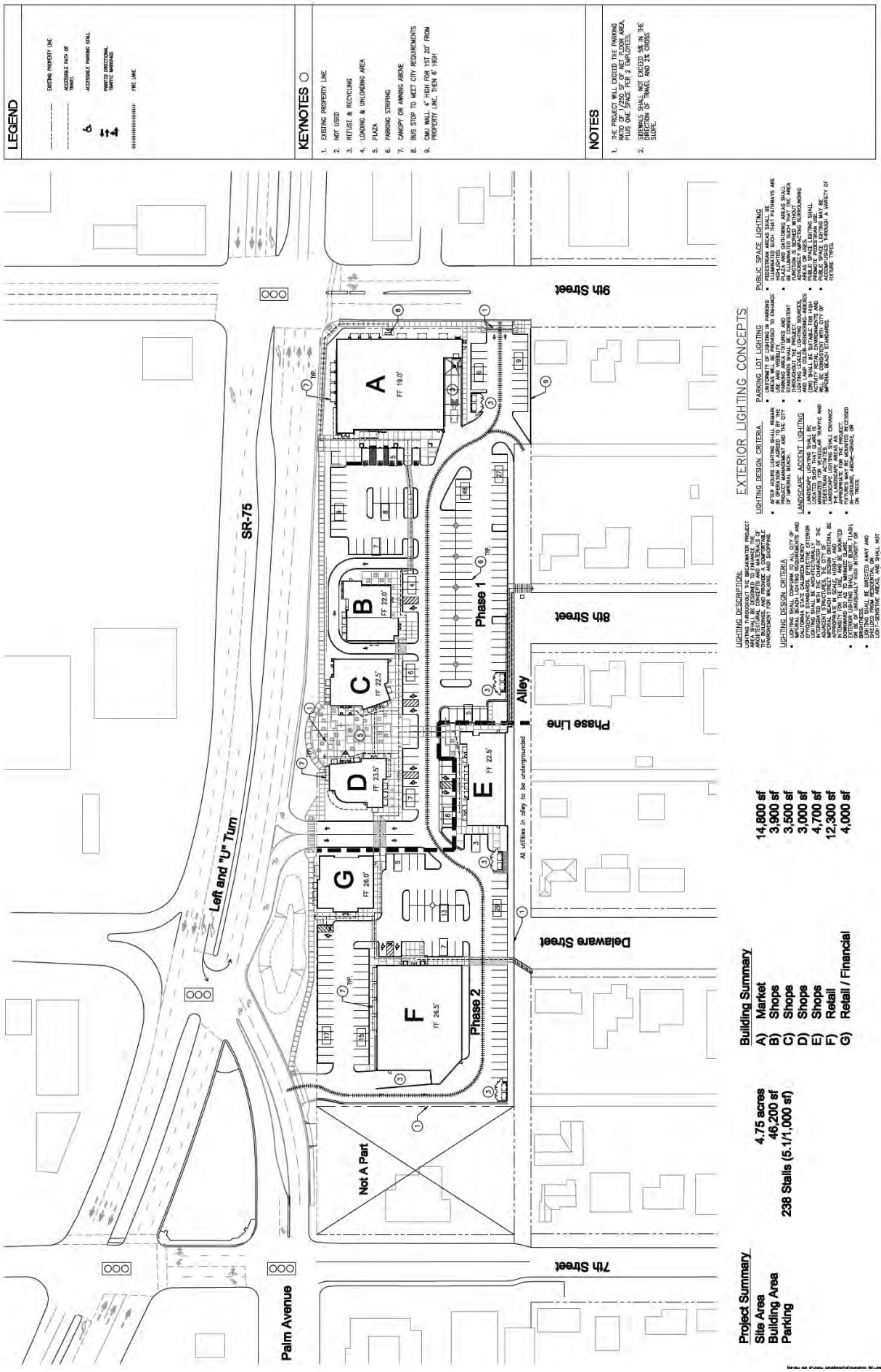
APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

ATTACHMENT NO. 1
SITE MAP



ATTACHMENT NO. 2

LEGAL DESCRIPTION

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 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 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 SOUTH 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:

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, DESCRIBED AS 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.

PARCEL C:

EIGHTH STREET:

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 UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, DESCRIBED AS FOLLOWS:

BEING THE EAST ONE HALF OF 8th STREET, FORMERLY 12th STREET, AS SHOWN ON THE SUBDIVISION MAP OF R. MERIDEATH JONES SUBDIVISION, MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 29, 1908, SAID MAP BEING VACATED MARCH 22, 1923 BY DECREE IN SUPERIOR COURT ACTION 38686 AND FILED IN DEED BOOK 935, PAGE 181 ON SAME DATE.

EXCEPT ANY PORTION LYING SOUTH OF THE NORTH LINE OF SOUTH CORONADO MANOR, AS SHOWN ON MAP NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20,1948; AND ANY PORTION LYING NORTH OF THE SOUTH RIGHT OF WAY LINE OF CALIFORNIA STATE ROUTE 75 AS GRANTED TO THE STATE OF CALIFORNIA PER BOOK 1526, PAGE 405, RECORDED AUGUST 24, 1943.

END OF LEGAL DESCRIPTION

METHOD OF FINANCING

Any terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase and Sale 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 Purchaser to acquire the Site and develop and construct the Improvements is approximately $13,824,000 (the "Total Acquisition and Development Costs"), which includes $11,262,000 in Purchaser costs and approximately $2,200,000 in Public Improvement Costs (and costs for Site Preparation Design Work).

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 loans and Purchaser 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 Purchaser and reasonably approved by Successor Agency 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 Successor Agency shall be responsible, solely from Series 2010 Bond Proceeds, for providing $2,200,000 for the planning, permitting, construction and installation of the Public Improvements and costs for Site Preparation Design Work, of which the "Disbursed Funds" have previously been disbursed. To the extent Purchaser defers construction of any of the Public Improvements to Phase 2, the Sources and Uses shall be revised accordingly.

(b) 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.

(c) 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.

(d) Equity shall be provided by Purchaser ("Purchaser Equity"), in an amount to be determined. Purchaser Equity consists of funds provided by Purchaser that are not secured by any deed of trust.

(e) Purchaser 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.

3. **Project Budget**. The Parties anticipate that all Acquisition and 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 Successor Agency Executive Director (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 Acquisition and Development Costs as set forth in the most recently approved Project Budget. Pursuant to Section 110 of the Agreement, Purchaser shall submit to the Successor Agency Executive Director 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 Successor Agency Executive Director shall not unreasonably withhold approval thereof. On or before the applicable Closing Date, Purchaser shall provide written certification to the Successor Agency that such financing documents are correct copies of the actual documents to be executed by Purchaser. 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, Purchaser shall demonstrate to the reasonable satisfaction of the Successor Agency Executive Director the availability of additional Purchaser Equity sufficient to pay such costs.

5. **Purchaser's Purchase Price**.

a. Purchaser shall pay to the Successor Agency the Purchase Price for the Site in the amount of $213,000, plus the Participation Component described below.

b. The Purchase Price has been established in accordance with a current appraisal of the Site.

c. The Purchase Price to be paid for the Site by Purchaser 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, Purchaser shall also pay to the Successor Agency as a portion of the Purchase Price the Participation Component pursuant to the Payment Agreement and Section 201.b. of the Agreement.

b. Purchaser's obligation to pay Successor Agency the Participation Component of the Purchase Price shall be secured by the Successor Agency Deed of Trust, which shall be recorded against the Site at the Close of Escrow.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

A. General

1. This Scope of Development establishes the responsibilities of the Purchaser 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 Purchase and Sale Agreement 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 Successor Agency to enhance overall Project design. It shall be the Purchaser'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 Successor Agency staff for approval. Any substantial changes to the approved drawings shall require Successor Agency approval.

3. The development is planned to be on the Site described in the Purchase and Sale Agreement, 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 Purchase and Sale Agreement.

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 Purchase and Sale Agreement.

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 Successor Agency staff in accordance with the terms of the Purchase and Sale Agreement. 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. Purchaser 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 Purchaser 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. Purchaser 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. Purchaser 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. Purchaser 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 Purchase and Sale Agreement and shall meet all applicable City standards.

C. Site Preparation by Purchaser. Purchaser 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. Purchaser 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 Purchaser 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. Purchaser 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 Purchaser's responsibility.

R. Energy Conservation: The Purchaser 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 Purchaser 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 Purchaser 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 Purchaser shall prepare and submit to the Successor Agency Executive Director 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 Purchaser shall submit status reports, as reasonably requested by Successor Agency 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 Successor Agency-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 Purchaser 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, Purchaser 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
____ Purchaser'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

Purchaser 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

Purchaser 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. Purchaser 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

Purchaser 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 Successor Agency pursuant to the Purchase and Sale 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 Purchase and Sale Agreement.

AA. Site Preparation Design Work

The Site Preparation Design Work shall include that work included in Exhibit A, which is attached hereto and incorporated herein by reference.

EXHIBIT A

Site Preparation Design Work

[BEHIND THIS PAGE]

IMPERIAL BEACH

EXHIBIT A – SCOPE OF WORK

SITE PREPARATION DESIGN WORK
FOR CALTRANS – ENCROACHMENT SUBMITTAL

In order to submit for the Encroachment Permit for all Highway Improvements at one time and expedite approval and the reconfiguration process to SR-75, the following on and off-site preparation design work is required:

Imperial Beach Site Preparation and Encroachment Submittal Design Budget

Item l – Survey and Right of Way Mapping Services	**City Budget**
Pothole Exhibit/Survey	$ 1,500
Supplemental Survey	$ 2,000
SR75 Relinquishment Plat	$ 3,500
SR75 Dedication Plat	$ 3,500
Palm Street Dedication	$ 2,500
Subtotal Item l – Survey/Mapping	$ 13,000
Item ll – Construction Documents	
Mass Grading Plan	$ 6,000
Grading Plan Processing	$ 3,200
Public Improvement Plan	$ 35,000
SR75 Median Pockets and Pedestrian Refuge	$ 9,000
Public Improvement Plan Processing	$ 3,200
Caltrans Coordination	$ 20,000
Final Drainage Study	$ 5,000
General Meetings and Coordination	$ 5,000
Subtotal Item ll – Construction Documents	$ 86,400
Grand Total	**$ 99,400**

ATTACHMENT NO. 5

TO PURCHASE AND SALE AGREEMENT

SCHEDULE OF PERFORMANCE

	Action to be Taken	**Time of Performance**
	Actions relating to Design Requirements	
1.	Submission – Basic Concept/Schematic Design Drawings. Purchaser shall submit Basic Concept Drawings for the Project.	Concurrently with execution and delivery to the Successor Agency of the Purchase and Sale Agreement by Purchaser.
2.	Approval – Basic Concept/Schematic Design Drawings. Successor Agency shall review and approve or disapprove the Basic Concept/Schematic Design Drawings.	Concurrently with approval of the Purchase and Sale Agreement by the Successor Agency Board.
3.	Submission – Design Development Drawings, Landscape Plan and Grading Plans. Purchaser (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 the Effective Date of the Purchase and Sale Agreement. Phase 2: Not later than 180 days prior to Phase 2 Closing Date.
4.	Approval – Design Development Drawings, Landscape Plan and Grading Plans. Successor Agency 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. Purchaser (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. Successor Agency 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. Purchaser (and Assignee, if applicable) shall obtain and submit to Successor Agency 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. Purchaser shall submit the Evidence of Financing for the applicable Phase as required by Purchase and Sale Agreement 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. Successor Agency Executive Director or designee shall approve or disapprove evidence of financing. Purchase and Sale Agreement Section 110.	Not later than ten (10) Business Days after complete submittal; five (5) Business Days for resubmittals and revisions.
10.	CC&R's. Purchaser shall submit CC&Rs to the Successor Agency for review pursuant to Purchase and Sale Agreement Section 407.	Not later than thirty (30) days prior to the scheduled Close of Escrow.

	Action to be Taken	**Time of Performance**
11.	Review of CC&Rs. Successor Agency Executive Director shall approve or disapprove of CC&Rs.	Not later than thirty (30) days after complete submittal; fifteen (15) days for resubmittals and revisions.
12.	Submission – Evidence of Satisfaction of Conditions Precedent to Close of Escrow and Phase 1 Closing. Purchaser shall submit documentation that all Conditions Precedent to the Close of Escrow and Phase 1 Closing set forth in Purchase and Sale Agreement Section 208 have been satisfied.	Unless specifically provided otherwise in the Purchase and Sale Agreement 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. Successor Agency Executive Director 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. Purchaser shall submit documentation that all Conditions Precedent to the Phase 2 Closing set forth in Purchase and Sale Agreement Section 220 have been satisfied.	Unless specifically provided otherwise in the Purchase and Sale Agreement 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. Successor Agency Executive Director 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.

	Action to be Taken	Time of Performance
Actions relating to Closings		
16.	Open Escrow. Successor Agency to open Escrow for the conveyance of the Site.	Not later than thirty (30) days prior to the scheduled Close of Escrow.
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 Purchase and Sale Agreement, subject to extension by the Successor Agency Executive Director pursuant to Purchase and Sale Agreement 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 Purchase and Sale Agreement.
Actions relating to Construction		
19.	Commencement of Construction of Phase 1 Public Improvements. Purchaser 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. Purchaser shall complete the construction of all Public Improvements, except those deferred to Phase 2 pursuant to Purchase and Sale Agreement Section 219.c.4.	Not later than the scheduled Phase 1 Completion Date.

	Action to be Taken	**Time of Performance**
21.	Commencement of Construction of Phase 1 Improvements. Purchaser (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.
22.	Completion of Construction of Phase 1 Improvements ("Phase 1 Completion Date"). Purchaser (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. Purchaser (and Assignee, if applicable) shall commence construction of the Phase 2 Improvements as required by the Purchase and Sale Agreement 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"). Purchaser (and Assignee, if applicable) shall complete construction of the Phase 2 Improvements as required by the Purchase and Sale Agreement.	Not later than eighteen (18) months after the Phase 2 Closing (i.e., 60 months after Effective Date).

Imperial Beach

09/16/13

Based on CSI Cost estimates - 9.9.13

DEVELOPMENT PROFORMA

LAND COST:	4.75 net acres, or	206,910 SF					**$213,000**
CITY REIMBURSEMENT OF OFFSITES							**($2,160,000)**
ENTITLEMENT APPROVALS and DUE DILIGENCE EXPENSE TO DATE:							**$475,000**
MND consultants (Planning , Legal, Architect, Civil, Landscape, Utiltiy, Etc.)							
Phase I							
Title/Escrow							
Soils Testing							
ON AND OFF HARD SITE COST: (Per CSI)		206,910 SF	x $	20.12 /SF			**$4,163,029**
ON AND OFF SOFT SITE COST (Consultants & Fees): (Per CSI if design bui		206,910 SF	x $	3.00 /SF			**$620,730**
BUILDING COSTS: (Including Courtyard or "Curb line in" expenses)							
Bldg A	Full BTS-Prevailing Wage	16,000 SF	x	$135.00 /SF	2,160,000		
Bldg B,C, D: Shops	Raw Shell-Prevailing Wage	10,400 SF	x	$150.00 /SF	1,560,000		
Bldg E: Shops (POTENTIALLY PHASED)	Raw Shell-Prevailing Wage	4,000 SF	x	$150.00 /SF	600,000		
Bldg G: Shops	Raw Shell-Prevailing Wage	3,500 SF	x	$150.00 /SF	525,000		
Bldg. F: Mini Anchor	Full BTS-Prevailing Wage	10,000 SF	x	$140.00 /SF	1,400,000		
Extra TI's - Shops		17,900 SF	x	$30.00 /SF	537,000		
Subtotal Building Costs		43,900 SF			6,782,000		
Grease Traps					25,000		
StreetScene Furnishings/Amenities					75,000		
Building Permits &Fees		Subtotal Building Cost	x	2.00 %	271,280		
		Total Building Costs					**$7,153,280**
ARCHITECT							
Design Input/Guidelines					25,000		
Shop & Major Coordination					25,000		
Bldg A	Full BTS-Prevailing Wage	16,000 SF	x	6.50 /SF	104,000		
Bldg B,C, D: Shops	Raw Shell-Prevailing Wage	10,400 SF	x	8.00 /SF	83,200		
Bldg E: Shops	Raw Shell-Prevailing Wage	4,000 SF	x	8.00 /SF	32,000		
Bldg G: Shops	Raw Shell-Prevailing Wage	3,500 SF	x	8.00 /SF	28,000		
Bldg. F: Mini Anchor	Full BTS-Prevailing Wage	10,000 SF	x	7.00 /SF	70,000		
Reimbursables		Subtotal Architect	x	10.00 %	12,900		
		Total Architect					**$380,100**
LEASING COMMISSIONS							
Bldg A		16,000 SF	x $	6.25 /SF	100,000		
Bldg B,C, D: Shops		10,400 SF	x $	12.00 /SF	124,800		
Bldg E: Shops		4,000 SF	x $	12.00 /SF	48,000		
Bldg G: Shops		3,500 SF	x $	12.00 /SF	42,000		
Bldg. F: Mini Anchor		10,000 SF	x $	7.50 /SF	75,000		
		Total Leasing Commissions					**$389,800**
LEGAL/ACCT/ADMIN.:							**$100,000**
MARKETING/GRAND OPENING:							**$15,000**
OVERHEAD & SUPERVISION:		2.99 %	x Total Cost to Develop				**$400,000**
$ **TAXES DURING CONSTRUCTION:**							**$40,000**
* **INSURANCE DURING CONSTRUCTION:**							**$30,000**
@ **LIABILITY INSURANCE DURING CONSTRUCTION**							**$20,000**
^ **LEASE-UP EXPENSE**							**$35,000**
FINANCING COST:							
Legal/Title/Survey/Inspection:			Construction & Permanent Loan				**$150,000**
Loan Points Mini-Perm				2.00 %	x	$ 13,200,000	**$264,000**
Construction Interest	15 Mo X	5.00 %		0.55 %	x	$ 13,200,000	**$453,750**
				Subtotal Cost:			**$12,742,689**
CONTINGENCY		4.68 %	x Total Cost to Develop				**$625,000**
							$13,367,689
TOTAL COST TO DEVELOP					say...		**$13,368,000**

Imperial Beach

09/16/13

INCOME AND EXPENSE PROFORMA

SCHEDULED GROSS INCOME:						
Bldg A	16,000 SF	x $	1.79	/SF/Mo	X 12 Mo	**$343,200**
Bldg B,C, D: Shops	10,400 SF	x $	2.50	/SF/Mo	X 12 Mo	**$312,000**
Bldg E: Shops	4,000 SF	x $	2.00	/SF/Mo	X 12 Mo	**$96,000**
Bldg G: Shops	3,500 SF	x $	2.35	/SF/Mo	X 12 Mo	**$98,700**
Bldg. F: Mini Anchor	10,000 SF	x $	1.58	/SF/Mo	X 12 Mo	**$189,600**
			Total Scheduled Gross Income			**$1,039,500**
LESS: Vacancy	5.00 %	Shops				**($25,335)**
EFFECTIVE GROSS INCOME						**$1,014,165**
LESS EXPENSES:	All Leases are Net,Net, Net, Including Property Management, & Roof					
Management @ 1.5% net of reimbursement						**($15,212)**
CAM for Vacant Space	720 SF	x $	0.60	/SF/Mo	X 12 Mo	**($5,184)**
Reserves	2.00 %	x	Effective Gross Income			**($6,240)**
NET OPERATING INCOME (NOI):						**$987,529**
LESS: Debt Service	7.00 k	x		$	13,200,000	**($924,000)**
PROJECTED CASH FLOW:						**$63,529**

L OAN & FINANCIAL ANALYSIS

LOAN INFORMATION:

NOI	$	987,529	Capitalized	@	7.00%	$14,107,550
Value:				say...		**$14,108,000**

LOAN ASSUMPTIONS:

Construction & Permanent: **$13,367,689**

RETURN ON COST:

NOI $ 987,529 /Total Cost to Develop $ 13,368,000 **7.39%**

LOAN TO VALUE:						**94%**
DEBT COVERAGE RATIO						**1.07**
PROJECTED GROSS PROFIT:	VALUE:	NOI $ 987,529	Capitalized	@	7.00%	**$14,108,000**
		Less Sales Costs:	Value	X	2.00%	**($282,160)**
	NET PROCEEDS					**$13,825,840**
		LESS TOTAL COST TO DEVELOP				**($13,368,000)**
	PROJECTED PRE-TAX PROFIT:					**$457,840**
						$457,840
	PROJECTED PRE-TAX PROFIT:			say...		**$458,000**

NOTES

$ Equal to 1.25% of initial Land Cost of Shopping Center for 15 months.

* Estimated by a Calculation of Hard Costs / Soft Costs / and Gross Income

^ CAM on shops/retail space @ $.60/s.f./mo. for 6 months.

Chicago Title Company

Builders Services Division
2365 Northside Drive, Suite 500, San Diego, CA 92108 (619) 521-3400

Title Department:

Chicago Title Company
Attn: Tom Votel/Ken Cyr
Email: votelt@ctt.com & ken.cyr@ctt.com
Phone: (619) 521-3553 & (619) 521-3555
Fax: (619) 521-3608
Order No.: 12201261-996-U50

Customer:

City of Imperial Beach
Attn: Greg Wade

SECOND AMENDED PRELIMINARY REPORT

Property Address: 735, 759, 761 - 775 & 827 Palm Ave., Imperial Beach, CA

Dated as of: September 5, 2013 at 7:30 am

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 or 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 Exclusion 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(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company

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.

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY

SCHEDULE A

1. The estate or interest in the land hereinafter described or referred to covered by this report is:

   A Fee

2. Title to said estate or interest at the date hereof is vested in:

   IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity

3. The land referred to in this report is situated in the State of California, County of San Diego and is described in the Legal Description, attached hereto:

END OF SCHEDULE A

LEGAL DESCRIPTION

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 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 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 SOUTH 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:

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

LEGAL DESCRIPTION
(continued)

FEBRUARY 25, 1870, DESCRIBED AS 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.

PARCEL C:

EIGHTH STREET:

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 UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, DESCRIBED AS FOLLOWS:

BEING THE EAST ONE HALF OF 8th STREET, FORMERLY 12th STREET, AS SHOWN ON THE SUBDIVISION MAP OF R. MERIDEATH JONES SUBDIVISION, MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 29, 1908, SAID MAP BEING VACATED MARCH 22, 1923 BY DECREE IN SUPERIOR COURT ACTION 38686 AND FILED IN DEED BOOK 935, PAGE 181 ON SAME DATE.

EXCEPT ANY PORTION LYING SOUTH OF THE NORTH LINE OF SOUTH CORONADO MANOR, AS SHOWN ON MAP NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20,1948; AND ANY PORTION LYING NORTH OF THE SOUTH RIGHT OF WAY LINE OF CALIFORNIA STATE ROUTE 75 AS GRANTED TO THE STATE OF CALIFORNIA PER BOOK 1526, PAGE 405, RECORDED AUGUST 24, 1943.

END OF LEGAL DESCRIPTION

SCHEDULE B

At the date hereof, items to be considered and exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. Taxes exempt.

2. 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

MATTERS AFFECTING PARCEL A

3. Rights of the public to use the streets as dedicated on Map No. 1145, of R. Merideath Jones' Addition to South San Diego.

4. The right to construct, operate, and maintain a water pipe line at a depth of not less than 2-1/2 feet below the surface, over and across said land, as granted to F. D. Warner, in deed recorded October 7, 1925, in Book 1109, page 212 of deeds.

   The exact location and extent of said easement is not disclosed of record.

5. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	Imperial Beach Sanitation District
Purpose:	Sewers
Recorded:	May 11, 1951 in Book 4095, Page 353 Official Records
Affects:	The route thereof affects a portion of said land and is more fully described in said document.

6. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	The County of San Diego
Purpose:	public road purposes
Recorded:	August 9, 1951 in Book 4198, page 174 of Official Records
Affects:	The South 20 feet of said land

   Said instrument additionally contains the privilege and right to extend drainage structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof

7. Covenants, conditions and restrictions ("but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry" as set forth in the document

SCHEDULE B
(continued)

Recorded: May 5, 1952 in Book 4457, page 294 as Instrument No. 54854 of Official Records

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

Note: If you should request a copy of the document referred to above, California Law requires that a county recorder, title insurance company, escrow company, real Estate broker, real Estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover Page over, or stamp on the first Page of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

8. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	San Diego Gas and Electric Company
Purpose:	public utilities, ingress, egress
Recorded:	July 25, 1984 as Instrument No. 84-281556 of Official Records
Affects:	The exact location and extent of said easement is not disclosed of record

9. A notice of assessment for assessment District No. 67-m recorded June 23, 1992 as File No. 1992-0389944 of Official Records.

10. A notice of assessment for assessment District No. 68 (alleys) recorded July 8, 1994 as file no. 1994-0428705 of Official Records.

11. The fact that said land 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
Recorded:	February 8, 1996 as Instrument No. 1996-0065030 and February 27, 1996 as Instrument No. 1996-0094070, both of Official Records

12. A Resolution of the city council of the City of Imperial Beach, California, 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 of official records.

13. The fact that said land 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.

SCHEDULE B
(continued)

Redevelopment Agency:	Palm Avenue/Commercial Redevelopment Project Area
Recorded:	July 27, 2007 as Instrument No. 2007-0502890 of Official Records

THE FOLLOWING MATTERS AFFECT PARCEL B

14. Right of the public use for public street purposes those portions of the property herein described lying within the boundaries of all the streets and alleys shown on map of R. Merideath Jones addition to South San Diego, No. 1145, filed in the county recorder's office July 29, 1908.

15. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	F. D. Warner
Purpose:	water pipeline and incidental purposes
Recorded:	Book 1109, page 212 of Deeds
Affects:	The exact location and extent of said easement is not disclosed of record

The interest of F. D. Warner and Mabel R. Warner, husband and wife, has since passed to Hobart Homes, Inc., a corporation, as disclosed by a quitclaim deed recorded January 8, 1948 as File No. 2058 of Official Records.

16. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	Imperial Beach Sanitation District
Purpose:	Sewers
Recorded:	May 11, 1951 in Book 4095, Page 353 Official Records
Affects:	The route thereof affects a portion of said land and is more fully described in said document.

17. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	County of San Diego
Purpose:	public road purposes
Recorded:	August 9, 1951 in Book 4198, page 174 of 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 drainage structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof

18. Covenants, conditions and restrictions ("but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry" as set forth in the document

SCHEDULE B
(continued)

Recorded: May 5, 1952 in Book 4457, page 417 of Official Records

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

Note: If you should request a copy of the document referred to above, California Law requires that a county recorder, title insurance company, escrow company, real Estate broker, real Estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover Page over, or stamp on the first Page of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

19. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Purpose:	ingress and egress for road purposes
Recorded:	July 30, 1953 in Book 4938, page 199 of Official Records
Affects:	The route thereof affects a portion of said land and is more fully described in said document.

20. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	San Diego Gas and Electric Company
Purpose:	public utilities, ingress, egress
Recorded:	June 3, 1980 as Instrument No. 80-178475 of Official Records
Affects:	The exact location and extent of said easement is not disclosed of record

21. An Agreement, and the terms and conditions as contained therein

By and Between:	City of Imperial Beach and Sam Dimenstein
Recorded:	November 18, 1981 as Instrument No. 81-364713 of Official Records
Regarding:	Underground Agreement

Reference is hereby made to said document for full particulars.

22. The fact that said land 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)

SCHEDULE B
(continued)

Recorded: February 8, 1996 as Instrument No. 1996-0065030 of Official Records and July 27, 2007 as Instrument No. 2007-0502890 of Official Records

Statement that Redevelopment Proceedings have been instituted recorded February 27, 1996 as Instrument No. 1996-0094070 of Official Records.

23. Matters contained in "Notice of Intent to Lien", recorded September 19, 1997 as Instrument No. 1997-0461749 of Official Records.

24. A Resolution of the city council of the City of Imperial Beach, California, confirming the diagram and assessment and providing for the levy of the annual assessment in a special maintenance district recorded April 28, 2000 as File No. 2000-0459549 of Official Records.

MATTERS AFFECTING PARCEL C

25. Right of the public use for public street purposes those portions of the property herein described lying within the boundaries of all the streets and alleys shown on map of R. Merideath Jones addition to South San Diego, No. 1145, filed in the county recorder's office July 29, 1908.

26. Covenants, conditions and restrictions (but omitting any covenant or restrictions, if any, based upon on 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

Recorded: January 17, 2013, as Instrument No. 2013-0036059 of Official records

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

MATTERS AFFECTING PARCELS A AND B

27. A Deed of Trust to secure performance under an agreement referred to therein, and any other obligations secured thereby.

Dated: Not stated
Trustor: Redevelopment Agency of the City of Imperial Beach
Trustee: First American Title Company, a California corporation

SCHEDULE B
(continued)

Beneficiary: City of Imperial Beach
Recorded: March 10, 2011 as Instrument No. 2011-0131285 of Official Records.

28. Covenants, conditions and restrictions ("but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry" as set forth in the document

    Recorded: March 10, 2011 as Instrument No. 2011-0131286 of Official Records

    Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

    Note: If you should request a copy of the document referred to above, California Law requires that a county recorder, title insurance company, escrow company, real Estate broker, real Estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover Page over, or stamp on the first Page of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

29. A document subject to all the terms, provisions and conditions therein contained.

    Entitled: Memorandum of Option Agreement
    Recorded: March 10, 2011 as Instrument No. 2011-0131442 of Official Records

    Reference is hereby made to said document for full particulars.

30. "Any claim that the transaction vesting the Title as shown in Schedule A or creating the lien of the Insured Mortgage, or any other transaction occurring on or prior to Date of Policy in which Redevelopment Agency of the City of Imperial Beach or its successors transferred, acquired, or made any agreement affecting the title to or any interest in the Land, is void or voidable, or subject to termination, renegotiation, or judicial review, under California Assembly Bill 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session)."

31. Approval of the policy or commitment of title insurance anticipated by this report by Regional Counsel of the Company is required prior to recordation of the instruments required to complete this transaction and the issue of such policy or commitment. The right is reserved to make additional exceptions and/or requirements upon such review.

SCHEDULE B
(continued)

32. Covenants, conditions and restrictions (but omitting any covenant or restrictions, if any, based upon on 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

    Recorded: January 17, 2013, as Instrument No. 2013-0036059 of Official records

    Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

33. Water rights, claims or title to water, whether or not shown by the public records.

34. Matters which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said land that is satisfactory to this Company, and/or by inquiry of the parties in possession thereof.

    This office must be notified at least 7 business days prior to the scheduled closing in order to arrange for an inspection of the land; upon completion of this inspection you will be notified of the removal of specific coverage exceptions and/or additional exceptions to coverage.

35. Any rights of parties in possession of said land, based on any unrecorded lease, or leases.

    This Company will require a full copy of any unrecorded lease, together with all supplements, assignments, and amendments for review.

END OF SCHEDULE B

INFORMATIONAL NOTES

Note No. 1: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

Note No. 2: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, 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.

Fidelity National Financial, Inc
Privacy Statement

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 FNFs 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, 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 transactions, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded.

Disclosure of Personal Information
We may provide your Personal Information (excluding information we receive from our 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 connections with an insurance transactions;
- 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, or 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 had 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.

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 outlines 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 regulation 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 Drive
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 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.

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.

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.

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.

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 judgement 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.

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.

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

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

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.

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 $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 the 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.

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

FNF Underwritten Title Companies
CTC – Chicago Title Company

FNF Underwriters
CTIC – Chicago Title Insurance Co.

Available Discounts

CREDIT FOR PRELIMINARY TITLE REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES
Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 - 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge within the following time period from the date of the report.

FEE REDUCTION SETTLEMENT PROGRAM
Eligible customers shall receive a $20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in The People of the State of California.

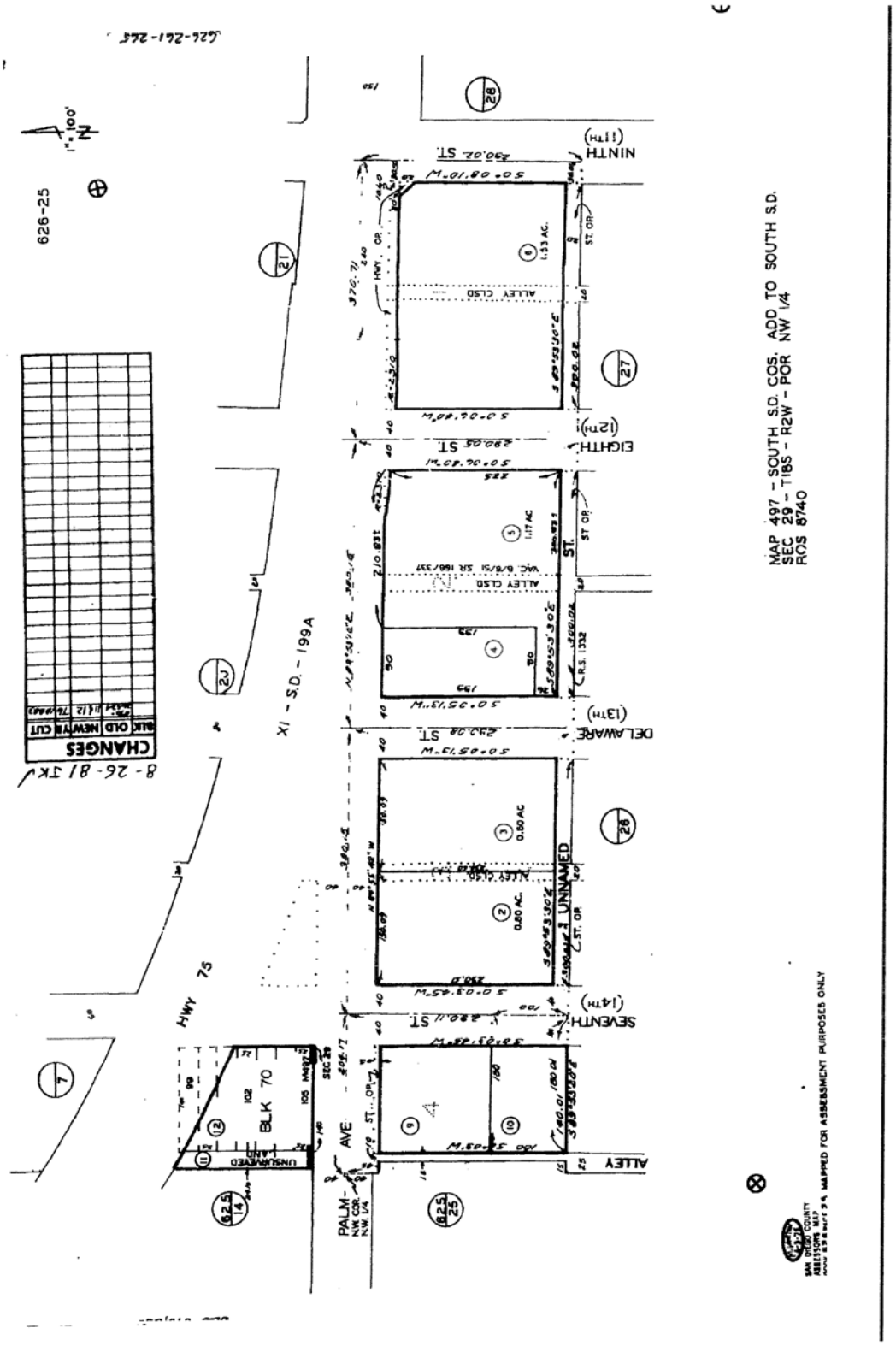
DISASTER LOANS
The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS
On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 32% to 50% of the appropriate title insurance rate, depending on the type of coverage selected.

SHORT TERM RATE
The Short Term Rate is a reduction of the charges shown in the Insurance Tables which is allowable only when the current order is placed within 60 months from the date of issuance of a prior CLTA or ALTA Form of Policy of any qualified title insurer and provided further that the grantor, borrower, lender, lessor or assignor is insured by or under the terms of a prior policy, or is the vested owner of the interest insured by said policy. The short term rate is 64% to 92% of the appropriate title insurance rate depending on the type of coverage selected.

EMPLOYEE RATE
No charge shall be made to employees (including employees on approved retirement) of the Company or its underwritten, subsidiary or affiliated title companies for policies or escrow services in connection with financing, refinancing, sale or purchase of the employees' bona fide home property. Waiver of such charges is authorized only in connection with those costs which the employee would be obligated to pay, by established custom, as a party to the transaction.

(continued)


626-25
CHANGES
8-26-81 TK
XI - S.D. - 199A
HWY 75
BLK 70
UNNAMED LANE
PALM AVE
ALLEY
SEVENTH (14TH) ST
DELAWARE (13TH) ST
EIGHTH (12TH) ST
NINTH (11TH) ST
UNNAMED ST
ALLEY CLSD
MAP 497 - SOUTH S.D. COS. ADD TO SOUTH S.D.
SEC 29 - T18S - R2W - POR NW 1/4
ROS 8740
SAN DIEGO COUNTY ASSESSOR MAP

Chicago Title Company

Builders Services Division
2365 Northside Drive, Suite 500, San Diego, CA 92108 (619) 521-3400

SUPPLEMENTAL REPORT

September 23, 2013

Attn: Greg Wade
Company: City of Imperial Beach
Address: 825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Your No.: 735, 759, 761-775 & 827 Palm Avenue, Imperial Beach, CA

Order No.: 12201261-996-U50

Date as of: September 5, 2013

The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented to reflect the following additional items:

Exception No. 19 of said preliminary report is hereby deleted in its entirety.

Sincerely,

Ken Cyr

Tom Votel / Ken Cyr
Senior Title Officers
Builders Services Division
Direct: (619) 521-3553 & (619) 521-3555
Fax: (619) 521-3608

Email: votelt@ctt.com & ken.cyr@ctt.com

ATTACHMENTS 8 – 11

WILL BE PROVIDED AS SOON AS THEY ARE AVAILABLE

OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR PURCHASE OF "PROPERTY 2"

To: _____ Escrow No.: _____
_____ ("Escrow")
("Escrow Holder" and "Title Company")
_____
_____, California _____
Attn.: _____, Escrow Officer
Telephone: (____) _____-_____
Facsimile: (____) _____-_____

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 ("Purchaser"), and IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency" or "Optionee"), each a "Party" and collectively, the "Parties" to this Option Agreement.

R E C I T A L S

A. This Option Agreement is entered into pursuant to that certain Purchase and Sale Agreement dated as of _____, 201___, ("Purchase Agreement"). The Purchase Agreement provides for the redevelopment of certain real property described in the Purchase Agreement as the "Site" with commercial and retail buildings, landscaping, parking and related improvements ("Project"), as more specifically described in the Purchase Agreement. The term "Purchase Agreement" as used herein shall mean, refer to and include the Purchase Agreement, 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 Purchase Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

B. In accordance with the Purchase Agreement, the Successor Agency has conveyed to Purchaser title to Site, consisting of two properties, described in the Purchase Agreement and referred to as "Property 1" and "Property 2". 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 Option Agreement, and in accordance with the Purchase Agreement, the Successor Agency desires to acquire an option to purchase fee title in Property 2 from Purchaser and Purchaser desires to grant to Successor Agency an option to purchase fee title in Property 2 from Purchaser.

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, Successor Agency shall 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 Purchaser's right, title and interest in and to all Improvements, easements, appurtenances, and other intangible property of Purchaser to said land (collectively herein, "Property 2").

1.2 The Option shall commence upon the Close of Escrow (as defined in the Purchase Agreement) conveying title to the Site to Purchaser, and end at 5:00 p.m. on_____, 201_____ (i.e., the date that is 48 months after the Close of Escrow (as defined in the Purchase Agreement) conveying title to the Site to Purchaser), 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, subject to a day-for-day extension for any extension of the Phase 2 Closing Date in accordance with the Purchase Agreement including due to Force Majeure delay as provided in Section 602 of the Purchase Agreement (the "Option Term") (for example purposes only, if the Phase 2 Closing Date is extended by 6 months to 48 months after the Effective Date, then the Option Term would likewise be extended by 6 months to the date that is 54 months after the Close of Escrow (as defined in the Purchase Agreement) conveying title to the Site to Purchaser).

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") as and for the full and complete option purchase price for Property 2.

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 1.2 of this Option Agreement, above, Successor Agency shall have the right to exercise the Option, by delivering written notice (the "Option Notice") to Purchaser, or its successor or assignee, and to any Permitted Lender whose security instrument encumbers any of Property 1, stating that Successor Agency elects to purchase Property 2 upon the terms and conditions set forth in this Option Agreement. For purposes of this Option Agreement, if Successor Agency delivers such Option Notice, Successor Agency may be referred to as the "Optionee". The Successor Agency Executive Director is hereby authorized to exercise the Option on behalf of the Successor Agency without any further approval by the Successor Agency Board.

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) A default by Purchaser under the terms of the Purchase Agreement that is not cured within the time provided in the Purchase Agreement, if any, including, but not limited to, any of the events of default described in Sections 510.b. or 510.c. of the Purchase Agreement, at any time after Purchaser takes title to the Site under the Purchase Agreement but before the occurrence of the "Phase 2 Closing" (as defined in the Purchase Agreement); and

(ii) The failure of the "Phase 2 Closing" (as defined in the Purchase Agreement) to occur by the Phase 2 Closing Date (as defined in the Purchase Agreement), subject to any extensions of the Phase 2 Closing Date in accordance with the terms of the Purchase Agreement, and subject to Force Majeure delay as provided in Section 602 of the Purchase Agreement.

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. Unless the Option has been exercised, upon the final day of the Option Term or upon the earlier occurrence of the Phase 2 Closing, Successor Agency 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 shall deliver to Escrow Holder a fully-executed copy of this Option Agreement within five (5) business days after the Option Notice Date (as defined below). As used in this Option Agreement, the term "Option Notice Date" shall mean the date on which Optionee shall have delivered the Option Notice to Purchaser, or its successor or assignee, and to any Permitted Lender whose security instrument encumbers any of Property 1, in accordance with this Option Agreement. When the fully-executed copy of this Option Agreement is delivered to Escrow Holder, as provided above, Escrow shall be deemed opened ("Opening of Escrow"). Escrow

Holder shall immediately notify Successor Agency and Purchaser, 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 Option Term Purchaser shall, in accordance with all of the terms and conditions of the Purchase Agreement, have the right and intends to construct and install Horizontal Improvements on the Site, consisting of public improvements and utilities required to be constructed or installed on or in connection with the anticipated development of the Site, 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, Purchaser shall maintain Property 2 or cause Property 2 to be maintained in a safe, neat and orderly condition and in accordance with industry health and safety standards for construction sites (the "Required Site Conditions"). At any time after delivery of an Option Notice, Optionee, without cost or expense to Purchaser, shall have the right to perform such investigation of the physical condition of Property 2 and the Improvements, as Optionee shall deem necessary. Upon notice from the Optionee, Purchaser shall promptly, without cost to the Optionee, take such actions as may be necessary to restore Property 2 to the Required Site Conditions, to the reasonable satisfaction of the Optionee. Any and all costs, fees and expenses to restore Property 2 to the Required Site Conditions to the reasonable satisfaction of the Optionee shall be the responsibility of Purchaser and shall be paid by Purchaser prior to conveyance of Property 2 to the Optionee pursuant to this Option Agreement.

3.2 Environmental Conditions. Reference is hereby made to that certain Environmental Indemnity dated _____, 201_____, in the form attached to the Purchase Agreement as Attachment No. 10 (the "Environmental Indemnity"), which was executed by Purchaser for the benefit of City of Imperial Beach ("City") and Successor Agency. Purchaser shall comply with the Environmental Indemnity, and indemnify, defend and hold harmless City and Successor Agency, 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 Section 2.3 above, Purchaser shall have no right to encumber Property 2 with any deed of trust, mortgage, easement, lease, or other encumbrance against title to Property 2 or record any instrument 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, including any endorsements and other coverage reasonably requested by Optionee), in the liability amount of the fair market value of the Property 2, as reasonably estimated by Optionee, at the sole cost of Purchaser, insuring that fee simple merchantable title to Property 2 will vest in the Optionee upon the Closing Date

(described below), free and clear of all recorded and unrecorded possessory interests, liens, encumbrances, mortgages, deeds of trust, assessments, easements, leases and taxes, including, without limitation, any deed of trust securing a Permitted Deed of Trust, except those approved in writing by the Optionee; provided, however, easements or licenses necessary to facilitate the development of the Site in accordance with the Purchase Agreement may not be disapproved and Optionee shall not unreasonably withhold its approval of any other non-monetary matters affecting title. Any and all costs, fees and expenses to remove or satisfy any such possessory interests, liens, encumbrances, mortgages, deeds of trust, assessments, easements, leases and taxes shall be the responsibility of Purchaser and shall be paid by Purchaser prior to conveyance of Property 2 to the Optionee pursuant to this Option Agreement.

4. Closing of Escrow.

4.1 Closing Date.

4.1.1 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 Successor Agency. 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 Option Agreement.

4.3 Deposits to be Made by Purchaser. At or before 5:00 p.m. on the last business day immediately before the Close of Escrow, Purchaser shall deliver to Escrow Holder:

4.3.1 A grant deed conveying fee title to the Property, properly executed and acknowledged by Purchaser 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 Purchaser 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 Purchaser if appropriate, as may be necessary to Close Escrow and comply with this Option Agreement.

4.3.4 Any additional funds as may be necessary to comply with this Option Agreement.

4.4 Possession. Exclusive possession of Property 2 shall be given to the Optionee at the Close of Escrow.

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 Property 2 (as determined by the Successor Agency Executive Director) and insuring fee title is vested in the Optionee in accordance with this Option Agreement.

6. Specific Performance. If Purchaser defaults hereunder, the Successor Agency, at its option, may commence an action for specific performance of the terms of this Option Agreement pertaining to such default.

7. Successor Agency's Representations and Warranties. Successor Agency hereby represents and warrants to Purchaser 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. Successor Agency has the legal power, right and authority to enter into this Option Agreement and to consummate the transactions contemplated hereby. The individual executing this Option Agreement on behalf of Successor Agency has the legal power, right and actual authority to bind the Successor Agency to the terms and conditions of this Option Agreement.

7.2 Requisite Action. As of the date hereof, all requisite action has been taken by the Successor Agency in connection with the entering into of this Option Agreement and the consummation of the transactions contemplated hereby.

7.3 Validity. This Option Agreement and all documents required hereby to be executed by the Successor Agency are and shall be valid, legally binding obligations of and enforceable against the Successor Agency in accordance with their terms, subject to principles of equity and laws affecting creditors' rights generally.

8. Purchaser's Representations and Warranties. Purchaser hereby agrees and represents and warrants to Successor Agency 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. Purchaser has the legal power, right and authority to own property and to enter into this Option Agreement and the documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Option Agreement and the documents referenced herein on behalf of Purchaser have the legal power, right and actual authority to bind Purchaser 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 Purchaser in connection with the entering into of this Option Agreement and the documents referenced herein, and the consummation of the transactions contemplated hereby.

8.3 Validity. This Option Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms, subject to principles of equity and laws affecting creditors' rights generally.

9. Brokerage Commissions. Purchaser hereby represents and warrants to Successor Agency that Purchaser 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 Option Agreement. Successor Agency hereby represents and warrants to Purchaser that Successor Agency 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 Option 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 Option Agreement and the obligations of the Purchaser hereunder shall be binding upon Purchaser and its successors and assignees as to Property 2, and shall inure to the benefit of Successor Agency and its representatives, successors and assigns, whether such succession or assignment is voluntary, involuntary, by force of law or otherwise. Successor Agency shall have the right to assign this Option Agreement or any interest or right under this Option Agreement or under the Escrow or to appoint a nominee to act as Optionee under this Option Agreement. Successor Agency shall have the right to assign this Option Agreement and its rights, duties and obligations hereunder in its sole and absolute discretion so long as the assignee shall be bound by the terms and conditions of this Agreement.

10.2 Attorneys' Fees. In any action between the Parties arising out of this Option Agreement or the Escrow, or in connection with Property 2, 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 Option 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 Purchaser: 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@smcdslaw.com

If to Successor Agency: Imperial Beach Redevelopment Agency Successor Agency
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: Kendall D. Berkey
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 Successor Agency's or Purchaser'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. Purchaser and Successor Agency agree that this Option 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 Option 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 Option Agreement, the provisions of this Option 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 Option 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 Successor Agency and Purchaser shall mutually approve, and which do not materially alter the terms of this Option 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 Successor Agency or Purchaser, as between Successor Agency and Purchaser, 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/to Purchaser as of Close of Escrow, based on the most current statements and information available to Escrow Holder. Purchaser 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 before Close of Escrow.

10.6 Payment of Costs. Purchaser 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 Purchaser and Successor Agency with conformed copies of documents submitted for recording.

10.9 Delivery of Documents and Funds. Upon Close of Escrow, Escrow Holder shall deliver to Purchaser and to Successor Agency 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 Option 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 Property 2 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, Purchaser's obligations to repair or replace any such damage or destruction shall be in accordance with the Purchase Agreement.

10.12 Interpretation. This Option Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Option Agreement. Each Party acknowledges that it has been represented by independent counsel in connection with this Option Agreement and that this Option Agreement is the result of negotiations between the parties hereto. Any uncertainty or ambiguity shall not be construed against Successor Agency because Successor Agency's counsel, as a matter of convenience or otherwise, prepared this Option 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 Option Agreement. References to Section numbers are to Sections as numbered in this Option Agreement unless expressly stated otherwise.

10.14 Gender, Etc. As used in this Option 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 Option 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 Option 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 Option Agreement.

10.16 Modifications. Any alteration, change or modification of or to this Option 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 Option Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Option 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 Option Agreement, together with the Purchase Agreement, contains the entire understanding between the Parties relating to the transaction contemplated by this Option Agreement. All prior or contemporaneous agreements (other than those attached as exhibits to the Purchase Agreement), understandings, representations and statements, oral or written, are merged into this Option 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 Successor Agency and Purchaser of each and every obligation and condition of this Option Agreement.

10.20 Counterparts. This Option 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 Option Agreement are incorporated into this Option Agreement by reference.

10.22 Computation of Time. The time in which any act is to be done under this Option 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 Option Agreement.

10.24 Preliminary Change of Ownership Report. Successor Agency 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 Option 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 Option 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 Option 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 Option Agreement, Successor Agency and Purchaser shall execute in a form suitable for recordation a Memorandum of Option disclosing the grant of the Option to Successor Agency, and Successor Agency's right to purchase Property 2 pursuant to this Option Agreement, such Memorandum of Option to be in the form of Exhibit "C," attached hereto.

IN WITNESS WHEREOF, the parties have duly executed this Option 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

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Successor Agency 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

Imperial Beach Redevelopment
Agency Successor Agency
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 IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("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 Imperial Beach Redevelopment Agency Successor Agency ("Optionee"), is hereby accepted pursuant to the authority conferred by the Imperial Beach Successor Agency Council on _____, 20__ and the Optionee consents to recordation thereof by its duly authorized officer.

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____

By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

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:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY
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 _____, 201_____, by and between Sudberry-Palm Avenue, LLC, a California limited liability company ("Purchaser"), and the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency"). 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. Purchaser and Successor Agency have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Purchaser has granted to Successor Agency 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. Purchaser grants to Successor Agency 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 Purchaser 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 Purchaser, or its successor or assignee, and to any Permitted Lender whose security instrument encumbers any of the Site, 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

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

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:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY
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 _____, 201__, by and between Sudberry-Palm Avenue, LLC, a California limited liability company ("Purchaser"), and the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency"). All capitalized terms used and not otherwise defined in this Instrument, but defined in the Option Agreement (as defined below), shall have the same meaning in this Instrument as in the Option Agreement.

RECITALS

A. Purchaser and Successor Agency have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Purchaser has granted to Successor Agency 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 _____, 201__, by Instrument No. _____ (the "Memorandum of Option").

C. Pursuant to the Option Agreement, the Option granted to Successor Agency was to expire and be terminated upon the final day of the Option Term or upon the earlier occurrence of the Phase 2 Closing.

D. The Phase 2 Closing conditions have occurred and this Instrument is being executed in connection with the Phase 2 Closing or the Option Term has expired, and the parties now desire to enter into this Instrument to release Property 2 from any rights the Successor Agency 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.

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____

By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

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)

OFFICIAL BUSINESS
Document entitled to free
recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency") has entered into a Purchase and Sale Agreement with SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Purchaser"), dated _____, 20____ (the "Purchase Agreement") 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 Purchase Agreement, for the construction on the Site of a commercial/retail center (the "Project") in accordance with the terms and conditions contained in the Purchase Agreement. Any capitalized term not otherwise defined in this Release shall have the meaning set forth for such term in the Purchase Agreement; and

WHEREAS, pursuant to the Purchase Agreement 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

WHEREAS, pursuant to the Purchase Agreement, Purchaser 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 Purchase Agreement, upon the completion of the Improvements as required by the Purchase Agreement, and the request of Purchaser, Successor Agency is required to issue for recordation a Release of Construction Covenants (this "Release") acknowledging satisfactory completion of the construction of the Improvements

required by the Purchase Agreement relating to the portion of the Site described in this Release, and releasing all other obligations in the Purchase Agreement relating to such portion of the Site; and

WHEREAS, Purchaser has completed the Improvements required by the Purchase Agreement relating to the Site ***[or the Released Property]*** as required by the Purchase Agreement and has requested that Successor Agency issue this Release; and

WHEREAS, Successor Agency has inspected the Site and determined that the construction and development required by the Purchase Agreement 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 Purchase Agreement.

NOW THEREFORE, it is hereby acknowledged and certified by Successor Agency that:

1. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

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 Purchase Agreement.

3. Purchaser is in full compliance with the terms of Section 324 of the Purchase Agreement.

4. All rights of the Successor Agency pursuant to Section 511 of the Purchase Agreement providing the Successor Agency 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 Successor Agency the estate of the property previously conveyed pursuant to the Purchase Agreement, and to re-enter and take possession of such property, are hereby extinguished and terminated, and are no longer enforceable or binding against Purchaser and/or successors and assigns as to the Released Property.

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 Purchase Agreement 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 Grant Deed, Agreement Containing Covenants, Public Improvement Disbursement Agreement, Acceptance and Maintenance Agreement for Public Improvements, Right of Entry Agreement, and Environmental Indemnity that survive the issuance and recordation of this Release and the Payment Agreement and Successor Agency Deed of Trust.

IN WITNESS WHEREOF, Successor Agency has executed this Release as of the date set opposite its signature.

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____

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)

EXHIBIT "A"

Legal Description of the Released Property

[BEHIND THIS PAGE]

Attachment 14

Will be provided as soon as it is available

PAYMENT AGREEMENT

This Agreement (this "Agreement") is entered into by and between SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Purchaser"), and the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency"), as of _____, 20__. In this Agreement, each of the Purchaser and the Successor Agency 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. Successor Agency has sold to Purchaser certain real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site") upon which Purchaser has covenanted to develop a commercial/retail center (the "Project").

B. In connection with the sale of the Site to Purchaser, Purchaser has previously paid a base purchase price equal to $213,000; and has agreed to pay the hereinafter defined Participation Component.

C. The Parties mutually desire to enter into this Agreement to document the Purchaser's obligation to pay the Participation Component (the "Obligation").

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

1. Payment of Participation Component.

a. As additional consideration for the conveyance of the Site from Successor Agency to Purchaser and for the performance by Successor Agency of its obligations relating thereto, including, without limitation, the funding and disbursement to Purchaser of the Remaining Public Improvement Funds (as defined below) as and when required to be paid, subject to any applicable notice and cure provisions and Force Majeure Delay as defined in the Successor Agency Deed of Trust (which is an express condition precedent to Purchaser's obligations hereunder), Purchaser agrees to pay the "Participation Component" of the Purchase Price to the Successor Agency. The obligation of the Purchaser to pay the Participation Component shall survive any assignment, transfer, lien, mortgage, encumbrance, or refinance of the Site or any portion thereof or any interest therein and/or the Project or any portion thereof or any interest therein, and shall not be affected or reduced in any way by reason of any such assignment, transfer, lien, mortgage, encumbrance, or refinance; however, in no event will any Participation Component be payable more than once with respect to any Parcel of the Site, and once such Participation Component has been paid with respect to any Parcel of the Site in accordance with the terms and conditions of this Agreement, such Parcel of the Site shall cease

to be affected or encumbered hereby.

b. "Participation Component" shall mean an amount equal to one and one-half percent (1.5%) of the gross sales price (as defined below) from the first arm's-length sale of each Parcel or Parcels of the Site (or any portion thereof) by Purchaser in any number of transactions which is completed within the first Fifty-Five (55) years from the Effective Date of the Purchase Agreement (each such transaction being referred to herein as a "Sale"), if any. In connection with each such Sale, Purchaser agrees to provide to the Successor Agency documentation reasonably satisfactory to Successor Agency's Executive Director regarding the total of all compensation payable to Purchaser for the Sale, directly or indirectly, less costs of sale payable by Purchaser (i.e., escrow fees, title insurance costs, recording fees and notary fees). Such documentation shall include all information, data and documents necessary to calculate the amount of the Participation Component attributable to such Sale and to document the fact that such Sale is being effectuated by an arm's-length sale, including, without limitation, a copy of the applicable purchase and sale agreement and all amendments or modifications thereto. The amount of the Participation Component attributable to each Sale shall be subject to the reasonable approval of the Successor Agency Executive Director.

c. For purposes of this Agreement, the term "arm's length sale" shall mean a transaction in which Purchaser and the buyer act independently and have no relationship to each other, as reasonably determined by the Successor Agency Executive Director.

d. For purposes of this Agreement, the term "gross sales price" shall mean all compensation payable to Purchaser for the Sale, directly or indirectly, less costs of sale payable by Purchaser.

e. Purchaser 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 Successor Agency 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. Purchaser's obligation to pay Successor Agency the Participation Component of the Purchase Price shall be secured by a Deed of Trust in favor of the Successor Agency being recorded contemporaneously with the execution hereof (the "Successor Agency Deed of Trust"), which Successor Agency Deed of Trust shall be subordinated to the lien of any deed of trust, mortgage, encumbrance or other security instrument recorded against the Site (or any portion thereof) by or on behalf of the holder of a Permitted Deed of Trust, including a Construction Lender or Permanent Lender (each a "Permitted Lender") if requested by the Permitted Lender, and which Successor Agency Deed of Trust shall be reconveyed/partially reconveyed as to portions of the Site upon the sale of any Parcel (or any portion thereof) of the Site and payment to the Successor Agency of the Participation Component relating to such Parcel (or any portion thereof) in accordance with the provisions of this Agreement. The terms "Remaining Public Improvement Funds", "Permitted Deed of Trust", "Construction Lender" and

"Permanent Lender" shall have the meanings set forth in Exhibit "B" to that certain Agreement Containing Covenants Affecting Real Property entered into by and between Successor Agency and Purchaser and recorded against the Site on _____, 20___, as Instrument No. _____ ("Agreement Containing Covenants").

2. Purpose of Payment Agreement. This Agreement is prepared for the purpose of evidencing the obligation of the Purchaser to Successor Agency to pay the Participation Component. This Agreement and Purchaser's obligation to pay the Participation Component shall terminate upon Successor Agency's determination that it is unable to fund and disburse to Purchaser any portion of the Remaining Public Improvement Funds due to AB x1 26 and AB x1 27 which were signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law, 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 California Health and Safety Code, as amended by Assembly Bill No. 1484 (Chapter 26, Statutes 2012) which was signed by the Governor of California on June 27, 2012 (the "Dissolution Act") and/or any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861), or upon any failure by the Successor Agency to cause the timely funding and disbursement to Purchaser of the Remaining Public Improvement Funds as and when required to be paid, subject to any applicable notice and cure provisions and Force Majeure Delay as defined in the Successor Agency Deed of Trust. Upon any such determination or failure, this Agreement and the Successor Agency Deed of Trust shall terminate and be of no further force or effect and Successor Agency shall cause the immediate full release and reconveyance of the Successor Agency Deed of Trust.

3. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

4. 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

5. Where and How Payable. The Participation Component is payable at the principal office of the Successor Agency, 825 Imperial Beach Boulevard, Imperial Beach, California 91932, or at such other place as the Successor Agency, or its successors and assigns hereunder, may inform the Purchaser in writing, in lawful money of the United States.

6. Security. This Agreement shall be secured by the Successor Agency Deed of Trust, which Successor Agency Deed of Trust shall be subordinate to the lien of any deed of trust, mortgage, encumbrance or other security instrument recorded against the Site by or on behalf of any Permitted Lender if requested by such Permitted Lender. The Successor Agency Deed of Trust shall be recorded against the Site contemporaneously with the execution and delivery hereof. In addition to the provisions for reconveyance provided for above, this Agreement shall terminate, and the lien of the Successor Agency Deed of Trust shall be

reconveyed and released, as to portions of the Site upon the sale of any Parcel (or any portion thereof) of the Site and payment to the Successor Agency of the Participation Component relating to such Parcel (or any portion thereof) in accordance with the provisions of this Agreement.

7. Interest. Except as provided in Section 1.(e), above, the Obligation shall not bear interest.

8. Payments. Except as provided in Section 9, below, the Obligation under this Agreement shall be due and payable as provided in Section 1 of this Agreement. Any portion of the Obligation not paid in full on the date that is fifty-five (55) years after the Effective Date of the Purchase Agreement shall be deemed paid in full.

9. Due Upon Event of Acceleration. The entire unpaid principal balance of this 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, in contravention of the provisions of the Agreement Containing Covenants ; or

(b) if there is a default by the Purchaser under the terms of the Purchase Agreement, this Agreement, the Successor Agency Deed of Trust, or the Agreement Containing Covenants during a period of time when this Agreement is still in full force and effect, which is not cured within the respective time period provided herein and therein.

Upon written request from Purchaser, Successor Agency shall provide, within fifteen (15) days from receipt of the written request, to Purchaser and any lender, prospective lender, or prospective purchaser, an estoppel certificate by which Successor Agency confirms whether or not any defaults then exist under the Purchase Agreement, the Successor Agency Deed of Trust, or this Agreement, along with such other factual matters as such recipient may reasonably require and which is within the knowledge of the Successor Agency. Purchaser shall pay all reasonable costs and expenses of Successor Agency in providing any such estoppel certificate.

10. Application of Payments. All payments to the Successor Agency shall be applied first to interest, then to reduce the principal amount owed.

11. Limited Recourse. Subject to the provisions and limitations of this Section 11, the Obligation under this Agreement is the non-recourse obligation of the Purchaser. Purchaser and any member of Purchaser's limited liability company shall not have any personal liability for the Obligation, except as provided in this Section 11. The sole recourse of Successor Agency shall be the exercise of its rights against the Site and any related security for the Obligation.

Provided, however, that the foregoing shall not (a) constitute a waiver of any Obligation evidenced by this Agreement or the Successor Agency Deed of Trust; (b) limit the right of the Successor Agency to name Purchaser as a party defendant in any action or suit for judicial foreclosure and sale under this Agreement and the Successor Agency 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 Purchaser; (c) release or impair this Agreement or the Successor Agency Deed of Trust; (d) prevent or in any way hinder Successor Agency 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 Successor Agency 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 Purchaser of any of its obligations under any indemnity delivered by Purchaser to Successor Agency; 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 Agreement and the Successor Agency Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Purchaser and its successors and assigns shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Purchaser, its principals, shareholders, partners 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 Purchaser in connection with the operation of the mortgaged property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Successor Agency may recover directly from Purchaser:

(a) any damages, costs and expenses incurred by Successor Agency as a result of fraud or any criminal act or acts of Purchaser or any member, partner, shareholder, officer, director or employee of Purchaser, or of any member or general or limited partner of Purchaser, or of any general or limited partner of such member or general or limited partner;

(b) any damages, costs and expenses incurred by Successor Agency as a result of any misappropriation of funds provided to pay Acquisition and Development Costs or for the Public Improvements, as described in the Purchase Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(c) any and all amounts owing by Purchaser pursuant to any indemnity set forth in the Purchase Agreement, including but not limited to the Environmental Indemnity, and

(d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Successor Agency shall pay Purchaser's reasonable court costs and attorneys' fees if Purchaser is the prevailing party in any such enforcement or collection action).

12. Waivers. Purchaser 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 Agreement, in whole or in part, whether before or after maturity and with or without notice. Purchaser hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by the holder hereof, in the enforcement of this Agreement, the Successor Agency Deed of Trust or any term or provision of either thereof.

13. Exercise of Rights and Remedies. Upon the failure of Purchaser to perform or observe any other term or provision of this Agreement, upon any event of acceleration described in this Agreement, or upon the occurrence of any other event of default under the terms of the Successor Agency Deed of Trust, the Purchase Agreement or the Agreement Containing Covenants, in each event, which is not cured within any applicable notice and cure period, the holder may exercise its rights or remedies hereunder or thereunder.

14. Defaults.

(a) Subject to Force Majeure Delay as defined in the Successor Agency Deed of Trust, and subject to the further provisions of this Section 14 including those providing for notice and an opportunity to cure, failure or delay by Purchaser to perform or to comply with any material term or provision of this Agreement, the Successor Agency Deed of Trust, or the Agreement Containing Covenants, constitutes a default under this Agreement.

(b) Successor Agency shall give written notice of default to Purchaser, specifying the default complained of by the Successor Agency. Delay in giving such notice shall not constitute a waiver of any default.

(c) Any failures or delays by Successor Agency 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 Successor Agency in asserting any of its rights and remedies shall not deprive Successor Agency 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 Agreement or the Successor Agency Deed of Trust, prior to exercising any remedies hereunder or thereunder, Successor Agency shall give Purchaser written notice of such default. Purchaser shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Successor Agency under this Agreement and/or the Successor Agency

Deed of Trust. In no event shall Successor Agency 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) business days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of this Agreement or the Successor Agency Deed of Trust, prior to exercising any remedies hereunder or thereunder, Successor Agency shall give Purchaser written 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, Purchaser shall have such period to effect a cure prior to exercise of remedies by the Successor Agency. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Purchaser (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Purchaser shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Successor Agency; provided, however, in no event shall Successor Agency 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 twenty (120) 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 Purchaser; 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) Purchaser shall pay all costs and expenses reasonably incurred by Successor Agency, including without limitation, court costs and attorneys' fees, in enforcing or collecting upon this Agreement (provided that Successor Agency shall pay Purchaser's reasonable court costs and attorneys' fees if Purchaser 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 Agreement, with interest at the rate specified in Section 1 of this Agreement.

15. Partial Invalidity. If the rights created by this 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.

16. Approvals. In any approval, consent or other determination by the Parties required under this Agreement, the Parties shall act reasonably and in good faith.

17. Successor Agency Assignment. Purchaser agrees that the Successor Agency shall

have the absolute right, without obtaining approval from Purchaser, to assign (in whole or in part) to a third party the Successor Agency's right to receive (in whole or in part) payments under this Agreement as long as the assignee shall be fully bound by the terms of this Agreement.

19. Successors and Assigns. This Agreement shall bind Purchaser and Purchaser's successors and assigns and the benefits hereof shall inure to Successor Agency and Successor Agency's successors and assigns. If Successor Agency ceases to exist without first assigning its rights and obligations hereunder (including, without limitation, the power of consent and approval as to any matters requiring the consent or approval of the Successor Agency of Successor Agency Executive Director) and notifying Purchaser of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Purchaser shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Successor Agency) for information regarding who has succeeded to such rights and obligations and shall be entitled to rely on the written statement of the City Manager as to such matter, or (b) if the City Manager does not provide Purchaser with satisfactory evidence regarding such matter, Purchaser may seek relief from the Superior Court of the State of California for a declaration as to who has authority to act in the role of the Successor Agency hereunder.

20. Time is of the Essence. Time is of the essence with respect to all of the obligations under this Agreement.

21. Right and Remedies are Cumulative. The rights and remedies of the Successor Agency are cumulative, and the exercise by the Successor Agency 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 Purchaser.

22. Amendment in Writing. This Agreement may not be changed orally, but only by an amendment in writing signed by the Purchaser and Successor Agency.

IN WITNESS WHEREOF the Parties have executed this 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

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____

By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

EXHIBIT “A”

LEGAL DESCRIPTION OF THE SITE

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Imperial Beach Redevelopment
Agency Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attn: Executive Director

(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 Imperial Beach Redevelopment Agency Successor Agency (in this Deed of Trust called "Beneficiary"), whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932.

If Beneficiary ceases to exist without first assigning its rights and obligations hereunder (including, without limitation, the power of consent and approval as to any matters requiring the consent or approval of the Beneficiary or the Beneficiary Executive Director) and notifying Trustor of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Trustor shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Beneficiary) for information regarding who has succeeded to such rights and obligations and shall be entitled to rely on the written statement of the City Manager as to such matter, or (b) if the City Manager does not provide Trustor with satisfactory evidence regarding such matter, Trustor may seek relief from the Superior Court of the State of California for a declaration as to who has authority to act in the role of the Beneficiary hereunder.

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:

> 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 "Purchaser" 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), including, without limitation, payment of indebtedness of the Trustor to the Beneficiary in accordance with the terms of the Payment Agreement, including, without limitation, payment of the Participation Component and interest, if any.

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 this Deed of Trust at the time and in the manner provided in the Payment Agreement or herein.

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 rights of the Senior Lender—as defined below), subject to the below-described license in favor of Trustor, for the purpose of discharging the debt secured by this Deed of Trust. Notwithstanding the foregoing, Trustor is hereby granted a revocable license —revocable only as provided below— to collect such rents, profits and income until written notice from Beneficiary that a default exists under this Deed of Trust, and has not been cured after the giving of notice and the expiration of any applicable cure period without such default being cured, at which time the license shall be automatically revoked.

5. That while any default under this Deed of Trust or under the Payment Agreement secured by this Deed of Trust exists, and after the giving of notice and the expiration of any applicable cure period without such default being cured, 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 (excluding footings, foundations, and similar below-ground improvements). Such policies shall be endorsed with standard mortgagee clause with loss payable to the Beneficiary (subject to the rights of the Senior Lender) and certificates thereof shall be deposited with the Beneficiary. Unless approved otherwise in writing by the Successor Agency Executive Director,

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 reasonable 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 that certain Agreement Containing Covenants Affecting Real Property recorded entered into by and between Trustor (Purchaser therein) and Beneficiary (Successor Agency therein) concurrently herewith as Document No. _____ ("Covenant Agreement"), 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 Covenant Agreement, 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 and Beneficiary's good faith determination that foreclosure of such lien could occur within 60 days or that Beneficiary's interests hereunder are in jeopardy (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 reasonable 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, which failure continues uncured for a period of 10 days following written notice to Trustor, 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), 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 of the Subject 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.

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 Successor Agency Executive Director 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 Covenant Agreement), Successor Agency Executive Director shall execute a Subordination Agreement (as defined in the Covenant Agreement) as to Property 1, and subject to the occurrence of the Phase 2 Closing (as defined in the Covenant Agreement), Successor Agency Executive Director 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) if there is no then-existing Senior Deed of Trust, Beneficiary shall have the right to reasonably approve plans and specifications for any major rebuilding (other than any replacement of damaged buildings with substantially similar improvements) 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 Imperial Beach Redevelopment Agency Successor Agency (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 201___; 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 "**Imperial Beach Redevelopment Agency Successor Agency**" 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 201____, 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 201___, 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 "Imperial Beach Redevelopment Agency Successor Agency" 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 and the Beneficiary. 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 Deed of Trust 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.

m. The Successor Agency Executive Director 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.

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, California 91932
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 ("Purchaser").

RECITALS

A. The Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency") has conveyed to Purchaser 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 Purchase and Sale Agreement dated _____, 201____ ("Purchase Agreement") by and between the Successor Agency and Purchaser, Purchaser 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 Purchase Agreement. The term "Purchase Agreement" as used herein shall mean, refer to and include the Purchase Agreement, 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 Purchase Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the

Purchase Agreement.

C. In consideration for the Successor Agency's performance of its obligations under the Purchase Agreement, Purchaser agreed to construct the off-site improvements ("Public Improvements") set forth in the Purchase Agreement to serve the Project, which include the following:

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 Property 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", which shall be an ongoing maintenance obligation of Purchaser before and after acceptance of the remainder of the Public Improvements by the City;

(e) Installation of new street lights; and

(f) Any other Cal-Trans requirements relating to the Public Improvements.

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 Property, or within any right-of-way abutting the boundary shall be placed underground (conversion) to the reasonable satisfaction of the City Public Works Director. Purchaser 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 Property to the reasonable satisfaction of the City Public Works Director, including the adjustment to grade and/or replacement of all utility covers in such alley. The work shall also include combining and reconfiguring the vehicular access point to the alley and parking access

on 9th Street to the satisfaction of the City Public Works Director. 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");

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 Public Works Director ("New Traffic Signal"); and

6. All other improvement requirements as set forth in the Purchase Agreement.

D. The purpose of this Agreement is to establish the conditions for City's acceptance of the Public Improvements once completed by Purchaser in accordance with the Purchase Agreement and all applicable City requirements.

E. The Public Improvements detailed herein are not exhaustive of all of the public improvements Purchaser must complete pursuant to the Project entitlements, other governing documents and/or applicable law; however, recordation hereof following Completion will constitute conclusive evidence that all Public Improvements required pursuant to the Purchase Agreement have been completed.

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, Purchaser 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) approval of the Public Improvements by Cal-trans, as necessary; (3) recordation of a Notice of Completion by the City; (4) 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 (5) 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. Purchaser shall promptly remedy at the Purchaser'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. Purchaser hereby guarantees all work against defective workmanship and materials furnished by Purchaser for a period of one (1) year from the date the Notice of Completion is filed. Purchaser 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 Purchaser to make such replacements or repairs within fifteen (15) calendar days of notice from the City, the City may perform this work and the Purchaser and its sureties shall be liable for the costs thereof. If any such replacements and repairs cannot reasonably be made within such fifteen (15) calendar day period, and Purchaser has begun such replacements and repairs fifteen (15) calendar day period and is proceeding with diligence to complete same, then such fifteen (15) calendar day period shall be extended to allow the completion of such replacements and repairs. In addition to the foregoing, the City, in its sole discretion, may extend the fifteen (15) day deadline to complete any such replacements or repairs.

5.0 INDEMNIFICATION. In addition to and without limiting any indemnity provided under the Purchase Agreement, Purchaser shall protect, defend, indemnify and hold the Successor Agency, City and each of their respective elected officials, members, officers, representatives, agents, employees, contractors and attorneys (collectively, 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 Purchaser's officers, employees, invitees, guests, agents or contractors, which arise out of the negligence or intentional misconduct of Purchaser, its respective contractors, subcontractors, agents or other persons acting on Purchaser's behalf in connection with the design, construction and installation of the Improvements, and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. If the City, in good faith, determines that its interests are not adequately protected by being provided a defense by Purchaser, City (and the other Indemnified Parties) may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the City, on behalf of the Indemnified Parties, makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. 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.

7.0 ESTOPPEL CERTIFICATE. Upon written request from Purchaser, City shall provide, within fifteen (15) days of the receipt of the written request, to Purchaser and any lender, prospective lender, or prospective purchaser, an estoppel certificate by which City confirms whether or not any defaults then exist hereunder or in connection herewith, along with confirmation of such other factual matters as such recipient may reasonably require and which is within the knowledge of the City. Purchaser shall pay all reasonable costs and expenses of City in providing any such estoppel certificate.

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: _____
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:

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT ("Agreement") is made as of this _____ day of_____, 201____ (the "Effective Date"), by and between IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (the "Successor Agency"), and SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Licensee").

RECITALS

A. The Successor Agency 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 Purchase and Sale Agreement dated _____, 201____ (the "Purchase Agreement"), by and between the Successor Agency and the Licensee ("Purchaser" therein), pertaining to the redevelopment of the Site with a commercial/retail development (the "Improvements"), in accordance with the terms and conditions of the Purchase Agreement. The term "Purchase Agreement" as used herein shall mean, refer to and include the Purchase Agreement, 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 Purchase Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Purchase Agreement.

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 Successor Agency 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) conduct reasonable investigations on the Site pertaining to the relinquishment, reconfiguration, access, signalization, utility (wet & dry), retention basin, storm drain systems assessments and possible relocations, below surface infrastructures and other tests and samples necessary for highway and Site improvement to conform to the approved plan, 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 Successor Agency or its directors, officers, members, employees, agents and independent contractors (collectively, "Successor Agency'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 Successor Agency Executive Director or his or her 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 Successor Agency 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 Purchase Agreement; (ii) termination of the Purchase Agreement; or (iii) termination of this Agreement in accordance with Section 15 hereto (the "Term").

3. No Possessory Interest. Licensee acknowledges and agrees that Successor Agency'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 Successor Agency 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. Successor Agency, in its capacity as owner of the Site, shall cooperate with Licensee in applying for such permits and authorizations, subject to the approval of Successor Agency Executive Director or designee.

6. Reports and Studies. In consideration of the Successor Agency's granting of this License, Licensee shall promptly provide the Successor Agency with a copy of all reports and test results arising from this License; it being understood that such reports and test results are being delivered to Successor Agency without any representations or warranties of any kind or nature, expressed or implied, as to the contents thereof, and 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 Successor Agency'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 Purchase Agreement, 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 Successor Agency 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 Successor Agency 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 Successor Agency, 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 Successor Agency 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 Successor Agency 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, and Successor Agency, in good faith, determines that a foreclosure thereof could occur within 60 days, Licensee shall, within ten days of written demand, deliver to the Successor Agency bonds or other adequate security in form and amount approved in writing by Successor Agency Executive Director or designee.

11. Indemnification. To the extent permitted by law, Licensee shall protect, defend, indemnify and hold Successor Agency, the Successor Agency's Representative and each of its elected officials, officers, representatives, agents, employees, contractors and

attorneys (collectively, 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 Agreement (excluding any such matter arising out of the mere discovery by Licensee of a Pre-existing Site Condition and any loss or damage to the proportional extent resulting from the Successor Agency's or any Indemnified Party's negligence or willful misconduct), and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. If the Successor Agency (on behalf of the Indemnified Parties), in good faith, determines that its(their) interests are not adequately protected by being provided a defense by Licensee, the Successor Agency may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If, pursuant to the preceding sentence, the Successor Agency makes such 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. The foregoing defense and indemnification obligations shall survive the termination of this Agreement or the Purchase Agreement 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 Purchase Agreement, Completion and recordation of any Release of Construction Covenants, as described in the Purchase Agreement.

12. Waiver Of Subrogation. Licensee hereby waives any and every claim which arises or may arise in its favor and against the Successor Agency 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. Successor Agency hereby waives any and every claim which arises or may arise in its favor and against the Licensee during the term of this Agreement or any extension or renewal hereof for any and all loss or damage to Successor Agency's property, or property of Successor Agency's officers, representatives, employees, agents, subcontractors, patrons or invitees covered by valid and collectible property insurance policies (or self-insurance programs) to the extent that such loss or damage is covered under such insurance policies (or self-insurance programs). Each Party shall obtain appropriate waiver of subrogation endorsements to 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 Successor Agency and Successor Agency's 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 Successor Agency's or any Indemnified Party'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 Successor Agency Executive Director or designee, after giving Licensee written notice of such violation and a thirty (30) calendar day period within which to cure the same and during such 30-day period such violation is not cured, 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. Successor Agency 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 Successor Agency. 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 Successor Agency Executive Director (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 Successor Agency Executive Director. 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. Successor Agency's Proprietary Capacity. Licensee agrees that Successor Agency, in making and entering into this Agreement, is acting and shall be deemed to be acting solely in Successor Agency'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 Successor Agency's governmental powers or rights or the exercise thereof by Successor Agency, 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 entity 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

And a copy of each such notice sent to Licensee shall be transmitted by email to Gerald I. Solomon, Esq. of Solomon Minton Cardinal Doyle & Smith LLP addressed as follows: gis@smcdslaw.com

If to Successor Agency:

Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Successor Agency Executive Director
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: Kendall D. Berkey
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]

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

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 Successor Agency. At the option of Successor Agency, the insurer shall reduce or eliminate deductibles (limited to general and vehicle liability insurance only) or self-insured retentions as respects Successor Agency, 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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's 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 Successor Agency.

(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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's Representatives and their officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the Successor Agency 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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's 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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's Representatives and their officers, agents, employees and volunteers for losses arising from work performed by Licensee for the Successor Agency.

(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 Successor Agency at the following address:

Imperial Beach Redevelopment Agency Successor Agency
1685 Main Street, Room 212
Imperial Beach, CA 90401.
Attention: Successor Agency Executive Director

(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. Successor Agency, at its sole option, may

terminate this Agreement and obtain damages from Licensee resulting from the breach. Alternatively, Successor Agency may purchase the required insurance (but has no special obligation to do so), and without further notice to Licensee, Successor Agency may deduct from sums due to Licensee any premium costs advanced by Successor Agency 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 Successor Agency's Risk Manager.

E. Verification of Coverage. Licensee shall furnish Successor Agency 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 Successor Agency and are to be received and approved by Successor Agency before work commences. Copies of the Certificate of Insurance and endorsement forms acceptable to Successor Agency are attached.

F. Licensee Contractors. Licensee shall provide to Successor Agency 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]

PURCHASE AND SALE AGREEMENT
[9th and Palm]

by and between

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY ("SUCCESSOR AGENCY")

and

SUDBERRY-PALM AVENUE LLC, a California limited liability company
("PURCHASER")

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement") by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency") and SUDBERRY-PALM AVENUE, a California limited liability company ("Purchaser"), is dated for identification purposes only as of _____, 201__. In this Agreement, each of the Purchaser and the Successor Agency 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 Successor Agency is the owner of certain real property constituting an approximately 3.9 acre site, 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". Upon the City's vacation of adjacent rights-of-way, which will occur upon the approval and recordation of the Map, the Site will increase to approximately 4.75 acres.

b. 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 Successor Agency to Purchaser for the Purchase Price and upon the satisfaction of conditions and subject to the terms of this Agreement, below;

(ii) Purchaser's concurrent grant to the Successor Agency 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 Successor Agency in accordance with the terms of this Agreement;

(iii) construction of certain off-site Public Improvements (defined below) by Purchaser, including the Highway 75 Access Improvements (defined below), and payment to or for the benefit of or reimbursement to Purchaser for the cost of the Public Improvements, solely from Series 2010 Bond Proceeds (defined below); and

(iv) Purchaser'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 Purchaser (designated Parcels "A" through "G", as depicted on the Site Map attached to this Agreement as Attachment No. 1); and

(B) the construction by Purchaser of retail/commercial buildings on Parcels "A", "B", "C" and "D" (as defined below) and, if Purchaser elects to do so, on Parcel "E", "F", and "G".

c. The Parties to this Agreement acknowledge that the public funds expended by the City of Imperial Beach and the Successor Agency (and its predecessor-in-interest, the former Imperial Beach Redevelopment Agency) to acquire and clear the Site and relocate the former occupants from the Site exceed the Purchase Price (such differential plus the Public Improvement Funds (defined below) collectively being referred to herein as the "Public Subsidy"). The Public Subsidy shall be in consideration for the following: (i) the construction by Purchaser 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) Purchaser's satisfactory construction of the Public Improvements required to be constructed under this Agreement, including the Public Improvements described in Section 219.a.; and (iii) Purchaser'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 Purchaser.

d. 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.

e. 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.

f. 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.

g. The Successor Agency acknowledges that performance by Purchaser of its obligations and the development and use of the Site pursuant to this Agreement will help 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.

h. Purchaser acknowledges that performance by the Successor Agency of its obligations pursuant to this Agreement will provide to Purchaser and its principals significant and valuable financial benefits and that Successor Agency's performance of these obligations is in consideration of Purchaser's compliance with the requirements of this Agreement in the development, construction, operation and use of the Project.

i. The City of Imperial Beach and Purchaser entered into that certain Disposition and Development Agreement dated for identification purposes as of December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Purchaser and dated March 15, 2012, as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Purchaser and dated August 10, 2012, as further amended by that certain second "Letter Agreement" entered into by the City and the Purchaser and dated December 20, 2012, and as further amended by that certain third "Letter Agreement" entered into by the City and the Purchaser and dated September 23, 2013, all collectively referred to as the "DDA". This Agreement is a renegotiation of all of the terms and conditions of the DDA and, upon the Effective Date, this Agreement shall supersede and replace the DDA in its entirety and the City and Purchaser shall have no further rights or obligations thereunder except as may be expressly provided therein.

j. The Parties hereby acknowledge that the recitals of fact contained in this Section 101 are true and correct.

SECTION 102 <u>Dissolution Act</u>

Subject to the provisions of Section 512.b., by execution of this Agreement, Purchaser hereby waives, releases and discharges the Successor Agency and its 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 Successor Agency's inability to meet its financial or other obligations under this Agreement as a result of the Dissolution Act (defined below), and any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861). Notwithstanding Part 5 of this Agreement, the Successor Agency's failure to meet its financial or other obligations under this Agreement as a result of State action with respect to the Dissolution Act, and/or any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861), shall not constitute a default by the Successor Agency under this Agreement.

Purchaser 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.b., Purchaser hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Notwithstanding the foregoing waiver and release, in the event of the Successor Agency's failure to meet its financial or other obligations under this Agreement as a result of State action with respect to the Dissolution Act, and/or any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861), the Parties agree to meet and confer in good faith to discuss the effects of any such failure on the benefits accruing to, or the obligations imposed upon, any Party hereunder.

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 Purchaser 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 Purchase and Sale 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 Plans" shall mean the Plans approved by the Successor Agency 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 Purchaser assigns its interests in this Agreement as to all or any portion of the Site, which assignment shall be subject to the approval of Successor Agency as provided in this Agreement.

"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.

"Close of Escrow" shall mean the escrow closing for the sale of the Site to Purchaser pursuant to Section 202 of this Agreement.

"Closing" shall mean either of the following (as defined herein): (a) the Phase 1 Closing; or (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 Purchaser, its Assignee or contractor relating to the Improvements as to the Private Improvements and by the City as to the Public 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) as to the Public Improvements only, approval of the Public Improvements by Cal-trans, as necessary;

(5) 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

(6) completion to the reasonable satisfaction of the Successor Agency Executive Director 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 Successor Agency 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 Purchaser 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.

"Dissolution Act" means AB x1 26 and AB x1 27 which were signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law, 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 California Health and Safety Code, as amended by Assembly Bill No. 1484 (Chapter 26, Statutes 2012) which was signed by the Governor of California on June 27, 2012.

"Effective Date" shall mean the date upon which all of the following conditions have been satisfied: (i) the approval of this Agreement by the Successor Agency and its Oversight Board; (ii) the approval of the Amended Long Range Property Management Plan by the Successor Agency and its Oversight Board pursuant to the Dissolution Act; (iii) the approval of the Long Range Property Management Plan by the State Department of Finance (the "DOF") pursuant to the Dissolution Act; (iv) the effectiveness of this Agreement pursuant to the

Dissolution Act, or the review and approval of this Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board's action approving this Agreement in accordance with the Dissolution Act; and (v) the execution of this Agreement by both the Successor Agency and Purchaser.

"Entitlements" shall mean all applicable land use approvals and all conditions of approval, legally required by the City 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 Purchaser and Successor Agency Executive Director, 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 Successor Agency or Purchaser 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 an escrow agent mutually acceptable to the Successor Agency and Purchaser.

"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 Successor Agency shall convey title to one or more Parcels to Purchaser, that is mutually acceptable in form and substance to the Purchaser and Successor Agency Executive Director, 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 Successor Agency or Purchaser 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 Purchaser 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 the Instrument Terminating Option substantially in the form attached to the Option Agreement as Exhibit "D", which is incorporated herein by this reference, and which shall be recorded against Property 2 upon the Phase 2 Closing.

"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" shall mean the Memorandum of Option in the form attached to the Option Agreement as Exhibit "C", which is incorporated herein by this reference, 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.

"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 Successor Agency, in its sole discretion, to purchase back Property 2 from the Purchaser prior to the recordation of the Instrument Terminating Option, as set forth in, and subject to the conditions in, the Option Agreement and memorialized in the Memorandum of Option.

"Option Agreement" shall mean an Option Agreement and Joint Escrow Instructions, substantially in the form attached to this Agreement as Attachment No. 12, which is incorporated herein by this reference.

"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 sales price from the first arm's-length sale of each Parcel or Parcels of the Site (or any portion thereof) by Purchaser in any number of transactions which is completed within the first Fifty-Five (55) years from the Effective Date of this Agreement, if any.

"Parties" shall have the meaning set forth in the Preamble to this Agreement.

"Payment Agreement" shall mean the Payment Agreement substantially in the form attached to this Agreement as Attachment No. 15, which is incorporated herein by this reference, evidencing Purchaser's obligation to pay to Successor Agency 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 Purchaser 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 Successor Agency 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 Purchaser 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 Purchaser or a sale back from such Affiliate to Purchaser, including, but not limited to, a conveyance to a limited liability company or limited partnership in which Purchaser, or an Affiliate, is the manager or general partner, as the case may be;

(iii) The inclusion of equity participation by Purchaser by addition of investor members or limited partners to Purchaser'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 Purchaser's partnership, or the removal for cause of the manager of the Purchaser'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) Intentionally omitted;

(vi) Intentionally omitted; 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 Successor Agency Executive Director for conformance with this Agreement; provided, however that the Successor Agency Executive Director shall approve any such transfer

as a Permitted Transfer upon delivery of documentation to the Successor Agency Executive Director 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 Purchaser, 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 Purchaser 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 Purchaser elects to construct the building on Parcel "E"), Parcel "F" (if Purchaser elects to construct the building on Parcel "F"), and Parcel "G" (if Purchaser 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 Successor Agency; (ii) the Successor Agency executes and records 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 Purchaser until after the Phase 2 Closing, any Pubic Improvements deferred by Purchaser 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 Purchaser or an Assignee, and required to be submitted to Successor Agency 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 Successor Agency, located on the Site, and owned by Purchaser 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 Area' shall mean the Palm Avenue/Commercial Redevelopment Project Area.

"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 Purchaser, subject to the obligation of the Successor Agency to disburse, or cause 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 which the Successor Agency has disbursed $40,768.43 (the "Disbursed Funds").

"Purchase Price" shall mean the monetary consideration payable by Purchaser to Successor Agency 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 $213,000.00, in cash, at the Close of Escrow; and (b) payment to Successor Agency of the Participation Component in accordance with the Payment Agreement.

"Purchaser" shall have the meaning set forth in the Preamble to this Agreement and Section 107 of this Agreement.

"Purchaser Equity" shall mean any Source of Financing needed to pay Acquisition and Development Costs that is provided by Purchaser and not secured by a deed of trust on the Site or any portion thereof.

"Purchaser's Title Policy" shall have the meaning set forth in Section 211 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 Successor Agency 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 $2,159,231.57, which shall be disbursed by the Successor Agency, or caused to be disbursed by the Successor Agency, to pay or reimburse Purchaser 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 substantially in the form attached to this Agreement as Attachment No. 18, which is incorporated herein by this reference.

"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.

"Series 2010 Bond Proceeds" shall mean proceeds from the Palm Avenue/Commercial Redevelopment Project Tax Allocation Bonds, 2010 Tax Allocation Bonds, approved by the Successor Agency's Oversight Board and the State Department of Finance on the Successor Agency's "ROPS 1", and allocated for the Public Improvements and currently held by the City.

"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.

"Site Preparation Design Work" shall mean 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 this Agreement. The Site Preparation Design Work is more specifically described in the Scope of Development.

"Source of Financing" means a source of financing the Project which has been approved by the Successor Agency, 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 Successor Agency 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.

"Successor Agency" means the Imperial Beach Redevelopment Agency Successor Agency, and any assignee or successor to its rights, powers and responsibilities.

"Successor Agency 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 at the Close of Escrow.

"Successor Agency Executive Director" refers to the Successor Agency Executive Director or his or her designee.

"Title Company" means a title insurance company mutually acceptable to Successor Agency and Purchaser.

"Title Report" means the Second Amended Preliminary Report, dated September 5, 2013, as amended by that certain Supplemental Report dated September 23, 2013, 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 Successor Agency. 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 Successor Agency

a. Successor Agency is a public entity, exercising governmental functions and powers, and organized and existing under the laws of the State of California. The address of the Successor Agency for purposes of receiving notices pursuant to this Agreement shall be:

Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Executive Director
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: Kendall D. Berkey
Tel: 213-617-0480
Fax: 213-625-0931

SECTION 107 Purchaser

a. Purchaser is Sudberry-Palm Avenue LLC, a California limited liability company, whose Manager is Sudberry Development, Inc., a California corporation. The address of Purchaser 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 Purchaser shall be transmitted by email to Gerald I. Solomon, Esq. of Solomon Minton Cardinal Doyle & Smith LLP addressed as follows: gis@smcdslaw.com.

b. Whenever the term "Purchaser" is used herein, such term means and includes the Purchaser as of the date hereof, and any Assignee pursuant to an assignment and assumption agreement, and any successor to the rights, powers and responsibilities of Purchaser or Assignee as permitted by this Agreement.

SECTION 108 Assignments and Transfers

a. Purchaser 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. Purchaser further recognizes that the qualifications and identity of Purchaser are of particular concern to the Successor Agency, 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 Purchaser or any other act or transaction involving or resulting in a significant change (as defined below) in ownership or control of Purchaser, is for practical purposes a transfer or disposition of the property then owned by Purchaser. Purchaser further recognizes that it is because of such qualifications and identity that the Successor Agency is entering into the Agreement with Purchaser. Therefore, no voluntary or involuntary successor in interest of Purchaser 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, Purchaser 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 Successor Agency, which the Successor Agency may grant or withhold in its sole discretion; provided, however, that Successor Agency shall approve any Permitted Transfer upon delivery of documentation to the Successor Agency 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 Successor Agency.

c. For the reasons cited above, Purchaser 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 Successor Agency, there shall be no significant change in the ownership of Purchaser or in the relative proportions thereof, or with respect to the identity of the parties in control of Purchaser 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 Purchaser, other than Permitted Transfers, shall require the approval of the Successor Agency. To the extent Successor Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, the Successor Agency 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 Successor Agency. In addition, the Successor Agency shall not approve any assignment or

transfer of this Agreement or any interest herein or significant change in ownership of Purchaser 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. Notwithstanding any provision of this Agreement to the contrary, Successor Agency 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. Purchaser shall promptly notify the Successor Agency of any and all changes whatsoever in the identity of the parties in control of Purchaser 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 Successor Agency if there is any significant change (voluntary or involuntary) in ownership or control of Purchaser or Purchaser'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 Successor Agency in conformance with this Agreement shall be evidenced by the execution and delivery by Purchaser, Assignee and Successor Agency of an assignment and assumption agreement, which agreement shall be reasonably acceptable to the Successor Agency Executive Director as to form and content pursuant to which Purchaser would assign to such Assignee and such Assignee would assume rights and obligations of Purchaser under this Agreement pertaining to the assigned portion of the Site.

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 Purchaser, such that the authority to make binding board-level business decisions for Purchaser 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 Successor Agency and the City 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 Purchaser 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, Purchaser and Successor Agency Executive Director 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, Successor Agency 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 Purchaser has made no representation or warranty that any such source will ultimately be available for the financing of the Project. Without limiting Purchaser's obligations under this Agreement, Purchaser'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 Purchaser 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 Purchaser 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), Purchaser (or Assignee, as applicable) shall submit to Successor Agency evidence reasonably satisfactory to the Successor Agency Executive Director that Purchaser 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 Purchaser or Assignee, as applicable, for a Construction Loan, including a final Project Budget approved by the Successor Agency Executive Director and all other commitments (all as described in the Method of Financing) to finance the construction of the Improvements, certified by Purchaser to be a true and correct copy or copies thereof. Purchaser 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 Purchaser 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 Successor Agency Executive Director;

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 Purchaser and the applicable Assignee to be a true and correct copy thereof, setting forth all consideration payable to Purchaser by such Assignee for conveyance of the applicable Parcel prior to Completion.

5. Documentation reasonably acceptable to the Successor Agency Executive Director of sources of additional capital sufficient to demonstrate that Purchaser or Assignee, as the case may be, has adequate equity funds committed to provide the amount of Purchaser Equity required by the Method of Financing.

The Successor Agency Executive Director 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 Successor Agency Executive Director 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; provided that the Purchaser's submission of any such submittal states in bold capitalized letters in 14 point on the cover page of such submittal that the "**SUCCESSOR AGENCY'S FAILURE TO RESPOND TO THIS DOCUMENT WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT SHALL BE DEEMED TO CONSTITUTE THE SUCCESSOR AGENCY'S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE PURCHASE AND SALE AGREEMENT**". If Successor Agency Executive Director shall disapprove any such evidence of financing, then Successor Agency Executive Director shall do so by written notice to Purchaser 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, Purchaser may submit to the Successor Agency Executive Director for review and comment any loan applications to be made by Purchaser or pro forma loan documentation provided by the proposed lender; provided, that review, comments and approval, if any, by the Successor Agency Executive Director shall be for the sole purpose of determining and advising Purchaser 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 Successor Agency Executive Director in writing shall not be subject to subsequent disapproval. Successor Agency shall cooperate reasonably with Purchaser and any Approved Assignee in Purchaser/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 Purchaser or Approved Assignee. Successor Agency 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 Successor Agency shall cooperate with Purchaser in Purchaser'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, Successor Agency agrees to sell to Purchaser and Purchaser agrees to purchase the Site for the Purchase Price.

b. The Purchase Price shall consist of the following: (i) $213,000.00, payable in cash, upon the Close of Escrow; and (ii) the payment of the Participation Component.

c. For purposes of this Section 201, "arm's length sale" shall mean a transaction in which Purchaser and the buyer act independently and have no relationship to each other, as reasonably determined by the Successor Agency Executive Director.

d. For purposes of this Section 201, "gross sales price" shall mean all compensation payable to Purchaser for the sale, directly or indirectly, less costs of sale payable by Purchaser.

e. Intentionally Omitted.

f. Purchaser's obligation to pay Successor Agency the Participation Component of the Purchase Price shall be set forth in the Payment Agreement, and shall be secured by the Successor Agency Deed of Trust, which shall be recorded against the Site at the Close of Escrow, as a lien that is junior and subordinate to any Permitted Deeds of Trust.

SECTION 202 Escrow

a. Successor Agency 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. Successor Agency and Purchaser 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 Successor Agency and to Purchaser within five (5) Business Days after opening of the escrow, the Escrow Agent shall carry out its duties as Escrow Agent hereunder.

b. Successor Agency and Purchaser 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 Purchaser 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. Purchaser 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 Purchaser 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 Purchaser'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. Successor Agency shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Successor Agency 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 Purchaser.

f. Successor Agency shall timely and properly execute, acknowledge and deliver a Grant Deed conveying to Purchaser title to all the Parcels in the Site in accordance with the requirements of this Agreement, together with an estoppel certificate certifying that Purchaser has completed all acts (except payment of the Purchase Price), necessary to entitle Purchaser 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 Successor Agency and Purchaser, respectively, for any fees, charges and costs payable under this Section 202. Before such payments are made, the Escrow Agent shall notify Successor Agency and Purchaser 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 Purchaser and Successor Agency (the "Settlement Statement").

3. Disburse funds in accordance with the Settlement Statement when the conditions of this escrow have been fulfilled by Successor Agency and Purchaser 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 Purchaser'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 Purchaser and Successor Agency.

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 Successor Agency and Purchaser, 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 Successor Agency and Purchaser. 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 Successor Agency 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. Successor Agency shall notify Purchaser in writing of such operating expenses and, at the option of Purchaser, shall cancel any and all related contracts and agreements that would be binding on the Site post-Closing. Successor Agency shall pay all such expenses that accrue prior to the date of the Close of Escrow and all such expenses that Purchaser disapproved which accrue after the Close of Escrow. To the extent any such expenses were approved by Purchaser prior to Closing and Purchaser assumes any related contracts and agreements at Closing, Purchaser shall pay such expenses accruing on the date of the Close of Escrow and thereafter during the period of Purchaser'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. Successor Agency and Purchaser 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 Successor Agency and Purchaser 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"). Purchaser or Successor Agency, 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. Successor Agency and Purchaser shall each pay their respective legal, professional and consultant fees relating to this transaction.

n. All communications from the Escrow Agent to Successor Agency or Purchaser 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), and any other documents to be recorded, if any, to effectuate the vacation of the adjacent rights-of-way;

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. Intentionally Omitted;

7. Recordable Construction Loan documents;

8. Successor Agency Deed of Trust (to be recorded against the Site);

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. Intentionally omitted;

3. Recordable Construction Loan documents (to be recorded against Parcel Parcel "E" or Parcel "F" or Parcel "G" on Property 2, or all of the Parcels, 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, Successor Agency shall convey title to the Site to Purchaser 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 Successor Agency Executive Director and Purchaser and communicated in writing to the Escrow Agent.

b. Except as otherwise provided herein, possession of the Site shall be delivered to Purchaser at the Close of Escrow. Purchaser 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

Successor Agency shall convey to Purchaser 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 Purchaser, the Successor Agency Executive Director shall make such non-material modifications to the form of the Grant Deed as the Successor Agency Executive Director may deem necessary or appropriate to carry out the purposes of this Agreement.

SECTION 205 Condition of Title

a. Successor Agency shall convey to Purchaser fee simple title to the Site free and clear of all liens, encumbrances, assessments, easements, leases and taxes except the Approved Title Conditions.

b. Successor Agency has caused the Title Company to deliver to Purchaser a Second

Amended Preliminary Report dated September 5, 2013, as amended by that certain Supplemental Report dated September 23, 2013, (collectively, 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, Purchaser 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 Successor Agency Executive Director within one hundred twenty (120) 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. Intentionally omitted.

d. Intentionally omitted.

e. The exceptions approved by Purchaser in Section 205.b, above, together with the covenants of the Grant Deed conveying the Site to Purchaser (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 Purchaser's Title Policy and are acceptable to Purchaser shall hereinafter collectively be referred to as the "Approved Title Conditions". Purchaser shall have the right to approve or disapprove any further exceptions (which are not created by Purchaser) reported by the Title Company. Successor Agency 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, Successor Agency 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

Purchaser 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 Purchaser in writing that the Grant Deed(s) conveying the Site to Purchaser, properly executed and acknowledged by the Successor Agency Executive Director 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 Successor Agency immediately following the delivery to Purchaser of the Purchaser's Title Policy or confirmation that the Title Company is irrevocably committed to issue the Purchaser'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 Successor Agency 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. The obligation of the Successor Agency 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. 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 Successor Agency 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 Successor Agency are not satisfied by the Purchaser or waived in writing by the Successor Agency within the time limits set forth in the Schedule of Performance. The Close of Escrow and the obligations of Successor Agency and Purchaser with respect to the purchase and 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, Purchaser 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. Purchaser and Successor Agency 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 eighteen (18) 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 Purchaser or Successor Agency 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 Purchaser and Successor Agency). The Purchaser 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 Successor Agency). Purchaser shall have submitted and Successor Agency Executive Director shall have approved the Final Construction Drawings.

c. Project Budget (benefits Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency Executive Director the availability of sufficient funds to pay all Acquisition and Development Costs.

d. Construction Contract (benefits Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency-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. Successor Agency'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 Successor Agency-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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Purchaser (unless deferred to Phase 2), required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the final Successor Agency-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 Successor Agency Executive Director 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 Successor Agency the right but not the obligation to assume Purchaser's rights and obligations under the Public Improvement Contract in the event Purchaser abandons the Public Improvement work, or ceases to perform its obligations under the Public Improvement Disbursement Agreement or this Agreement. Successor Agency'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 Successor Agency-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 Purchaser, has demonstrated experience in completing similar public works projects and is otherwise reasonably acceptable to Successor Agency; 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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency). Purchaser shall have submitted and the Successor Agency Executive Director 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 Purchaser, 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, and (ii) those to be provided by Successor Agency, 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 Successor Agency.

Successor Agency shall cooperate reasonably with Purchaser in Purchaser'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 Purchaser. Successor Agency 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 Successor Agency). Purchaser shall have submitted and the Successor Agency Executive Director shall have reasonably approved evidence of binding commitments (subject to commercially customary conditions) from (i) a grocery store or supermarket reasonably acceptable to the Successor Agency Executive Director 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 Successor Agency Executive Director's review shall be limited to

confirming that such leases are not inconsistent with this Agreement.

h. Insurance (benefits Successor Agency). Purchaser shall have submitted to Successor Agency, and the Successor Agency Executive Director 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 Imperial Beach Redevelopment Agency Successor Agency, the City of Imperial Beach, and their respective elected officials, officers, officials, employees, attorneys, contractors and agents."

i. CC&Rs (benefits Successor Agency and Purchaser). Purchaser shall have submitted to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency Executive Director's review shall be limited to confirming that the CC&Rs are not inconsistent with this Agreement.

j. Intentionally Omitted.

k. Intentionally Omitted.

l. Permits (benefits Successor Agency and Purchaser). Purchaser 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) Purchaser shall have delivered to Successor Agency the list of permits required for grading and the construction of the Phase 1 Improvements; (2) Purchaser shall have obtained all applicable plan check approvals for the Phase 1 Improvements; (3) Purchaser 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 Purchaser at the Phase 1 Closing); (5) there are no changes (other than changes approved by the Successor Agency Executive Director) to the Construction Drawings approved by the Successor Agency Executive Director in accordance with paragraph b. of this Section 208 between the time of Successor Agency Executive Director's approval and the time of issuance of the Building Permits other than minor changes required by the Successor Agency'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 Successor Agency Executive Director may extend, but in no event later than thirty days after the Phase 1 Closing.

m. No Challenges (benefits Purchaser and Successor Agency). 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 Purchaser and Successor Agency). Successor Agency and Purchaser 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 Purchaser). Successor Agency shall have submitted to Purchaser 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 Purchaser and Successor Agency, as applicable). Successor Agency, Purchaser 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 Purchaser and Successor Agency);

(2) Environmental Indemnity (to be executed by Purchaser);

(3) Option Agreement (to be executed by Purchaser and Successor Agency);

(4) If not already executed, the Public Improvement Disbursement Agreement (to be executed by Purchaser, Successor Agency and Escrow Agent);

(5) Intentionally Omitted; and

(6) Such other documents as the Parties may request to be delivered through Escrow.

q. Representations, Warranties and Covenants (benefits Successor Agency). Purchaser shall have duly performed each and every obligation to be performed by Purchaser hereunder to be performed prior to the Phase 1 Closing and Purchaser'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 Successor Agency (benefits Purchaser). Successor Agency shall have duly performed each and every obligation to be performed by Successor Agency hereunder to be performed prior to the Phase 1 Closing and Successor Agency'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 Successor Agency). Purchaser shall have delivered the items to be delivered by Purchaser prior to the Phase 1 Closing, when and as required in this Agreement.

t. Deliveries (benefits Purchaser). Successor Agency shall have delivered the items and funds to be delivered by Successor Agency prior to the Phase 1 Closing, when and as required in this Agreement.

u. Intentionally omitted.

v. Condition of Site (benefits Purchaser). Successor Agency shall have completed all demolition on the Site as provided in Section 216.f. of this Agreement.

w. No Impeding Litigation (benefits Purchaser and Successor Agency). 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 Successor Agency). Purchaser shall not be in default of this Agreement.

y. No default (benefits Purchaser). Successor Agency shall not be in default of this Agreement.

z. Feasibility (benefits Purchaser). Purchaser has not provided written notice to the Successor Agency that Purchaser has determined, in Purchaser's sole good faith discretion, that the Project is not financially feasible, due to any of the following: (i) intentionally omitted; (ii) Purchaser has failed, despite commercially reasonable efforts, to obtain financing for the development of the Project on terms reasonably satisfactory to Purchaser; or (iii) the costs of developing the Project or of completing the Public Improvements are materially different than those anticipated by Purchaser 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 or legislation pending or adopted which, in Purchaser'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 Successor Agency will not, or will not be able to, satisfy its obligations hereunder.

aa. Feasibility (benefits Successor Agency). Subject to the liquidated damages provision set forth in Section 512 of this Agreement, Successor Agency has not provided written notice to the Purchaser prior to February 1, 2014, that the Successor Agency has determined, in Successor Agency'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 Successor Agency of any of its obligations hereunder.

bb. Purchaser's Title Policy (benefits Purchaser). Title Company shall be irrevocably committed to issue the Purchaser's Title Policy to Purchaser, as provided in this Agreement.

cc. Purchaser Formation Documents (benefits Successor Agency). Except as otherwise provided below, Purchaser shall have delivered documentation relating to the

corporate, partnership, limited liability or other similar status of Purchaser, as the case may be (and if Purchaser is a limited partnership, its general partners, and if Purchaser 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 Successor Agency, then Purchaser shall provide to Successor Agency the operating agreement of Purchaser (or the portions thereof evidencing authority). In addition, if requested by Successor Agency, then Purchaser shall provide to Successor Agency formation and good standing certificates filed with, or issued by, the State of California for Purchaser'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. Successor Agency 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, Successor Agency agrees that Purchaser may redact the financial details of any such information prior to any such disclosure.

dd. Joint Supplemental Escrow Instructions (benefits Purchaser and Successor Agency). Successor Agency and Purchaser 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 Purchaser). Successor Agency 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 Successor Agency). Purchaser shall have duly performed (or Successor Agency will have waived) each and every obligation to be performed by Purchaser hereunder to be performed prior to the Close of Escrow and Purchaser'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 Successor Agency (benefits Purchaser). Successor Agency shall have duly performed (or Purchaser will have waived) each and every obligation to be performed by Successor Agency hereunder to be performed prior to the Close of Escrow and Successor Agency's representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the Close of Escrow in all material respects.

hh. Deliveries (benefits Successor Agency). Purchaser shall have deposited into escrow the cash portion of the Purchase Price, and delivered the items and funds to be delivered

by Purchaser prior to the Closing, when and as required in this Agreement.

ii. Deliveries (benefits Purchaser). Successor Agency shall have delivered the items and funds to be delivered by Successor Agency prior to the Closing, when and as required in this Agreement.

jj. No Impeding Litigation (benefits Purchaser and Successor Agency). 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 Successor Agency). Purchaser shall not be in default of this Agreement.

ll. No default (benefits Purchaser). Successor Agency 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 Successor Agency or Purchaser, the following shall apply:

1. Either Party shall have the right to terminate this Agreement, the escrow and the rights and obligations of Successor Agency and Purchaser 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 Purchaser and Successor Agency all funds, if any, and documents deposited by them, respectively, into escrow which are held by Escrow Agent on the date of said termination (less, in the case of the Party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such Party under 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 Purchaser and the Successor Agency 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 Successor Agency and Purchaser.

b. Disburse the cash portion of the Purchase Price to Successor Agency, and deliver the fully executed Payment Agreement to the Successor Agency.

c. Distribute to the Successor Agency and Purchaser 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 Purchaser's Title Policy to Purchaser and deliver the original thereof to Purchaser within two weeks after the Closing.

e. Prepare and distribute to Purchaser and Successor Agency each, copies of both Parties' escrow closing statements and a complete copy of all documents handled by escrow.

Escrow Agent agrees that release of funds to Successor Agency shall irrevocably commit Escrow Agent, on behalf of Title Company, to issue Purchaser'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 Purchaser an owner's policy of Title Insurance, issued by the Title Company, insuring that the fee interest of the Site is vested in Purchaser in the condition required by Section 205 of this Agreement, together with any endorsements as the Purchaser may reasonably request ("Purchaser's Title Policy"). The Title Company shall provide Successor Agency and Purchaser with a copy of the Purchaser's Title Policy. The Purchaser's Title Policy shall be in such reasonable amount as the Purchaser may request, subject to the approval of the Successor Agency Executive Director. If Title Company is unable or unwilling to deliver the Purchaser's Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Purchaser, Purchaser may terminate this Agreement pursuant to Section 509.

b. Successor Agency shall pay only the premium for a standard form CLTA owner's policy. Any extended coverage and endorsements requested by Purchaser shall be at no cost or expense to Successor Agency.

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 Purchaser, shall be borne by Successor Agency. All *ad valorem* taxes and assessments levied or imposed for any period commencing after conveyance of title of the Site to Purchaser shall be paid (as between Successor Agency and Purchaser) by Purchaser. Purchaser's and Successor Agency'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, Purchaser 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 Purchaser 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. Purchaser 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. Purchaser shall give Successor Agency prompt notice in writing of any such contest at least ten (10) days before filing any contests. Purchaser 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 Purchaser shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Successor Agency 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 Purchaser, Purchaser 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 Purchaser and, after such payment and discharge by Purchaser, Successor Agency will promptly return to Purchaser such security as Successor Agency shall have received in connection with such contest.

c. Successor Agency 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 Purchaser shall be prosecuted by Purchaser at Purchaser's sole cost and expense; and Purchaser shall indemnify and save harmless Successor Agency (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 Successor Agency (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 Purchaser, unless waived by Purchaser in writing.

SECTION 215 Land Use Requirements for the Site

a. Entitlements. It shall be a condition of the Close of Escrow that Purchaser 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. Purchaser shall promptly and in good faith apply for, and diligently pursue obtaining the Entitlements. Without limiting Purchaser's obligations under this Section 215.a., Purchaser's failure to obtain the Entitlements shall not be an event of default hereunder, provided that Purchaser promptly applied in good faith for, and diligently pursued obtaining the Entitlements (or caused others to do so on Purchaser's behalf). Successor Agency 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 Purchaser 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 Purchaser; (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 Purchaser 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. Purchaser shall comply with all applicable conditions of approval required by City. Without cost to Successor Agency, Successor Agency shall reasonably cooperate and provide appropriate technical assistance to Purchaser, as necessary, in connection with Purchaser's obtaining all necessary Entitlements and permits for the construction of the Improvements.

b. Indemnification. To the extent permitted by law, Purchaser shall protect, defend, indemnify and hold Successor Agency, City, and each of their respective elected officials, officers, representatives, agents, employees, contractors and attorneys (Successor Agency, City, and each of their respective elected officials, officers, representatives, agents, employees, contractors and attorneys may be collectively referred to herein as 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 Purchaser'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 Purchaser, 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 the Successor Agency, in good faith, determines that its interests are not adequately protected by being provided a defense by Purchaser, Successor Agency (and the other Indemnified Parties) may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the Successor Agency, on behalf of the Indemnified Parties, makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser shall pay all of the costs related thereto, including, without limitation, reasonable 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 Successor Agency (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. Purchaser acknowledges that the Successor Agency is a Party to this Agreement only in its capacity as the assignee of the former Imperial Beach 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. Purchaser'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. Successor Agency makes no representation or warranty, express or implied, regarding any conditions of the Site, except that Successor Agency represents and warrants to Purchaser that Successor Agency has disclosed and provided to Purchaser all information in Successor Agency's possession or known to Successor Agency 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 Successor Agency's possession or which are known by and available to Successor Agency, 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, Successor Agency shall indemnify, defend and hold Purchaser (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 Successor Agency or any of its employees, agents, or contractors first occurring after the Effective Date.

3. It shall be the sole responsibility of Purchaser, at Purchaser'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. Purchaser shall have the right, at its own expense, and in consultation with Successor Agency, 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 Purchaser in accordance with this Agreement. Purchaser shall also provide Successor Agency with the name(s) of the Consultant. Upon Consultant's completion of the work, a copy of the Consultant's written report(s) shall be delivered to Successor Agency; provided, however, that Purchaser makes no representation or warranty regarding such reports, and it shall have no liability whatsoever for any errors or omissions contained therein. Purchaser shall have the right, not later than June 1, 2014, to terminate this Agreement if Purchaser determines, on the basis of the report or any of the due diligence performed by Purchaser, that the environmental condition on the Site is not suitable for the economically feasible development of the Site as contemplated herein. If Purchaser does not terminate this Agreement by written notice to Successor Agency on or before June 1, 2014, then this condition shall be deemed waived.

4. If Purchaser 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 Purchaser without cost or expense to the Successor Agency (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 Purchaser incurs any costs to remove or remediate any Hazardous Substances from the Site ("Remediation Costs"), the Successor Agency 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 Successor Agency or any of its employees, agents or contractors, if any.

c. Conveyance of Site. The Site shall be conveyed to Purchaser in an "as is" physical condition, with no warranty, express or implied by the Successor Agency 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, Purchaser hereby waives, releases and discharges the Successor Agency, the City, and their respective 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 any of the Indemnified Parties. Purchaser 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, Purchaser 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, Purchaser shall defend, indemnify and hold harmless the Indemnified Parties in accordance with the Environmental Indemnity substantially in the form of Attachment No. 10 to this Agreement, which is incorporated herein by this reference (but which example has not been approved as to form and substance by either Successor Agency or Purchaser 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). As a condition to the Phase 1 Closing, Purchaser shall execute and deliver to Successor Agency the Environmental Indemnity as to the Site.

f. Site Preparation.

Prior to the Close of Escrow, without cost to Purchaser, Successor Agency 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 Purchaser 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 Purchaser

a. Until the Close of Escrow, representatives of Purchaser 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 Successor Agency Executive Director 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, Purchaser shall protect, defend, indemnify and hold 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 Purchaser'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 Purchaser, 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 Purchaser 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 any of the Indemnified Parties. If the Successor Agency, on behalf of the Indemnified Parties, in good faith, determines that its(their) interests are not adequately protected by being provided a defense by Purchaser, Successor Agency may, on behalf of the Indemnified Parties, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the Successor Agency makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser 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 Successor Agency 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 Purchaser, (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) except as required by applicable law or (iv) lease any portion of the Site without the prior written consent of Purchaser. Successor Agency shall maintain the Site in a safe and secure condition, and shall not permit any use of the Site without Purchaser'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", which shall be an ongoing maintenance obligation of Purchaser before and after acceptance of the remainder of the Public Improvements by the City;

(e) Installation of new street lights; and

(f) Any other Cal-Trans requirements relating to the Public Improvements.

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 Public Works Director. Purchaser 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 Public Works Director, including the adjustment to grade and/or replacement of all utility covers in such alley. The work shall also include combining and reconfiguring the vehicular access point to the alley and parking access on 9th Street to the satisfaction of the City Public Works Director. 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 Public Works Director ("New Traffic Signal").

b. Intentionally omitted.

c. Payment for Public Improvement Costs. Subject to the conditions precedent set forth in Sections 219.e., f. and h., below, Successor Agency shall pay, or cause the City to pay, to or for the benefit of or reimburse Purchaser for the cost of designing, permitting, constructing and installing the Public Improvements described in this Section 219.c., below (the "Public Improvement Costs") and costs for Site Preparation Design Work, not to exceed the amount described in this Section 219.c., solely from the Series 2010 Bond Proceeds, but in no event more than the sum of $2,200,000 (the "Public Improvement Funds") for the Public Improvements described in Section 219.a.1., above and costs for Site Preparation Design Work. Prior to the Effective Date, Successor Agency has incurred and disbursed to Project design consultants the sum of $40,768.43 (the "Disbursed Funds"), which is a portion of the Public Improvement Funds, for the preparation of plans for the Public Improvements. For purposes of this Agreement, the amount of the Public Improvement Funds remaining after disbursement of the Disbursed Funds, $2,159,231.57, shall be referred to as the "Remaining Public Improvement Funds". The Successor Agency shall disburse (or cause the City to disburse) the Remaining Public Improvement Funds as follows:

1. Successor Agency's obligation shall be to first reimburse Purchaser, 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, Purchaser shall provide to the Successor Agency Executive Director 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 Successor Agency shall disburse such Excess Funds to the extent necessary to pay or reimburse Purchaser 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 Successor Agency any Excess Funds remaining after paying for all the Public Improvements listed in Section 219.a.

d. Right to Defer Some Public Improvements. Upon written notice to the Successor Agency Executive Director not later than thirty (30) days prior to the Scheduled Phase 1 Closing Date, Purchaser 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 Deposit described in paragraph f. of this Section 219, below, Successor Agency shall have no obligation to pay to or on behalf or, or reimburse, Purchaser for the cost of Public Improvements unless and until all of the following conditions shall have been satisfied:

1. Public Improvement Budget. Purchaser shall have prepared and submitted to the Successor Agency Executive Director, and the Successor Agency Executive Director 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 Purchaser or any Affiliate of Purchaser as a management fee, contractor's fee or for overhead or general conditions, regardless of how characterized. The Successor Agency Executive Director shall approve or disapprove the Public Improvement Budget within twenty (20) days of a complete submittal. The Successor Agency Executive Director 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 Successor Agency's contribution for the Public Improvements shall not exceed the Remaining Public Improvement Funds;

2. Public Improvement Contract. Purchaser and its general contractor shall have executed the Public Improvement Contract described in Section 208 of this Agreement, approved by the Successor Agency Executive Director; and

3. No default. Successor Agency shall determine that Purchaser is not in default of any material obligation under this Agreement or any related instrument or agreement.

f. Disbursement.

1. Not later than five (5) Business Days after the Effective Date, the Successor Agency shall open a construction escrow account ("Construction Escrow") with Wells Fargo Bank or other lending institution that is mutually acceptable to the Purchaser and Successor Agency Executive Director ("Escrow Agent"), and deposit into the Construction Escrow $259,231.57 (the "Initial Deposit").

2. As conditions precedent to the disbursement from escrow of any portion of the Initial Deposit, (i) Successor Agency, Purchaser 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; (ii) if applicable pursuant to Section 13 of the Disbursement Agreement, Purchaser shall have executed the Assignment(s) of Agreement and Plans and Specifications (City to Purchaser) substantially in the form attached to the Disbursement Agreement as Exhibit A and incorporated herein by reference; and (iii) Purchaser and any applicable architect, engineer or other person or entity shall have executed an Assignment of Architectural Agreements and Plans and Specifications (Purchaser to City) substantially in the form attached to the Disbursement Agreement as Exhibit A and incorporated herein by 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, Successor Agency shall deposit the $1,900,000 balance of the Remaining Public Improvement Funds.

4. Promptly after the Successor Agency deposits into Escrow the funds described in paragraph 3 of this Section 219.f., Purchaser shall process the first application for payment to pay for the cost of the following:

a. Bond. Purchaser 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 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, the Bond shall have been approved in writing by the Successor Agency Executive Director as to content, form and amount. Purchaser shall, prior to the commencement of construction of the Public Improvements deliver to Successor Agency a certificate or certificates from the bonding company issuing the Bond, naming the Successor Agency 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 Successor Agency for public improvements; and

b. Insurance. Purchaser 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 by Purchaser. Purchaser shall, prior to the commencement of construction of the Public Improvements deliver to Successor Agency a certificate or certificates

from the insurance company issuing the insurance policies, naming the Successor Agency and City as additional insureds.

c. Other Costs. The Successor Agency Executive Director may, in his 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 any other party, body, or agency, but does not affect the obligation of the Successor Agency Executive Director to act reasonably in granting such approval), approve as part of the first application for payment other Public Improvement Costs, provided such costs are of a minor nature, such as permit costs.

5. Successor Agency shall direct the Escrow 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 or in the Public Improvement Disbursement Agreement, in the event the Construction Escrow is opened and this Agreement is terminated for any reason, Successor Agency shall have the right in its sole and absolute discretion to direct the Escrow Agent to remit to Successor Agency any amounts on deposit in the Construction Escrow without any additional or further consent, approval or direction of Purchaser.

g. Acceptance of Public Improvements. All Public Improvements shall be designed and constructed to the satisfaction of the City's Public Works Director. Purchaser's obligation to construct the Public Improvements pursuant to this Agreement shall be satisfied upon the satisfaction of the following conditions and City's and Purchaser's execution and recordation of an Acceptance and Maintenance Agreement for Public Improvements substantially in the form attached to this Agreement as Attachment No. 17: (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 Purchaser or its contractor; (3) certification or equivalent by an authorized representative of each designer of each of the respective Public Improvements that construction has been completed in a good and workmanlike manner and substantially in accordance with plans and specifications approved by the Successor Agency; 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. Purchaser shall promptly remedy at the Purchaser's cost and expense any condition or conditions which prevent the City from accepting the Public Improvements as provided by this paragraph.

h. Funding for Site Preparation Design Work. The Parties agree that a portion of the Remaining Public Improvement Funds, not to exceed the sum of $100,000, may be disbursed as reimbursement for costs for the Site Preparation Design Work. The obligation of the Successor

Agency to reimburse funds for costs for the Site Preparation Design Work shall be included in the Remaining Public Improvement Funds. 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 disbursement of the Site Preparation Design Funds shall be subject to the conditions precedent for the disbursement of the Initial Deposit set forth in clause 2 of Section 219.f., above.

2. The Site Preparation Design Funds shall be subject to and disbursed in accordance with the Disbursement Agreement to be executed by Successor Agency, Purchaser and Escrow Agent. Disbursements of the Site Preparation Design Funds shall be subject to the approval of the Successor Agency Executive Director in accordance with the Disbursement Agreement.

3. Successor Agency'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 $100,000 is disbursed for the Site Preparation Design Work, the balance available for the Public Improvements shall be $2,059,231.57. Provided, however, that Purchaser 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 this Agreement.

4. Not later than thirty (30) days after completion of the Site Preparation Design Work and acceptance of the Public Improvements pursuant to Section 219.g., above, Purchaser shall prepare, execute and deliver to the Successor Agency 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 Funds disbursed for all Public Improvements Costs minus the costs for the Site Preparation Design Work plus (ii) the Public Improvement Funds disbursed for the Site Preparation Design Work, is less than $2,200,000, the Escrow Agent shall promptly, but in any event within thirty (30) days of written demand by the Successor Agency, disburse to the Successor Agency from the Construction Escrow the amount by which the actual final cost is less than $2,200,000 plus any other remaining amounts in the Construction Escrow and the Construction Escrow shall be closed.

SECTION 220 <u>Phase 2 Closing</u>.

Until the occurrence of the Phase 2 Closing, Purchaser 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. Successor Agency and Purchaser 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 Purchaser or Successor Agency 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 Successor Agency and Purchaser). Successor Agency Executive Director shall have approved any changes to the previously approved Final Construction Drawings as they pertain to the Phase 2 Improvements.

b. Project Budget (benefits Successor Agency and Purchaser). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency Executive Director the availability of sufficient funds to pay all Acquisition and Development Costs for the Phase 2 Improvements.

c. Construction Contract (benefits Successor Agency and Purchaser). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Successor Agency-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. Successor Agency'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 Successor Agency-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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency). Purchaser shall have delivered to Successor Agency, and the Successor Agency Executive Director 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 Purchaser 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 Successor Agency-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. Successor Agency'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 Successor Agency-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 Purchaser, has demonstrated experience in completing similar public works projects and is otherwise reasonably acceptable to Successor Agency; 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 Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the construction contract, Successor Agency 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 Successor Agency and Purchaser). Purchaser shall have submitted and the Successor Agency Executive Director 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 Purchaser, 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, and (ii) those to be provided by Successor Agency for Public Improvements, necessary to finance the construction of Phase 2 to Completion, in accordance with a Project Budget approved, in writing, by the Successor Agency, which funds shall include all Purchaser Equity needed to pay all Acquisition and Development Costs for Phase 2. Notwithstanding the foregoing, if Purchaser 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.

Successor Agency shall cooperate reasonably with Purchaser in Purchaser'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 Purchaser.

Successor Agency 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 Successor Agency and Purchaser). Purchaser shall have submitted and the Successor Agency Executive Director shall have approved evidence of binding commitments (subject to commercially customary conditions) from (i) intentionally omitted; and (ii) retail tenants to lease space in Parcel "F", and Parcel "E" and Parcel "G", if any as to "E" and "G", provided that commitments to lease any portion of Parcel "E" or Parcel "G" shall not be a condition precedent to the Phase 2 Closing. Purchaser shall have the right, in Purchaser'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, Purchaser or any assignee of Purchaser 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. Successor Agency's review and approval of binding commitments from tenants pursuant to this Section shall be for the benefit of the Successor Agency alone, and no one shall be entitled to rely on such review or approval for any purpose whatsoever. By approving the tenant commitments, Successor Agency 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. Purchaser shall not be required to disclose any confidential economic deal terms and other confidential information not intended for public disclosure or which Purchaser may not disclose without breaching a contractual obligation or proscription.

g. Insurance (benefits Successor Agency). Purchaser shall have submitted to Successor Agency, and the Successor Agency Executive Director 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 Imperial Beach Redevelopment Agency Successor Agency, the City of Imperial Beach, and their respective elected officials, officers, representatives, agents, employees, contractors and attorneys."

h. Intentionally omitted.

i. Permits (benefits Successor Agency and Purchaser). Purchaser shall have delivered to Successor Agency 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 Purchaser 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 Successor Agency Executive Director 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 Purchaser and Successor Agency). 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 Purchaser and Successor Agency). Successor Agency and Purchaser 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 Purchaser). Successor Agency 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 Purchaser and Successor Agency, as applicable). Successor Agency, Purchaser 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. Intentionally omitted; 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 Successor Agency); and

4. Subordination Agreement.

Non-recorded documents:

5. Intentionally omitted.

PART 3. DEVELOPMENT OF THE SITE

SECTION 301 Land Use Approvals

It is the responsibility of Purchaser, without cost to Successor Agency, 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, Purchaser shall submit and Successor Agency Executive Director shall approve complete

Final Construction Drawings and Purchaser 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 Purchaser 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 Purchaser, (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 Purchaser 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. Purchaser has prepared basic concept and schematic drawings and related documents for the development of the Site, which have been approved by the Successor Agency.

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 Purchaser and the Successor Agency Executive Director. Any such changes shall be within the limitations of the Scope of Development.

SECTION 304 Landscaping and Grading Plans

a. Purchaser shall prepare and submit to the Successor Agency for its approval preliminary and final landscaping and preliminary and finish grading plans for the Site. These plans shall be prepared and submitted within the times established in the Schedule of Performance. Purchaser 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 Purchaser's architect. Within the times established in the Schedule of Performance, Purchaser shall submit to the Successor Agency for approval the name and qualifications of its architect, landscape architect and civil engineer.

SECTION 305 Construction Drawings and Related Documents

a. Purchaser (or Assignee, as the case may be) shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the Successor Agency 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 Successor Agency Executive Director if developed as a logical evolution of previously approved Plans. Any items so submitted and approved by the Successor Agency Executive Director shall not be subject to subsequent disapproval.

c. During the preparation of all Plans, the Successor Agency Executive Director and Purchaser shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents. The Successor Agency Executive Director and Purchaser shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Successor Agency can receive prompt and speedy consideration.

d. If any revisions or corrections of Plans approved by the Successor Agency shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Site, Purchaser and the Successor Agency Executive Director 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 Successor Agency 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 Successor Agency. Upon receipt of any disapproval, Purchaser shall revise the Plans, and shall resubmit to the Successor Agency Executive Director as soon as possible but in no event later than sixty (60) days after receipt of the notice of disapproval. The Successor Agency 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 Successor Agency Executive Director requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. Purchaser, upon receipt of a disapproval based upon powers reserved by the Successor Agency hereunder shall revise the Plans, and shall resubmit to the Successor Agency Executive Director as soon as possible but in no event later than sixty (60) days after receipt of the notice of disapproval.

b. If Purchaser desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Successor Agency Executive Director 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 Successor Agency 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 Purchaser 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 Successor Agency in connection therewith, whether Purchaser has commenced such design, development and/or construction prior to or after Close of Escrow, or at any time, shall be the responsibility of Purchaser, without any cost to Successor Agency.

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 Successor Agency Executive Director and Purchaser.

b. After each Closing, Purchaser 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, Purchaser shall submit to the Successor Agency a written report of the progress of construction when and as reasonably requested by the Successor Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Successor Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by Purchaser. If Successor Agency utilizes the services of a construction monitor (at Successor Agency's cost), Purchaser shall reasonably cooperate with the Successor Agency's monitor to coordinate inspections.

SECTION 309 Indemnification and Insurance

a. Purchaser'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 Purchaser to defend, indemnify, and hold harmless the Indemnified Parties, Purchaser 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 any of the Indemnified Parties:

1. The existence, release, presence or disposal on, in, or under the Site of any Hazardous Substances resulting from the acts or omissions of Purchaser, an Assignee, their respective contractors, subcontractors, agents or other persons acting on Purchaser'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 Successor Agency, Successor Agency 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 Purchaser, or resulting from any material breach or default by Purchaser, under this Agreement.

If the Successor Agency (on behalf of the Indemnified Parties), in good faith, determines that its(their) interests are not adequately protected by being provided a defense by Purchaser, the Successor Agency may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If, pursuant to the preceding sentence, the Successor Agency makes such election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. Purchaser 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 Purchaser to defend, indemnify, and hold harmless the Successor Agency 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"), Purchaser shall maintain in effect and deliver to Successor Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(a) All-Risk Policies: Purchaser 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 Purchaser 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 Successor Agency, 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: Purchaser 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 Purchaser on the Site, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Purchaser, or any person acting for Purchaser, 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 Purchaser or its tenants, or any person acting for Purchaser, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Successor Agency and any other additional insured) 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. Purchaser shall deliver to Successor Agency a Certificate of Insurance and endorsements evidencing such insurance coverage prior to the occurrence of the Closing. Purchaser agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Purchaser may be held responsible for the indemnification of any of the Indemnified Parties or the payment of

damages to persons or property resulting from Purchaser's activities, activities of its tenants or the activities of any other person or persons for which Purchaser is otherwise responsible. To the extent that Purchaser 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, Purchaser 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: Purchaser shall maintain or cause to be maintained automobile insurance on any automobiles owned by Purchaser, 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: Purchaser shall maintain or cause to be maintained workers' compensation insurance, if required, for any employees of Purchaser, 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 Purchaser 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 Purchaser. Notwithstanding the foregoing, Purchaser 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 Purchaser shall deliver to Successor Agency 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 Successor Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Successor Agency, City, and Purchaser 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 Imperial Beach Redevelopment Agency Successor Agency, the City of Imperial Beach, and their respective elected officials, officers, employees, contractors, agents and attorneys."

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

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

SECTION 310 Nondiscrimination

Purchaser 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. Purchaser 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 Purchaser 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 Purchaser 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. Purchaser hereby agrees that Purchaser 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. Purchaser hereby agrees that Purchaser 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. Purchaser shall indemnify, protect, defend and hold harmless the Indemnified Parties, with counsel reasonably acceptable to Successor Agency, 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 Purchaser, 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 Purchaser 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 Purchaser 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. Purchaser hereby expressly acknowledges and agrees that Successor Agency has never previously affirmatively represented to the Purchaser 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), Purchaser 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 Condition of Site during Construction.

At all times after the Close of Escrow and prior to the completion of construction, Purchaser 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 Permits

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, Purchaser shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the Successor Agency 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 Successor Agency shall have the reasonable right of access to the Site, upon 24 hours' written notice to Purchaser

(except in the case of an emergency, in which case, Successor Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the Successor Agency shall be those who are so identified in writing by the Successor Agency Executive Director. Such access and inspection rights shall be undertaken in a manner which does not interfere with Purchaser's activities or cause damage to property or improvements.

b. The Purchaser has the right to designate representatives to accompany the Successor Agency representatives on such inspections. The Successor Agency agrees to coordinate with Purchaser to schedule such inspections so that Purchaser's representative may attend the inspections, in the discretion of Purchaser.

SECTION 315 Disclaimer of Responsibility

The Successor Agency neither undertakes nor assumes nor will have any responsibility or duty to Purchaser or to any third party to review, inspect, supervise, pass judgment upon or inform Purchaser 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. Purchaser 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 Purchaser or to any third party by the Successor Agency in connection with such matter is for the public purpose of redeveloping the Site, and neither Purchaser (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Successor Agency 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, Purchaser shall pay when due all real estate taxes and assessments assessed and levied on or against the Site or any portion thereof. Purchaser 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, Purchaser 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 Purchaser 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, Purchaser shall have the right to encumber Property 1, and upon and after the Phase 2 Closing, Purchaser 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"). Purchaser has no authority to encumber Property 1 or any portion thereof prior to the Phase 1 Closing. Purchaser 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 Successor Agency 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, Purchaser shall promptly notify the Successor Agency of any security interest created or attached to the Site whether by voluntary act of Purchaser or otherwise. The Successor Agency Executive Director 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 Successor Agency hereunder. Upon the reasonable request of a Permitted Lender, the Successor Agency Executive Director 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 Successor Agency Executive Director 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 Successor Agency Executive Director 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 <u>Lender Not Obligated to Construct Improvements</u>

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 <u>Notice of Default to Lenders; Right of Lender to Cure Defaults</u>

Whenever the Successor Agency shall deliver any notice or demand to Purchaser with respect to any breach or default by Purchaser in completion of construction of the Improvements, the Successor Agency shall at the same time deliver the notice or demand to each Permitted Lender

that requests such notice or demand, in writing, from the Successor Agency and provides its contact information for the notice or demand. Each such Permitted Lender shall (insofar as the rights of the Successor Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such 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 Successor Agency 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 Purchaser. Any Permitted Lender who forecloses on its Permitted Deed of Trust, or is assigned or otherwise succeeds to Purchaser's rights under this Agreement, or, subject to the reasonable approval of the Successor Agency Executive Director, 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 Successor Agency by which such Permitted Lender expressly assumes Purchaser's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Successor Agency. Any such Permitted Lender properly completing such improvements shall be entitled, upon written request made to the Successor Agency, to a Release of Construction Covenants from the Successor Agency.

SECTION 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by Purchaser, 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 Successor Agency 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 Successor Agency.

SECTION 322 Right of the Successor Agency to Cure Defaults

In the event of a default or breach by Purchaser 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 Successor Agency may cure the default at any time prior to completion by a Permitted Lender of any foreclosure under its security. In such event, the Successor Agency shall be entitled to reimbursement from Purchaser of all costs and expenses incurred by the Successor Agency in curing the default. The Successor Agency 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 Successor Agency to Satisfy Other Liens on the Site

Prior to Completion and after Purchaser has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Site, the Successor Agency shall have the right, without obligation, to satisfy any such liens or encumbrances. In such event, the Successor Agency shall be entitled to reimbursement from Purchaser of all costs and expenses incurred by the Successor Agency in satisfying any such liens or encumbrances. The Successor Agency 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, Successor Agency shall deliver to Purchaser a Release of Construction Covenants relative to such portion of the Site, upon written request therefor by Purchaser. 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 Successor Agency's issuance of a Release of Construction Covenants relative to such portion of the Site, each 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 and a release of all other obligations in this Agreement relating to such portion of the Site—it being understood that once a Release of Construction Covenants has been recorded as to the entire Site, this Agreement shall be of no further force or effect. The Successor Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the construction 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 Purchaser, the Successor Agency Executive Director 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 Successor Agency fails to deliver the Release of Construction Covenants within ten (10) days after written request from Purchaser, Successor Agency shall provide Purchaser 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 Purchaser 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 Successor Agency, Successor Agency will issue the Release of Construction Covenants upon delivery to the Successor Agency by Purchaser of a bond or other security that is acceptable to Successor Agency in the Successor Agency Executive Director's sole discretion, in an amount representing Successor Agency'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 Purchaser 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. Purchaser covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part thereof, that Purchaser, 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 Successor Agency.

b. Notwithstanding the generality of subsection (a), above, Purchaser, 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 Purchaser's May 6, 2009 proposal to the former Imperial Beach 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 Successor Agency 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 Purchaser as described in the Proposal, but shall specifically include an approximately 14,800 square foot grocery store or supermarket approved in writing by the Successor Agency Executive Director on Parcel "A" and an approximately 5,000 – 15,000 square foot retail building approved in writing by the Successor Agency Executive Director on Parcel "F".

d. The Retail Center shall specifically exclude those prohibited uses listed in the Agreement Containing Covenants.

SECTION 402 Maintenance

Purchaser shall maintain the Site or cause the Site to be maintained in accordance with the requirements of the 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 Purchaser at its other similar retail developments in San Diego County in existence as of the Effective Date.

SECTION 403 Obligation to Refrain from Discrimination

Purchaser 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 Purchaser, or if the Purchaser is no longer the owner, then against its permitted successors in interest which have been expressly approved in writing by the Successor Agency in accordance with the terms and conditions of this Agreement by the Successor Agency 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, Purchaser 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). Purchaser shall obtain and cause to be recorded (as applicable), at Purchaser's sole cost and expense, any instruments necessary and/or appropriate to subordinate to the Agreement Containing Covenants (to the reasonable satisfaction of the Successor Agency Executive Director) 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 Purchaser; Purchaser shall have no obligation to cause such items to be subordinated).

SECTION 407 CC&Rs

Purchaser shall prepare and submit a set of covenants, conditions and restrictions by and among Purchaser 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 Successor Agency, for review and written approval by the Successor Agency Executive Director 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 Successor Agency is a third party beneficiary of certain provisions thereof as deemed reasonably necessary by Successor Agency 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 Successor Agency of the Option and the operation of the Retail Center if Successor Agency or its assignee owns Property 2, and Purchaser and/or its assignee(s) own Property 1. The Successor Agency Executive Director'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

Purchaser 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 Purchaser against the Successor Agency, service of process on the Successor Agency shall be made by personal service upon the Successor Agency Executive Director or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Successor Agency against Purchaser, service of process on Purchaser shall be made by personal service upon Purchaser or upon the Purchaser's Manager, or any officer of the Purchaser 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 Estoppels

Upon written request from Purchaser, Successor Agency shall provide, within fifteen (15) days from receipt of the written request, to Purchaser and any lender, prospective lender, or prospective purchaser, an estoppel certificate by which Successor Agency confirms whether or not any defaults then exist hereunder or in connection herewith, along with confirmation of such other factual matters as such recipient may reasonably require and which is within the knowledge of the Successor Agency. Purchaser shall pay all reasonable costs and expenses of Successor Agency in providing any such estoppel certificate.

SECTION 509 Termination by Purchaser

a. Prior to the Phase 1 Closing, subject to the notice and cure provisions of Section 501, Purchaser shall have the right to terminate this Agreement, by providing written notice to the Successor Agency, in the event of (i) an uncured default by Successor Agency, or (ii) the failure of any condition precedent to the Phase 1 Closing that benefits the Purchaser.

b. Prior to the Phase 2 Closing, subject to the notice and cure provisions of Section 501, Purchaser shall have the right to terminate this Agreement, by providing written notice to the Successor Agency and reconveying title to Property 2 to Successor Agency, free and clear of any encumbrances, in the event of (i) an uncured default by Successor Agency, or (ii) the failure of any condition precedent to the Phase 2 Closing that benefits the Purchaser.

SECTION 510 Termination by Successor Agency

a. Prior to the Phase 1 Closing, subject to the notice and cure provisions of Section 501, Successor Agency shall have the right to terminate this Agreement, by providing written notice to Purchaser, in the event of (i) an uncured default by Purchaser, or (ii) the failure of any condition precedent to the Phase 1 Closing that benefits the Successor Agency 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, Successor Agency shall have the right to terminate this Agreement, by providing written notice to the Purchaser, in the event of (i) an uncured default by Purchaser, or (ii) the failure of any condition precedent to the Phase 2 Closing that benefits the Successor Agency to be satisfied as of the latest date for the Phase 2 Closing. Upon which termination, Purchaser shall reconvey title to Property 2 to Successor Agency, free and clear of any encumbrances, other than any Successor Agency-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, Successor Agency 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, Purchaser 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 Purchaser shall not have obtained an extension or postponement to which Purchaser may be entitled pursuant to Section 602 hereof; or

2. Purchaser 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 Purchaser has not obtained an extension or postponement to which Purchaser may be entitled to pursuant to Section 602 hereof; or

3. Except for Permitted Transfers, Purchaser 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. Purchaser otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

SECTION 511 Power of Termination and Right of Reverter

a. The Parties agree that the Completion of the Improvements by Purchaser, as provided in this Agreement, is a condition subsequent to which the fee simple estate in the Site granted to Purchaser by Successor Agency is subject. Therefore, if this Agreement is terminated by Successor Agency 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), Successor Agency 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 Successor Agency the estate in the Site previously conveyed to Purchaser 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 Purchaser under this Agreement (and the instrument and documents being executed in accordance herewith) will terminate, except for any obligation of Purchaser to indemnify the Indemnified Parties, and (ii) Successor Agency shall take title to the Site subject to any Permitted Deed of Trust. Successor Agency'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. Successor Agency'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 Successor Agency title to a Property, Parcel or Parcels as provided in this Section, Successor Agency shall, pursuant to its rights and responsibilities 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 Plan, to a qualified and responsible developer (as determined by Successor Agency) who will assume the obligation of making or completing such Improvements as are acceptable to Successor Agency in accordance with the uses specified for the Site in the Redevelopment Plan and in a manner that is satisfactory to Successor Agency. Upon such resale of the subject Property, Parcel or Parcels, any proceeds of such sale shall be applied as follows:

1. First, to reimburse Successor Agency on its own behalf for all reasonable costs and expenses incurred by Successor Agency, including but not limited to pro-rata salaries of Successor Agency 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 Successor Agency 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 Successor Agency (other than those existing as of the Close of Escrow that were not created by Purchaser) or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Purchaser, its successors or transferees; expenditures made or obligations incurred with respect to any improvements made or completed by Successor Agency 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 Successor Agency by Purchaser and its successors or transferees.

2. Second, to reimburse any Permitted Lender for amounts owing under its Construction Loan.

3. Third, to reimburse Purchaser for any Purchaser Equity disbursed to pay Acquisition and Development Costs, less any gains or income withdrawn or made by Purchaser 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 Successor Agency's exercise of its power of termination.

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

d. The rights established in this Section 511 are authorized by Section 33438 of the California Health and Safety Code and are to be interpreted in light of the fact that Successor Agency will convey the Site to Purchaser for redevelopment and not for speculation.

SECTION 512. Termination for Reasons of Infeasibility

a. This Agreement shall be subject to termination by Purchaser prior to the Phase 1 Closing, as a failure of a condition and not as an event of default, in the event Purchaser delivers the written notice to Successor Agency described in paragraph z. of Section 208 of this Agreement ("Purchaser's Notice of Infeasibility"). From and after giving Purchaser's Notice of Infeasibility, Purchaser shall no longer be obligated to perform its obligations under this Agreement and Successor Agency shall have no cause of action or claim against Purchaser arising out of such election to terminate.

b. This Agreement is subject to termination by Successor Agency prior to February 1, 2014, as a failure of a condition and not as an event of default, in the event Successor Agency delivers the written notice to Purchaser described in paragraph aa. of Section 208 of this Agreement ("Successor Agency's Notice of Infeasibility"). From and after giving Successor Agency's Notice of Infeasibility, Successor Agency 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 Successor Agency the Successor Agency must accompany any such Successor Agency's Notice of Infeasibility to Purchaser with a termination fee, which fee shall be treated as liquidated damages in the amount of $50,000.

SUCCESSOR AGENCY AND PURCHASER, BY THIS AGREEMENT, MUTUALLY AGREE THAT IF SUCCESSOR AGENCY EXERCISES ITS RIGHT OF TERMINATION PURSUANT TO THE FOREGOING PARAGRAPH AND SECTION 208.aa., THEN THE RESULTING DAMAGES TO PURCHASER WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO DETERMINE. BECAUSE OF THIS DIFFICULTY, THE PARTIES AGREE THAT, IN THE EVENT SUCCESSOR AGENCY DELIVERS TO PURCHASER SUCCESSOR AGENCY'S NOTICE OF INFEASIBILITY, SUCCESSOR AGENCY MUST PAY TO PURCHASER THE SUM OF FIFTY THOUSAND DOLLARS ($50,000) AS LIQUIDATED DAMAGES, WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER, AND PURCHASER SHALL BE ENTITLED TO SUCH LIQUIDATED DAMAGES INSTEAD OF AND EXCLUSIVE OF ANY OTHER REMEDY AGAINST SUCCESSOR AGENCY FOR ANY TERMINATION OF THIS AGREEMENT PURSUANT TO THE FOREGOING PARAGRAPH AND SECTION 208.aa.

Successor Agency: _____ **Purchaser: _____**

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

Formal notices, demands and communications between Successor Agency and Purchaser 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 Successor Agency shall not excuse performance of Successor Agency), 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 Purchaser 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.

c. Times of performance under this Agreement may also be extended in writing by the Successor Agency and Purchaser.

SECTION 603 Conflict of Interest

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

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

b. Purchaser 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 Successor Agency Officials and Employees

No elected official, officer, representative, agent, employee, contractor or attorney of Successor Agency shall be personally liable to Purchaser, any Assignee or any successor in interest in the event of any default or breach by Successor Agency 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 Purchaser shall be personally liable to Successor Agency or any successor in interest in the event of any default or breach by Purchaser for any amount which may become due on any obligation under the terms of this Agreement.

SECTION 605 Inspection of Books and Records

Successor Agency shall have the right at all reasonable times to inspect and copy the books and records of Purchaser 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 Successor Agency or Purchaser 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 or consents required of the Successor Agency (under this Agreement and the related documents being executed in connection herewith) shall be deemed granted by the written approval or consent of the Successor Agency Executive Director or designee without the requirement of any additional approval or consent by the Successor Agency Board or any other party, body, or agency, except as otherwise required by applicable law. Successor Agency agrees to provide notice to Purchaser of the name of any designee of the Successor Agency Executive Director on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Successor Agency Executive Director may, in his or her sole discretion, refer to the Successor Agency Board any item requiring Successor Agency approval or consent provided that such referral to the Successor Agency Board will not be deemed to extend any timeframe for Successor Agency performance

specified herein or in the Schedule of Performance that is not approved by Purchaser; otherwise, "Successor Agency approval" means and refers to approval by the Successor Agency Executive Director. Purchaser shall consider in good faith and not unreasonably (in light of all the circumstances) withhold, condition or delay approval of any request by Successor Agency Executive Director to extend any such timeframe for Successor Agency performance specified herein or in the Schedule of Performance if Successor Agency Executive Director in good faith determines that a particular matter requiring Successor Agency approval should be referred to Successor Agency Board.

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 Successor Agency or Purchaser 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. Purchaser and Successor Agency Executive Director 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); and Attachment No. 10 (Environmental Indemnity) 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 Successor Agency, whichever occurs first. The Successor Agency Executive Director, with the concurrence of the Successor Agency legal counsel, 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 Successor Agency shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The Successor Agency and Purchaser 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 Successor Agency to be responsible in any way for the debts or obligations of Purchaser or any other Person.

SECTION 611 Compliance with Law

Purchaser 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 Purchaser or any lessee or permittee in any action or proceeding against them, or any of them, whether Successor Agency be a Party to this Agreement or not, that Purchaser, 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 Successor Agency and Purchaser.

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.

If Successor Agency ceases to exist without first assigning its rights and obligations hereunder (including, without limitation, the power of consent and approval as to any matters requiring the consent or approval of the Successor Agency of Successor Agency Executive Director) and notifying Purchaser of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Purchaser shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Successor Agency) for information regarding who has succeeded to such rights and obligations and shall be entitled to rely on the written statement of the City Manager as to such matter, or (b) if the City Manager does not provide Purchaser with satisfactory evidence regarding such matter, Purchaser may seek relief from the Superior Court of the State of California for a declaration as to who has authority to act in the role of the Successor Agency hereunder.

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 Successor Agency and Purchaser, 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

Purchaser hereby represents that the persons executing this Agreement on behalf of Purchaser have full authority to do so and to bind Purchaser 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 Successor Agency or Purchaser, and all amendments to this Agreement must be in writing and signed by the appropriate authorities of Successor Agency and Purchaser.

IN WITNESS WHEREOF, Successor Agency and Purchaser 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:_____ By:_____
Colton T. Sudberry, President

[SIGNATURES CONTINUE ON NEXT PAGE]

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

ATTACHMENT NO. 1

SITE MAP

[behind this page]

ATTACHMENT NO. 2

LEGAL DESCRIPTION

[behind this page]

ATTACHMENT NO. 3

METHOD OF FINANCING

[behind this page]

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

[behind this page]

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

[behind this page]

ATTACHMENT NO. 6

PROJECT BUDGET

[behind this page]

ATTACHMENT NO. 7

TITLE REPORT

[behind this page]

ATTACHMENT NO. 8

FORM OF GRANT DEED

[behind this page]

ATTACHMENT NO. 9

FORM OF AGREEMENT CONTAINING COVENANTS

[behind this page]

ATTACHMENT NO. 10

FORM OF ENVIRONMENTAL INDEMNITY

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ATTACHMENT NO. 11

FORM OF PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT

[behind this page]

ATTACHMENT NO. 12

FORM OF OPTION AGREEMENT

[behind this page]

ATTACHMENT NO. 13

FORM OF RELEASE OF CONSTRUCTION COVENANTS

[behind this page]

ATTACHMENT NO. 14

INTENTIONALLY OMITTED

ATTACHMENT NO. 15

FORM OF PAYMENT AGREEMENT

[behind this page]

ATTACHMENT NO. 16

SUCCESSOR AGENCY DEED OF TRUST

[behind this page]

ATTACHMENT NO. 17

ACCEPTANCE AND MAINTENANCE AGREEMENT

FOR PUBLIC IMPROVEMENTS

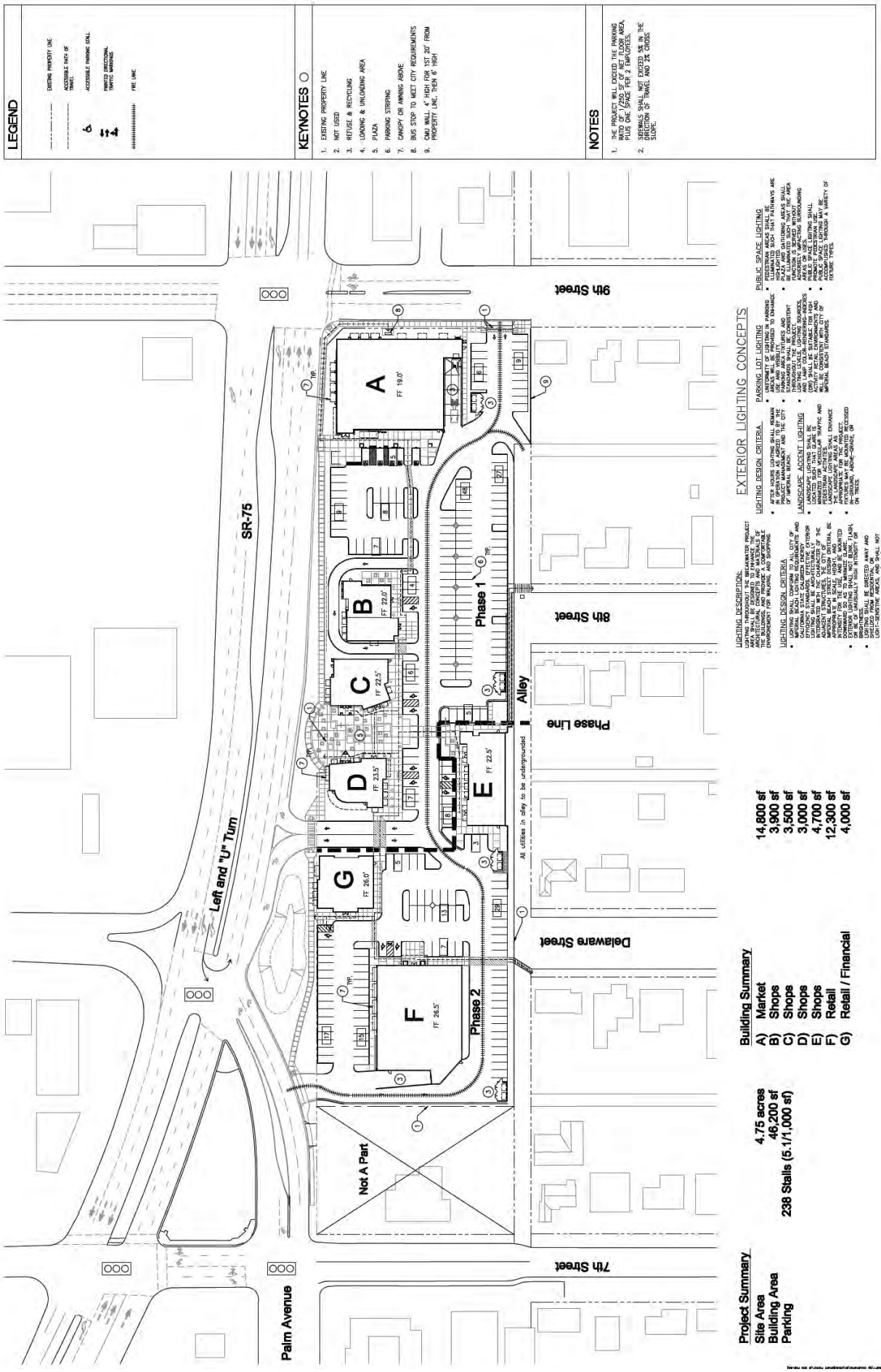
[behind this page]

ATTACHMENT NO. 18

FORM OF RIGHT OF ENTRY AGREEMENT

[behind this page]

ATTACHMENT NO. 1
SITE MAP



ATTACHMENT NO. 2

LEGAL DESCRIPTION

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 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 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 SOUTH 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:

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, DESCRIBED AS 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.

PARCEL C:

EIGHTH STREET:

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 UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, DESCRIBED AS FOLLOWS:

BEING THE EAST ONE HALF OF 8th STREET, FORMERLY 12th STREET, AS SHOWN ON THE SUBDIVISION MAP OF R. MERIDEATH JONES SUBDIVISION, MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 29, 1908, SAID MAP BEING VACATED MARCH 22, 1923 BY DECREE IN SUPERIOR COURT ACTION 38686 AND FILED IN DEED BOOK 935, PAGE 181 ON SAME DATE.

EXCEPT ANY PORTION LYING SOUTH OF THE NORTH LINE OF SOUTH CORONADO MANOR, AS SHOWN ON MAP NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20,1948; AND ANY PORTION LYING NORTH OF THE SOUTH RIGHT OF WAY LINE OF CALIFORNIA STATE ROUTE 75 AS GRANTED TO THE STATE OF CALIFORNIA PER BOOK 1526, PAGE 405, RECORDED AUGUST 24, 1943.

END OF LEGAL DESCRIPTION

METHOD OF FINANCING

Any terms not otherwise defined herein shall have the meaning ascribed to them in the Purchase and Sale 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 Purchaser to acquire the Site and develop and construct the Improvements is approximately $13,824,000 (the "Total Acquisition and Development Costs"), which includes $11,262,000 in Purchaser costs and approximately $2,200,000 in Public Improvement Costs (and costs for Site Preparation Design Work).

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 loans and Purchaser 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 Purchaser and reasonably approved by Successor Agency 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 Successor Agency shall be responsible, solely from Series 2010 Bond Proceeds, for providing $2,200,000 for the planning, permitting, construction and installation of the Public Improvements and costs for Site Preparation Design Work, of which the "Disbursed Funds" have previously been disbursed. To the extent Purchaser defers construction of any of the Public Improvements to Phase 2, the Sources and Uses shall be revised accordingly.

(b) 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.

(c) 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.

(d) Equity shall be provided by Purchaser ("Purchaser Equity"), in an amount to be determined. Purchaser Equity consists of funds provided by Purchaser that are not secured by any deed of trust.

(e) Purchaser 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.

3. **Project Budget**. The Parties anticipate that all Acquisition and 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 Successor Agency Executive Director (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 Acquisition and Development Costs as set forth in the most recently approved Project Budget. Pursuant to Section 110 of the Agreement, Purchaser shall submit to the Successor Agency Executive Director 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 Successor Agency Executive Director shall not unreasonably withhold approval thereof. On or before the applicable Closing Date, Purchaser shall provide written certification to the Successor Agency that such financing documents are correct copies of the actual documents to be executed by Purchaser. 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, Purchaser shall demonstrate to the reasonable satisfaction of the Successor Agency Executive Director the availability of additional Purchaser Equity sufficient to pay such costs.

5. **Purchaser's Purchase Price**.

a. Purchaser shall pay to the Successor Agency the Purchase Price for the Site in the amount of $213,000, plus the Participation Component described below.

b. The Purchase Price has been established in accordance with a current appraisal of the Site.

c. The Purchase Price to be paid for the Site by Purchaser 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, Purchaser shall also pay to the Successor Agency as a portion of the Purchase Price the Participation Component pursuant to the Payment Agreement and Section 201.b. of the Agreement.

b. Purchaser's obligation to pay Successor Agency the Participation Component of the Purchase Price shall be secured by the Successor Agency Deed of Trust, which shall be recorded against the Site at the Close of Escrow.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

A. General

1. This Scope of Development establishes the responsibilities of the Purchaser 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 Purchase and Sale Agreement 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 Successor Agency to enhance overall Project design. It shall be the Purchaser'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 Successor Agency staff for approval. Any substantial changes to the approved drawings shall require Successor Agency approval.

3. The development is planned to be on the Site described in the Purchase and Sale Agreement, 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 Purchase and Sale Agreement.

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 Purchase and Sale Agreement.

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 Successor Agency staff in accordance with the terms of the Purchase and Sale Agreement. 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. Purchaser 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 Purchaser 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. Purchaser 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. Purchaser 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. Purchaser 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 Purchase and Sale Agreement and shall meet all applicable City standards.

C. Site Preparation by Purchaser. Purchaser 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. Purchaser 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 Purchaser 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. Purchaser 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 Purchaser's responsibility.

R. Energy Conservation: The Purchaser 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 Purchaser 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 Purchaser 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 Purchaser shall prepare and submit to the Successor Agency Executive Director 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 Purchaser shall submit status reports, as reasonably requested by Successor Agency 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 Successor Agency-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 Purchaser 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, Purchaser 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
____ Purchaser'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

Purchaser 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

Purchaser 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. Purchaser 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

Purchaser 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 Successor Agency pursuant to the Purchase and Sale 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 Purchase and Sale Agreement.

AA. Site Preparation Design Work

The Site Preparation Design Work shall include that work included in Exhibit A, which is attached hereto and incorporated herein by reference.

EXHIBIT A

Site Preparation Design Work

[BEHIND THIS PAGE]

IMPERIAL BEACH

EXHIBIT A – SCOPE OF WORK

SITE PREPARATION DESIGN WORK
FOR CALTRANS – ENCROACHMENT SUBMITTAL

In order to submit for the Encroachment Permit for all Highway Improvements at one time and expedite approval and the reconfiguration process to SR-75, the following on and off-site preparation design work is required:

Imperial Beach Site Preparation and Encroachment Submittal Design Budget

Item l – Survey and Right of Way Mapping Services	**City Budget**
Pothole Exhibit/Survey	$ 1,500
Supplemental Survey	$ 2,000
SR75 Relinquishment Plat	$ 3,500
SR75 Dedication Plat	$ 3,500
Palm Street Dedication	$ 2,500
Subtotal Item l – Survey/Mapping	$ 13,000
Item ll – Construction Documents	
Mass Grading Plan	$ 6,000
Grading Plan Processing	$ 3,200
Public Improvement Plan	$ 35,000
SR75 Median Pockets and Pedestrian Refuge	$ 9,000
Public Improvement Plan Processing	$ 3,200
Caltrans Coordination	$ 20,000
Final Drainage Study	$ 5,000
General Meetings and Coordination	$ 5,000
Subtotal Item ll – Construction Documents	$ 86,400
Grand Total	**$ 99,400**

ATTACHMENT NO. 5

TO PURCHASE AND SALE AGREEMENT

SCHEDULE OF PERFORMANCE

	Action to be Taken	**Time of Performance**
	Actions relating to Design Requirements	
1.	Submission – Basic Concept/Schematic Design Drawings. Purchaser shall submit Basic Concept Drawings for the Project.	Concurrently with execution and delivery to the Successor Agency of the Purchase and Sale Agreement by Purchaser.
2.	Approval – Basic Concept/Schematic Design Drawings. Successor Agency shall review and approve or disapprove the Basic Concept/Schematic Design Drawings.	Concurrently with approval of the Purchase and Sale Agreement by the Successor Agency Board.
3.	Submission – Design Development Drawings, Landscape Plan and Grading Plans. Purchaser (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 the Effective Date of the Purchase and Sale Agreement. Phase 2: Not later than 180 days prior to Phase 2 Closing Date.
4.	Approval – Design Development Drawings, Landscape Plan and Grading Plans. Successor Agency 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. Purchaser (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. Successor Agency 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. Purchaser (and Assignee, if applicable) shall obtain and submit to Successor Agency 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. Purchaser shall submit the Evidence of Financing for the applicable Phase as required by Purchase and Sale Agreement 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. Successor Agency Executive Director or designee shall approve or disapprove evidence of financing. Purchase and Sale Agreement Section 110.	Not later than ten (10) Business Days after complete submittal; five (5) Business Days for resubmittals and revisions.
10.	CC&R's. Purchaser shall submit CC&Rs to the Successor Agency for review pursuant to Purchase and Sale Agreement Section 407.	Not later than thirty (30) days prior to the scheduled Close of Escrow.

	Action to be Taken	**Time of Performance**
11.	Review of CC&Rs. Successor Agency Executive Director shall approve or disapprove of CC&Rs.	Not later than thirty (30) days after complete submittal; fifteen (15) days for resubmittals and revisions.
12.	Submission – Evidence of Satisfaction of Conditions Precedent to Close of Escrow and Phase 1 Closing. Purchaser shall submit documentation that all Conditions Precedent to the Close of Escrow and Phase 1 Closing set forth in Purchase and Sale Agreement Section 208 have been satisfied.	Unless specifically provided otherwise in the Purchase and Sale Agreement 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. Successor Agency Executive Director 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. Purchaser shall submit documentation that all Conditions Precedent to the Phase 2 Closing set forth in Purchase and Sale Agreement Section 220 have been satisfied.	Unless specifically provided otherwise in the Purchase and Sale Agreement 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. Successor Agency Executive Director 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.

	Action to be Taken	Time of Performance
Actions relating to Closings		
16.	Open Escrow. Successor Agency to open Escrow for the conveyance of the Site.	Not later than thirty (30) days prior to the scheduled Close of Escrow.
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 Purchase and Sale Agreement, subject to extension by the Successor Agency Executive Director pursuant to Purchase and Sale Agreement 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 Purchase and Sale Agreement.
Actions relating to Construction		
19.	Commencement of Construction of Phase 1 Public Improvements. Purchaser 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. Purchaser shall complete the construction of all Public Improvements, except those deferred to Phase 2 pursuant to Purchase and Sale Agreement Section 219.c.4.	Not later than the scheduled Phase 1 Completion Date.

	Action to be Taken	**Time of Performance**
21.	Commencement of Construction of Phase 1 Improvements. Purchaser (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.
22.	Completion of Construction of Phase 1 Improvements ("Phase 1 Completion Date"). Purchaser (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. Purchaser (and Assignee, if applicable) shall commence construction of the Phase 2 Improvements as required by the Purchase and Sale Agreement 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"). Purchaser (and Assignee, if applicable) shall complete construction of the Phase 2 Improvements as required by the Purchase and Sale Agreement.	Not later than eighteen (18) months after the Phase 2 Closing (i.e., 60 months after Effective Date).

Imperial Beach

09/16/13

Based on CSI Cost estimates - 9.9.13

DEVELOPMENT PROFORMA

LAND COST:	4.75 net acres, or	206,910 SF					**$213,000**
CITY REIMBURSEMENT OF OFFSITES							**($2,160,000)**
ENTITLEMENT APPROVALS and DUE DILIGENCE EXPENSE TO DATE:							**$475,000**
MND consultants (Planning , Legal, Architect, Civil, Landscape, Utiltiy, Etc.)							
Phase I							
Title/Escrow							
Soils Testing							
ON AND OFF HARD SITE COST: (Per CSI)		206,910 SF	x $	20.12 /SF			**$4,163,029**
ON AND OFF SOFT SITE COST (Consultants & Fees): (Per CSI if design bui		206,910 SF	x $	3.00 /SF			**$620,730**
BUILDING COSTS: (Including Courtyard or "Curb line in" expenses)							
Bldg A	Full BTS-Prevailing Wage	16,000 SF	x	$135.00 /SF	2,160,000		
Bldg B,C, D: Shops	Raw Shell-Prevailing Wage	10,400 SF	x	$150.00 /SF	1,560,000		
Bldg E: Shops (POTENTIALLY PHASED)	Raw Shell-Prevailing Wage	4,000 SF	x	$150.00 /SF	600,000		
Bldg G: Shops	Raw Shell-Prevailing Wage	3,500 SF	x	$150.00 /SF	525,000		
Bldg. F: Mini Anchor	Full BTS-Prevailing Wage	10,000 SF	x	$140.00 /SF	1,400,000		
Extra TI's - Shops		17,900 SF	x	$30.00 /SF	537,000		
Subtotal Building Costs		43,900 SF			6,782,000		
Grease Traps					25,000		
StreetScene Furnishings/Amenities					75,000		
Building Permits &Fees		Subtotal Building Cost	x	2.00 %	271,280		
		Total Building Costs					**$7,153,280**
ARCHITECT							
Design Input/Guidelines					25,000		
Shop & Major Coordination					25,000		
Bldg A	Full BTS-Prevailing Wage	16,000 SF	x	6.50 /SF	104,000		
Bldg B,C, D: Shops	Raw Shell-Prevailing Wage	10,400 SF	x	8.00 /SF	83,200		
Bldg E: Shops	Raw Shell-Prevailing Wage	4,000 SF	x	8.00 /SF	32,000		
Bldg G: Shops	Raw Shell-Prevailing Wage	3,500 SF	x	8.00 /SF	28,000		
Bldg. F: Mini Anchor	Full BTS-Prevailing Wage	10,000 SF	x	7.00 /SF	70,000		
Reimbursables		Subtotal Architect	x	10.00 %	12,900		
		Total Architect					**$380,100**
LEASING COMMISSIONS							
Bldg A		16,000 SF	x $	6.25 /SF	100,000		
Bldg B,C, D: Shops		10,400 SF	x $	12.00 /SF	124,800		
Bldg E: Shops		4,000 SF	x $	12.00 /SF	48,000		
Bldg G: Shops		3,500 SF	x $	12.00 /SF	42,000		
Bldg. F: Mini Anchor		10,000 SF	x $	7.50 /SF	75,000		
		Total Leasing Commissions					**$389,800**
LEGAL/ACCT/ADMIN.:							**$100,000**
MARKETING/GRAND OPENING:							**$15,000**
OVERHEAD & SUPERVISION:		2.99 %	x Total Cost to Develop				**$400,000**
$ **TAXES DURING CONSTRUCTION:**							**$40,000**
* **INSURANCE DURING CONSTRUCTION:**							**$30,000**
@ **LIABILITY INSURANCE DURING CONSTRUCTION**							**$20,000**
^ **LEASE-UP EXPENSE**							**$35,000**
FINANCING COST:							
Legal/Title/Survey/Inspection:			Construction & Permanent Loan				**$150,000**
Loan Points Mini-Perm				2.00 %	x	$ 13,200,000	**$264,000**
Construction Interest	15 Mo X	5.00 %		0.55 %	x	$ 13,200,000	**$453,750**
				Subtotal Cost:			**$12,742,689**
CONTINGENCY		4.68 %	x Total Cost to Develop				**$625,000**
							$13,367,689
TOTAL COST TO DEVELOP					say...		**$13,368,000**

Imperial Beach

09/16/13

INCOME AND EXPENSE PROFORMA

SCHEDULED GROSS INCOME:						
Bldg A	16,000 SF	x $	1.79	/SF/Mo	X 12 Mo	**$343,200**
Bldg B,C, D: Shops	10,400 SF	x $	2.50	/SF/Mo	X 12 Mo	**$312,000**
Bldg E: Shops	4,000 SF	x $	2.00	/SF/Mo	X 12 Mo	**$96,000**
Bldg G: Shops	3,500 SF	x $	2.35	/SF/Mo	X 12 Mo	**$98,700**
Bldg. F: Mini Anchor	10,000 SF	x $	1.58	/SF/Mo	X 12 Mo	**$189,600**
			Total Scheduled Gross Income			**$1,039,500**
LESS: Vacancy	5.00 %	Shops				**($25,335)**
EFFECTIVE GROSS INCOME						**$1,014,165**
LESS EXPENSES:	All Leases are Net,Net, Net, Including Property Management, & Roof					
Management @ 1.5% net of reimbursement						**($15,212)**
CAM for Vacant Space	720 SF	x $	0.60	/SF/Mo	X 12 Mo	**($5,184)**
Reserves	2.00 %	x	Effective Gross Income			**($6,240)**
NET OPERATING INCOME (NOI):						**$987,529**
LESS: Debt Service	7.00 k	x		$	13,200,000	**($924,000)**
PROJECTED CASH FLOW:						**$63,529**

L OAN & FINANCIAL ANALYSIS

LOAN INFORMATION:

NOI	$	987,529	Capitalized	@	7.00%	$14,107,550
Value:				say...		**$14,108,000**

LOAN ASSUMPTIONS:

Construction & Permanent: **$13,367,689**

RETURN ON COST:

NOI $ 987,529 /Total Cost to Develop $ 13,368,000 **7.39%**

LOAN TO VALUE:						**94%**
DEBT COVERAGE RATIO						**1.07**
PROJECTED GROSS PROFIT:	VALUE:	NOI $ 987,529	Capitalized	@	7.00%	**$14,108,000**
		Less Sales Costs:	Value	X	2.00%	**($282,160)**
	NET PROCEEDS					**$13,825,840**
		LESS TOTAL COST TO DEVELOP				**($13,368,000)**
	PROJECTED PRE-TAX PROFIT:					**$457,840**
						$457,840
	PROJECTED PRE-TAX PROFIT:			say...		**$458,000**

NOTES

$ Equal to 1.25% of initial Land Cost of Shopping Center for 15 months.

* Estimated by a Calculation of Hard Costs / Soft Costs / and Gross Income

^ CAM on shops/retail space @ $.60/s.f./mo. for 6 months.

Chicago Title Company

Builders Services Division
2365 Northside Drive, Suite 500, San Diego, CA 92108 (619) 521-3400

Title Department:

Chicago Title Company
Attn: Tom Votel/Ken Cyr
Email: votelt@ctt.com & ken.cyr@ctt.com
Phone: (619) 521-3553 & (619) 521-3555
Fax: (619) 521-3608
Order No.: 12201261-996-U50

Customer:

City of Imperial Beach
Attn: Greg Wade

SECOND AMENDED PRELIMINARY REPORT

Property Address: 735, 759, 761 - 775 & 827 Palm Ave., Imperial Beach, CA

Dated as of: September 5, 2013 at 7:30 am

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 or 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 Exclusion 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(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company

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.

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY

SCHEDULE A

1. The estate or interest in the land hereinafter described or referred to covered by this report is:

   A Fee

2. Title to said estate or interest at the date hereof is vested in:

   IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity

3. The land referred to in this report is situated in the State of California, County of San Diego and is described in the Legal Description, attached hereto:

END OF SCHEDULE A

LEGAL DESCRIPTION

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 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 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 SOUTH 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:

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

LEGAL DESCRIPTION
(continued)

FEBRUARY 25, 1870, DESCRIBED AS 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.

PARCEL C:

EIGHTH STREET:

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 UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, DESCRIBED AS FOLLOWS:

BEING THE EAST ONE HALF OF 8th STREET, FORMERLY 12th STREET, AS SHOWN ON THE SUBDIVISION MAP OF R. MERIDEATH JONES SUBDIVISION, MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, JULY 29, 1908, SAID MAP BEING VACATED MARCH 22, 1923 BY DECREE IN SUPERIOR COURT ACTION 38686 AND FILED IN DEED BOOK 935, PAGE 181 ON SAME DATE.

EXCEPT ANY PORTION LYING SOUTH OF THE NORTH LINE OF SOUTH CORONADO MANOR, AS SHOWN ON MAP NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20,1948; AND ANY PORTION LYING NORTH OF THE SOUTH RIGHT OF WAY LINE OF CALIFORNIA STATE ROUTE 75 AS GRANTED TO THE STATE OF CALIFORNIA PER BOOK 1526, PAGE 405, RECORDED AUGUST 24, 1943.

END OF LEGAL DESCRIPTION

SCHEDULE B

At the date hereof, items to be considered and exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. Taxes exempt.

2. 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

MATTERS AFFECTING PARCEL A

3. Rights of the public to use the streets as dedicated on Map No. 1145, of R. Merideath Jones' Addition to South San Diego.

4. The right to construct, operate, and maintain a water pipe line at a depth of not less than 2-1/2 feet below the surface, over and across said land, as granted to F. D. Warner, in deed recorded October 7, 1925, in Book 1109, page 212 of deeds.

   The exact location and extent of said easement is not disclosed of record.

5. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	Imperial Beach Sanitation District
Purpose:	Sewers
Recorded:	May 11, 1951 in Book 4095, Page 353 Official Records
Affects:	The route thereof affects a portion of said land and is more fully described in said document.

6. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	The County of San Diego
Purpose:	public road purposes
Recorded:	August 9, 1951 in Book 4198, page 174 of Official Records
Affects:	The South 20 feet of said land

   Said instrument additionally contains the privilege and right to extend drainage structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof

7. Covenants, conditions and restrictions ("but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry" as set forth in the document

SCHEDULE B
(continued)

Recorded: May 5, 1952 in Book 4457, page 294 as Instrument No. 54854 of Official Records

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

Note: If you should request a copy of the document referred to above, California Law requires that a county recorder, title insurance company, escrow company, real Estate broker, real Estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover Page over, or stamp on the first Page of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

8. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	San Diego Gas and Electric Company
Purpose:	public utilities, ingress, egress
Recorded:	July 25, 1984 as Instrument No. 84-281556 of Official Records
Affects:	The exact location and extent of said easement is not disclosed of record

9. A notice of assessment for assessment District No. 67-m recorded June 23, 1992 as File No. 1992-0389944 of Official Records.

10. A notice of assessment for assessment District No. 68 (alleys) recorded July 8, 1994 as file no. 1994-0428705 of Official Records.

11. The fact that said land 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
Recorded:	February 8, 1996 as Instrument No. 1996-0065030 and February 27, 1996 as Instrument No. 1996-0094070, both of Official Records

12. A Resolution of the city council of the City of Imperial Beach, California, 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 of official records.

13. The fact that said land 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.

SCHEDULE B
(continued)

Redevelopment Agency:	Palm Avenue/Commercial Redevelopment Project Area
Recorded:	July 27, 2007 as Instrument No. 2007-0502890 of Official Records

THE FOLLOWING MATTERS AFFECT PARCEL B

14. Right of the public use for public street purposes those portions of the property herein described lying within the boundaries of all the streets and alleys shown on map of R. Merideath Jones addition to South San Diego, No. 1145, filed in the county recorder's office July 29, 1908.

15. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	F. D. Warner
Purpose:	water pipeline and incidental purposes
Recorded:	Book 1109, page 212 of Deeds
Affects:	The exact location and extent of said easement is not disclosed of record

The interest of F. D. Warner and Mabel R. Warner, husband and wife, has since passed to Hobart Homes, Inc., a corporation, as disclosed by a quitclaim deed recorded January 8, 1948 as File No. 2058 of Official Records.

16. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	Imperial Beach Sanitation District
Purpose:	Sewers
Recorded:	May 11, 1951 in Book 4095, Page 353 Official Records
Affects:	The route thereof affects a portion of said land and is more fully described in said document.

17. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	County of San Diego
Purpose:	public road purposes
Recorded:	August 9, 1951 in Book 4198, page 174 of 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 drainage structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof

18. Covenants, conditions and restrictions ("but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry" as set forth in the document

SCHEDULE B
(continued)

Recorded: May 5, 1952 in Book 4457, page 417 of Official Records

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

Note: If you should request a copy of the document referred to above, California Law requires that a county recorder, title insurance company, escrow company, real Estate broker, real Estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover Page over, or stamp on the first Page of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

19. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Purpose:	ingress and egress for road purposes
Recorded:	July 30, 1953 in Book 4938, page 199 of Official Records
Affects:	The route thereof affects a portion of said land and is more fully described in said document.

20. An easement for the purpose shown below and rights incidental thereto as set forth in a document.

Granted To:	San Diego Gas and Electric Company
Purpose:	public utilities, ingress, egress
Recorded:	June 3, 1980 as Instrument No. 80-178475 of Official Records
Affects:	The exact location and extent of said easement is not disclosed of record

21. An Agreement, and the terms and conditions as contained therein

By and Between:	City of Imperial Beach and Sam Dimenstein
Recorded:	November 18, 1981 as Instrument No. 81-364713 of Official Records
Regarding:	Underground Agreement

Reference is hereby made to said document for full particulars.

22. The fact that said land 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)

SCHEDULE B
(continued)

Recorded: February 8, 1996 as Instrument No. 1996-0065030 of Official Records and July 27, 2007 as Instrument No. 2007-0502890 of Official Records

Statement that Redevelopment Proceedings have been instituted recorded February 27, 1996 as Instrument No. 1996-0094070 of Official Records.

23. Matters contained in "Notice of Intent to Lien", recorded September 19, 1997 as Instrument No. 1997-0461749 of Official Records.

24. A Resolution of the city council of the City of Imperial Beach, California, confirming the diagram and assessment and providing for the levy of the annual assessment in a special maintenance district recorded April 28, 2000 as File No. 2000-0459549 of Official Records.

MATTERS AFFECTING PARCEL C

25. Right of the public use for public street purposes those portions of the property herein described lying within the boundaries of all the streets and alleys shown on map of R. Merideath Jones addition to South San Diego, No. 1145, filed in the county recorder's office July 29, 1908.

26. Covenants, conditions and restrictions (but omitting any covenant or restrictions, if any, based upon on 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

Recorded: January 17, 2013, as Instrument No. 2013-0036059 of Official records

Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

MATTERS AFFECTING PARCELS A AND B

27. A Deed of Trust to secure performance under an agreement referred to therein, and any other obligations secured thereby.

Dated: Not stated
Trustor: Redevelopment Agency of the City of Imperial Beach
Trustee: First American Title Company, a California corporation

SCHEDULE B
(continued)

Beneficiary: City of Imperial Beach
Recorded: March 10, 2011 as Instrument No. 2011-0131285 of Official Records.

28. Covenants, conditions and restrictions ("but omitting, except to the extent that said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical condition, national origin, source of income, or ancestry" as set forth in the document

    Recorded: March 10, 2011 as Instrument No. 2011-0131286 of Official Records

    Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

    Note: If you should request a copy of the document referred to above, California Law requires that a county recorder, title insurance company, escrow company, real Estate broker, real Estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover Page over, or stamp on the first Page of the previously recorded document or documents a statement, in at least 14-point boldface type, relating to unlawful restrictions.

29. A document subject to all the terms, provisions and conditions therein contained.

    Entitled: Memorandum of Option Agreement
    Recorded: March 10, 2011 as Instrument No. 2011-0131442 of Official Records

    Reference is hereby made to said document for full particulars.

30. "Any claim that the transaction vesting the Title as shown in Schedule A or creating the lien of the Insured Mortgage, or any other transaction occurring on or prior to Date of Policy in which Redevelopment Agency of the City of Imperial Beach or its successors transferred, acquired, or made any agreement affecting the title to or any interest in the Land, is void or voidable, or subject to termination, renegotiation, or judicial review, under California Assembly Bill 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session)."

31. Approval of the policy or commitment of title insurance anticipated by this report by Regional Counsel of the Company is required prior to recordation of the instruments required to complete this transaction and the issue of such policy or commitment. The right is reserved to make additional exceptions and/or requirements upon such review.

SCHEDULE B
(continued)

32. Covenants, conditions and restrictions (but omitting any covenant or restrictions, if any, based upon on 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

    Recorded: January 17, 2013, as Instrument No. 2013-0036059 of Official records

    Note: Section 12956.1 of the government code provides the following: "If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."

33. Water rights, claims or title to water, whether or not shown by the public records.

34. Matters which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said land that is satisfactory to this Company, and/or by inquiry of the parties in possession thereof.

    This office must be notified at least 7 business days prior to the scheduled closing in order to arrange for an inspection of the land; upon completion of this inspection you will be notified of the removal of specific coverage exceptions and/or additional exceptions to coverage.

35. Any rights of parties in possession of said land, based on any unrecorded lease, or leases.

    This Company will require a full copy of any unrecorded lease, together with all supplements, assignments, and amendments for review.

END OF SCHEDULE B

INFORMATIONAL NOTES

Note No. 1: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

Note No. 2: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the amount, if any, 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.

Fidelity National Financial, Inc
Privacy Statement

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 FNFs 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, 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 transactions, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded.

Disclosure of Personal Information
We may provide your Personal Information (excluding information we receive from our 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 connections with an insurance transactions;
- 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, or 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 had 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.

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 outlines 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 regulation 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 Drive
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 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.

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.

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.

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.

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 judgement 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.

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.

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

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

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.

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 $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 the 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.

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the filed rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for such discount. These discounts only apply to transactions involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

Not all discounts are offered by every FNF Company. The discount will only be applicable to the FNF Company as indicated by the named discount.

FNF Underwritten Title Companies
CTC – Chicago Title Company

FNF Underwriters
CTIC – Chicago Title Insurance Co.

Available Discounts

CREDIT FOR PRELIMINARY TITLE REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES
Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 - 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge within the following time period from the date of the report.

FEE REDUCTION SETTLEMENT PROGRAM
Eligible customers shall receive a $20.00 reduction in their title and/or escrow fees charged by the Company for each eligible transaction in accordance with the terms of the Final Judgments entered in The People of the State of California.

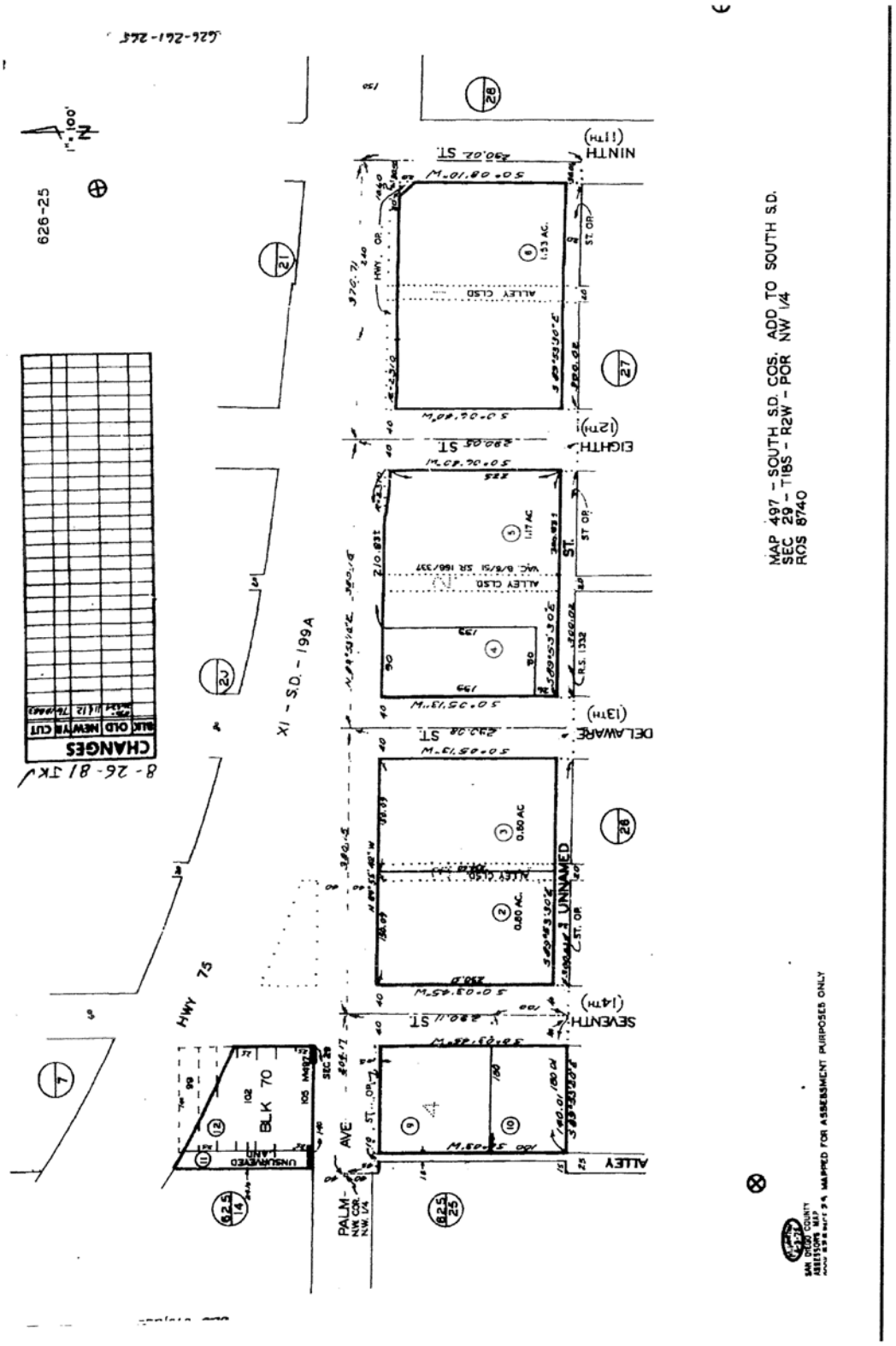
DISASTER LOANS
The charge for a Lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS
On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 32% to 50% of the appropriate title insurance rate, depending on the type of coverage selected.

SHORT TERM RATE
The Short Term Rate is a reduction of the charges shown in the Insurance Tables which is allowable only when the current order is placed within 60 months from the date of issuance of a prior CLTA or ALTA Form of Policy of any qualified title insurer and provided further that the grantor, borrower, lender, lessor or assignor is insured by or under the terms of a prior policy, or is the vested owner of the interest insured by said policy. The short term rate is 64% to 92% of the appropriate title insurance rate depending on the type of coverage selected.

EMPLOYEE RATE
No charge shall be made to employees (including employees on approved retirement) of the Company or its underwritten, subsidiary or affiliated title companies for policies or escrow services in connection with financing, refinancing, sale or purchase of the employees' bona fide home property. Waiver of such charges is authorized only in connection with those costs which the employee would be obligated to pay, by established custom, as a party to the transaction.

(continued)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CHANGES
8-26-81 TK
XI - S.D. - 199A
HWY 75
BLK 70
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SEVENTH (14TH) ST
DELAWARE (13TH) ST
EIGHTH (12TH) ST
NINTH (11TH) ST
UNNAMED ST
ALLEY CLSD
MAP 497 - SOUTH S.D. COS. ADD TO SOUTH S.D.
SEC 29 - T18S - R2W - POR NW 1/4
ROS 8740
SAN DIEGO COUNTY ASSESSOR MAP

Chicago Title Company

Builders Services Division
2365 Northside Drive, Suite 500, San Diego, CA 92108 (619) 521-3400

SUPPLEMENTAL REPORT

September 23, 2013

Attn: Greg Wade
Company: City of Imperial Beach
Address: 825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Your No.: 735, 759, 761-775 & 827 Palm Avenue, Imperial Beach, CA

Order No.: 12201261-996-U50

Date as of: September 5, 2013

The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented to reflect the following additional items:

Exception No. 19 of said preliminary report is hereby deleted in its entirety.

Sincerely,

Ken Cyr

Tom Votel / Ken Cyr
Senior Title Officers
Builders Services Division
Direct: (619) 521-3553 & (619) 521-3555
Fax: (619) 521-3608

Email: votelt@ctt.com & ken.cyr@ctt.com

ATTACHMENTS 8 – 11

WILL BE PROVIDED AS SOON AS THEY ARE AVAILABLE

OPTION AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR PURCHASE OF "PROPERTY 2"

To: _____ Escrow No.: _____
_____ ("Escrow")
("Escrow Holder" and "Title Company")
_____
_____, California _____
Attn.: _____, Escrow Officer
Telephone: (____) _____-_____
Facsimile: (____) _____-_____

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 ("Purchaser"), and IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency" or "Optionee"), each a "Party" and collectively, the "Parties" to this Option Agreement.

R E C I T A L S

A. This Option Agreement is entered into pursuant to that certain Purchase and Sale Agreement dated as of _____, 201___, ("Purchase Agreement"). The Purchase Agreement provides for the redevelopment of certain real property described in the Purchase Agreement as the "Site" with commercial and retail buildings, landscaping, parking and related improvements ("Project"), as more specifically described in the Purchase Agreement. The term "Purchase Agreement" as used herein shall mean, refer to and include the Purchase Agreement, 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 Purchase Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

B. In accordance with the Purchase Agreement, the Successor Agency has conveyed to Purchaser title to Site, consisting of two properties, described in the Purchase Agreement and referred to as "Property 1" and "Property 2". 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 Option Agreement, and in accordance with the Purchase Agreement, the Successor Agency desires to acquire an option to purchase fee title in Property 2 from Purchaser and Purchaser desires to grant to Successor Agency an option to purchase fee title in Property 2 from Purchaser.

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, Successor Agency shall 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 Purchaser's right, title and interest in and to all Improvements, easements, appurtenances, and other intangible property of Purchaser to said land (collectively herein, "Property 2").

1.2 The Option shall commence upon the Close of Escrow (as defined in the Purchase Agreement) conveying title to the Site to Purchaser, and end at 5:00 p.m. on_____, 201_____ (i.e., the date that is 48 months after the Close of Escrow (as defined in the Purchase Agreement) conveying title to the Site to Purchaser), 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, subject to a day-for-day extension for any extension of the Phase 2 Closing Date in accordance with the Purchase Agreement including due to Force Majeure delay as provided in Section 602 of the Purchase Agreement (the "Option Term") (for example purposes only, if the Phase 2 Closing Date is extended by 6 months to 48 months after the Effective Date, then the Option Term would likewise be extended by 6 months to the date that is 54 months after the Close of Escrow (as defined in the Purchase Agreement) conveying title to the Site to Purchaser).

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") as and for the full and complete option purchase price for Property 2.

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 1.2 of this Option Agreement, above, Successor Agency shall have the right to exercise the Option, by delivering written notice (the "Option Notice") to Purchaser, or its successor or assignee, and to any Permitted Lender whose security instrument encumbers any of Property 1, stating that Successor Agency elects to purchase Property 2 upon the terms and conditions set forth in this Option Agreement. For purposes of this Option Agreement, if Successor Agency delivers such Option Notice, Successor Agency may be referred to as the "Optionee". The Successor Agency Executive Director is hereby authorized to exercise the Option on behalf of the Successor Agency without any further approval by the Successor Agency Board.

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) A default by Purchaser under the terms of the Purchase Agreement that is not cured within the time provided in the Purchase Agreement, if any, including, but not limited to, any of the events of default described in Sections 510.b. or 510.c. of the Purchase Agreement, at any time after Purchaser takes title to the Site under the Purchase Agreement but before the occurrence of the "Phase 2 Closing" (as defined in the Purchase Agreement); and

(ii) The failure of the "Phase 2 Closing" (as defined in the Purchase Agreement) to occur by the Phase 2 Closing Date (as defined in the Purchase Agreement), subject to any extensions of the Phase 2 Closing Date in accordance with the terms of the Purchase Agreement, and subject to Force Majeure delay as provided in Section 602 of the Purchase Agreement.

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. Unless the Option has been exercised, upon the final day of the Option Term or upon the earlier occurrence of the Phase 2 Closing, Successor Agency 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 shall deliver to Escrow Holder a fully-executed copy of this Option Agreement within five (5) business days after the Option Notice Date (as defined below). As used in this Option Agreement, the term "Option Notice Date" shall mean the date on which Optionee shall have delivered the Option Notice to Purchaser, or its successor or assignee, and to any Permitted Lender whose security instrument encumbers any of Property 1, in accordance with this Option Agreement. When the fully-executed copy of this Option Agreement is delivered to Escrow Holder, as provided above, Escrow shall be deemed opened ("Opening of Escrow"). Escrow

Holder shall immediately notify Successor Agency and Purchaser, 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 Option Term Purchaser shall, in accordance with all of the terms and conditions of the Purchase Agreement, have the right and intends to construct and install Horizontal Improvements on the Site, consisting of public improvements and utilities required to be constructed or installed on or in connection with the anticipated development of the Site, 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, Purchaser shall maintain Property 2 or cause Property 2 to be maintained in a safe, neat and orderly condition and in accordance with industry health and safety standards for construction sites (the "Required Site Conditions"). At any time after delivery of an Option Notice, Optionee, without cost or expense to Purchaser, shall have the right to perform such investigation of the physical condition of Property 2 and the Improvements, as Optionee shall deem necessary. Upon notice from the Optionee, Purchaser shall promptly, without cost to the Optionee, take such actions as may be necessary to restore Property 2 to the Required Site Conditions, to the reasonable satisfaction of the Optionee. Any and all costs, fees and expenses to restore Property 2 to the Required Site Conditions to the reasonable satisfaction of the Optionee shall be the responsibility of Purchaser and shall be paid by Purchaser prior to conveyance of Property 2 to the Optionee pursuant to this Option Agreement.

3.2 Environmental Conditions. Reference is hereby made to that certain Environmental Indemnity dated _____, 201_____, in the form attached to the Purchase Agreement as Attachment No. 10 (the "Environmental Indemnity"), which was executed by Purchaser for the benefit of City of Imperial Beach ("City") and Successor Agency. Purchaser shall comply with the Environmental Indemnity, and indemnify, defend and hold harmless City and Successor Agency, 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 Section 2.3 above, Purchaser shall have no right to encumber Property 2 with any deed of trust, mortgage, easement, lease, or other encumbrance against title to Property 2 or record any instrument 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, including any endorsements and other coverage reasonably requested by Optionee), in the liability amount of the fair market value of the Property 2, as reasonably estimated by Optionee, at the sole cost of Purchaser, insuring that fee simple merchantable title to Property 2 will vest in the Optionee upon the Closing Date

(described below), free and clear of all recorded and unrecorded possessory interests, liens, encumbrances, mortgages, deeds of trust, assessments, easements, leases and taxes, including, without limitation, any deed of trust securing a Permitted Deed of Trust, except those approved in writing by the Optionee; provided, however, easements or licenses necessary to facilitate the development of the Site in accordance with the Purchase Agreement may not be disapproved and Optionee shall not unreasonably withhold its approval of any other non-monetary matters affecting title. Any and all costs, fees and expenses to remove or satisfy any such possessory interests, liens, encumbrances, mortgages, deeds of trust, assessments, easements, leases and taxes shall be the responsibility of Purchaser and shall be paid by Purchaser prior to conveyance of Property 2 to the Optionee pursuant to this Option Agreement.

4. Closing of Escrow.

4.1 Closing Date.

4.1.1 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 Successor Agency. 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 Option Agreement.

4.3 Deposits to be Made by Purchaser. At or before 5:00 p.m. on the last business day immediately before the Close of Escrow, Purchaser shall deliver to Escrow Holder:

4.3.1 A grant deed conveying fee title to the Property, properly executed and acknowledged by Purchaser 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 Purchaser 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 Purchaser if appropriate, as may be necessary to Close Escrow and comply with this Option Agreement.

4.3.4 Any additional funds as may be necessary to comply with this Option Agreement.

4.4 Possession. Exclusive possession of Property 2 shall be given to the Optionee at the Close of Escrow.

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 Property 2 (as determined by the Successor Agency Executive Director) and insuring fee title is vested in the Optionee in accordance with this Option Agreement.

6. Specific Performance. If Purchaser defaults hereunder, the Successor Agency, at its option, may commence an action for specific performance of the terms of this Option Agreement pertaining to such default.

7. Successor Agency's Representations and Warranties. Successor Agency hereby represents and warrants to Purchaser 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. Successor Agency has the legal power, right and authority to enter into this Option Agreement and to consummate the transactions contemplated hereby. The individual executing this Option Agreement on behalf of Successor Agency has the legal power, right and actual authority to bind the Successor Agency to the terms and conditions of this Option Agreement.

7.2 Requisite Action. As of the date hereof, all requisite action has been taken by the Successor Agency in connection with the entering into of this Option Agreement and the consummation of the transactions contemplated hereby.

7.3 Validity. This Option Agreement and all documents required hereby to be executed by the Successor Agency are and shall be valid, legally binding obligations of and enforceable against the Successor Agency in accordance with their terms, subject to principles of equity and laws affecting creditors' rights generally.

8. Purchaser's Representations and Warranties. Purchaser hereby agrees and represents and warrants to Successor Agency 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. Purchaser has the legal power, right and authority to own property and to enter into this Option Agreement and the documents referenced herein, and to consummate the transactions contemplated hereby. The individuals executing this Option Agreement and the documents referenced herein on behalf of Purchaser have the legal power, right and actual authority to bind Purchaser 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 Purchaser in connection with the entering into of this Option Agreement and the documents referenced herein, and the consummation of the transactions contemplated hereby.

8.3 Validity. This Option Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms, subject to principles of equity and laws affecting creditors' rights generally.

9. Brokerage Commissions. Purchaser hereby represents and warrants to Successor Agency that Purchaser 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 Option Agreement. Successor Agency hereby represents and warrants to Purchaser that Successor Agency 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 Option 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 Option Agreement and the obligations of the Purchaser hereunder shall be binding upon Purchaser and its successors and assignees as to Property 2, and shall inure to the benefit of Successor Agency and its representatives, successors and assigns, whether such succession or assignment is voluntary, involuntary, by force of law or otherwise. Successor Agency shall have the right to assign this Option Agreement or any interest or right under this Option Agreement or under the Escrow or to appoint a nominee to act as Optionee under this Option Agreement. Successor Agency shall have the right to assign this Option Agreement and its rights, duties and obligations hereunder in its sole and absolute discretion so long as the assignee shall be bound by the terms and conditions of this Agreement.

10.2 Attorneys' Fees. In any action between the Parties arising out of this Option Agreement or the Escrow, or in connection with Property 2, 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 Option 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 Purchaser: 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@smcdslaw.com

If to Successor Agency: Imperial Beach Redevelopment Agency Successor Agency
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: Kendall D. Berkey
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 Successor Agency's or Purchaser'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. Purchaser and Successor Agency agree that this Option 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 Option 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 Option Agreement, the provisions of this Option 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 Option 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 Successor Agency and Purchaser shall mutually approve, and which do not materially alter the terms of this Option 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 Successor Agency or Purchaser, as between Successor Agency and Purchaser, 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/to Purchaser as of Close of Escrow, based on the most current statements and information available to Escrow Holder. Purchaser 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 before Close of Escrow.

10.6 Payment of Costs. Purchaser 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 Purchaser and Successor Agency with conformed copies of documents submitted for recording.

10.9 Delivery of Documents and Funds. Upon Close of Escrow, Escrow Holder shall deliver to Purchaser and to Successor Agency 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 Option 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 Property 2 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, Purchaser's obligations to repair or replace any such damage or destruction shall be in accordance with the Purchase Agreement.

10.12 Interpretation. This Option Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Option Agreement. Each Party acknowledges that it has been represented by independent counsel in connection with this Option Agreement and that this Option Agreement is the result of negotiations between the parties hereto. Any uncertainty or ambiguity shall not be construed against Successor Agency because Successor Agency's counsel, as a matter of convenience or otherwise, prepared this Option 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 Option Agreement. References to Section numbers are to Sections as numbered in this Option Agreement unless expressly stated otherwise.

10.14 Gender, Etc. As used in this Option 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 Option 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 Option 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 Option Agreement.

10.16 Modifications. Any alteration, change or modification of or to this Option 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 Option Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Option 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 Option Agreement, together with the Purchase Agreement, contains the entire understanding between the Parties relating to the transaction contemplated by this Option Agreement. All prior or contemporaneous agreements (other than those attached as exhibits to the Purchase Agreement), understandings, representations and statements, oral or written, are merged into this Option 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 Successor Agency and Purchaser of each and every obligation and condition of this Option Agreement.

10.20 Counterparts. This Option 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 Option Agreement are incorporated into this Option Agreement by reference.

10.22 Computation of Time. The time in which any act is to be done under this Option 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 Option Agreement.

10.24 Preliminary Change of Ownership Report. Successor Agency 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 Option 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 Option 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 Option 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 Option Agreement, Successor Agency and Purchaser shall execute in a form suitable for recordation a Memorandum of Option disclosing the grant of the Option to Successor Agency, and Successor Agency's right to purchase Property 2 pursuant to this Option Agreement, such Memorandum of Option to be in the form of Exhibit "C," attached hereto.

IN WITNESS WHEREOF, the parties have duly executed this Option 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

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Successor Agency 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

Imperial Beach Redevelopment
Agency Successor Agency
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 IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("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 Imperial Beach Redevelopment Agency Successor Agency ("Optionee"), is hereby accepted pursuant to the authority conferred by the Imperial Beach Successor Agency Council on _____, 20__ and the Optionee consents to recordation thereof by its duly authorized officer.

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____

By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

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:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY
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 _____, 201_____, by and between Sudberry-Palm Avenue, LLC, a California limited liability company ("Purchaser"), and the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency"). 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. Purchaser and Successor Agency have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Purchaser has granted to Successor Agency 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. Purchaser grants to Successor Agency 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 Purchaser 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 Purchaser, or its successor or assignee, and to any Permitted Lender whose security instrument encumbers any of the Site, 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

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

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:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY
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 _____, 201__, by and between Sudberry-Palm Avenue, LLC, a California limited liability company ("Purchaser"), and the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency"). All capitalized terms used and not otherwise defined in this Instrument, but defined in the Option Agreement (as defined below), shall have the same meaning in this Instrument as in the Option Agreement.

RECITALS

A. Purchaser and Successor Agency have entered into that certain Option Agreement For Purchase of Real Property and Joint Escrow Instructions dated _____, 201_ (the "Option Agreement"), pursuant to which Purchaser has granted to Successor Agency 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 _____, 201__, by Instrument No. _____ (the "Memorandum of Option").

C. Pursuant to the Option Agreement, the Option granted to Successor Agency was to expire and be terminated upon the final day of the Option Term or upon the earlier occurrence of the Phase 2 Closing.

D. The Phase 2 Closing conditions have occurred and this Instrument is being executed in connection with the Phase 2 Closing or the Option Term has expired, and the parties now desire to enter into this Instrument to release Property 2 from any rights the Successor Agency 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.

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____

By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

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)

OFFICIAL BUSINESS
Document entitled to free
recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attention: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency") has entered into a Purchase and Sale Agreement with SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Purchaser"), dated _____, 20____ (the "Purchase Agreement") 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 Purchase Agreement, for the construction on the Site of a commercial/retail center (the "Project") in accordance with the terms and conditions contained in the Purchase Agreement. Any capitalized term not otherwise defined in this Release shall have the meaning set forth for such term in the Purchase Agreement; and

WHEREAS, pursuant to the Purchase Agreement 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

WHEREAS, pursuant to the Purchase Agreement, Purchaser 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 Purchase Agreement, upon the completion of the Improvements as required by the Purchase Agreement, and the request of Purchaser, Successor Agency is required to issue for recordation a Release of Construction Covenants (this "Release") acknowledging satisfactory completion of the construction of the Improvements

required by the Purchase Agreement relating to the portion of the Site described in this Release, and releasing all other obligations in the Purchase Agreement relating to such portion of the Site; and

WHEREAS, Purchaser has completed the Improvements required by the Purchase Agreement relating to the Site ***[or the Released Property]*** as required by the Purchase Agreement and has requested that Successor Agency issue this Release; and

WHEREAS, Successor Agency has inspected the Site and determined that the construction and development required by the Purchase Agreement 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 Purchase Agreement.

NOW THEREFORE, it is hereby acknowledged and certified by Successor Agency that:

1. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Agreement.

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 Purchase Agreement.

3. Purchaser is in full compliance with the terms of Section 324 of the Purchase Agreement.

4. All rights of the Successor Agency pursuant to Section 511 of the Purchase Agreement providing the Successor Agency 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 Successor Agency the estate of the property previously conveyed pursuant to the Purchase Agreement, and to re-enter and take possession of such property, are hereby extinguished and terminated, and are no longer enforceable or binding against Purchaser and/or successors and assigns as to the Released Property.

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 Purchase Agreement 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 Grant Deed, Agreement Containing Covenants, Public Improvement Disbursement Agreement, Acceptance and Maintenance Agreement for Public Improvements, Right of Entry Agreement, and Environmental Indemnity that survive the issuance and recordation of this Release and the Payment Agreement and Successor Agency Deed of Trust.

IN WITNESS WHEREOF, Successor Agency has executed this Release as of the date set opposite its signature.

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____

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)

EXHIBIT "A"

Legal Description of the Released Property

[BEHIND THIS PAGE]

Attachment 14

Will be provided as soon as it is available

PAYMENT AGREEMENT

This Agreement (this "Agreement") is entered into by and between SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Purchaser"), and the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency"), as of _____, 20__. In this Agreement, each of the Purchaser and the Successor Agency 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. Successor Agency has sold to Purchaser certain real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site") upon which Purchaser has covenanted to develop a commercial/retail center (the "Project").

B. In connection with the sale of the Site to Purchaser, Purchaser has previously paid a base purchase price equal to $213,000; and has agreed to pay the hereinafter defined Participation Component.

C. The Parties mutually desire to enter into this Agreement to document the Purchaser's obligation to pay the Participation Component (the "Obligation").

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

1. Payment of Participation Component.

a. As additional consideration for the conveyance of the Site from Successor Agency to Purchaser and for the performance by Successor Agency of its obligations relating thereto, including, without limitation, the funding and disbursement to Purchaser of the Remaining Public Improvement Funds (as defined below) as and when required to be paid, subject to any applicable notice and cure provisions and Force Majeure Delay as defined in the Successor Agency Deed of Trust (which is an express condition precedent to Purchaser's obligations hereunder), Purchaser agrees to pay the "Participation Component" of the Purchase Price to the Successor Agency. The obligation of the Purchaser to pay the Participation Component shall survive any assignment, transfer, lien, mortgage, encumbrance, or refinance of the Site or any portion thereof or any interest therein and/or the Project or any portion thereof or any interest therein, and shall not be affected or reduced in any way by reason of any such assignment, transfer, lien, mortgage, encumbrance, or refinance; however, in no event will any Participation Component be payable more than once with respect to any Parcel of the Site, and once such Participation Component has been paid with respect to any Parcel of the Site in accordance with the terms and conditions of this Agreement, such Parcel of the Site shall cease

to be affected or encumbered hereby.

b. "Participation Component" shall mean an amount equal to one and one-half percent (1.5%) of the gross sales price (as defined below) from the first arm's-length sale of each Parcel or Parcels of the Site (or any portion thereof) by Purchaser in any number of transactions which is completed within the first Fifty-Five (55) years from the Effective Date of the Purchase Agreement (each such transaction being referred to herein as a "Sale"), if any. In connection with each such Sale, Purchaser agrees to provide to the Successor Agency documentation reasonably satisfactory to Successor Agency's Executive Director regarding the total of all compensation payable to Purchaser for the Sale, directly or indirectly, less costs of sale payable by Purchaser (i.e., escrow fees, title insurance costs, recording fees and notary fees). Such documentation shall include all information, data and documents necessary to calculate the amount of the Participation Component attributable to such Sale and to document the fact that such Sale is being effectuated by an arm's-length sale, including, without limitation, a copy of the applicable purchase and sale agreement and all amendments or modifications thereto. The amount of the Participation Component attributable to each Sale shall be subject to the reasonable approval of the Successor Agency Executive Director.

c. For purposes of this Agreement, the term "arm's length sale" shall mean a transaction in which Purchaser and the buyer act independently and have no relationship to each other, as reasonably determined by the Successor Agency Executive Director.

d. For purposes of this Agreement, the term "gross sales price" shall mean all compensation payable to Purchaser for the Sale, directly or indirectly, less costs of sale payable by Purchaser.

e. Purchaser 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 Successor Agency 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. Purchaser's obligation to pay Successor Agency the Participation Component of the Purchase Price shall be secured by a Deed of Trust in favor of the Successor Agency being recorded contemporaneously with the execution hereof (the "Successor Agency Deed of Trust"), which Successor Agency Deed of Trust shall be subordinated to the lien of any deed of trust, mortgage, encumbrance or other security instrument recorded against the Site (or any portion thereof) by or on behalf of the holder of a Permitted Deed of Trust, including a Construction Lender or Permanent Lender (each a "Permitted Lender") if requested by the Permitted Lender, and which Successor Agency Deed of Trust shall be reconveyed/partially reconveyed as to portions of the Site upon the sale of any Parcel (or any portion thereof) of the Site and payment to the Successor Agency of the Participation Component relating to such Parcel (or any portion thereof) in accordance with the provisions of this Agreement. The terms "Remaining Public Improvement Funds", "Permitted Deed of Trust", "Construction Lender" and

"Permanent Lender" shall have the meanings set forth in Exhibit "B" to that certain Agreement Containing Covenants Affecting Real Property entered into by and between Successor Agency and Purchaser and recorded against the Site on _____, 20___, as Instrument No. _____ ("Agreement Containing Covenants").

2. Purpose of Payment Agreement. This Agreement is prepared for the purpose of evidencing the obligation of the Purchaser to Successor Agency to pay the Participation Component. This Agreement and Purchaser's obligation to pay the Participation Component shall terminate upon Successor Agency's determination that it is unable to fund and disburse to Purchaser any portion of the Remaining Public Improvement Funds due to AB x1 26 and AB x1 27 which were signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law, 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 California Health and Safety Code, as amended by Assembly Bill No. 1484 (Chapter 26, Statutes 2012) which was signed by the Governor of California on June 27, 2012 (the "Dissolution Act") and/or any future or current litigation related thereto, including *California Redevelopment Association v. Matosantos* (S194861), or upon any failure by the Successor Agency to cause the timely funding and disbursement to Purchaser of the Remaining Public Improvement Funds as and when required to be paid, subject to any applicable notice and cure provisions and Force Majeure Delay as defined in the Successor Agency Deed of Trust. Upon any such determination or failure, this Agreement and the Successor Agency Deed of Trust shall terminate and be of no further force or effect and Successor Agency shall cause the immediate full release and reconveyance of the Successor Agency Deed of Trust.

3. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

4. 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

5. Where and How Payable. The Participation Component is payable at the principal office of the Successor Agency, 825 Imperial Beach Boulevard, Imperial Beach, California 91932, or at such other place as the Successor Agency, or its successors and assigns hereunder, may inform the Purchaser in writing, in lawful money of the United States.

6. Security. This Agreement shall be secured by the Successor Agency Deed of Trust, which Successor Agency Deed of Trust shall be subordinate to the lien of any deed of trust, mortgage, encumbrance or other security instrument recorded against the Site by or on behalf of any Permitted Lender if requested by such Permitted Lender. The Successor Agency Deed of Trust shall be recorded against the Site contemporaneously with the execution and delivery hereof. In addition to the provisions for reconveyance provided for above, this Agreement shall terminate, and the lien of the Successor Agency Deed of Trust shall be

reconveyed and released, as to portions of the Site upon the sale of any Parcel (or any portion thereof) of the Site and payment to the Successor Agency of the Participation Component relating to such Parcel (or any portion thereof) in accordance with the provisions of this Agreement.

7. Interest. Except as provided in Section 1.(e), above, the Obligation shall not bear interest.

8. Payments. Except as provided in Section 9, below, the Obligation under this Agreement shall be due and payable as provided in Section 1 of this Agreement. Any portion of the Obligation not paid in full on the date that is fifty-five (55) years after the Effective Date of the Purchase Agreement shall be deemed paid in full.

9. Due Upon Event of Acceleration. The entire unpaid principal balance of this 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, in contravention of the provisions of the Agreement Containing Covenants ; or

(b) if there is a default by the Purchaser under the terms of the Purchase Agreement, this Agreement, the Successor Agency Deed of Trust, or the Agreement Containing Covenants during a period of time when this Agreement is still in full force and effect, which is not cured within the respective time period provided herein and therein.

Upon written request from Purchaser, Successor Agency shall provide, within fifteen (15) days from receipt of the written request, to Purchaser and any lender, prospective lender, or prospective purchaser, an estoppel certificate by which Successor Agency confirms whether or not any defaults then exist under the Purchase Agreement, the Successor Agency Deed of Trust, or this Agreement, along with such other factual matters as such recipient may reasonably require and which is within the knowledge of the Successor Agency. Purchaser shall pay all reasonable costs and expenses of Successor Agency in providing any such estoppel certificate.

10. Application of Payments. All payments to the Successor Agency shall be applied first to interest, then to reduce the principal amount owed.

11. Limited Recourse. Subject to the provisions and limitations of this Section 11, the Obligation under this Agreement is the non-recourse obligation of the Purchaser. Purchaser and any member of Purchaser's limited liability company shall not have any personal liability for the Obligation, except as provided in this Section 11. The sole recourse of Successor Agency shall be the exercise of its rights against the Site and any related security for the Obligation.

Provided, however, that the foregoing shall not (a) constitute a waiver of any Obligation evidenced by this Agreement or the Successor Agency Deed of Trust; (b) limit the right of the Successor Agency to name Purchaser as a party defendant in any action or suit for judicial foreclosure and sale under this Agreement and the Successor Agency 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 Purchaser; (c) release or impair this Agreement or the Successor Agency Deed of Trust; (d) prevent or in any way hinder Successor Agency 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 Successor Agency 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 Purchaser of any of its obligations under any indemnity delivered by Purchaser to Successor Agency; 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 Agreement and the Successor Agency Deed of Trust. The foregoing provisions of this paragraph are limited by the provision that in the event of the occurrence of a default, Purchaser and its successors and assigns shall have personal liability hereunder for any deficiency judgment, but only if and to the extent Purchaser, its principals, shareholders, partners 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 Purchaser in connection with the operation of the mortgaged property, which are then due and payable. Notwithstanding the first sentence of this paragraph, Successor Agency may recover directly from Purchaser:

(a) any damages, costs and expenses incurred by Successor Agency as a result of fraud or any criminal act or acts of Purchaser or any member, partner, shareholder, officer, director or employee of Purchaser, or of any member or general or limited partner of Purchaser, or of any general or limited partner of such member or general or limited partner;

(b) any damages, costs and expenses incurred by Successor Agency as a result of any misappropriation of funds provided to pay Acquisition and Development Costs or for the Public Improvements, as described in the Purchase Agreement, rents and revenues from the operation of the Project, or proceeds of insurance policies or condemnation proceeds;

(c) any and all amounts owing by Purchaser pursuant to any indemnity set forth in the Purchase Agreement, including but not limited to the Environmental Indemnity, and

(d) all court costs and attorneys' fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions (provided that Successor Agency shall pay Purchaser's reasonable court costs and attorneys' fees if Purchaser is the prevailing party in any such enforcement or collection action).

12. Waivers. Purchaser 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 Agreement, in whole or in part, whether before or after maturity and with or without notice. Purchaser hereby agrees to pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by the holder hereof, in the enforcement of this Agreement, the Successor Agency Deed of Trust or any term or provision of either thereof.

13. Exercise of Rights and Remedies. Upon the failure of Purchaser to perform or observe any other term or provision of this Agreement, upon any event of acceleration described in this Agreement, or upon the occurrence of any other event of default under the terms of the Successor Agency Deed of Trust, the Purchase Agreement or the Agreement Containing Covenants, in each event, which is not cured within any applicable notice and cure period, the holder may exercise its rights or remedies hereunder or thereunder.

14. Defaults.

(a) Subject to Force Majeure Delay as defined in the Successor Agency Deed of Trust, and subject to the further provisions of this Section 14 including those providing for notice and an opportunity to cure, failure or delay by Purchaser to perform or to comply with any material term or provision of this Agreement, the Successor Agency Deed of Trust, or the Agreement Containing Covenants, constitutes a default under this Agreement.

(b) Successor Agency shall give written notice of default to Purchaser, specifying the default complained of by the Successor Agency. Delay in giving such notice shall not constitute a waiver of any default.

(c) Any failures or delays by Successor Agency 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 Successor Agency in asserting any of its rights and remedies shall not deprive Successor Agency 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 Agreement or the Successor Agency Deed of Trust, prior to exercising any remedies hereunder or thereunder, Successor Agency shall give Purchaser written notice of such default. Purchaser shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Successor Agency under this Agreement and/or the Successor Agency

Deed of Trust. In no event shall Successor Agency 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) business days after the notice of default is received or deemed received.

(e) If a non-monetary event of default occurs under the terms of this Agreement or the Successor Agency Deed of Trust, prior to exercising any remedies hereunder or thereunder, Successor Agency shall give Purchaser written 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, Purchaser shall have such period to effect a cure prior to exercise of remedies by the Successor Agency. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Purchaser (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Purchaser shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Successor Agency; provided, however, in no event shall Successor Agency 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 twenty (120) 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 Purchaser; 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) Purchaser shall pay all costs and expenses reasonably incurred by Successor Agency, including without limitation, court costs and attorneys' fees, in enforcing or collecting upon this Agreement (provided that Successor Agency shall pay Purchaser's reasonable court costs and attorneys' fees if Purchaser 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 Agreement, with interest at the rate specified in Section 1 of this Agreement.

15. Partial Invalidity. If the rights created by this 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.

16. Approvals. In any approval, consent or other determination by the Parties required under this Agreement, the Parties shall act reasonably and in good faith.

17. Successor Agency Assignment. Purchaser agrees that the Successor Agency shall

have the absolute right, without obtaining approval from Purchaser, to assign (in whole or in part) to a third party the Successor Agency's right to receive (in whole or in part) payments under this Agreement as long as the assignee shall be fully bound by the terms of this Agreement.

19. Successors and Assigns. This Agreement shall bind Purchaser and Purchaser's successors and assigns and the benefits hereof shall inure to Successor Agency and Successor Agency's successors and assigns. If Successor Agency ceases to exist without first assigning its rights and obligations hereunder (including, without limitation, the power of consent and approval as to any matters requiring the consent or approval of the Successor Agency of Successor Agency Executive Director) and notifying Purchaser of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Purchaser shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Successor Agency) for information regarding who has succeeded to such rights and obligations and shall be entitled to rely on the written statement of the City Manager as to such matter, or (b) if the City Manager does not provide Purchaser with satisfactory evidence regarding such matter, Purchaser may seek relief from the Superior Court of the State of California for a declaration as to who has authority to act in the role of the Successor Agency hereunder.

20. Time is of the Essence. Time is of the essence with respect to all of the obligations under this Agreement.

21. Right and Remedies are Cumulative. The rights and remedies of the Successor Agency are cumulative, and the exercise by the Successor Agency 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 Purchaser.

22. Amendment in Writing. This Agreement may not be changed orally, but only by an amendment in writing signed by the Purchaser and Successor Agency.

IN WITNESS WHEREOF the Parties have executed this 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

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____

By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

EXHIBIT “A”

LEGAL DESCRIPTION OF THE SITE

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Imperial Beach Redevelopment
Agency Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attn: Executive Director

(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 Imperial Beach Redevelopment Agency Successor Agency (in this Deed of Trust called "Beneficiary"), whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932.

If Beneficiary ceases to exist without first assigning its rights and obligations hereunder (including, without limitation, the power of consent and approval as to any matters requiring the consent or approval of the Beneficiary or the Beneficiary Executive Director) and notifying Trustor of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Trustor shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Beneficiary) for information regarding who has succeeded to such rights and obligations and shall be entitled to rely on the written statement of the City Manager as to such matter, or (b) if the City Manager does not provide Trustor with satisfactory evidence regarding such matter, Trustor may seek relief from the Superior Court of the State of California for a declaration as to who has authority to act in the role of the Beneficiary hereunder.

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:

> 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 "Purchaser" 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), including, without limitation, payment of indebtedness of the Trustor to the Beneficiary in accordance with the terms of the Payment Agreement, including, without limitation, payment of the Participation Component and interest, if any.

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 this Deed of Trust at the time and in the manner provided in the Payment Agreement or herein.

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 rights of the Senior Lender—as defined below), subject to the below-described license in favor of Trustor, for the purpose of discharging the debt secured by this Deed of Trust. Notwithstanding the foregoing, Trustor is hereby granted a revocable license —revocable only as provided below— to collect such rents, profits and income until written notice from Beneficiary that a default exists under this Deed of Trust, and has not been cured after the giving of notice and the expiration of any applicable cure period without such default being cured, at which time the license shall be automatically revoked.

5. That while any default under this Deed of Trust or under the Payment Agreement secured by this Deed of Trust exists, and after the giving of notice and the expiration of any applicable cure period without such default being cured, 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 (excluding footings, foundations, and similar below-ground improvements). Such policies shall be endorsed with standard mortgagee clause with loss payable to the Beneficiary (subject to the rights of the Senior Lender) and certificates thereof shall be deposited with the Beneficiary. Unless approved otherwise in writing by the Successor Agency Executive Director,

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 reasonable 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 that certain Agreement Containing Covenants Affecting Real Property recorded entered into by and between Trustor (Purchaser therein) and Beneficiary (Successor Agency therein) concurrently herewith as Document No. _____ ("Covenant Agreement"), 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 Covenant Agreement, 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 and Beneficiary's good faith determination that foreclosure of such lien could occur within 60 days or that Beneficiary's interests hereunder are in jeopardy (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 reasonable 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, which failure continues uncured for a period of 10 days following written notice to Trustor, 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), 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 of the Subject 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.

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 Successor Agency Executive Director 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 Covenant Agreement), Successor Agency Executive Director shall execute a Subordination Agreement (as defined in the Covenant Agreement) as to Property 1, and subject to the occurrence of the Phase 2 Closing (as defined in the Covenant Agreement), Successor Agency Executive Director 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) if there is no then-existing Senior Deed of Trust, Beneficiary shall have the right to reasonably approve plans and specifications for any major rebuilding (other than any replacement of damaged buildings with substantially similar improvements) 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 Imperial Beach Redevelopment Agency Successor Agency (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 201___; 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 "**Imperial Beach Redevelopment Agency Successor Agency**" 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 201____, 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 201___, 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 "Imperial Beach Redevelopment Agency Successor Agency" 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 and the Beneficiary. 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 Deed of Trust 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.

m. The Successor Agency Executive Director 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.

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, California 91932
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 ("Purchaser").

RECITALS

A. The Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency") has conveyed to Purchaser 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 Purchase and Sale Agreement dated _____, 201____ ("Purchase Agreement") by and between the Successor Agency and Purchaser, Purchaser 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 Purchase Agreement. The term "Purchase Agreement" as used herein shall mean, refer to and include the Purchase Agreement, 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 Purchase Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the

Purchase Agreement.

C. In consideration for the Successor Agency's performance of its obligations under the Purchase Agreement, Purchaser agreed to construct the off-site improvements ("Public Improvements") set forth in the Purchase Agreement to serve the Project, which include the following:

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 Property 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", which shall be an ongoing maintenance obligation of Purchaser before and after acceptance of the remainder of the Public Improvements by the City;

(e) Installation of new street lights; and

(f) Any other Cal-Trans requirements relating to the Public Improvements.

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 Property, or within any right-of-way abutting the boundary shall be placed underground (conversion) to the reasonable satisfaction of the City Public Works Director. Purchaser 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 Property to the reasonable satisfaction of the City Public Works Director, including the adjustment to grade and/or replacement of all utility covers in such alley. The work shall also include combining and reconfiguring the vehicular access point to the alley and parking access

on 9th Street to the satisfaction of the City Public Works Director. 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");

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 Public Works Director ("New Traffic Signal"); and

6. All other improvement requirements as set forth in the Purchase Agreement.

D. The purpose of this Agreement is to establish the conditions for City's acceptance of the Public Improvements once completed by Purchaser in accordance with the Purchase Agreement and all applicable City requirements.

E. The Public Improvements detailed herein are not exhaustive of all of the public improvements Purchaser must complete pursuant to the Project entitlements, other governing documents and/or applicable law; however, recordation hereof following Completion will constitute conclusive evidence that all Public Improvements required pursuant to the Purchase Agreement have been completed.

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, Purchaser 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) approval of the Public Improvements by Cal-trans, as necessary; (3) recordation of a Notice of Completion by the City; (4) 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 (5) 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. Purchaser shall promptly remedy at the Purchaser'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. Purchaser hereby guarantees all work against defective workmanship and materials furnished by Purchaser for a period of one (1) year from the date the Notice of Completion is filed. Purchaser 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 Purchaser to make such replacements or repairs within fifteen (15) calendar days of notice from the City, the City may perform this work and the Purchaser and its sureties shall be liable for the costs thereof. If any such replacements and repairs cannot reasonably be made within such fifteen (15) calendar day period, and Purchaser has begun such replacements and repairs fifteen (15) calendar day period and is proceeding with diligence to complete same, then such fifteen (15) calendar day period shall be extended to allow the completion of such replacements and repairs. In addition to the foregoing, the City, in its sole discretion, may extend the fifteen (15) day deadline to complete any such replacements or repairs.

5.0 INDEMNIFICATION. In addition to and without limiting any indemnity provided under the Purchase Agreement, Purchaser shall protect, defend, indemnify and hold the Successor Agency, City and each of their respective elected officials, members, officers, representatives, agents, employees, contractors and attorneys (collectively, 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 Purchaser's officers, employees, invitees, guests, agents or contractors, which arise out of the negligence or intentional misconduct of Purchaser, its respective contractors, subcontractors, agents or other persons acting on Purchaser's behalf in connection with the design, construction and installation of the Improvements, and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. If the City, in good faith, determines that its interests are not adequately protected by being provided a defense by Purchaser, City (and the other Indemnified Parties) may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If the City, on behalf of the Indemnified Parties, makes the foregoing election to conduct its own defense or obtain independent legal counsel in defense of any claim related to this indemnification, then Purchaser shall pay all of the costs related thereto, including, without limitation, reasonable attorneys' fees and costs. 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.

7.0 ESTOPPEL CERTIFICATE. Upon written request from Purchaser, City shall provide, within fifteen (15) days of the receipt of the written request, to Purchaser and any lender, prospective lender, or prospective purchaser, an estoppel certificate by which City confirms whether or not any defaults then exist hereunder or in connection herewith, along with confirmation of such other factual matters as such recipient may reasonably require and which is within the knowledge of the City. Purchaser shall pay all reasonable costs and expenses of City in providing any such estoppel certificate.

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: _____
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:

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT ("Agreement") is made as of this _____ day of_____, 201____ (the "Effective Date"), by and between IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (the "Successor Agency"), and SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Licensee").

RECITALS

A. The Successor Agency 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 Purchase and Sale Agreement dated _____, 201____ (the "Purchase Agreement"), by and between the Successor Agency and the Licensee ("Purchaser" therein), pertaining to the redevelopment of the Site with a commercial/retail development (the "Improvements"), in accordance with the terms and conditions of the Purchase Agreement. The term "Purchase Agreement" as used herein shall mean, refer to and include the Purchase Agreement, 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 Purchase Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Purchase Agreement.

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 Successor Agency 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) conduct reasonable investigations on the Site pertaining to the relinquishment, reconfiguration, access, signalization, utility (wet & dry), retention basin, storm drain systems assessments and possible relocations, below surface infrastructures and other tests and samples necessary for highway and Site improvement to conform to the approved plan, 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 Successor Agency or its directors, officers, members, employees, agents and independent contractors (collectively, "Successor Agency'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 Successor Agency Executive Director or his or her 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 Successor Agency 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 Purchase Agreement; (ii) termination of the Purchase Agreement; or (iii) termination of this Agreement in accordance with Section 15 hereto (the "Term").

3. No Possessory Interest. Licensee acknowledges and agrees that Successor Agency'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 Successor Agency 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. Successor Agency, in its capacity as owner of the Site, shall cooperate with Licensee in applying for such permits and authorizations, subject to the approval of Successor Agency Executive Director or designee.

6. Reports and Studies. In consideration of the Successor Agency's granting of this License, Licensee shall promptly provide the Successor Agency with a copy of all reports and test results arising from this License; it being understood that such reports and test results are being delivered to Successor Agency without any representations or warranties of any kind or nature, expressed or implied, as to the contents thereof, and 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 Successor Agency'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 Purchase Agreement, 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 Successor Agency 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 Successor Agency 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 Successor Agency, 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 Successor Agency 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 Successor Agency 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, and Successor Agency, in good faith, determines that a foreclosure thereof could occur within 60 days, Licensee shall, within ten days of written demand, deliver to the Successor Agency bonds or other adequate security in form and amount approved in writing by Successor Agency Executive Director or designee.

11. Indemnification. To the extent permitted by law, Licensee shall protect, defend, indemnify and hold Successor Agency, the Successor Agency's Representative and each of its elected officials, officers, representatives, agents, employees, contractors and

attorneys (collectively, 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 Agreement (excluding any such matter arising out of the mere discovery by Licensee of a Pre-existing Site Condition and any loss or damage to the proportional extent resulting from the Successor Agency's or any Indemnified Party's negligence or willful misconduct), and all expenses of investigating and defending against same, including, without limitation, attorneys' fees and costs. If the Successor Agency (on behalf of the Indemnified Parties), in good faith, determines that its(their) interests are not adequately protected by being provided a defense by Licensee, the Successor Agency may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If, pursuant to the preceding sentence, the Successor Agency makes such 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. The foregoing defense and indemnification obligations shall survive the termination of this Agreement or the Purchase Agreement 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 Purchase Agreement, Completion and recordation of any Release of Construction Covenants, as described in the Purchase Agreement.

12. Waiver Of Subrogation. Licensee hereby waives any and every claim which arises or may arise in its favor and against the Successor Agency 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. Successor Agency hereby waives any and every claim which arises or may arise in its favor and against the Licensee during the term of this Agreement or any extension or renewal hereof for any and all loss or damage to Successor Agency's property, or property of Successor Agency's officers, representatives, employees, agents, subcontractors, patrons or invitees covered by valid and collectible property insurance policies (or self-insurance programs) to the extent that such loss or damage is covered under such insurance policies (or self-insurance programs). Each Party shall obtain appropriate waiver of subrogation endorsements to 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 Successor Agency and Successor Agency's 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 Successor Agency's or any Indemnified Party'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 Successor Agency Executive Director or designee, after giving Licensee written notice of such violation and a thirty (30) calendar day period within which to cure the same and during such 30-day period such violation is not cured, 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. Successor Agency 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 Successor Agency. 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 Successor Agency Executive Director (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 Successor Agency Executive Director. 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. Successor Agency's Proprietary Capacity. Licensee agrees that Successor Agency, in making and entering into this Agreement, is acting and shall be deemed to be acting solely in Successor Agency'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 Successor Agency's governmental powers or rights or the exercise thereof by Successor Agency, 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 entity 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

And a copy of each such notice sent to Licensee shall be transmitted by email to Gerald I. Solomon, Esq. of Solomon Minton Cardinal Doyle & Smith LLP addressed as follows: gis@smcdslaw.com

If to Successor Agency:

Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932
Attn: Successor Agency Executive Director
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: Kendall D. Berkey
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]

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

Dated:_____ By: _____
Successor Agency Executive Director

APPROVED AS TO FORM
Successor Agency Attorney

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By:_____

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 Successor Agency. At the option of Successor Agency, the insurer shall reduce or eliminate deductibles (limited to general and vehicle liability insurance only) or self-insured retentions as respects Successor Agency, 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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's 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 Successor Agency.

(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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's Representatives and their officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the Successor Agency 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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's 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, Imperial Beach Redevelopment Agency Successor Agency, Successor Agency's Representatives and their officers, agents, employees and volunteers for losses arising from work performed by Licensee for the Successor Agency.

(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 Successor Agency at the following address:

Imperial Beach Redevelopment Agency Successor Agency
1685 Main Street, Room 212
Imperial Beach, CA 90401.
Attention: Successor Agency Executive Director

(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. Successor Agency, at its sole option, may

terminate this Agreement and obtain damages from Licensee resulting from the breach. Alternatively, Successor Agency may purchase the required insurance (but has no special obligation to do so), and without further notice to Licensee, Successor Agency may deduct from sums due to Licensee any premium costs advanced by Successor Agency 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 Successor Agency's Risk Manager.

E. Verification of Coverage. Licensee shall furnish Successor Agency 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 Successor Agency and are to be received and approved by Successor Agency before work commences. Copies of the Certificate of Insurance and endorsement forms acceptable to Successor Agency are attached.

F. Licensee Contractors. Licensee shall provide to Successor Agency 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 2

PALM/COMMERCIAL REDEVELOPMENT PROJECT AREA

IMPERIAL BEACH, CALIFORNIA

SUMMARY REPORT PERTAINING TO THE PROPOSED CONVEYANCE OF CERTAIN REAL PROPERTY WITHIN THE REDEVELOPMENT PROJECT AREA

California Community Redevelopment Law
Section 33433

PURSUANT TO PROPOSED PURCHASE AND SALE AGREEMENT
BETWEEN
THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY
AND
SUDBERRY - PALM AVENUE LLC

City of Imperial Beach, California

September 2013

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I. INTRODUCTION

A. Purpose of Report

This Summary Report was prepared in accordance with Section 33433 of the California Community Redevelopment Law in order to inform the City of Imperial Beach (City), the Imperial Beach Redevelopment Agency Successor Agency (Successor Agency) and the public about the proposed Purchase and Sale Agreement (Agreement) between the Successor Agency and Sudberry – Palm Avenue LLC (Purchaser).

As described in Table 1, the Purchaser intends to develop an approximate 46,200-square-foot (SF) retail shopping center (Project) located at the southwest corner of 9th Street and Palm Avenue (Site) in the City of Imperial Beach. The development will consist of a grocery market, retail shops, and restaurants, along with 228 surface parking spaces.

As background, the Purchaser and the City entered into a Disposition and Development Agreement (DDA) in December 2011 for development of a neighborhood shopping center. In December 2012, the DDA was assigned to the Successor Agency. The Site is currently owned by the Successor Agency. The current Agreement under review will replace, in its entirety, the December 2011 DDA.

This Report and attached appendix describe the transaction between the Successor Agency and the Purchaser. This Report specifies:

1. The costs to be incurred by the Successor Agency under the Agreement;

2. The estimated value of the interest to be conveyed at the highest and best use permitted under the Redevelopment Plan;

3. The estimated value of the interest to be conveyed at the proposed use and with the conditions, covenants, and development costs required by the Agreement;

4. The compensation to be paid to the Successor Agency pursuant to the proposed transaction;

5. An explanation of the difference, if any, between the compensation to be paid to the Successor Agency under the proposed transaction, and the fair market value at the highest and best use consistent with the Redevelopment Plan; and

6. An explanation of why the Sale of the Site will assist with the elimination of blight.

B. Summary of Findings

The Successor Agency engaged its economic consultant, Keyser Marston Associates, Inc. (KMA), to analyze the proposed financial terms. The principal KMA conclusions are summarized as follows:

- The estimated costs of the Agreement to the Successor Agency total $16,349,000.
- The estimated fair market value of the Site at its highest and best use is $213,000.
- The estimated re-use value of the interest to be conveyed is *negative* $2,465,000.
- The estimated value of the compensation to be received by the Successor Agency is *negative* $1,987,000.

C. Description of Area and Proposed Project

Description of Environs and Surrounding Area

The City is located just north of the Mexico border in southwestern San Diego County. The City's boundaries encompass an area of 4.4 square miles. Over the past several years, the City has renewed itself as a popular destination due to the City's beachfront (including the Imperial Beach Pier), the Tijuana Estuary Natural Preserve, and San Diego Bay. The City continues to be proactive in its efforts to provide amenities for visitors while increasing the quality of life for residents. One such example is the new 78-room hotel, Pier South, located on Seacoast Drive. The boutique hotel is set to open in Fall 2013.

Project Description

The Site is a 4.75-acre site, inclusive of proposed vacated public rights-of-way, located at the intersection of 9th Street and Palm Avenue. The Purchaser proposes to develop an approximate 42,900-SF retail shopping center (Project) on the Site consisting of a grocery market, retail shops, and restaurants, along with 228 surface parking spaces.

D. Proposed Transaction Terms

This section summarizes the salient aspects of the proposed Agreement between the Successor Agency and the Purchaser.

- The Site will be divided into two parts (Property 1 and Property 2), as follows:

- Property 1 will include the parcels consisting of building pads A, B, C, and D and related landscaping, on-site utilities, improvements, landscaping, lighting, parking, and driveways (Phase 1).

- Property 2 will include the parcels consisting of building pads E, F, and G and related landscaping, on-site utilities, improvements, landscaping, lighting, parking, and driveways (Phase 2).

- The Purchaser will pay the Successor Agency $213,000 for the Site.

- Additionally, the Purchaser will pay the Successor Agency 1.5% of the gross sales price from the first arm's-length sale of each portion of the Site, in any number of transactions over any period of time (Participation Component).

- The Successor Agency will reimburse the Purchaser up to $2,200,000 for public improvements (Public Improvement Funds) to the intersection at Delaware Street, Palm Avenue, and Highway 75 (Public Improvements). To date, the Successor Agency has disbursed $40,768 for design costs for the Public Improvements. The remaining balance of the Public Improvement Funds is $2,159,232 (Remaining Public Improvement Funds).

  The Successor Agency's obligation under the Agreement to reimburse the Public Improvement Funds shall be a special limited obligation. The funds will be payable solely from proceeds from the Palm Avenue/Commercial Redevelopment Project Tax Allocation Bonds, 2010 Tax Allocation Bonds, approved by the Successor Agency's Oversight Board and the State Department of Finance on the Successor Agency's "ROPS 1", and allocated for the Public Improvements and currently held by the City.

- The Purchaser covenants to use the Site only for the development and operation of a retail center, generally consistent with the information submitted as part of the Purchaser's May 6, 2009 proposal to the City.

- The Successor Agency will have an option (Option Agreement) to re-purchase Property 2 for $1.00 (Option Price) if Property 2 does not close within 48 months of the sale of the Site (Close of Escrow). The Successor Agency will remove the Option Agreement secured by Property 2 when the Purchaser meets all conditions precedent to the start of Phase 2.

II. COSTS OF THE AGREEMENT TO THE SUCCESSOR AGENCY

The estimated costs of the Agreement to the Successor Agency total $16,349,000, and include the following items:

Acquisition-Related Costs (1)	**Amount**
Site Acquisition	$11,262,000
Relocation	$1,835,000
Demolition and Maintenance	$727,000
Subtotal, Acquisition-Related Costs	$13,824,000
Add: Reimbursement of Public Improvements (2)	$2,200,000
Add: Third Party Costs (3)	$325,000
Total Successor Agency Costs	**$16,349,000**

(1) Per City.
(2) Includes $2,159,200 for Public Improvements and $40,800 previously advanced for design costs.
(3) Includes appraisal, legal, economic, environmental, and other costs incurred by the Successor Agency.

III. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE HIGHEST AND BEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN

This section presents an analysis of the fair market value of the Site at its highest and best use. KMA finds that the fair market value of the Site at its highest and best use is $213,000.

Typically, the analysis of fair market value at highest and best use does not consider the specific transaction or development concept, but rather the most profitable use that is consistent with the Redevelopment Plan, or other governing land use regulations. The purpose of the analysis is to estimate the maximum compensation that the Successor Agency could achieve if it were to offer the Site on the open market.

The highest and best use of the Site is that use that generates the highest property value. By definition, the highest and best use is the use that is physically possible, financially feasible, and legally permitted. The City of Imperial Beach General Plan designates the Site as General Commercial (C-1). This land use designation is intended for community and neighborhood serving retail and office uses such as markets, specialty stores, professional offices, personal service department stores, restaurants, liquor stores, hardware stores, etc. Residential uses may be permitted above the first floor at a maximum density of one unit per every 1,000 SF of land, or approximately 43 units per acre.

The Successor Agency contracted with Robert Backer & Associates (Backer) for an appraisal of the Site. The appraisal estimated the current market value of the Site, as-is, as of September 10, 2013. The appraiser concluded that the fair market value of the Site, as if vacant, entitled, and finished with all frontage improvements is $5,173,000, or say $25 per SF. However, the Site will require extraordinary on- and off-site improvements that will take up to one year to complete. As such, Backer concludes that the total value of the Site, after consideration of the construction costs and interest carry for the extraordinary on- and off-site improvements, is $213,000, as shown below:

Highest and Best Use	
Land Value – Vacant, Entitled, and Finished with All Frontage Improvements	$5,172,800
(Less) Cost of On- and Off-Site Improvements	($4,816,400)
(Less) Interest Carry (1)	($143,500)
Land Value – As Is (rounded)	**$213,000**

(1) Reflects one year of interest carry at 5.5%.

KMA conducted an independent review of commercial and residential sites of 10 acres or less within South County from January 2011 to the present. The KMA survey included: the City of Imperial Beach; the cities of National City and Chula Vista west of Interstate 805; and the South San Diego communities of San Ysidro and Nestor. As indicated in Table 2, surveyed sales ranged from $8 to $60 per SF of land.

The median and average prices per SF were $28 and $27, respectively. The surveyed comparables vary greatly in terms of timing, location, size, and proposed use. There were no comparable sales in the City within this time period. Six of the surveyed sales involved sites of less than one acre, substantially smaller than the Site. In general, KMA finds the majority of the comparables to be superior to the Site. On this basis, then, KMA finds the fair market value of the Site, as though entitled and finished, to fall slightly below the median/average of the comparables, or $25 per SF. The KMA finding is therefore consistent with the Backer appraisal. This finding of value must then be adjusted to account for a deduction of on- and off-site improvements, plus interest carry, totaling $4,960,000 (rounded), resulting in an "As Is" value of $213,000.

Therefore, KMA estimates the fair market value of the Site at its highest and best use to be $213,000.

IV. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE USE AND WITH THE CONDITIONS, COVENANTS, AND DEVELOPMENT COSTS REQUIRED BY THE AGREEMENT

This section explains the principal conditions and covenants which the Purchaser of the Site must meet in order to comply with the Redevelopment Plan (Plan). The Agreement contains specific covenants and conditions designed to ensure that the conveyance of the Site will be carried out in a manner to achieve the Successor Agency's objectives, standards, and criteria under the Plan. Based on a detailed financial feasibility analysis of the proposed Project, KMA concludes that the fair re-use value of the Site is *negative* $2,465,000.

KMA estimated the re-use value of the Site based on the anticipated income characteristics of the proposed Project. Re-use value is defined as the highest price in terms of cash or its equivalent which a property or development right is expected to bring for a specified use in a competitive open market, subject to the covenants, conditions, and restrictions imposed by the Agreement.

KMA solved for residual value based on the terms of the Agreement absent any Successor Agency financial assistance. Tables 3 through 5 present KMA's residual value analysis for the proposed Project.

Estimated Development Costs

In estimating the direct costs of the development, KMA reviewed the financial pro forma submitted by the Purchaser. KMA made various adjustments to the Purchaser pro forma based on industry standards and our experience with comparable projects in Southern California. As shown in Table 3, the development costs for the Project, excluding land acquisition, are estimated to total $13,613,000. This equates to $310 per SF of total gross building area (GBA). These costs include the following:

- Site improvements, such as extraordinary on- and off-site improvements, general conditions, contractor fee, insurance, and interest carry, total $4,960,000, or $24 per SF of land. These costs are inclusive of the requirement to pay prevailing wages during construction.

- Direct construction costs, such as building construction, tenant improvements, furniture fixtures & equipment, and contingency, are estimated to total $5,756,000. This equates to $131 per SF total GBA. These costs are inclusive of the requirement to pay prevailing wages during construction.

- Indirect costs, such as architecture, engineering, public permits and fees, legal and accounting, taxes and insurance, marketing, leasing commissions, developer fee, and contingency, are projected to be $2,093,000, or 19.5% of direct costs plus site improvements.

- Financing costs, consisting of loan fees and interest during construction, are estimated to be $804,000, or 7.5% of direct costs plus site improvements.

Net Operating Income

Table 4 presents the estimate of stabilized Net Operating Income (NOI) for the Project. KMA reviewed the revenue projection provided by the Purchaser and compared it to other similar projects with which we are familiar in San Diego County.

The KMA pro forma analysis considers the Purchaser's NOI projection, and makes certain assumptions based on industry data and our knowledge of comparable projects. The NOI projection of $1,003,000 reflects the following assumptions:

- An average rent of $2.00 per SF triple net (NNN) for the retail shops. KMA reviewed the projected rents from the Purchaser and current market rents in the Imperial Beach and South Bay areas. Based on this review, KMA found the projected rents to be reasonable to high considering both the competitive market factors in the local trade area and the proposed quality of the Project.

- A vacancy factor of 5.0% has been allowed for all the commercial components, excluding the market anchor (Building A) and retail anchor (Building F).

- Annual unreimbursed operating expenses have been calculated at a nominal 2.6% of Effective Gross Income (EGI).

Residual Value

The residual land value supported by the Project can be estimated as the difference between the total development costs, exclusive of land acquisition, and the warranted investment that can be attracted to the Project based on current real estate investment standards. As shown in Table 5, KMA estimates warranted investment to be $11,148,000, based on a target return on investment (ROI) of 9.0%. This return target reflects the proposed type and quality of the development, the mix of tenants, and the location of the Site within a truncated market area. The difference between the total warranted investment and total development costs of $13,613,000 represents the residual land value for the Site of *negative* $2,465,000, as follows:

Residual Land Value	
Net Operating Income (NOI)	$1,003,000
Target Return on Investment (ROI)	9.0%
Warranted Investment	$11,148,000
(Less) Total Development Costs	($13,613,000)
Residual Land Value	**($2,465,000)**

Conclusion

Based on the foregoing, KMA concludes that the fair re-use value of the Site is *negative* $2,465,000.

V. COMPENSATION WHICH THE PURCHASER WILL BE REQUIRED TO PAY

The compensation to be received by the Successor Agency for the Site under the terms of the Agreement is estimated to be *negative* $1,987,000 comprised of the following:

Sources	**Totals**
Purchase Price	$213,000
Participation Component (1)	$0
Effective Compensation to Successor Agency	**$213,000**
(Less) Public Improvement Funds	($2,200,000)
Total Effective Compensation to Successor Agency	**($1,987,000)**

(1) KMA conservatively estimates zero revenue to the Successor Agency from this participation provision, inasmuch as any sale of the Site would be undertaken solely at the Purchaser's discretion.

On this basis, then, KMA estimates the net compensation to the Successor Agency to be *negative* $1,987,000.

VI. EXPLANATION OF THE DIFFERENCE, IF ANY, BETWEEN THE COMPENSATION TO BE PAID TO THE SUCCESSOR AGENCY BY THE PROPOSED TRANSACTION AND THE FAIR MARKET VALUE OF THE INTEREST TO BE CONVEYED AT THE HIGHEST AND BEST USE CONSISTENT WITH THE REDEVELOPMENT PLAN

The Successor Agency will receive an estimated total compensation of *negative* $1,987,000. The estimated fair market value at highest and best use of the interest to be conveyed is $213,000. The compensation to the Successor Agency is lower than the fair market value at highest and best use for the following reasons:

- The Agreement imposes a covenant on the use of the Site 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 the Purchaser's proposal to the Successor Agency.

- The Purchaser is required to develop a first class, signature commercial/retail development that incorporates high quality features. The Agreement further imposes a covenant on the use of Parcel A for the construction and operation of a grocery store.

- The Purchaser is required to adhere to the Schedule of Performance contained in the Agreement, notwithstanding current market and financing conditions for new commercial/retail development.

- The Agreement imposes the obligation on the Purchaser and its contractors to comply with applicable governmental requirements, including (to the extent applicable) the payment of State prevailing wages during construction.

- The Agreement imposes a burden on the Purchaser to pay the Successor Agency 1.5% of the gross sales price from the future resale of the Site.

- The Agreement includes an Option Agreement that enables the Successor Agency the right to take back Property 2 if the Purchaser fails to meet the conditions precedent to start Phase 2 of the Project. As a result, the Purchaser will be unable to obtain financing secured by Property 2 until these conditions have been met.

VII. EXPLANATION OF WHY THE SALE OF THE SITE WILL ASSIST WITH THE ELIMINATION OF BLIGHT

The Palm/Commercial Redevelopment Plan contains the goals and objectives and the projects and expenditures proposed to eliminate blight within the Project Area. These blighting factors include:

- Areas suffering from economic dislocation and disuse.

- Areas which are stagnant or improperly utilized, and which the planning, redesign, or redevelopment could not be accomplished by private enterprises acting alone, without public participation.

Implementation of the proposed Agreement can be expected to assist in the alleviation of blighting conditions through the following:

- Elimination and prevention of blight and deterioration; and the conservation, rehabilitation, and redevelopment of the Project Area in accord with the General Plan, Redevelopment Plan, and local codes and ordinances.

- Achievement of an environment reflecting a high level of concern for architectural, landscape, and urban design and land use principles appropriate to attainment of the objectives of the Redevelopment Plan.

- Provision for increased revenues to the City, including sales, business license, and other fees, taxes, and revenues to the City.

- Provision for tax increment to provide funds necessary to finance rehabilitation and development programs which cannot be accomplished through existing publicly funded programs or by the private sector acting alone to eliminate blighting influences in the Project Area.

- Creation and development of local job opportunities and the preservation of the area's existing employment base.

- Elimination or amelioration of certain environmental deficiencies, including substandard vehicular circulation systems; inadequate water, sewer, and storm drain systems; insufficient off-street parking; and other similar public improvements, facilities, and utilities deficiencies adversely affecting the Project Area.

VIII. LIMITING CONDITIONS

The estimates of re-use and fair market value at the highest and best use contained in this Summary Report assume compliance with the following assumptions:

1. There are no known soil or subsoil problems, including toxic or hazardous conditions on the Site that need to be remediated in order to develop the Site.

2. The ultimate development will not vary significantly from that assumed in this Summary Report.

3. The title of the property is good and marketable; no title search has been made, nor have we attempted to determine the ownership of the property. The value estimates are given without regard to any questions of title, boundaries, encumbrances, liens or encroachments. It is assumed that all assessments, if any are paid.

4. The Site will be in conformance with the applicable zoning and building ordinances.

5. Information provided by such local sources as governmental agencies, financial institutions, realtors, buyers, sellers, and others was considered in light of its source, and checked by secondary means.

6. If an unforeseen change occurs in the economy, the conclusions herein may no longer be valid.

7. The development will adhere to the schedule of performance described in the Agreement.

8. Both parties are well informed and well advised and each is acting prudently in what he/she considers his/her own best interest.

attachments

TABLE 1

PROJECT DESCRIPTION
9TH AND PALM
CITY OF IMPERIAL BEACH

I. Site Area	4.75	Acres
II. Gross Building Area		
Building A - Market	16,000	SF
Buildings B, C, D - Shops	10,400	SF
Building E - Shops	4,000	SF
Building F - Retail	10,000	SF
Building G - Shops	3,500	SF
Total Gross Building Area (GBA)	43,900	SF
Floor Area Ratio (FAR)	0.21	
III. Parking		
Number of Spaces	228	Spaces
Parking Ratio	5.2	Spaces per 1,000 SF GBA

TABLE 2

SELECTED COMMERCIAL AND RESIDENTIAL LAND SALES COMPARABLES (1)
9TH AND PALM
CITY OF IMPERIAL BEACH

Sale Date	Address	City	Sale Price	Acres	$/SF	Property Description
12/12/12	240 Landis Ave	Chula Vista	$1,420,000	0.54	$60	Office, medical
06/21/12	225 W San Ysidro Blvd	San Ysidro	$575,000	0.30	$44	Commercial, retail, strip center
01/24/13	140 National City Blvd	National City	$249,000	0.20	$29	Commercial, industrial, retail, apartments
04/10/13	2100 Highland Ave	National City	$325,000	0.27	$28	Auto Zone
02/21/13	980-986 Broadway	Chula Vista	$3,005,000	2.50	$28	Commercial land
06/15/12	1105-1123 National City Blvd	National City	$1,165,000	1.25	$21	Lumina
07/08/11	1507 Howard Avenue	San Diego	$565,000	0.96	$14	Commercial, retail
11/09/11	825 Hollister St	San Diego	$1,200,000	3.65	$8	Commercial, industrial, office
08/24/12	Picador Blvd	San Diego	$125,000	0.38	$8	Retail, fast food, general freestanding
		Minimum	$125,000	0.20	$8	
		Maximum	$3,005,000	3.65	$60	
		Median	$575,000	0.54	$28	
		Average	$958,778	1.12	$27	

(1) Selected sales transactions (10 acres or smaller) for commercial and residential land in Imperial Beach, National City, Chula Vista, Nestor, and San Ysidro from January 2011 to present.

Source: CoStar Group, Robert Backer Associates
Prepared by: Keyser Marston Associates, Inc.
Filename i: Imperial Beach_9th Palm_v1_09-12-13;9/12/2013;rks

TABLE 3

ESTIMATED DEVELOPMENT COSTS
9TH AND PALM
CITY OF IMPERIAL BEACH

I. Site Improvements (1)(2)			
On-Site Improvements	$1,406,540	$7	Per SF Site
Off-Site Improvements	$2,309,050	$11	Per SF Site
General Conditions	$165,000	$1	Per SF Site
Inspections, Permits & Fees	$248,292	$1	Per SF Site
Design Costs	$372,438	$2	Per SF Site
Insurance	$45,013	$0	Per SF Site
Contractor Overhead & Profit	$180,052	$1	Per SF Site
Interest Carry	$143,189	$1	Per SF Site
Contingency	$90,026	1.8%	of Site Improvements
Total Site Improvements	$4,959,600	$24	Per SF Site
II. Direct Costs (1)			
Parking	$0		Included above
Shell Construction	$5,049,000	$115	Per SF GBA
Tenant Improvements	$358,000	$20	Per SF GBA - Shops
Amenities/FF&E	$75,000		Allowance
Contingency	$274,000	5.0%	of Directs
Total Direct Costs	$5,756,000	$131	Per SF GBA
III. Indirect Costs			
Architecture & Engineering	$429,000	4.0%	of Directs + Site Improvements
Entitlement Costs	$429,000	4.0%	of Directs + Site Improvements
Permits & Fees (3)	$271,280	$6	Per SF GBA
Legal & Accounting	$107,000	1.0%	of Directs + Site Improvements
Taxes & Insurance	$107,000	1.0%	of Directs + Site Improvements
Developer Fee	$321,000	3.0%	of Directs + Site Improvements
Marketing/Lease-Up	$329,000	$7.50	Per SF GBA
Contingency	$100,000	5.0%	of Indirects
Total Indirect Costs	$2,093,280	19.5%	of Directs + Site Improvements
IV. Financing Costs			
Loan Fees	$268,000	2.5%	of Directs + Site Improvements
Interest during Construction/Lease-Up	$536,000	5.0%	of Directs + Site Improvements
Total Financing Costs	$804,000	7.5%	of Directs + Site Improvements
V. Total Development Costs	**$13,612,880**	**$310**	**Per SF GBA**
Or Say (Rounded)	**$13,613,000**		

(1) Includes the payment of prevailing wages.
(2) Source: CSI Construction budget, dated September 9, 2013.
(3) Per Developer. Not verified by KMA or City.

Prepared by: Keyser Marston Associates, Inc.
Filename: i: Imperial Beach_9th Palm_v1_09-12-13;9/12/2013;rks

TABLE 4

NET OPERATING INCOME
9TH AND PALM
CITY OF IMPERIAL BEACH

	Size		Rent/SF	Monthly Rent	Annual Rent
I. Gross Scheduled Income					
Building A - Market	16,000	SF	$1.79	$28,600	$343,200
Buildings B, C, D - Shops	10,400	SF	$2.50	$26,000	$312,000
Building E - Shops	4,000	SF	$2.00	$8,000	$96,000
Building F - Retail	10,000	SF	$1.58	$15,800	$189,600
Building G - Shops	3,500	SF	$2.74	$9,590	$115,100
Gross Scheduled Income (GSI)	43,900	SF	$2.00	$87,992	$1,055,900
II. Effective Gross Income					
(Less) Vacancy (1)			5.0% of GSI		($26,000)
Effective Gross Income (EGI)					$1,029,900
III. Operating Expenses					
(Less) Management			1.5% of EGI		($15,200)
(Less) CAM for Vacant Space			0.5% of EGI		($5,200)
(Less) Reserves			0.6% of EGI		($6,200)
Total Operating Expenses			2.6% of EGI		($26,600)
IV. Net Operating Income (NOI)					**$1,003,300**

(1) Reflects vacancy on shops only (Buildings B, C, D, E, and G).

Prepared by: Keyser Marston Associates, Inc.
Filename: i: Imperial Beach_9th Palm_v1_09-12-13;9/12/2013;rks

TABLE 5

RESIDUAL LAND VALUE
9TH AND PALM
CITY OF IMPERIAL BEACH

I. Warranted Investment

Net Operating Income (NOI)	$1,003,300
Target Return on Investment (ROI)	9.0%
Warranted Investment	$11,148,000

II. Residual Land Value

Total Warranted Investment	$11,148,000
(Less) Development Costs	($13,613,000)
Residual Land Value	**($2,465,000)**

City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

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

October __, 2013

Via Electronic Mail

Gregory Wade, Deputy Director
Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Blvd.
Imperial Beach, California 91932

SUBJECT: 9th and Palm Avenue Project

Dear Mr. Wade:

As you know, Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser"), and the City of Imperial Beach, a municipal corporation (the "City"), are parties to that certain Disposition and Development Agreement dated December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Purchaser and dated March 15, 2012, as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Purchaser and dated August 10, 2012, as further amended by that certain second "Letter Agreement" entered into by the City and the Purchaser and dated December 20, 2012, and as further amended by that certain third "Letter Agreement" entered into by the City and the Purchaser and dated September 23, 2013, all collectively referred to as the "DDA", which is incorporated herein by this reference.

The DDA concerns the sale of the "Site" (as defined in the DDA) to the Purchaser and the Purchaser's associated 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 in the DDA as Parcels "A" through "G"), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (collectively 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 (collectively defined in the DDA as the "Public Improvements"). The DDA further contemplates the City's ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA
The City's right, title, and interest in and to the real property which is the subject of the DDA and described in the DDA as the "Site" was subsequently transferred to the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency"). In addition, the DDA was

assigned by the City to the Successor Agency pursuant to that certain Assignment and Assumption Agreement dated December 27, 2012 (the "Assignment Agreement"). Pursuant to the Assignment Agreement, the City was released and relieved of performance of all terms, covenants, and conditions on the part of the City to be performed, occurring, or arising under the DDA, including all Attachments attached thereto and agreements entered into by the City pursuant to the DDA from and after the Effective Date of the Assignment Agreement, except for the financial obligations under the DDA to provide up to $2.2 Million to pay or reimburse the Purchaser for the cost of plans for, permitting, construction and installation of the Public Improvements from the tax allocation bond proceeds received by the City from the former Imperial Beach Redevelopment Agency (the "Former RDA"), as such funds are defined in the DDA as the "Cooperation Agreement Revenues" and "Public Improvement Funds", as long as the City has possession of such funds. The Assignment Agreement did not relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA including, without limitation, the right to terminate the DDA pursuant to Section 512(b) of the DDA.

Pursuant to the DDA, $2.2 Million in tax allocation bond proceeds constituting the "Public Improvement Funds" has been transferred to the City for use toward development of the Public Improvements and the City continues to hold said proceeds. To date, $40,768.43 of the Public Improvement Funds has been disbursed toward development of the Public Improvements.

The Purchaser and the Successor Agency have negotiated a proposed Purchase and Sale Agreement, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof (the "Purchase and Sale Agreement") that is a renegotiation of all of the terms and conditions of the DDA. If and when the Purchase and Sale Agreement becomes effective, it will supersede and replace the DDA in its entirety, and the City and the Purchaser would have no further rights or obligations under the DDA except as may be expressly provided therein. With regard to the commitments below, any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Purchase and Sale Agreement.

Upon the effectiveness of the Purchase and Sale Agreement, the City hereby commits to the following:

1. Not later than five Business Days after the Effective Date of the Purchase and Sale Agreement, the City shall deposit into the Construction Escrow the Initial Deposit of $259,231.57 of the Remaining Public Improvement Funds, to be utilized and disbursed in accordance with the applicable provisions of the Purchase and Sale Agreement and all instruments and documents entered into in connection therewith, including, without limitation, the Public Improvement Disbursement Agreement.

2. Subject to the conditions precedent to disbursement of the Remaining Public Improvement Funds set forth in the Purchase and Sale Agreement, not later than the date which is five Business Days after the satisfaction of the conditions precedent set forth in paragraph e. of

Section 219 of the Purchase and Sale Agreement, the City shall deposit into the Construction Escrow the $1.9 Million balance of the Remaining Public Improvement Funds, to be utilized and disbursed in accordance with the applicable provisions of the Purchase and Sale Agreement and all instruments and documents entered into in connection therewith, including, without limitation, the Public Improvement Disbursement Agreement.

3. As and when required by the Purchase and Sale Agreement and Public Improvement Disbursement Agreement, the City shall assign to the Purchaser all of the City's right, title, and interest in and to (i) the Traffic Engineering Agreement and all plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto prepared by the Traffic Engineer for or on behalf of the City pursuant to the Traffic Engineering Agreement and (ii) the PDC Engineering Agreement and all plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto prepared by the PDC Engineer for or on behalf of the City pursuant to the PDC Engineering Agreement by entering into one or two, as applicable, Assignment of Agreement and Plans and Specifications (City to Purchaser) attached to the Purchase and Sale Agreement. Such Assignment of Agreement and Plans and Specifications (City to Purchaser) provides that upon the occurrence of certain specified events, the Traffic Engineering Agreement and the PDC Engineering Agreement and the Plans and Specifications assigned to the Purchaser thereunder shall revert to and revest in the City, and the Purchaser shall assign and release to the City all of the Purchaser's right, title, and interest in and to the Traffic Engineering Agreement and the PDC Engineering Agreement and the Plans and Specifications by executing and delivering to the City an "Assignment and Release" in a form mutually reasonably acceptable to the City and the Purchaser and, in such event, the City shall have the right, without any further consent of or consideration to the Purchaser, the Traffic Engineer and/or the PDC Engineer to use the Plans and Specifications as the City may determine, in the City's sole and absolute discretion. The City shall negotiate and agree, in good faith, upon the final form and substance of any such "Assignment and Release".

Should you have any questions or comments regarding the above matter, please do not hesitate to me.

Sincerely,
CITY OF IMPERIAL BEACH,
a municipal corporation

Dated: _____

By: _____
Andy Hall
City Manager

APPROVED AS TO FORM
City Attorney

By: _____
Jennifer M. Lyon

KANE, BALLMER & BERKMAN
Special Counsel
By: _____
Kendall D. Berkey

Attachment 4

RESOLUTION NO. 2013-7402

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SUDBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, (II) APPROVING THE COMMITMENT LETTER FOR THE USE AND EXPENDITURE OF PUBLIC IMPROVEMENT FUNDS AND ASSIGNMENT OF PLANS PURSUANT TO THE PURCHASE AND SALE AGREEMENT, AND (III) APPROVING OTHER RELATED ACTIONS

WHEREAS, on February 6, 1996, the City Council of the City of Imperial Beach (the "City") adopted Ordinance No. 96-901 approving and adopting a Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project. On July 18, 2001, the City Council of the City adopted Resolution No. 2001-5477 and the Imperial Beach Redevelopment Agency (the "Redevelopment Agency") adopted Resolution No. R-01-36 approving Amendment 1 to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (the "Project Area"), which actions expanded the original redevelopment project area boundaries adopted and established on February 7, 1996 to effectively include the entire developable area of the City (the original Redevelopment Plan and the Amendment No. 1 to the Redevelopment Plan are referred to collectively as the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Agency adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), which established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization; and

WHEREAS, the Redevelopment Agency was a redevelopment agency in the City, duly created pursuant 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

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the H&S Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment 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 expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (the "Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). On September 29, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1585 ("AB 1585"), which further amended certain provisions of AB 26 as amended by AB 1484 (AB 26, AB 1484, and AB 1585 are collectively referred to herein as the "Dissolution Act"); and

WHEREAS, the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") entered into that certain Disposition and Development Agreement dated December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Purchaser and dated March 15, 2012, as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Purchaser and dated August 10, 2012, as further amended by that certain second "Letter Agreement" entered into by the City and the Purchaser and dated December 20, 2012, and as further amended by that certain third "Letter Agreement" entered into by the City and the Purchaser and dated September 23, 2013, all collectively referred to as the "DDA; and

WHEREAS, the City's right, title, and interest in and to certain real property (the "Palm Ave. Properties") identified as 735-849 Palm Avenue (APN: 626-250-03, 04, 05, & 06), and generally located at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street within the Project Area, was subsequently transferred to the Successor Agency. The DDA pertains to the sale to and development by the Purchaser of the Palm Ave. Properties and additional land (certain City public rights-of-way) to be vacated by the City, comprising in total of approximately 4.75 acres (collectively defined in the DDA as the "Site"); and

WHEREAS, pursuant to the DDA, $2.2 Million in tax allocation bond proceeds constituting the "Public Improvement Funds" has been transferred to the City for use toward development of the Public Improvements and the City continues to hold these proceeds. To date, $40,768.43 of the Public Improvement Funds has been disbursed toward development of the Public Improvements pursuant to terms of the DDA; and

WHEREAS, the DDA was assigned by the City to the Successor Agency pursuant to that certain Assignment and Assumption Agreement dated December 27, 2012 (the "Assignment Agreement"). Pursuant to the Assignment Agreement, the City was released and relieved of performance of all terms, covenants, and conditions on the part of the City to be performed, occurring, or arising under the DDA, including all Attachments attached thereto and agreements entered into by the City pursuant to the DDA from and after the Effective Date of the Assignment Agreement, except for the financial obligations under the DDA to provide up to $2.2 Million to pay or reimburse the Purchaser for the cost of plans for, permitting, construction

and installation of the Public Improvements from the tax allocation bond proceeds received by the City from the Redevelopment Agency, as such funds are defined in the DDA as the "Cooperation Agreement Revenues" and "Public Improvement Funds", as long as the City has possession of such funds. The Assignment Agreement did not relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA including, without limitation, the right to terminate the DDA pursuant to Section 512(b) of the DDA; and

WHEREAS, the Purchaser and the Successor Agency have negotiated a proposed Purchase and Sale Agreement, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof (the "Purchase Agreement") that is a renegotiation of all of the terms and conditions of the DDA. If and when the Purchase Agreement becomes effective, it will supersede and replace the DDA in its entirety, and the City, the Successor Agency, and the Purchaser would have no further rights or obligations under the DDA except as may be expressly provided therein; and

WHEREAS, the "Effective Date" of the Purchase Agreement shall mean the date upon which all of the following conditions have been satisfied: (i) the approval of the Purchase Agreement by the Successor Agency and its Oversight Board; (ii) the approval of the Amended Long Range Property Management Plan by the Successor Agency and its Oversight Board pursuant to the Dissolution Act; (iii) the approval of the Amended Long Range Property Management Plan by the State Department of Finance (the "DOF") pursuant to the Dissolution Act; (iv) the effectiveness of the Purchase Agreement pursuant to the Dissolution Act, or the review and approval of the Purchase Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board's action approving the Purchase Agreement in accordance with the Dissolution Act; and (v) the execution of the Purchase Agreement by both the Successor Agency and Purchaser; and

WHEREAS, the Purchase Agreement concerns the sale of the Site and the Purchaser's associated development of the "Project", defined and described in detail in the Purchase Agreement and summarized as follows: (i) a "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 in the Purchase Agreement as Parcels "A" through "G"), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (collectively 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 (collectively defined in the DDA as the "Public Improvements"). The Purchase Agreement further contemplates the City's ownership of the Public Improvements to be constructed on and off the Site pursuant to the Purchase Agreement; and

WHEREAS, the Successor Agency desires to enter into the Purchase Agreement with the Purchaser for the purpose of and related to the development of the Project on the Site and the construction of the Public Improvements; and

WHEREAS, in connection with the anticipated effectiveness of the Purchase Agreement, the City has prepared a proposed commitment letter (the "Commitment Letter") that would commit the City to certain actions in order to facilitate the Successor Agency's implementation of the Purchase Agreement. Specifically, upon the effectiveness of the Purchase Agreement,

the Commitment Letter provides the City's commitment to allocate the Remaining Public Improvement Funds toward the development of the Public Improvements pursuant to the Purchase Agreement and the Public Improvement Disbursement Agreement (attached in form as Attachment No. 11 to the Purchase Agreement) and to assign certain agreements, plans and related documents to the Purchaser as and when required by the Purchase Agreement and the Public Improvement Disbursement Agreement; and

WHEREAS, in order to facilitate the Successor Agency's entry into and implementation of the Purchase Agreement, the City desires to execute and issue the Commitment Letter to the Successor Agency; and

WHEREAS, pursuant to California Government Code Section 65402, the acquisition and disposition of the Site for the purposes and uses proposed by the Purchaser as outlined and provided for in the Purchase Agreement conform in every respect with the adopted General Plan and Local Coastal Program of the City as reported to and confirmed by the City Council of the City by adoption of Resolution No. 2011-7131, approved and adopted on December 14, 2011; and

WHEREAS, a public hearing has been duly called, noticed and advertised as required by law for October 2, 2013, at 6:00 p.m. in the City Council Chambers of the City, which is located at 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, for the City Council and the Successor Agency to consider approval of the Purchase Agreement, as contemplated by the Redevelopment Law; and

WHEREAS, pursuant to H&S Code Section 33433 of the Redevelopment Law, the Successor Agency has caused the preparation of a summary ("Summary Report") which contains the following:

(A) A summary of the proposed Purchase Agreement.

(B) A summary which describes and specifies all of the following:

(i) The cost of the Purchase Agreement to the Successor Agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the Purchase Agreement;

(ii) The estimated value of the interest to be conveyed, determined at the highest and best uses permitted under the Redevelopment Plan;

(iii) The estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the Purchase Agreement. Since the compensation from the sale of the Site is less than the fair market value of the interest to be conveyed, determined at the highest and best use consistent with the Redevelopment Plan, the Successor Agency has caused to be provided as part of the Summary Report an explanation of the reasons for the difference; and

(iv) An explanation of why the sale of the Site will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

WHEREAS, the Purchase Agreement contains all the provisions, terms, conditions and obligations required by state and local law, and a copy of the Purchase Agreement and the Summary Report have been available for public review and copying at the Secretary's office as required by the Redevelopment Law; and

WHEREAS, the sale of the Site and the construction of the Public Improvements will assist in the elimination of blight as more fully discussed in Section VII of the Summary Report, and the development of the Site in accordance with the Purchase Agreement is consistent with the goals and objectives of the Implementation Plan; and

WHEREAS, the City has duly considered all terms and conditions of the proposed sale of the Site and the information contained in the staff report and provided at the public hearing, and believes that the development of the Site and construction of the Public Improvements pursuant to the proposed Purchase Agreement is in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local law and requirements; 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; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

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

Section 1. The City Council hereby determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The City Council hereby recognizes that it has received and heard all oral and written objections to the proposed Purchase Agreement, to the proposed sale of the Site pursuant to the proposed Purchase Agreement, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.

Section 3. The City Council has reviewed and approves the Summary Report prepared pursuant to H&S Code Section 33433 of the Redevelopment Law.

Section 4. The City Council hereby finds and determines each of the following:

(a) That the sale of the Site will assist in the elimination of blight and is consistent with the Implementation Plan adopted pursuant to H&S Code Section 33490 of the Redevelopment Law;

(b) That the consideration to be received by the Successor Agency for the sale of the Site as described in the Purchase Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Site;

(c) That all consideration to be paid under the Purchase Agreement is in amounts necessary to effectuate the purposes of the Redevelopment Plan;

(d) That the Public Improvements to be constructed as part of the development of the Project are within the Project Area and that the construction and installation of the Public Improvements, which shall be publicly owned, are of benefit to the Project Area by helping to eliminate blight within the Project Area;

(e) That no other reasonable means of financing the Public Improvements are available to the community; and

(f) That the payment of tax allocation bond proceeds for the Public Improvements is consistent with the Implementation Plan.

Section 5. The City Council hereby approves the proposed Purchase Agreement between the Successor Agency and the Purchaser and all of the terms and provisions of the Purchase Agreement including, without limitation, the sale of the Site to the Purchaser for the Purchase Price for development of the Project, and the construction of the Public Improvements in accordance with the Purchase Agreement.

Section 6. The City Council hereby approves the proposed Commitment Letter to be issued to the Successor Agency and all of the terms and provisions of the Commitment Letter including, without limitation, the City's commitment to allocate the Remaining Public Improvement Funds toward the development of the Public Improvements pursuant to the Purchase Agreement and the Public Improvement Disbursement Agreement (attached in form as Attachment No. 11 to the Purchase Agreement) and to assign certain agreements, plans and related documents to the Purchaser as and when required by the Purchase Agreement and the Public Improvement Disbursement Agreement, upon the effectiveness of the Purchase Agreement.

Section 7. The City Council hereby authorizes and directs the City Manager, or designee, of the City to execute the Commitment Letter and all documents, instruments, and agreements on behalf of the City that are required by and for the implementation of the Commitment Letter and/or to facilitate the Successor Agency's entry into the Purchase Agreement as determined necessary or desirable and appropriate by the City Manager, subject to the approval as to form by the City Manager of the City and its legal counsel.

Section 8. The City Council hereby authorizes and directs the City Manager, or designee, of the City (i) to make such amendments, changes or revisions to the Commitment Letter or to any document, instrument, or agreement on behalf of the City that is required by and for the implementation of the Commitment Letter and/or to facilitate the Successor Agency's entry into the Purchase Agreement, as approved by the City Manager of the City and its legal counsel, (ii) to execute such other documents and take such other actions on behalf of the City as are necessary or desirable and appropriate to carry out and implement the purposes of the Commitment Letter and to effectuate the intent of this Resolution on behalf of the City, and (iii) to administer the City's obligations, responsibilities and duties to be performed under the Commitment Letter and all documents, instruments, and agreements required by and for the implementation of the Commitment Letter and/or to facilitate the Successor Agency's entry into the Purchase Agreement.

Section 9. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 10. The adoption of this Resolution is not intended to and shall not constitute a waiver by the City of any constitutional, legal or equitable rights that the City may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of the Dissolution Act, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of the Dissolution Act, and any and all related legal and factual issues, and the City Council expressly reserves any and all rights, privileges, and defenses available under law and equity.

Section 11. The City Council hereby determines that 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.

Section 12. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the City of Imperial Beach at its meeting held on the 2nd day of October 2013, by the following roll call vote:

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

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, MMC
CITY CLERK

Attachment 5

RESOLUTION NO. SA-13-32

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SUDBERRY-PALM AVENUE LLC FOR THE SALE OF LAND, AND CONFIRMING THE USE OF TAX ALLOCATION BOND PROCEEDS, FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06) AND MAKING CERTAIN FINDINGS RELATING THERETO, AND (II) APPROVING OTHER RELATED ACTIONS

WHEREAS, the Imperial Beach Redevelopment Agency (the "Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach (the "City"), duly created pursuant 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

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the H&S Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment 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 expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (the "Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). On September 29, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1585 ("AB 1585"), which further amended certain provisions of AB 26 as amended by AB 1484 (AB 26, AB 1484, and AB 1585 are collectively referred to herein as the "Dissolution Act"); and

WHEREAS, on February 6, 1996, the City Council of the City adopted Ordinance No. 96-901 approving and adopting a Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project. On July 18, 2001, the City Council of the City adopted Resolution No. 2001-5477 and the Redevelopment Agency adopted Resolution No. R-01-36 approving Amendment 1 to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (the "Project Area"), which actions expanded the original redevelopment project area boundaries adopted and established on February 7, 1996 to effectively include the entire developable area of the City (the original Redevelopment Plan and the Amendment No. 1 to the Redevelopment Plan are referred to collectively as the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Agency adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan"), which established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization; and

WHEREAS, the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Purchaser") entered into that certain Disposition and Development Agreement dated December 14, 2011, which was amended by that certain "Letter Agreement" entered into by the City and the Purchaser and dated March 15, 2012, as further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Purchaser and dated August 10, 2012, as further amended by that certain second "Letter Agreement" entered into by the City and the Purchaser and dated December 20, 2012, and as further amended by that certain third "Letter Agreement" entered into by the City and the Purchaser and dated September 23, 2013, all collectively referred to as the "DDA; and

WHEREAS, the City's right, title, and interest in and to certain real property (the "Palm Ave. Properties") identified as 735-849 Palm Avenue (APN: 626-250-03, 04, 05, & 06), and generally located at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street within the Project Area, was subsequently transferred to the Successor Agency. The DDA pertains to the sale to and development by the Purchaser of the Palm Ave. Properties and additional land (certain City public rights-of-way) to be vacated by the City, comprising in total of approximately 4.75 acres (collectively defined in the DDA as the "Site"); and

WHEREAS, the DDA was assigned by the City to the Successor Agency pursuant to that certain Assignment and Assumption Agreement dated December 27, 2012 (the "Assignment Agreement"). Pursuant to the Assignment Agreement, the City was released and relieved of performance of all terms, covenants, and conditions on the part of the City to be performed, occurring, or arising under the DDA, including all Attachments attached thereto and agreements entered into by the City pursuant to the DDA from and after the Effective Date of the Assignment Agreement, except for the financial obligations under the DDA to provide up to $2.2 Million to pay or reimburse the Purchaser for the cost of plans for, permitting, construction and installation of the Public Improvements from the tax allocation bond proceeds received by the City from the Redevelopment Agency, as such funds are defined in the DDA as the "Cooperation Agreement Revenues" and "Public Improvement Funds", as long as the City has possession of such funds. The Assignment Agreement did not relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA including, without limitation, the right to terminate the DDA pursuant to Section 512(b) of the DDA; and

WHEREAS, the Purchaser and the Successor Agency have negotiated a proposed Purchase and Sale Agreement, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof (the "Purchase Agreement") that is a renegotiation of all of the terms and conditions of the DDA. If and when the Purchase Agreement becomes effective, it will supersede and replace the DDA in its entirety, and the City, the Successor Agency, and the Purchaser would have no further rights or obligations under the DDA except as may be expressly provided therein; and

WHEREAS, the "Effective Date" of the Purchase Agreement shall mean the date upon which all of the following conditions have been satisfied: (i) the approval of the Purchase Agreement by the Successor Agency and its Oversight Board; (ii) the approval of the Amended Long Range Property Management Plan by the Successor Agency and its Oversight Board pursuant to the Dissolution Act; (iii) the approval of the Amended Long Range Property Management Plan by the State Department of Finance (the "DOF") pursuant to the Dissolution Act; (iv) the effectiveness of the Purchase Agreement pursuant to the Dissolution Act, or the review and approval of the Purchase Agreement by the DOF if the DOF timely and properly requests to review the Oversight Board's action approving the Purchase Agreement in accordance with the Dissolution Act; and (v) the execution of the Purchase Agreement by both the Successor Agency and Purchaser; and

WHEREAS, the Purchase Agreement concerns the sale of the Site and the Purchaser's associated development of the "Project", defined and described in detail in the Purchase Agreement and summarized as follows: (i) a "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 in the Purchase Agreement as Parcels "A" through "G"), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (collectively 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 (collectively defined in the DDA as the "Public Improvements"). The Purchase Agreement further contemplates the City's ownership of the Public Improvements to be constructed on and off the Site pursuant to the Purchase Agreement; and

WHEREAS, the Successor Agency desires to enter into the Purchase Agreement with the Purchaser for the purpose of and related to the development of the Project on the Site and the construction of the Public Improvements; and

WHEREAS, in connection with the anticipated effectiveness of the Purchase Agreement, the City has prepared a proposed commitment letter (the "Commitment Letter") that would commit the City to certain actions in order to facilitate the Successor Agency's implementation of the Purchase Agreement; and

WHEREAS, pursuant to California Government Code Section 65402, the acquisition and disposition of the Site for the purposes and uses proposed by the Purchaser as outlined and provided for in the Purchase Agreement conform in every respect with the adopted General Plan and Local Coastal Program of the City as reported to and confirmed by the City Council of the City by adoption of Resolution No. 2011-7131, approved and adopted on December 14, 2011; and

WHEREAS, a public hearing has been duly called, noticed and advertised as required by law for October 2, 2013, at 6:00 p.m. in the City Council Chambers of the City, which is located at 825 Imperial Beach Boulevard, Imperial Beach, CA 91932, for the City Council and the Successor Agency to consider approval of the Purchase Agreement, as contemplated by the Redevelopment Law; and

WHEREAS, pursuant to H&S Code Section 33433 of the Redevelopment Law, the Successor Agency has caused the preparation of a summary ("Summary Report") which contains the following:

(A) A summary of the proposed Purchase Agreement.

(B) A summary which describes and specifies all of the following:

(i) The cost of the Purchase Agreement to the Successor Agency, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the agency, plus the expected interest on any loans or bonds to finance the Purchase Agreement;

(ii) The estimated value of the interest to be conveyed, determined at the highest and best uses permitted under the Redevelopment Plan;

(iii) The estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the Purchase Agreement. Since the compensation from the sale of the Site is less than the fair market value of the interest to be conveyed, determined at the highest and best use consistent with the Redevelopment Plan, the Successor Agency has caused to be provided as part of the Summary Report an explanation of the reasons for the difference; and

(iv) An explanation of why the sale of the Site will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

WHEREAS, the Purchase Agreement contains all the provisions, terms, conditions and obligations required by state and local law, and a copy of the Purchase Agreement and the Summary Report have been available for public review and copying at the Secretary's office as required by the Redevelopment Law; and

WHEREAS, the sale of the Site and the construction of the Public Improvements will assist in the elimination of blight as more fully discussed in Section VII of the Summary Report, and the development of the Site in accordance with the Purchase Agreement is consistent with the goals and objectives of the Implementation Plan; and

WHEREAS, at the conclusion of the October 2, 2013 noticed public hearing, by the adoption of Resolution No. 2013-7402, the City made the findings required by H&S Code Section 33433 of the Redevelopment Law, approved the Purchase Agreement between the Successor Agency and the Purchaser, confirmed the use of tax allocation bond proceeds for the development of the Project, approved the Commitment Letter, and approved other related actions; and

WHEREAS, in accordance with the appraised value of the Site as set forth in the appraisal dated September 10, 2013, and pursuant to Section 201 of the Purchase Agreement, the "Purchase Price" (the monetary consideration payable to the Successor Agency by the Purchaser) for the Site includes the following two components: (a) the payment of the sum of $213,000, in cash, at the Close of Escrow; and (b) the payment of the "Participation Component" in accordance with the proposed Payment Agreement attached to the Purchase Agreement, equal to 1.5% of the gross sales price from the first arm's-length sale of each parcel or parcels of the Site (or any portion thereof) by the Purchaser in any number of transactions which is completed within the first 55-years from the Effective Date of the Purchase Agreement, if any; and

WHEREAS, the sale proceeds of $213,000 cash to be received by the Successor Agency from the sale of the Site to the Purchaser pursuant to the Purchase Agreement will be remitted after the close of escrow to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act. In addition, any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price (described above), pursuant to a qualifying sale in accordance with the proposed Payment Agreement, would likewise be remitted to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act; 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; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

Section 1. The Successor Agency hereby determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Successor Agency hereby recognizes that it has received and heard all oral and written objections to the proposed Purchase Agreement, to the proposed sale of the Site pursuant to the proposed Purchase Agreement, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.

Section 3. The Successor Agency has reviewed and approves the Summary Report prepared pursuant to H&S Code Section 33433 of the Redevelopment Law.

Section 4. The Successor Agency hereby finds and determines each of the following:

(a) That the sale of the Site will assist in the elimination of blight and is consistent with the Implementation Plan adopted pursuant to H&S Code Section 33490 of the Redevelopment Law;

(b) That the consideration to be received by the Successor Agency for the sale of the Site as described in the Purchase Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale of the Site;

(c) That all consideration to be paid under the Purchase Agreement is in amounts necessary to effectuate the purposes of the Redevelopment Plan;

(d) That the Public Improvements to be constructed as part of the development of the Project are within the Project Area and that the construction and installation of the Public Improvements, which shall be publicly owned, are of benefit to the Project Area by helping to eliminate blight within the Project Area;

(e) That no other reasonable means of financing the Public Improvements are available to the community; and

(f) That the payment of tax allocation bond proceeds for the Public Improvements is consistent with the Implementation Plan.

Section 5. The Successor Agency hereby approves the proposed Purchase Agreement between the Successor Agency and the Purchaser and all of the terms and provisions of the Purchase Agreement including, without limitation, the sale of the Site to the Purchaser for the Purchase Price for development of the Project, and the construction of the Public Improvements in accordance with the Purchase Agreement.

Section 6. The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to execute the Purchase Agreement and all documents, instruments, and agreements required by and for the implementation of the Purchase Agreement including, without limitation, all Attachments to the Purchase Agreement on behalf of the Successor Agency, subject to the approval as to form by the Executive Director of the Successor Agency and its legal counsel.

Section 7. The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency (i) to make such amendments, changes or revisions to the Purchase Agreement or to any

document, instrument, or agreement required by and for the implementation of the Purchase Agreement on behalf of the Successor Agency, as approved by the Executive Director of the Successor Agency and its legal counsel, (ii) to execute such other documents and take such other actions as are necessary or desirable and appropriate to carry out and implement the purposes of the Purchase Agreement and to effectuate the intent of this Resolution on behalf of the Successor Agency including, without limitation, approving extensions of deadlines set forth in the Purchase Agreement and the Schedule of Performance (Attachment No. 5 to the Purchase Agreement) as determined necessary by the Executive Director, or designee, to effectuate the purposes of the Purchase Agreement, and (iii) to administer the Successor Agency's obligations, responsibilities and duties to be performed under the Purchase Agreement and all documents, instruments, and agreements required by and for the implementation of the Purchase Agreement on behalf of the Successor Agency.

Section 8. The Successor Agency hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to remit to the San Diego County Auditor-Controller's Office for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act the proceeds of the Purchase Price that are received by the Successor Agency from the Successor Agency's sale of the Site to the Purchaser pursuant to the Purchase Agreement including (i) the cash in the amount of $213,000 to be received by the Successor Agency at the Close of Escrow and (ii) any funds received by the Successor Agency pursuant to the Participation Component of the Purchase Price, pursuant to a qualifying sale in accordance with the proposed Payment Agreement.

Section 9. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Successor Agency declares that its Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 10. The adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of the Dissolution Act, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of the Dissolution Act, and any and all related legal and factual issues, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity.

Section 11. The Successor Agency hereby determines that 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.

Section 12. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 2nd day of October 2013, by the following vote:

AYES: BOARD MEMBERS:
NOES: BOARD MEMBERS:
ABSENT: BOARD MEMBERS:

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY