



LONG-RANGE PROPERTY MANAGEMENT PLAN CHECKLIST

Instructions: Please use this checklist as a guide to ensure you have completed all the required components of your Long-Range Property Management Plan. Upon completion of your Long-Range Property Management Plan, email a PDF version of this document and your plan to:

Redevelopment_Administration@dof.ca.gov

The subject line should state "[Agency Name] Long-Range Property Management Plan". The Department of Finance (Finance) will contact the requesting agency for any additional information that may be necessary during our review of your Long-Range Property Management Plan. Questions related to the Long-Range Property Management Plan process should be directed to (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

Pursuant to Health and Safety Code 34191.5, within six months after receiving a Finding of Completion from Finance, the Successor Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency.

GENERAL INFORMATION:

Agency Name: **Imperial Beach Redevelopment Agency Successor Agency**

Date Finding of Completion Received: **April 12, 2013**

Date Oversight Board Approved LRPMP: **Original Plan approved on February 13, 2013. Amended Plan approved on October 9, 2013**

Long-Range Property Management Plan Requirements

For each property the plan includes the date of acquisition, value of property at time of acquisition, and an estimate of the current value.

Yes No

For each property the plan includes the purpose for which the property was acquired.

Yes No

For each property the plan includes the parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.

Yes No

For each property the plan includes an estimate of the current value of the parcel including, if available, any appraisal information.

Yes No

For each property the plan includes an estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

Yes No

For each property the plan includes the history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

Yes No

For each property the plan includes a description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.

Yes No

For each property the plan includes a brief history of previous development proposals and activity, including the rental or lease of the property.

Yes No

For each property the plan identifies the use or disposition of the property, which could include 1) the retention of the property for governmental use, 2) the retention of the property for future development, 3) the sale of the property, or 4) the use of the property to fulfill an enforceable obligation.

Yes No

The plan separately identifies and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

Yes No

ADDITIONAL INFORMATION

- If applicable, please provide any additional pertinent information that we should be aware of during our review of your Long-Range Property Management Plan.

There are three (3) real properties ("Properties") previously owned by the former Imperial Beach Redevelopment Agency ("Redevelopment Agency") that are included in the Amended Long-Range Property Management Plan ("Plan") and that were identified in the Non-Housing Due Diligence Review by California Health and Safety Code ("H&S Code") Section 34179.5(c)(5)(C) of the Dissolution Act (i.e. Procedure 7 of the Department of Finance's Guidelines for the DDR). These Properties are all currently owned by the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency") and are located in the City of Imperial Beach, County of San Diego, State of California, and described as follows: (1) 741-849 Palm Avenue; (2) 735 Palm Avenue; and (3) 800 Seacoast Drive. No real property assets were identified in the Housing Due Diligence Review by H&S Code Section 34179.5(c)(5)(C) of the Dissolution Act (i.e. Procedure 7 of the Department of Finance's Guidelines for the DDR).

For each of the Properties, the Plan includes all of the information required by H&S Code Section 34191.5(c) of the Dissolution Act. All three Properties and their respective dispositions in accordance with the Dissolution Act are discussed in detail in the Plan and summarized below:

1. Properties Located at 741-849 Palm Avenue and 735 Palm Avenue (APN 626-250-03, 04, 05 and 06) – “Palm Avenue Properties”:

Pursuant to H&S Code Section 34191.5(c)(2) of the Dissolution Act, the two Palm Avenue Properties are proposed to be sold by the Successor Agency to a private third party developer, Sudberry-Palm Avenue LLC, a California limited liability company (“Sudberry”), pursuant to a proposed Purchase and Sale Agreement (“Agreement”) that will be considered for approval by the Successor Agency and the Oversight Board and submitted to the Department of Finance (“DOF”) for review concurrently with the Plan. The Palm Avenue Properties will be discussed jointly and together in the Plan as they relate to the same proposed development project and will be sold to Sudberry pursuant to the same proposed Agreement. The anticipated sale proceeds from the Successor Agency’s sale of the Palm Avenue Properties (in addition to certain City of Imperial Beach (“City”) public rights-of-way to be vacated by the City) to Sudberry pursuant to the proposed Agreement in the amount of \$213,000 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.

The Palm Avenue Properties were the subject of an Exclusive Negotiation Agreement (“ENA”) entered into by and between the Redevelopment Agency and Sudberry Properties, Inc. on September 23, 2009 (and subsequently amended on March 17, 2010, January 4, 2011 and June 1, 2011) and have been the subject of on-going and continuous discussions and negotiations with Sudberry since execution of the ENA. Having received a Finding of Completion from the DOF dated April 12, 2013, the Successor Agency now intends, upon the DOF’s approval of the Plan, to dispose of the Palm Avenue Properties by selling them directly to Sudberry as the “Purchaser”, pursuant to H&S Code Section 34191.5(c)(2) under the terms of the proposed Agreement, to be submitted to and reviewed by the DOF concurrently with the Plan.

The proposed Agreement pertains to the development of the Palm Avenue Properties and additional land (certain City public rights-of-way) to be vacated by the City, comprising of approximately 4.75 acres 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, (collectively defined in the proposed Agreement as the “Site”). The proposed Agreement involves the sale of the Site from the Successor Agency directly to Sudberry as the Purchaser and Sudberry’s associated development of (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 proposed 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 proposed Agreement 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 “Town Center” Project, and any other Cal-Trans requirements (collectively defined in the proposed Agreement as the “Public Improvements”), (the Private Improvements and the Public Improvements are collectively defined in the proposed Agreement as the “Project”). The proposed Agreement further contemplates the City’s ownership of the Public Improvements to be constructed on and off the Site pursuant to the Agreement.

On October 9, 2013, concurrently with consideration of adopting a Resolution approving the Plan, the Oversight Board to the Successor Agency will consider adopting a Resolution approving, among other actions, (i) the terms of the proposed Agreement between the Successor Agency and Sudberry as the Purchaser, (ii) the sale and conveyance of the Palm Avenue Properties to Sudberry as the Purchaser pursuant to the terms of the proposed Agreement for development of the Project; (iii) the City’s ownership of the Public Improvements that will be constructed as part of the Project; and (iv) the Successor Agency’s distribution of the anticipated sale proceeds in the amount of \$213,000, from the

Successor Agency's sale of the Palm Avenue Properties (in addition to certain City public rights-of-way to be vacated by the City) to Sudberry pursuant to the proposed Agreement, 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.

2. Property Located at 800 Seacoast Drive (APN 625-262-02) – “Seacoast Inn Property”:

Pursuant to H&S Code Section 34191.5(c)(2) of the Dissolution Act, the Seacoast Inn Property is being used to fulfill an enforceable obligation (including completion of the current development of a full-service beachfront hotel and appurtenant parking facilities (the “Hotel Project”)) pursuant to a development agreement and a ground lease between the Redevelopment Agency and a third party developer/lessee, Seacoast Inn, L.P., a California limited partnership (“Seacoast Inn”).

Specifically, the Seacoast Inn Property is the subject of that certain Disposition and Development Agreement (“DDA”) dated December 16, 2010, and entered into by and between the Redevelopment Agency and Imperial Coast, L.P., a California limited partnership. The DDA was subsequently assigned to its successor and related entity Seacoast Inn. The DDA provides for (i) the Redevelopment Agency's acquisition of fee title of the Seacoast Inn Property and the Redevelopment Agency's subsequent ground lease of the Seacoast Inn Property to Seacoast Inn for its development of the Hotel Project, (ii) the payment by the Redevelopment Agency to Seacoast Inn for the cost of certain off-site Public Improvements and Plans, and (iii) the grant of an option to Seacoast Inn or its assignee to purchase fee title of the Seacoast Inn Property from the Redevelopment Agency (now the Successor Agency) for one dollar (\$1.00) upon the complete satisfaction of certain performance standards by Seacoast Inn or its assignee, in accordance with the terms of the DDA. Pursuant to the DDA, the Seacoast Inn Property has been ground leased to Seacoast Inn for one dollar (\$1.00) per year pursuant to the terms of a fifty-five (55) year term Ground Lease (“Ground Lease”) dated March 15, 2011, and entered into by and between the Redevelopment Agency and Seacoast Inn. The DDA and the Ground Lease each constitute an enforceable obligation of the Redevelopment Agency and now the Successor Agency pursuant to the Dissolution Act. As of this date, the Hotel Project provided for under the DDA is nearing completion of construction. In accordance with both the DDA and the Ground Lease, Seacoast Inn has the option to purchase fee title of the Seacoast Inn Property from the Successor Agency for one dollar (\$1.00) after certain conditions precedent are fully and completely met. Seacoast Inn's right to exercise the option to purchase fee title of the Seacoast Inn Property is conditioned upon the following events:

- Commencing upon completion of the Hotel Project until on or before Operating Year 10, the City's receipt of transient occupancy taxes (“TOT”) from the operation of the Hotel, in the amount of at least \$3,202,000; and
- Commencing upon completion of the Hotel Project and after Operating Year 10, the City's receipt of TOT from the operation of the Hotel, in the amount of at least \$2,351,000.

It should be noted that the receipt of TOT was not intended to benefit then and would not benefit now either the former Redevelopment Agency or the Successor Agency. Other than the total amount of lease revenue under the Ground Lease (a total maximum of \$55.00 for the 55-year term) and the total amount of sale proceeds received upon Seacoast Inn's exercising its option to purchase fee title of the Seacoast Inn Property (a total of \$1.00), there is no direct financial benefit to the Successor Agency expected through the Successor Agency's ownership and disposition of the Seacoast Inn Property to Seacoast Inn or its successor.

- 8) A brief history of previous development proposals and activity, including the rental or lease of the property

The Long-Range Property Management Plan shall address the use or disposition of all of the properties in the trust. Permissible uses include the retention of the property for governmental use pursuant to subdivision (a) of Section 34181, the retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. The plan shall separately identify and list properties in the trust dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation. With respect to the use or disposition of all other properties, all of the following shall apply:

- A. If the plan directs the use or liquidation of the property for a project identified in an approved redevelopment plan, the property shall transfer to the city, county, or city and county
- B. If the plan directs the liquidation of the property or the use of revenues generated from the property, such as lease or parking revenues, for any purpose other than to fulfill an enforceable obligation or other than that specified in subparagraph A (above), the proceeds from the sale shall be distributed as property tax to the taxing entities
- C. Property shall not be transferred to a successor agency, city, county, or city and county, unless the long-range property management plan has been approved by the oversight board and the Department of Finance

Property: **Palm Avenue Properties: 741-849 Palm Avenue and 735 Palm Avenue (APN 626-250-03, 04, 05 and 06)**

Dates of Acquisition: February 11, 2009 (741-849 Palm Avenue)
February 13, 2009 (735 Palm Avenue)

Value at Acquisition: \$9,679,454 (741-849 Palm Avenue)
\$1,608,827 (735 Palm Avenue)

Estimate of Current Value: \$213,000 (see attached appraisal dated September 10, 2013, and description below)

Purpose of Acquisition: To facilitate/effectuate the development and economic development of the Palm Avenue Properties and surrounding area

Parcel Data:

Property Address: 735-849 Palm Avenue, Imperial Beach, CA 91932

Assessor Parcel No. 626-250-03, 04, 05, 06

Lot Size: 207,000 square feet (4.75 acres, inclusive of public rights-of-way)
170,320 square feet (3.91 acres, exclusive of public rights-of-way)

Current Zoning: C-1 General Commercial Zone (C/MU-1 per recent Zoning Code Amendment) per the City's Zoning Code, General Plan/Local Coastal Program and Sections 210

and 230 of the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project

Estimate of Current Value: \$213,000 (see attached appraisal)

Appraisal Date: September 10, 2013

Estimated Revenues: Pursuant to the proposed Purchase and Sale Agreement ("Agreement") with Sudberry-Palm Avenue LLC, a California limited liability company ("Sudberry"), to be considered by the Successor Agency and the Oversight Board and reviewed by the DOF concurrently with this Plan, the Palm Avenue Properties (in addition to certain City public rights-of-way to be vacated by the City) (collectively, the "Site"), will be sold from the Successor Agency directly to Sudberry as the Purchaser for development of the "Project", as defined in the proposed Agreement. 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 proposed Agreement, the "Purchase Price" (the monetary consideration payable to the Successor Agency by Sudberry as 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) payment of the Participation Component in accordance with the proposed Payment Agreement (attached to the proposed Agreement), 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.

The anticipated sale proceeds from the Successor Agency's sale of the Palm Avenue Properties (in addition to certain City public rights-of-way to be vacated by the City) to Sudberry pursuant to the proposed Agreement in the amount of \$213,000 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 Participant Component of the Purchase Price (described above), pursuant to a qualifying sale in accordance with the proposed Payment Agreement, will 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.

Environmental Contamination History:

Studies Conducted: October 22, 1991 & March 16, 2009 – Asbestos Surveys (735 Palm Avenue)
September 10, 2007 – Asbestos and Lead Survey
April 3, 2009 – Phase I and Phase II Site & Subsurface Site Assessments
March 10, 2011 – Hazardous Building Materials Survey (741-849 Palm Avenue)

Remediation: June 2009 – Asbestos abated prior to demolition (735 Palm Avenue)
October 21, 2010 – Underground Storage Tank removed
December 1, 2011 – Asbestos abated prior to demolition (741-849 Palm Avenue)

Brownfield Status: N/A

Transit-Oriented Development Potential: The Palm Avenue Properties are located along a Mixed Use Transit Corridor as designated by the San Diego Regional Association of Governments ("SANDAG") in SANDAG's

Smart Growth Concept Map. The Palm Avenue/State Route 75 corridor is the major transit corridor within the City providing access to many transit modes including buses, bicycles and automobiles. This corridor has several bus stops along the Palm Avenue/State Route 75 transit corridor including one bus stop within 100 feet and two within 300 feet of the Palm Avenue Properties. Although there is no residential component to the proposed development "Town Center" Project pursuant to the proposed Agreement, there is significant residential development directly south of the Palm Avenue Properties, making the overall development proposal for the "Town Center" Project and its surrounding area a transit-oriented development.

Planning Objectives of the Successor Agency: The planning objectives for the Palm Avenue Properties are contained in the City's Zoning Code, General Plan/Local Coastal Plan and the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project, including Amendment No. 1 to this Redevelopment Plan. The Zoning, General Plan and Redevelopment Plan designation for this area is C-1 General Commercial. The General Commercial land use designation provides for land to meet the local demand for commercial goods and services, as opposed to the goods and services required primarily by the tourist population. It is intended that the dominant type of commercial activity in this designation will be community and neighborhood serving retail and office uses such as markets, specialty stores, professional offices, personal services, department stores, restaurants, liquor stores, hardware stores, etc. The proposed use of the Palm Avenue Properties conforms in every respect with the General Commercial land use designation. The Successor Agency, therefore, is seeking to have developed the Palm Avenue Properties in compliance with the planning objectives of these applicable land use plans. Additionally, both the Economic Development Plan and the Five-Year Implementation Plan adopted by the Redevelopment Agency and now administered by the Successor Agency contain specific goals to facilitate development of the Palm Avenue Properties, including the development of such large commercial properties along Palm Avenue to stimulate further improvements and economic development in the area.

Development Proposal History of Palm Avenue Properties:

- December 2004 – The 1st of 3 Requests for Proposals ("RFP") was issued for development of the Palm Avenue Properties. The City Council of the City authorized the Redevelopment Agency to issue a "Statement of Interest and/or Development Proposals" to property owners, tenants, and businesses located on the south side of Palm Avenue, between 7th Street and 9th Street.
- October 2005 – Lennar and D.R. Horton presented development proposals to the Redevelopment Agency for consideration. D.R. Horton was selected by the Redevelopment Agency as the preferred developer.
- December 2005 – D.R. Horton presented its development proposal to the City, Redevelopment Agency, and the community.
- January 12, 2006 – The Redevelopment Agency authorized staff to negotiate an Exclusive Negotiation Agreement ("ENA") with D.R. Horton.
- March 22, 2006 – The Redevelopment Agency entered into an ENA with D.R. Horton for a Mixed-Use development consisting of approximately 70,000 square feet of retail and 203 market-rate condominiums on the Palm Avenue Properties.
- November 16, 2006 – Due to the economic downturn/recession, D.R. Horton withdrew from all new development proposals nation-wide and, therefore, allowed the term of the ENA to expire.
- April 18, 2007 – The 2nd of 3 RFPs was issued for development of the Palm Avenue Properties. The Redevelopment Agency authorized staff to issue a "Request for Qualifications/Proposals for Real Estate Development in Imperial Beach" for the Palm Avenue Properties.

- July 2007 – The Redevelopment Agency received two responses to its “Request for Qualifications/Proposals for Real Estate Development in Imperial Beach” – “The Imperial Beach Gateway” by Sterling Development Corporation and Dan Malcolm of Lee & Associates and “The Shops at Palm Avenue” by Arnel Hopkins.
- February 2007 – The Redevelopment Agency authorized staff to negotiate and enter into an ENA with Arnel Hopkins.
- March 2008 – Arnel Hopkins withdrew from the project.
- April 2008 – The Redevelopment Agency directed staff to negotiate an ENA with the Imperial Beach Gateway team but, after several months of discussions, staff was unable reach an agreement with the developer.
- December 2008 – The Redevelopment Agency authorized staff to negotiate Purchase and Sale Agreements for the Redevelopment Agency's acquisition of the North Island Credit Union and Miracle Shopping Center properties which comprised the Palm Avenue Properties and most of the Project Site.
- February 4, 2009 – The Redevelopment Agency entered into an agreement with Epic Land Solutions, Inc. for relocation services to relocate existing tenants at the Miracle Shopping Center.
- February 11, 2009 – The Redevelopment Agency completed the purchase of the Miracle Shopping Center property.
- February 13, 2009 – The Redevelopment Agency completed the purchase of the North Island Credit Union property.
- February 18, 2009 – The 3rd and last RFP was issued for development of the Palm Avenue Properties. The Redevelopment Agency authorized staff to issue another Request for Qualifications/Proposals for development of the Palm Avenue Properties.
- June 17, 2009 – The Redevelopment Agency approved the relocation plan for relocation of existing tenants from the Palm Avenue Properties.
- June 2009 – Epic Land Solutions and staff initiated relocation of the existing tenants from the Palm Avenue Properties.
- July 15, 2009 – The Redevelopment Agency authorized staff to negotiate an ENA with Sudberry Development Inc. for development of the proposed Project on the Palm Avenue Properties.
- September 23, 2009 – The Redevelopment Agency entered into an ENA with Sudberry.
- March 17, 2010, January 4, 2011, and June 1, 2011 – The ENA with Sudberry was amended by the parties.
- October 2011 – Demolition of the Miracle Shopping Center on the Palm Avenue Properties was initiated.
- December 14, 2011 – The City entered into a Disposition and Development Agreement (“DDA”) with Sudberry-Palm Avenue LLC (“Sudberry”) for development of the Palm Avenue Properties with the tax generating retail/commercial “Town Center” Project.

- May 2012 – Notice of Completion was recorded for demolition of the Miracle Shopping Center on the Palm Avenue Properties.
- January 17, 2013 – Quitclaim Deed was recorded transferring fee title of the Palm Avenue Properties from the City to the Successor Agency.

Use or Disposition of the Property: Pursuant to H&S Code Section 34191.5(c)(2) of the Dissolution Act, the two Palm Avenue Properties are proposed to be sold by the Successor Agency directly to a private third party developer, Sudberry-Palm Avenue LLC, a California limited liability company (“Sudberry”), pursuant to a proposed Purchase and Sale Agreement (“Agreement”) that will be considered for approval by the Successor Agency and the Oversight Board and submitted to the DOF for review concurrently with this Plan. The anticipated sale proceeds from the Successor Agency’s sale of the Palm Avenue Properties (in addition to certain City public rights-of-way to be vacated by the City) to Sudberry pursuant to the proposed Agreement in the amount of \$213,000 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. The Palm Avenue Properties will be developed by Sudberry with a tax generating retail/commercial “Town Center” Project as described in the proposed Agreement.

In addition to the Successor Agency remitting the sale proceeds in the amount of \$213,000 to the San Diego County Auditor-Controller’s Office after the Close of Escrow for distribution to the taxing entities in accordance with H&S Code Section 34191.5(c)(2)(B) of the Dissolution Act, any funds received by the Successor Agency pursuant to the Participant Component of the “Purchase Price” (as described above under “Estimated Revenues”), pursuant to a qualifying sale in accordance with the proposed Payment Agreement (attached to the proposed Agreement), will 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.

The Palm Avenue Properties are located within the geographical area of the Palm Avenue/Commercial Redevelopment Project (“Project Area”). The sale, disposition, development, and use of the Palm Avenue Properties pursuant to the proposed Agreement complies with and furthers the goals and objectives of the Redevelopment Plan for the Project Area approved and adopted by the City Council of the City on February 6, 1996 by Ordinance No. 96-901, as subsequently amended (“Redevelopment Plan”) and also furthers municipal and other public purposes.

APPRAISED VALUE OF PALM AVENUE PROPERTIES:

An appraisal of the Palm Avenue Properties was conducted on behalf of the Successor Agency. A copy of the appraisal dated September 10, 2013 is attached to this Plan. The results of the appraisal, dated September 10, 2013, took into consideration the approved entitlements for the Palm Avenue Properties, the physical constraints of the Palm Avenue Properties, and the conditions upon which the Palm Avenue Properties could be developed in accordance with local and State laws, policies and procedures. Given this information, the Palm Avenue Properties were appraised collectively at a value of \$213,000. Specifically, due to the significant required on- and off- site improvement costs necessary to prepare the Palm Avenue Properties for development, together with the costs necessary to provide adequate access to the Palm Avenue Properties, the value of the Palm Avenue Properties “as is” is greatly reduced. It is clear from the appraisal that the Successor Agency disposing of the Palm Avenue Properties to Sudberry as the Purchaser under the proposed Agreement for \$213,000 would benefit not only the Successor Agency but also the State and other affected taxing entities as further detailed below, and is 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, and retail and office rents remain soft. Additionally, as indicated in the appraisal, experts have agreed that San Diego County’s office market will likely continue at a slow pace over the next few years as recovery from the recession occurs. Therefore, it is a

tremendous benefit to the State and other affected taxing entities for the Successor Agency to sell the Palm Avenue Properties, which are currently vacant with no tax generation, to Sudberry, a ready and willing developer, for their immediate development into the economically productive "Town Center" Project as described in the proposed Agreement.

FISCAL IMPACTS/ECONOMIC BENEFITS:

In order to assess the economic benefits to be derived by the State and other taxing entities as a result of the proposed "Town Center" Project to be developed on the Palm Avenue Properties by Sudberry as described in the proposed Agreement, KMA carried out a detailed analysis of the "Town Center" Project. The analysis resulted in the following tax generation projections:

Sudberry Develops "Town Center" Project Per Agreement

	State of California	County of San Diego	City of Imperial Beach	TransNet	K-14 School Districts	Total
Annual Sales Tax	\$700,000	-	\$112,000	\$56,000	-	\$868,000
Annual Property Tax	-	\$32,000	\$26,000	-	\$63,000	\$121,000
Total Annual Sales & Property Tax	\$700,000	\$32,000	\$138,000	\$56,000	\$63,000	\$989,000

It should be noted that the above table includes only the largest affected taxing entities and does not include those receiving less than 0.50% of the 1.0% property tax. According to the KMA analysis, if the "Town Center" Project is developed on the Palm Avenue Properties by Sudberry as the Purchaser under the terms of the proposed Agreement, the "Town Center" Project would have an overall assessed value of approximately \$12,290,000 and would generate estimated annual taxable sales of approximately \$11,196,000. This, in turn, would generate annual property tax of approximately \$121,000, with more than 50% (\$63,000) going to the South Bay Union, Sweetwater Union and Southwestern Community College Districts and would generate approximately \$868,000 of annual sales tax, with over 80% (\$700,000) going to the State.

Beyond the direct economic benefits of the Project, KMA also analyzed the potential impacts to employment if the "Town Center" Project is constructed on the Palm Avenue Properties under the terms of the proposed Agreement. Based upon this analysis, it is estimated that the development of the "Town Center" Project on the Palm Avenue Properties would create both short-term construction and long-term permanent employment opportunities as follows:

Sudberry Develops "Town Center" Project Per Agreement		
	Direct Impacts of Construction	Total Impact of Construction Including Direct, Indirect and Induced Impacts
Economic Impacts of Construction: Economic Output Payroll Employment (during one year construction period)	\$12.5 million \$3.9 million 68 workers	\$17.0 million \$5.3 million 98 workers
Permanent Employment: Project Description Employment @ Total Permanent Jobs (FTEs)	46,200 square feet of development 3.00 jobs/1,000 square feet 139 jobs	

A more detailed description and analysis of these employment impacts are attached to this Plan. Generally speaking, the analysis provided by KMA determined that, assuming a one-year construction period, the development of the "Town Center" Project on the Palm Avenue Properties under the terms of the proposed Agreement would generate approximately 68 construction jobs with another 30 construction-related positions for a total of 98 short-term jobs during construction. The analysis further determined that development of the "Town Center" Project on the Palm Avenue Properties under the terms of the proposed Agreement, consisting of approximately 46,200 square feet of commercial/retail development, would yield approximately 139 full-time jobs. It is also important to note that these employment impacts would create additional economic benefits to both the State and Federal governments in the form of income and other taxes. Additional analysis by KMA estimates the resulting State Income Tax generation during construction of the "Town Center" Project as follows:

Estimate of State Income Tax From Construction Employment

	Direct Construction	Indirect Construction	Total
Average Annual Construction Employment (person years)	56	12	68
Average Pay	\$52,000	\$83,000	
Total Income Tax Rate	\$2,910,000	\$968,000	\$3,878,000
California Income Tax Rate	9.3%	9.3%	9.3%
Number of Years to Construct	1.0 Year	1.0 Year	1.0 Year
Total State Income Tax During Construction Period	\$271,000	\$90,000	\$361,000

Additionally, beyond these economic benefits, at today's rates, the "Town Center" Project would also generate school fees in the estimated amount of \$22,236 to the Sweetwater Union High School District and in the estimated amount of \$6,930 to the South Bay Union School District.

Based upon this analysis, the State would receive the greatest benefit both during construction (approx. \$361,000 in State Income Tax) and during operation of the "Town Center" Project (approx. \$700,000 in annual retail Sales Tax). The State would also benefit from State Income Tax generated from the estimated 139 full-time workers employed at the new shopping center. These figures, however, have not been calculated.

Seacoast Inn Property
800 Seacoast Drive (APN 625-262-02)

- Purpose:** To address the disposition and use of real properties of the former redevelopment agency
- Due:** No later than six (6) months following the issuance to the successor agency of the Finding of Completion
- Contents:** The Long Range Property Management Plan shall include an inventory of all properties in the trust. The inventory shall consist of all of the following information:
- 1) The date of the acquisition of the property and the value of the property at that time and an estimate of the current value of the property
 - 2) The purpose for which the property was acquired
 - 3) Parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan
 - 4) An estimate of the current value of the parcel including, if available, any appraisal information
 - 5) An estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds
 - 6) The history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts
 - 7) A description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency
 - 8) A brief history of previous development proposals and activity, including the rental or lease of the property

The Long-Range Property Management Plan shall address the use or disposition of all of the properties in the trust. Permissible uses include the retention of the property for governmental use pursuant to subdivision (a) of Section 34181, the retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. The plan shall separately identify and list properties in the trust dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation. With respect to the use or disposition of all other properties, all of the following shall apply:

- A. If the plan directs the use or liquidation of the property for a project identified in an approved redevelopment plan, the property shall transfer to the city, county, or city and county
- B. If the plan directs the liquidation of the property or the use of revenues generated from the property, such as lease or parking revenues, for any purpose other than to fulfill an enforceable obligation or other than that specified in subparagraph A (above), the proceeds from the sale shall be distributed as property tax to the taxing entities

- C. Property shall not be transferred to a successor agency, city, county, or city and county, unless the long-range property management plan has been approved by the oversight board and the Department of Finance

Property: Seacoast Inn Property (Pier South Hotel): 800 Seacoast Drive (APN 625-262-02)

Date of Acquisition: March 9, 2011; Transferred to Successor Agency on December 28, 2012

Value at Acquisition: \$5,760,000

Estimate of Current Value: \$5,760,000 (this value is solely an estimate based on the appraisal dated October 15, 2010. Since the appraisal is over two years old, the value of the Seacoast Inn Property may likely have fluctuated).

Purpose of Acquisition: To facilitate/effectuate redevelopment of a dilapidated 38-room hotel/motel into a four-story, 78-room, full-service hotel and restaurant

Parcel Data:

Property Address: 800 Seacoast Drive, Imperial Beach, CA 91932

Assessor Parcel No. 625-262-02

Lot Size: 49,400 square feet (1.134 acres)

Current Zoning: C-2 Seacoast Commercial Zone (C/MU-2 per recent Zoning Amendment) per the City's Zoning Code, General Plan/Local Coastal Program and Sections 210 and 230 of the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (Amendment No. 1). The Seacoast Inn Property is also subject to a Specific Plan & General Plan Amendment approved by the City Council on December 5, 2007 which specifies the development of the site as a full-service, four-story hotel with restaurant and conference facilities (Ordinance No. 2007-1060).

Estimate of Current Value: \$5,760,000 (this value is solely an estimate based on the appraisal dated October 15, 2010. Since the appraisal is over two years old, the value of the Seacoast Inn Property may likely have fluctuated).

Appraisal Date: October 15, 2010

Estimated Revenues: Per Disposition and Development Agreement dated December 16, 2010 – maximum of \$55.00 of lease revenue for 55-year term (\$1.00 per year) to Successor Agency over 55-years, and maximum of \$1.00 for sale of Seacoast Inn Property to Seacoast Inn or successor if the Option to purchase fee title of the Seacoast Inn Property is timely and properly exercised.

Environmental Contamination History:

Studies Conducted: Geotechnical, Soils Report and Site Assessment

Remediation: No contaminants identified, no remediation required

Brownfield Status: N/A

Transit-Oriented Development Potential: The Seacoast Inn Property is currently under construction and nearing completion. The Seacoast Inn Property is located on Seacoast Drive, the first main-street and prime transit corridor running parallel to the coast of the Pacific Ocean. The Seacoast Inn Property and the adjacent properties are zoned as Seacoast Commercial and Mixed-Use (C/MU-2) under the City's General Plan and Zoning Ordinance. Additionally, the San Diego Regional Association of Governments ("SANDAG") has designated the entire segment of Seacoast Drive within the C/MU-2 Zone as a "Mixed-Use Transit Corridor" on SANDAG's Smart Growth Concept Map. Bus stops are located throughout this corridor including one directly across the street and less than 70 feet from the newly-developed Hotel on the Seacoast Inn Property. As such, the Seacoast Inn Property easily meet the objectives of a transit-oriented development.

Planning Objectives of the Successor Agency: The planning objectives for the Seacoast Inn Property are contained in the City's Zoning Code, General Plan/Local Coastal Plan and the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project (Amendment No. 1). The Zoning, General Plan and Redevelopment Plan designation for this area is "C-2 Seacoast Commercial" which is intended to provide for land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in this area will be visitor serving retail such as specialty stores, surf shops, restaurants, hotels and motels. The use of the Seacoast Inn Property conforms in every respect with the C-2 Seacoast Commercial land use designation. Additionally, both the Economic Development Plan and the Five-Year Implementation Plans adopted by the Redevelopment Agency and now administered by the Successor Agency contain specific goals to increase visitor serving uses and promote recreation, hotel and resort oriented uses within the Seacoast Drive corridor.

Development Proposal History of Seacoast Inn Property:

- November 21, 2007 – The City Council approved the Development Agreement, Coastal Development Permit, Specific Plan and certified the Environmental Impact Report ("EIR") for the Hotel Project.
- December 5, 2007 – The City Council of the City conducted the Second Reading of the Ordinances approving the Development Agreement and Specific Plan.
- April 10, 2008 – Approval by the Coastal Commission (on appeal) of Coastal Development Permit A-6-IMB-07-131.
- December 11, 2008 – Approval by the Coastal Commission of revised findings for Coastal Development Permit A-6-IMB-07-131.
- September-October 2010 – Demolition of existing structures.
- December 1, 2010 – The Redevelopment Agency approved the Disposition and Development Agreement ("DDA") between the Redevelopment Agency and Imperial Coast, L.P. and Addendum to the EIR. The DDA was subsequently assigned by Imperial Coast, L.P. to its successor and related entity Seacoast Inn.
- December 16, 2010 – The Redevelopment Agency and Imperial Coast, L.P. executed the DDA.
- March 9, 2011 – The Seacoast Inn Property was acquired pursuant to the terms of the DDA.
- March 10, 2011 – The Ground Lease between the Redevelopment Agency and Seacoast Inn was executed pursuant to the terms of the DDA. Other closing documents required by the terms of the DDA were executed by the Redevelopment Agency and Seacoast Inn.
- March 28, 2011 – Construction of the Hotel Project commenced by Seacoast Inn.

Use or Disposition of the Property: Pursuant to H&S Code Section 34191.5(c)(2) of the Dissolution Act, the Seacoast Inn Property is being used to fulfill an enforceable obligation (including completion of the current development of a full-service beachfront hotel and appurtenant parking facilities (the "Hotel Project")) pursuant to a development agreement and a ground lease between the Redevelopment Agency and a third party developer/lessee, Seacoast Inn, L.P., a California limited partnership ("Seacoast Inn").

Specifically, the Seacoast Inn Property is the subject of that certain Disposition and Development Agreement ("DDA") dated December 16, 2010, and entered into by and between the Redevelopment Agency and Imperial Coast, L.P., a California limited partnership. The DDA was subsequently assigned to its successor and related entity Seacoast Inn. The DDA provides for (i) the Redevelopment Agency's acquisition of fee title of the Seacoast Inn Property and the Redevelopment Agency's subsequent ground lease of the Seacoast Inn Property to Seacoast Inn for its development of the Hotel Project, (ii) the payment by the Redevelopment Agency to Seacoast Inn for the cost of certain off-site Public Improvements and Plans, and (iii) the grant of an option to Seacoast Inn or its assignee to purchase fee title of the Seacoast Inn Property from the Redevelopment Agency (now the Successor Agency) for one dollar (\$1.00) upon the complete satisfaction of certain performance standards by Seacoast Inn or its assignee, in accordance with the terms of the DDA. Pursuant to the DDA, the Seacoast Inn Property has been ground leased to Seacoast Inn for one dollar (\$1.00) per year pursuant to the terms of a fifty-five (55) year term Ground Lease ("Ground Lease") dated March 15, 2011, and entered into by and between the Redevelopment Agency and Seacoast Inn.

The DDA and the Ground Lease, and all documents required by the DDA and the Ground Lease, constitute an enforceable obligation of the Redevelopment Agency (now the Successor Agency) pursuant to H&S Code Sections 34167(d) and 34171(d)(1) of the Dissolution Act. As of this date, the Hotel Project provided for under the DDA is nearing completion of construction. In accordance with both the DDA and the Ground Lease, Seacoast Inn has the option to purchase fee title of the Seacoast Inn Property from the Successor Agency for one dollar (\$1.00) after certain conditions precedent are fully and completely met.

In light of the above, the Seacoast Inn Property must be retained by the Successor Agency to fulfill an enforceable obligation pursuant to H&S Code Sections 34167(d) and 34171(d)(1) of the Dissolution Act. Specifically, the Successor Agency's retention of fee title of the Seacoast Inn Property is required pursuant to the terms of the DDA and the Ground Lease. At any time commencing upon completion of the Hotel Project and ending upon expiration of the term of the Ground Lease, Seacoast Inn may purchase fee title of the Seacoast Inn Property for one dollar (\$1.00) upon meeting certain conditions precedent.

The use of the Seacoast Inn Property for the purposes provided in the DDA and the Ground Lease constitute enforceable obligations as the Seacoast Inn Property is contractually obligated to Seacoast Inn, a private third party, through the underlying DDA that was executed on December 16, 2010. The Successor Agency intends, therefore, to honor the obligations and requirements of the DDA and all related documents executed by the Redevelopment Agency and continue to lease the Seacoast Inn Property to Seacoast Inn pursuant to the Ground Lease, provided for under the terms of the DDA, for one dollar (\$1.00) per year. Further, pursuant to the DDA, Ground Lease and related documents executed by the Redevelopment Agency, upon completion of the Hotel Project and ending upon expiration of the term of the Ground Lease, Seacoast Inn may purchase fee title of the Seacoast Inn Property from the Successor Agency for one dollar (\$1.00) upon meeting certain conditions precedent. If and when Seacoast Inn exercises this Option to purchase fee title of the Seacoast Inn Property and upon complete satisfaction of the conditions precedent, the Successor Agency similarly intends to honor the obligations and requirements of the DDA, Ground Lease and related documents executed by the Redevelopment Agency and sell the Seacoast Inn Property to Seacoast Inn or its successor.

ATTACHMENTS:

9th & Palm Attachments:

1. Purchase and Sale Agreement for Palm Avenue Properties (provided separately with Resolution No. OB-13-27)
2. Quitclaim Deed – Conveyance of Palm Avenue Properties to Successor Agency
3. Appraisal of Palm Avenue Properties Dated September 10, 2013
4. Keyser Marston Associates, Inc.'s Fiscal Impact Analysis for Palm Avenue Properties

Seacoast Inn (Pier South) Attachments:

5. Disposition and Development Agreement dated December 16, 2010 for Seacoast Inn Property
6. Ground Lease dated March 15, 2011 per DDA for Seacoast Inn Property

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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Attachment No. 17	-	FORM OF ACCEPTANCE AND MAINTENANCE AGREEMENT FOR PUBLIC IMPROVEMENTS
Attachment No. 18	-	FORM OF RIGHT OF ENTRY AGREEMENT

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 of Imperial Beach’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 of Imperial Beach (“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, Successor Agency, 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 Dissolution Act

Subject to the provisions of Section 512.b., by execution of this Agreement, Purchaser hereby waives, releases and discharges the Successor Agency, the City, and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the 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 which was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law and the California Health and Safety Code by 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, and as further amended by Assembly Bill No. 1585 which was signed by the Governor of California on September 29, 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 amended 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 the Environmental Indemnity substantially in the form of Attachment No. 10 to this Agreement, which is incorporated herein by this reference.

“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 the Grant Deed substantially in the form of Attachment No. 8 to this Agreement, which is incorporated herein by this reference.

“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 Public 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.

1. 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.

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.

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. 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; provided, however, that Purchaser shall be reimbursed in accordance with the Public Improvement Disbursement Agreement for eligible Public Improvement Costs and costs for Site Preparation Design Work incurred prior to the date of any such termination.

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 Completion and following Completion 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. 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 Phase 2 Closing.

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 fixturing 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.

1. 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 Lender Not Obligated to Construct Improvements

No lender shall be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

SECTION 320 Notice of Default to Lenders; Right of Lender to Cure Defaults

Whenever the 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.

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. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Close of Escrow and shall be set forth and shall run for the time periods 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 re-vest 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 re-vesting 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 re-vesting 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 and/or notice recipients 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.

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

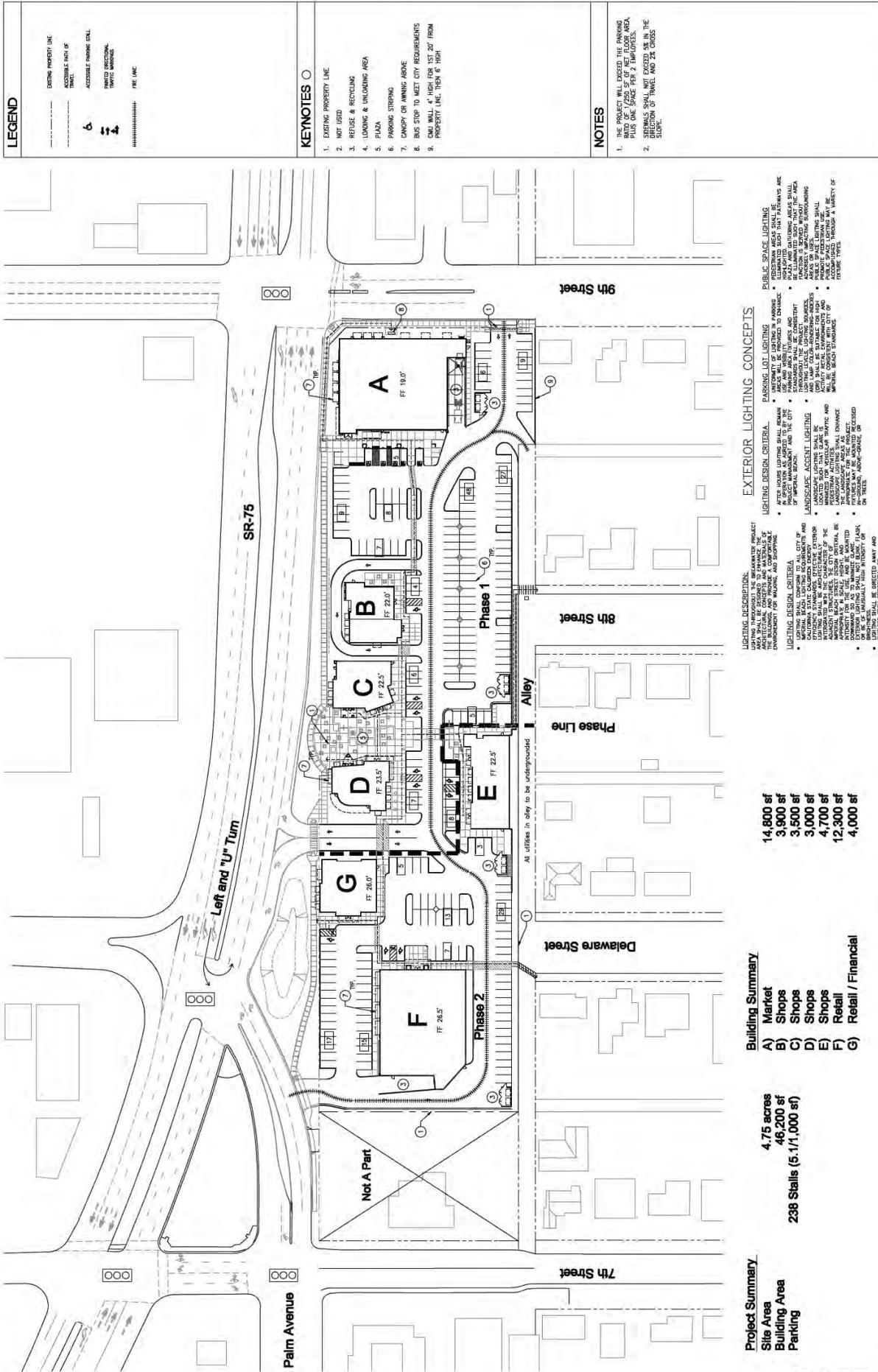
By: _____

ATTACHMENT NO. 1

SITE MAP

[behind this page]

ATTACHMENT NO. 1 SITE MAP



Scale: 1" = 40'-0"

0 20' 40'

DECEMBER 5, 2011 A-1

Site Plan

Breakwater
Imperial Beach, California

Sudberry Development

Andrew Hill, Stevenson Architects

ATTACHMENT NO. 2

LEGAL DESCRIPTION

[behind this page]

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

ATTACHMENT NO. 3

METHOD OF FINANCING

[behind this page]

METHOD OF FINANCING

Any terms not otherwise defined herein shall have the meaning ascribed to them in the 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

[behind this page]

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 devices 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 I – Survey and Right of Way Mapping Services	<u>City Budget</u>
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 I – Survey/Mapping	 \$ 13,000
 Item II – 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 II – Construction Documents	 \$ 86,400
 Grand Total	 \$ <u>99,400</u>

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

[behind this page]

ATTACHMENT NO. 5

TO PURCHASE AND SALE AGREEMENT

SCHEDULE OF PERFORMANCE

	Action to be Taken	Time of Performance
Actions relating to Design Requirements		
1.	<u>Submission – Basic Concept/Schematic Design Drawings.</u> 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.	<u>Approval – Basic Concept/Schematic Design Drawings.</u> 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.	<u>Submission – Design Development Drawings, Landscape Plan and Grading Plans.</u> 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.	<u>Approval – Design Development Drawings, Landscape Plan and Grading Plans.</u> 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.	<u>Submission – Final Construction Drawings.</u> 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.	<u>Approval – Final Construction Drawings.</u> 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.	<u>Approvals and Permits.</u> 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 I. of Section 208.
Actions relating to Conditions Precedent		
8.	<u>Submission – Evidence of Financing.</u> 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.	<u>Review of Evidence of Financing.</u> 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.	<u>CC&R's.</u> 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.	<u>Review of CC&Rs.</u> 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.	<u>Submission – Evidence of Satisfaction of Conditions Precedent to Close of Escrow and Phase 1 Closing.</u> 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.	<u>Review of Evidence of Conditions Precedent for Close of Escrow and Phase 1 Closing.</u> 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.	<u>Submission – Evidence of Satisfaction of Conditions Precedent to Phase 2 Closing.</u> 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.	<u>Review of Evidence of Conditions Precedent for Satisfaction of Conditions Precedent to Phase 2 Closing.</u> 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.	<u>Open Escrow.</u> 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.	<u>Phase 1 Closing Date.</u> 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.	<u>Phase 2 Closing Date.</u> 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.	<u>Commencement of Construction of Phase 1 Public Improvements.</u> Purchaser shall commence construction of the Public Improvements.	Not later than thirty (30) days after Close of Escrow.
20.	<u>Completion of Construction of Phase 1 Public Improvements.</u> 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.	<u>Commencement of Construction of Phase 1 Improvements.</u> 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.	<u>Completion of Construction of Phase 1 Improvements (“Phase 1 Completion Date”).</u> 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.	<u>Commencement of Construction of Phase 2 Improvements.</u> 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.	<u>Completion of Construction of Phase 2 Improvements (“Phase 2 Completion Date”).</u> 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).

ATTACHMENT NO. 6

PROJECT BUDGET

[behind this page]

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, Utilitiy, 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
Construction Interest	15 Mo X	5.00 %	0.55 % x \$	13,200,000
			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

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
PROJECTED CASH FLOW:			\$63,529

LOAN & FINANCIAL ANALYSIS

LOAN INFORMATION:			
NOI	\$	987,529	Capitalized @ 7.00%
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:	\$458,000
		say...	

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.

ATTACHMENT NO. 7

TITLE REPORT

[behind this page]



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 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 FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information and income information;
- Information we receive from you through our Internet websites, such as your name, address, 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 outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal 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 protectionThis 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

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.

**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:

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 landThis exclusion does not limit the access coverage in Item 5 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.

- (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

**ATTACHMENT ONE
(CONTINUED)**

(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.

**ATTACHMENT ONE
(CONTINUED)**

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:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	1.00% of Policy Amount or <u>\$ 2,500.00</u> (whichever is less)	<u>\$ 10,000.00</u>
Covered Risk 15:	1.00% of Policy Amount or <u>\$ 5,000.00</u> (whichever is less)	<u>\$ 25,000.00</u>
Covered Risk 16:	1.00% of Policy Amount or <u>\$ 5,000.00</u> (whichever is less)	<u>\$ 25,000.00</u>
Covered Risk 18:	1.00% of Policy Amount or <u>\$ 2,500.00</u> (whichever is less)	<u>\$ 5,000.00</u>

**ATTACHMENT ONE
(CONTINUED)**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and
 - f. environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19 and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	\$ 10,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 2,500.00	
(whichever is less)	
Covered Risk 18:	\$ 25,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 5,000.00	
(whichever is less)	
Covered Risk 19:	\$ 25,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 5,000.00	
(whichever is less)	
Covered Risk 21:	\$ 5,000.00
1.00% of Policy Amount Shown in Schedule A	
or	
\$ 2,500.00	
(whichever is less)	

**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.

**ATTACHMENT ONE
(CONTINUED)**

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.

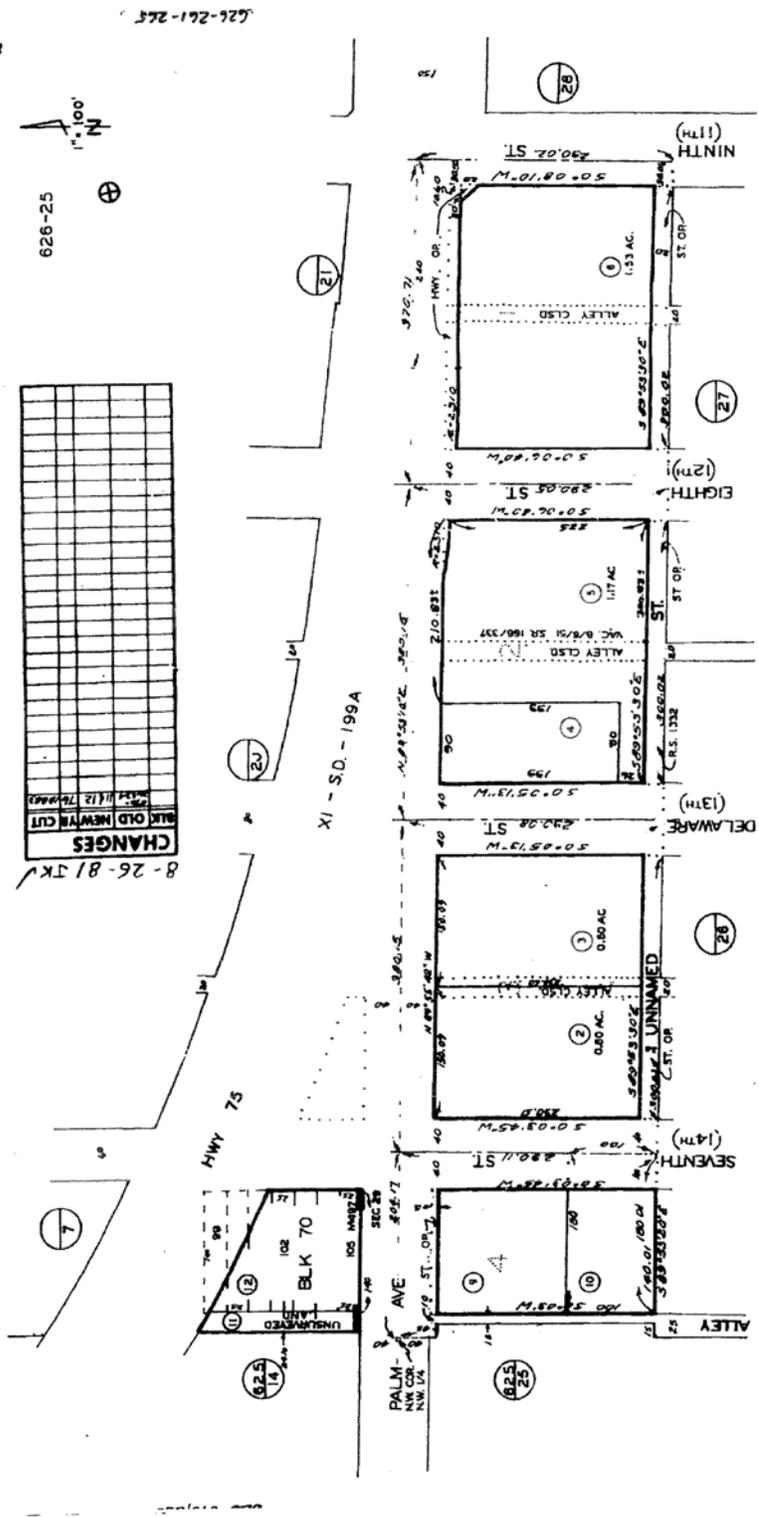
SHORT TERM RATE

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)



MAP 497 - SOUTH S.D. COS. ADD TO SOUTH S.D.
 SEC 29 - T1BS - R2W - P0R NW 1/4
 ROS 8740

FOR ASSESSMENT PURPOSES ONLY





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

ATTACHMENT NO. 8

FORM OF GRANT DEED

[behind this page]

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

Recording Requested by and
When Recorded Return to:

SUDBERRY-PALM AVENUE, LLC
c/o Sudberry Properties
5465 Morehouse Drive, Suite 260
San Diego, California 92121

SPACE ABOVE THIS LINE FOR RECORDING USE

Parcel Number: _____

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, herein called "Grantor", hereby grants to SUDBERRY-PALM AVENUE, LLC, a California limited liability company, herein called "Grantee", the real property, hereinafter referred to as the "Property", described in the document attached hereto, labeled Exhibit "A" and incorporated herein by this reference"), in accordance with and subject to the liens, encumbrances, covenants, conditions and restrictions set forth in this Grant Deed.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Exhibit "B" attached hereto and incorporated herein by reference.

The Property is subject to the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, which was approved and adopted by ordinance of the City Council of the City of Imperial Beach (the "Redevelopment Plan").

Grantor and Grantee agree as follows:

1. Grantee hereby covenants and agrees on behalf of itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Grantee, such successors and assigns shall comply with and be bound by all of the terms, conditions, and covenants in that certain Agreement Containing Covenants Affecting Real Property, as the same may be amended from time to time in accordance with the terms thereof ("Covenant Agreement") entered into of even date herewith by and between Grantor and Grantee with respect to the Property and recorded concurrently with the recordation of this Grant Deed. All such terms, conditions, and covenants are hereby incorporated herein by this reference as if fully set forth at length herein, subject to any termination or expiration provisions set forth in

Grant Deed
Page 1 of 8

such Covenant Agreement or subsequent modification of such Covenant Agreement by Grantor and Grantee.

2. Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Grant Deed is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property. The foregoing covenants shall run with the land.

3. All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(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.”

Notwithstanding the paragraph, 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.

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m)

and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the above paragraph, with respect to familial status, paragraph (b) 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 (b) 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.

(c) In contracts entered into by the Grantor relating to the sale, transfer, or leasing of land or any interest therein acquired by the Grantor within any survey area or redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

4. Grantor and Grantee agree that the timely completion of construction of the hereinafter defined Improvements on the Property by Grantee as required by that certain Purchase and Sale Agreement entered into by and between Grantor (Successor Agency therein) and Grantee (Purchaser therein) dated for identification purposes only as of _____, 201__, as the same may be amended from time to time in accordance with the terms thereof, (“Purchase Agreement”) is a condition subsequent, to which the fee simple estate in the Property granted to Grantee by this Grant Deed is subject. Prior to the hereinafter defined Completion of construction of the Improvements to be constructed on the Property, or any part thereof, which shall be evidenced by recordation of a Release of Construction Covenants pursuant to Section 5, below, the following shall apply:

(a) Grantor shall have the right, in its sole and absolute discretion, in addition to any other rights and remedies granted to Grantor, to exercise a power of termination as described in California Civil Code Section 885.010 to terminate and revert in Grantor the estate in the Property (or any portion thereof) conveyed to Grantee pursuant to this Grant Deed, with all improvements thereon, and to re-enter and take possession of the Property with any improvements thereon, in the event Grantor terminates the Purchase Agreement in accordance with Section 510.c. of the Purchase Agreement as the result of any of the following:

(i) Subject to hereinafter defined Force Majeure Delays, if Grantee, or its successor or assignee, fails to commence construction of the Improvements as required by the Purchase Agreement and such breach is not cured within the time provided in Section 501 of the Purchase Agreement, provided that Grantee shall not have obtained an extension or postponement to which Grantee may be entitled pursuant to Section 602 of the Purchase Agreement; or

(ii) Grantee, its successor or assignee abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of the Purchase Agreement, provided Grantee has not obtained an extension or postponement to which Grantee may be entitled to pursuant to Section 602 of the Purchase Agreement; or

(iii) Except for Permitted Transfers, Grantee, its successor or assignee assigns or attempts to assign the Purchase Agreement, or any rights therein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of the Purchase Agreement, and such breach is not cured within the time provided in Section 501 of the Purchase Agreement; or

(iv) Grantee, its successor or assignee otherwise materially breaches the Purchase Agreement, and such breach is not cured within the time provided in Section 501 of the Purchase Agreement.

(b) Grantor's rights under this Section of this Grant Deed shall be limited by and shall not defeat, render invalid or limit:

(i) Any Permitted Deed of Trust with respect to the Property, or any portion thereof; or

(ii) Any rights or interests provided in the Purchase Agreement for the protection of any beneficiary of a Permitted Deed of Trust with respect to the Property, or any portion thereof.

(c) In the event title to the Property or any part thereof is revested in Grantor as provided in this Section, (i) all obligations of Grantor under the Purchase and Sale Agreement (and the instruments and documents being executed in accordance therewith) will terminate, except for any obligation of Grantor to indemnify the Indemnified Parties pursuant to the Covenant Agreement, (ii) Grantor shall take title to the Property or any part thereof subject to any Permitted Deed of Trust, and (iii) Grantor shall, pursuant to its rights and responsibilities, use its best efforts to reconvey the subject Property or portion thereof 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 Grantor) who will assume the obligation of making or completing the improvements as are acceptable to Grantor in accordance with the uses specified for such Property or portion thereof in the Redevelopment Plan and in a manner that is satisfactory to the Grantor. Upon such resale of the subject Property or portion thereof, any proceeds of such sale shall be applied as follows:

(i) First, to reimburse Grantor on its own behalf for all reasonable costs and expenses incurred by Grantor, including but not limited to pro rata salaries of Grantor's staff and legal fees incurred in connection with the recapture, management and resale of the subject Property or portion thereof (but less any income derived by Grantor from any part of the Property in connection with such management); all taxes, installments of assessments payable

prior to resale, and water and sewer charges with respect to the Property or portion thereof; any payments made or required to be made to discharge any encumbrances or liens existing on the Property or portion thereof at the time of revesting of title in Grantor (other than those existing as of the Close of Escrow that were not created by Grantee) or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to any improvements made or completed by Grantor on the Property or any part thereof in accordance with the Purchase Agreement, the Scope of Development attached to the Purchase Agreement as Attachment No. 4 and the Plans; and any amounts otherwise owing to Grantor by Grantee and its successor or transferee;

(ii) Second, to reimburse any Permitted Lender for amounts then owing under its Construction Loan;

(iii) Third, to reimburse Grantee for any Purchaser Equity disbursed to pay Acquisition and Development Costs, less any gains or income withdrawn or made by Grantee from the Property or the Improvements thereon. Notwithstanding the foregoing, the sum of the amounts calculated pursuant to subsections (ii) and (iii) above shall not exceed the fair market value of the Improvements on the Property as of the date of the default or failure which gave rise to Grantor's exercise of its right of termination;

(iv) Any balance remaining after such reimbursements shall be retained by Grantor as its property.

The foregoing provisions are agreed to in recognition of the public interest in the redevelopment of the Property and the substantial investment by Grantor both in money and staff time for the completion of the Project. This Section shall be void, and Grantor's rights pursuant to this Section shall terminate and be of no further force and effect as to the Property (or any applicable portion thereof), upon the execution and recordation by Grantor of the Release of Construction Covenants for the subject Property (or such portion thereof). This power of termination is authorized by California Health and Safety Code Sections 33437 and 33438. The rights established in this Section and in Section 511 of the Purchase Agreement are to be interpreted in light of the fact that Grantor is conveying the Property to Grantee for redevelopment and not for speculation in undeveloped land.

5. (a) Promptly after Completion of the Improvements relative to any portion of the Property as required by the Purchase Agreement, Grantor shall deliver to Grantee a Release of Construction Covenants relative to such portion of the Property, upon written request therefor by Grantee. The Grantor 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 the Purchase Agreement with respect to the portion of the Property described in the Release of Construction Covenants and a release of all other obligations in the Purchase Agreement relating to such portion of the Property—it being understood that once a Release of Construction Covenants has been recorded as to the entire Property, the Purchase Agreement shall be of no further force or effect.

(b) The Release of Construction Covenants shall be substantially in the form attached to the Purchase Agreement as Attachment No. 13 so as to permit it to be recorded in the Official Records.

(c) If Grantor fails to deliver the Release of Construction Covenants within ten (10) days after written request from Grantee, Grantor shall provide Grantee 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 Grantee 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 Grantor, Grantor will issue the Release of Construction Covenants upon delivery to the Grantor by Grantee of a bond or other security that is acceptable to Grantor in the Grantor Executive Director's sole discretion, in an amount representing Grantor'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 Grantee 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.

6. The terms and conditions of this Grant Deed shall continue in effect for the following respective periods of time, and survive any sale, transfer, assignment, lease, conveyance, or other disposal of the Property, or portion or portions thereof: (a) the terms and conditions of Section 4 shall remain in effect until the issuance by the Grantor of the Release of Construction Covenants with respect to the entire Property or such portion of the Property as described in Section 5 of this Grant Deed; and (b) the terms and conditions of Sections 2 and 3 shall remain in effect in perpetuity.

7. For the respective periods of time set forth in Section 6 of this Grant Deed, all conditions, covenants and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein.

8. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed the beneficiary of the covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and such covenants shall run in favor of Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

If Grantor 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 Grantor or Grantor Executive Director) and notifying Grantee of such successor, and if applicable law does not provide for automatic assignment of such rights and obligations by operation of law, then Grantee shall have the right to (a) contact the City Manager of the City of Imperial Beach (as the entity which formed the Grantor) 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 Grantee with satisfactory evidence regarding such matter, Grantee 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 Grantor hereunder.

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

10. None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instruments between the parties to this Grant Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Grant Deed.

11. For the respective periods of time set forth in Section 6 of this Grant Deed, the covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except for the covenants and conditions contained in Section 4 of this Grant Deed.

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

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized this ____ day of _____, 201____.

[SIGNATURES ON NEXT PAGE]

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

GRANTOR:

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY

By: _____
Executive Director

ATTEST:

Jacqueline M. Hald

APPROVED AS TO FORM

By: _____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Special Counsel

By: _____

GRANTEE:

SADBERRY-PALM AVENUE LLC,
a California limited liability company

By: SADBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated: _____

By: _____
Colton T. Sudberry, President

State of California)

)

County of San Diego)

On _____, 201____ before me, _____(here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized 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 of Notary Public

[Seal]

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Imperial Beach, County of San Diego, State of California, described as follows:

Also more commonly known as Assessor's Parcel Number [insert].

EXHIBIT B

DEFINITIONS

(a) “Acceptance and Maintenance Agreement” shall mean an Acceptance and Maintenance Agreement for Public Improvements substantially in the form attached to the Purchase Agreement as Attachment No. 17.

(b) “Acquisition and Development Costs” means properly documented costs incurred by Grantee in connection with the acquisition of the Property and the entitlement, design, financing and construction of the Improvements, as set forth in the Project Budget.

(c) “Affiliate” means (i) any Person directly or indirectly controlling, controlled by or under common control with another Person; (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (iii) 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.

(d) “Approved Plans” shall mean the Plans approved by the Grantee pursuant to Section 306 of the Purchase Agreement.

(e) “Assignee” shall mean any Person to whom or to which Grantee assigns its interests in the Property or any portion thereof, which assignment shall be subject to the approval of Grantor as provided in the Covenant Agreement.

(f) “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 Property, and shall include Building Pads “A” through “G” inclusive, as shown on the Site Map attached to the Purchase Agreement as Attachment No. 1.

(g) “Building Permits” shall mean all grading and building permits required to be obtained from the City of Imperial Beach for the construction of the Improvements.

(h) “Close of Escrow” shall mean the escrow closing for the sale of the Property to Grantee pursuant to the Purchase Agreement.

(i) “Completion” means the completion of construction of the Improvements as required by all the requirements of the Purchase Agreement, evidenced by the occurrence of all of the following:

(i) Either of the following: (a) for any Private Improvements, the issuance by the City of Imperial Beach of a certificate of occupancy; or (b) for any Public Improvements, the execution and recordation of an Acceptance and Maintenance Agreement;

(ii) recordation of a Notice of Completion by Grantee, its Assignee or contractor relating to the Improvements as to the Private Improvements and by the City as to the Public Improvements;

(iii) 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;

(iv) as to the Public Improvements only, approval of the Public Improvements by Cal-trans, as necessary;

(v) 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

(vi) completion to the reasonable satisfaction of the Grantor Executive Director of development of the Property (or portion thereof within, or directly serving, the applicable Phase) in accordance with the Purchase Agreement, the Scope of Development attached to the Purchase Agreement as Attachment No. 4, and plans approved by the Grantor pursuant to the Purchase 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.

(j) “Construction Lender” means the maker of any Construction Loan or beneficiary of any Construction Loan Deed of Trust.

(k) “Construction Loan” means a Source of Financing in the form of a loan made to the Grantee or an Assignee for construction of the Improvements, secured against one or more Parcels, by a Construction Loan Deed of Trust.

(l) “Construction Loan Deed of Trust” means a deed of trust securing a Construction Loan.

(m) “Conversion” means the date upon which a Construction Loan is converted to (or refinanced with) a Permanent Loan.

(n) “Entitlements” shall mean all applicable land use approvals and all conditions of approval, legally required by the City of Imperial Beach or other governmental authority as a condition of subdivision of the Property, development of the Project and construction of the Improvements in accordance with the Purchase Agreement, including, without limitation, a Map and Building Permits.

(o) “Force Majeure Delays” shall mean an extension of time caused by delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of Imperial Beach or any other public or governmental agency or entity (except that acts or failure to act of Grantor shall not excuse performance of Grantor), 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 Grantee unless such delay or failure results from any of the foregoing causes) in accordance with the Purchase Agreement.

(p) “Horizontal Improvements” shall mean the public improvements and utilities required to be constructed or installed by Grantee on or in connection with the development of the Property and Property preparation in anticipation of construction of Vertical Improvements, as provided in the Scope of Development attached to the Purchase Agreement as Attachment No. 4, Approved Plans and Entitlements for the Project, not including the Vertical Improvements.

(q) “Improvements” shall collectively refer to the commercial retail shopping center to be constructed on the Property, consisting of the Horizontal Improvements and Vertical Improvements more particularly described in the Scope of Development attached to the Purchase Agreement as Attachment No. 4, and including the Private Improvements and the Public Improvements.

(r) “Indemnified Parties” shall mean Grantor, City, and each of their respective elected officials, officers, representatives, agents, employees, contractors and attorneys.

(s) “Instrument Terminating Option” shall mean an instrument that is mutually acceptable, in form and substance, to the Grantee and Grantor Executive Director, which shall be recorded against Property 2 upon the Phase 2 Closing.

(t) “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.

(u) “Memorandum of Option” means an instrument that is mutually acceptable, in form and substance, to Grantee and Grantor Executive Director, to be recorded against Property 2 at the Phase 1 Closing.

(v) “Notice of Completion” shall have the same definition as set forth in California Civil Code section 3093.

(w) “Option” shall mean the right of the Grantor, in its sole discretion, to purchase back Property 2 from the Grantee 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.

(x) “Option Agreement” shall mean an Option Agreement and Joint Escrow Instructions, that is mutually acceptable, in form and substance, to Grantee and Grantor Executive Director, granting the Option to the Grantor.

(y) “Parcel” shall mean each Parcel “A”, “B”, “C”, “D”, “E”, “F” or “G”. “Parcels” shall mean two or more of Parcels “A”, “B”, “C”, “D”, “E”, “F” or “G”.

(z) “Permanent Lender” means the maker of any Permanent Loan or beneficiary of any Permanent Loan Deed of Trust.

(aa) “Permanent Loan” means a Source of Financing in the form of a permanent loan to be made to the Grantee or an Assignee at Conversion, secured by a Permanent Loan Deed of Trust recorded against one or more Parcels.

(bb) “Permanent Loan Deed of Trust” means a deed of trust securing a Permanent Loan.

(cc) “Permitted Deed of Trust” means a mortgage or deed of trust approved by the Grantor as a Source of Financing for the Project, including Construction Loan Deeds of Trust and Permanent Loan Deeds of Trust.

(dd) “Permitted Lender” means the holder of a Permitted Deed of Trust, including a Construction Lender or Permanent Lender.

(ee) “Permitted Transfer” means any of the following:

(i) A conveyance of a security interest in the Property, or one or more Properties or one or more Parcels in connection with any Permitted Deed of Trust and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith, provided that Grantee shall have no authority to encumber any portion of the Property

until the occurrence of the Phase 1 Closing and the Close of Escrow, and shall have no authority to encumber Property 2 or any portion of Property 2 until the occurrence of the Phase 2 Closing;

(ii) A conveyance of the Property, or one or more Parcels, to any Affiliate of Grantee or a sale back from such Affiliate to Grantee, including, but not limited to, a conveyance to a limited liability company or limited partnership in which Grantee, or an Grantee, is the manager or general partner, as the case may be;

(iii) The inclusion of equity participation by Grantee by addition of investor members or limited partners to Grantee's limited liability company or limited partnership, as the case may be, or similar mechanisms, the purchase of any such membership or partnership interests by the manager or general partner and the withdrawal and/or replacement of such investor members or limited partners;

(iv) The removal for cause of any general partner by the limited partners of the Grantee's partnership, or the removal for cause of the manager of the Grantee's limited liability company, as the case may be, and the replacement thereof with a new general partner or manager, as the case may be; and

(v) The granting of easements, licenses, rights of entry or permits to facilitate the development of the Property in accordance with the Purchase Agreement.

Any transfer described in clauses (i) through (v) above shall be subject to the reasonable approval of the Grantor Executive Director for conformance with the Purchase Agreement; provided, however that the Grantor Executive Director shall approve any such transfer as a Permitted Transfer upon delivery of documentation to the Grantor Executive Director demonstrating that such transfer qualifies as a Permitted Transfer.

(ff) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

(gg) "Phase" means either Phase 1 or Phase 2.

(hh) "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 the Purchase 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 Grantee, 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 attached to the Purchase Agreement as Attachment No. 4.

(ii) "Phase 1 Closing" shall mean the point in time when all conditions precedent to the escrow closing as set forth in Section 208 of the Purchase Agreement have been satisfied or waived in writing by the party benefiting from such condition; the Map has been approved and recorded; and this Grant Deed and the Covenant Agreement 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 of the Purchase Agreement have been recorded.

(jj) "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 Grantee until Phase 2 in accordance with Section 219 of the Purchase 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 Grantee elects to construct the building on Parcel "E"), Parcel "F" (if Grantee elects to construct the building on Parcel "F"), and Parcel "G" (if Grantee elects to construct the building on Parcel "G"), as described in the Scope of Development attached to the Purchase Agreement as Attachment No. 4.

(kk) "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 the Purchase Agreement have been satisfied or waived in writing by the Grantor; (ii) the Grantor 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 of the Purchase Agreement have been recorded.

(ll) "Plans" shall mean the plans and drawings prepared on behalf of Grantee or an Assignee, and required to be submitted to Grantor pursuant to Sections 303, 304 and 305 of the Purchase Agreement.

(mm) "Private Improvements" shall mean the portion of the Improvements described in the Scope of Development attached to the Purchase Agreement as Attachment No. 4 that will be developed and constructed at no cost or expense to the Grantor, located on the Property, and owned by Grantee or an Assignee.

(nn) "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).

(oo) "Project Budget" means, initially, the table attached to the Purchase 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 the Purchase Agreement.

(pp) "Property 1" shall mean the portion of the Property depicted as Property 1 on the Site Map attached to the Purchase Agreement as Attachment No. 1, containing Parcels "A", "B", "C" and "D" and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

(qq) “Property 2” shall mean the portion of the Property depicted as Property 2 in the on the Site Map attached to the Purchase Agreement as Attachment No. 1, containing Parcels “E”, “F” and “G” and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

(rr) “Public Improvements” shall mean the off-site publicly-owned Improvements described in Section 219 of the Purchase Agreement and the Scope of Development attached to the Purchase Agreement as Attachment No. 4 (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 Grantee, subject to the obligation of the Grantor to disburse, or cause the City of Imperial Beach to disburse, the Remaining Public Improvement Funds as provided in Section 219 of the Purchase Agreement.

(ss) “Purchaser Equity” shall mean any Source of Financing needed to pay Acquisition and Development Costs that is provided by Grantee and not secured by a deed of trust on the Property or any portion thereof.

(tt) “Remaining Public Improvement Funds” shall mean \$2,159,231.57, which shall be disbursed by the Grantor to pay or reimburse Grantee for the cost of plans for, permitting, construction and installation of the Public Improvements as provided in Section 219 of the Purchase Agreement and the Public Improvement Disbursement Agreement attached as Attachment No. 11 to the Purchase Agreement.

(uu) “Source of Financing” means a source of financing the Project which has been approved by the Grantor, as more specifically described in the Method of Financing attached to the Purchase Agreement as Attachment No. 3.

(vv) “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 Property, as provided in the Scope of Development Financing attached to the Purchase Agreement as Attachment No. 4, Approved Plans and Building Permits for the Project, not including the Horizontal Improvements and Public Improvements.

ATTACHMENT NO. 9

FORM OF AGREEMENT CONTAINING COVENANTS

[behind this page]

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

Recording Requested by and
When Recorded Return to:

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

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY (this "Agreement") is entered into as of _____, 20____ by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY ("Successor Agency") and SUDBERRY-PALM AVENUE, LLC, a California limited liability company ("Purchaser").

A. Purchaser is the owner of that certain real property located in the City of Imperial Beach, County of San Diego, State of California, legally described in the "Legal Description" attached hereto as Exhibit "A" and incorporated herein by this reference (the "Property"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Exhibit "C" attached hereto and incorporated herein by reference.

B. The Property is within the Palm Avenue/Commercial Redevelopment Project Area (the "Project Area") in the City of Imperial Beach and is subject to the provisions of the redevelopment plan for the Project Area, which was approved and adopted on February 6, 1996, by the City Council of the City of Imperial Beach by Ordinance 96-901, including subsequent amendments (the "Redevelopment Plan").

NOW, THEREFORE, SUCCESSOR AGENCY AND PURCHASER HEREBY AGREE AS FOLLOWS:

1. Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that, upon and after the Close of Escrow, Purchaser and such successors and assigns, shall develop, maintain and use the Property only as provided in this Agreement and Exhibit "D"; which covenants and agreements are further subject to the following:

(a) Purchaser shall maintain the Improvements and landscaping on the Property, and shall keep the Property free from any accumulation of debris or waste materials, as provided in this Agreement; and

(b) Purchaser, its successors, assigns, and every successor in interest, shall comply with all applicable Federal, State, municipal, and local laws, rules, orders, ordinances, and regulations in the development, occupation, use, and operation of the Property and Improvements.

2. Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Purchaser, and such successors and assigns, shall comply with and be bound by the following covenants:

(a) Purchaser, and such successors and such assigns, shall use the Property only for the uses specified in the Redevelopment Plan, Exhibit “D”, entitled Scope of Development, which is attached hereto and incorporated herein by reference, and this Agreement. No change in the use of the Property from the uses specified in the Redevelopment Plan, Exhibit “D”, and this Agreement shall be permitted without the prior written approval of Successor Agency; which approval shall not unreasonably be withheld. The Improvements shall comply with the current California Building Code and Building Code of the City of Imperial Beach when constructed;

(b) Without limiting the generality of the foregoing, Purchaser, and such successors and such assigns, shall use the Property for the development and operation of a town center development (“Retail Center”) that combines retail with commercial space in a pedestrian-friendly environment. Assuming both Phase 1 and Phase 2 are completed, the Retail Center shall initially consist of approximately 46,200 square feet of building area in seven (7) buildings, surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting and driveways, all as described in Exhibit “D”, in accordance with the requirements of and as more particularly described in Exhibit “D” and 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 the original Purchaser’s affiliate, Sudberry Development, Inc., at its other similar retail developments in San Diego County. Without limiting the generality of the foregoing, Purchaser, and such successors and such assigns, shall initially use Parcel “A” for the construction and operation of an approximately 14,800 square foot grocery store or supermarket approved in writing by the Successor Agency Executive Director or the construction and operation of a different use on Parcel “A” approved in writing by the Successor Agency Executive Director and shall initially include on Parcel “F” an approximately 5,000 – 15,000 square foot retail building approved in writing by the Successor Agency Executive Director. The parties agree that it shall be reasonable for the Successor Agency to consider the following criteria when determining whether to approve a different use on Parcel “A”: (i) the proposed new use would be compatible with any on-site uses and any neighboring uses; (ii) the proposed new use would be a generator of at least as much sales tax revenues to the City of Imperial Beach than an approximately

14,800 square foot grocery store or supermarket would likely generate in such location, and (iii) the building for the proposed new use would be approximately 14,500 square foot or larger. Notwithstanding anything to the contrary expressed or implied hereby, for purposes of this paragraph and the preceding paragraph, "operation" shall mean open for business and operating for at least one day;

(d) The Property shall specifically exclude any offensive or incongruent uses including, without limitation, the following (unless prior written consent therefor by the Successor Agency Executive Director has been granted):

- (i) Excepting those odors, noises or sounds that are customarily associated with a restaurant use or with a typical grocery store providing prepared and made-to-order foods, no use shall be permitted in the Retail Center which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building on the Property;
- (ii) Any noxious materials, and any toxic or caustic, or corrosive fuel or gas in violation of applicable law;
- (iii) Any dust, dirt or particulate matter in excessive quantities;
- (iv) Any unusual fire, explosion, or other damaging or dangerous hazard;
- (v) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling (excluding a microbrewery, winery and/or distiller of fine spirits operated as an ancillary part of a restaurant), refining, smelting, agricultural or mining operation;
- (vi) Any surplus store or pawn shop;
- (vii) Other than a grocery store or national credit drug store, any retail outlet that sells alcoholic beverages for off-site consumption;
- (viii) Any mobile home park, trailer court, labor camp, junkyard or stockyard, provided, however, that this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance;
- (ix) Any dumping, disposing, incineration or reduction of garbage, provided, however, that this prohibition shall not be applicable to garbage compactors located near the rear of any building, grease traps and collection for restaurants, or consumer trash or recycling collection receptacles/areas;

- (x) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (xi) Any central laundry or dry cleaning plant, provided, however, that this prohibition shall not be applicable to: (A) nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Property is located; and (B) so-called “green” cleaners;
- (xii) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation, provided, however, that nothing contained herein shall preclude the use of the Retail Center for car shows or similar special events for the temporary marketing of automobiles;
- (xiii) Any veterinary hospital or animal raising or boarding facility, provided, however, that this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the building; and the combined incidental veterinary and boarding facilities shall occupy no more than 15% of the floor area of the pet shop;
- (xiv) Any mortuary or funeral home;
- (xv) Any adult-oriented business or facility as defined and regulated in City’s Municipal Code. Such uses include, without limitation, massage establishments (to the extent defined and regulated in such Code as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters and paraphernalia businesses;
- (xvi) Any establishment selling or exhibiting “obscene” material, except that this provision shall not prohibit (A) first class videotape (for purposes hereof, the term “videotape” shall include DVDs, CDs and other media used to show motion pictures now or in the future) retailers with a national presence which primarily rent or sell “G” to “R”-rated videotapes but which also rent or sell “non-rated or NC-17 videotapes” for off-premises viewing only, provided that such retailers do not rent or sell “X-rated videotapes”, (B) first-class book stores with a national presence which are not perceived to be, nor hold themselves out as “adult book” stores, but which incidentally sell books, magazines and other periodicals which

may contain pornographic materials, so long as such sale is not from any special or segregated section in the store and provided further that such pornographic materials are not considered objectionable or offensive to accepted standards of decency within the local community or (C) a first-class, first-run movie theatre that may show or display “R”-rated or “NC-17” rated films or telecasts or “X”-rated films or telecasts; provided, however, that (1) such operator believes, in its reasonable business judgment, that such “X”-rated motion picture or telecast has artistic merit or is a so-called “legitimate” film and (2) such operator, as a general policy, does not exhibit “X”-rated films and telecasts;

- (xvii) Any establishment which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff;
- (xviii) Laboratories, excluding any which are necessary to medical uses in the Retail Center;
- (xix) Social services agencies occupying more than an aggregate total of 4,000 square feet of the Property;
- (xx) Nursing homes;
- (xxi) Any establishment selling or exhibiting drugs or drug-related paraphernalia (*e.g.*, medical marijuana and smoke shops);
- (xxii) Any medical marijuana distribution facility that is (1) a facility or location, whether fixed or mobile, where marijuana is made available, sold, transmitted, given or otherwise provided to two or more persons with identification cards or qualified patients, or primary caregivers, as defined in California Health and Safety Code Section 11362.5 *et seq.* as amended from time to time, or (2) any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code Section 11362.5 *et seq.*;
- (xxiii) Check cashing businesses (as opposed to banks and similar financial institutions at which checks may be deposited or cashed);
- (xxiv) Fraternal organizations;
- (xxv) Fortunetelling businesses;

- (xxv) Tattoo parlors occupying more than an aggregate total of 2,000 square feet in the Retail Center; and
- (xxvi) Any gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns;
- (e) Purchaser, such successors and assigns, shall comply with all provisions and terms and conditions of Exhibit “D”;
- (f) Purchaser, such successors and assigns, shall pay when due all amounts due and payable and otherwise comply with all terms and conditions of that certain Payment Agreement entered into by and between Successor Agency and Purchaser dated as of _____, 20____ pertaining to the Purchaser’s payment to the Successor Agency of the Participation Component, as the same may be amended from time to time in accordance with the terms thereof (“Payment Agreement”) and that certain Deed of Trust Security Agreement and Fixture Filing (with Assignment of Rents) executed by the Purchaser dated as of _____, 20__ in favor of the Successor Agency and recorded concurrently herewith as Document No. _____, as the same may be amended from time to time in accordance with the terms thereof (the “Successor Agency Deed of Trust”)—it being acknowledged that the release and reconveyance of such Successor Agency Deed of Trust shall be conclusive evidence that all sums secured by the Successor Agency Deed of Trust have been paid and all obligations secured by the Successor Agency Deed of Trust have been satisfied;
- (g) Purchaser, and such successors and assigns, shall comply with all terms and conditions of that certain Option Agreement and Joint Escrow Instructions for Purchase of “Property 2” entered into by and between Successor Agency and Purchaser dated as of _____, 20____ pertaining to the Purchaser’s granting of an option to Successor Agency as to Property 2, as the same may be amended from time to time in accordance with the terms thereof, until the termination thereof, as evidenced by the recordation of the Instrument Terminating Option relative thereto as referenced therein;
- (h) Purchaser, and such successors and assigns, shall comply with all terms and conditions of that certain Environmental Indemnity executed by the Purchaser dated as of _____, 20__ in favor of the City of Imperial Beach, the Successor Agency, and their respective successors and assigns, as the same may be amended from time to time in accordance with the terms thereof;
- (i) Purchaser, such successors and such assignees shall comply with all terms and conditions of that certain Public Improvement Disbursement

Agreement entered into by and between Successor Agency, Purchaser and _____ dated as of _____, 20____ pertaining to the disbursement to Purchase of the Remaining Public Improvement Funds, as the same may be amended from time to time in accordance with the terms thereof (“Public Improvement Disbursement Agreement”), until the termination thereof, as evidenced by the recordation of the an Acceptance and Maintenance Agreement for Public Improvements relative thereto as referenced therein;

- (j) (i) Purchaser, and such successors and assigns, shall, commencing upon the Phase 1 Closing, pay when due all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. In addition, Purchaser shall remove, or shall have removed, any levy or attachment made on title to the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder;
- (ii) Purchaser, and such successors and assigns, shall, absent manifest error, refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Property; provided, however, that such prohibition shall not apply to an appeal, challenge or contest of the erroneous assessment for property tax purposes of the Property, and further provided that Purchaser, and such successors and assigns, shall not be prohibited from appealing, challenging or contesting any increases in assessment of the Property for property tax purposes over and above the current 2% per annum permitted amount;
- (iii) 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 Property, 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 Property, 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; and

- (iv) Successor Agency shall cooperate reasonably in any such contest permitted by this Section, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of any 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;
- (k) Purchaser, and such successors and such assigns, shall not place, or allow to be placed, against the Property 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 Property or such portion thereof in accordance with this Agreement. Under no circumstances whatsoever shall the Purchaser record or allow any security instruments to be recorded against Property 2 prior to the Phase 2 Closing;
- (l) Intentionally omitted; and
- (m) 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 Property 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 Property 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 Property.

Pursuant to California Health and Safety Code Section 33437(d), the restrictions in this Section are deemed necessary by the Successor Agency and are intended to run with the land for the benefit of the community.

3. (a) Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that 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's affiliate, Sudberry Development, Inc., at its other similar retail developments in San Diego County in existence as of _____, 20___ **[FILL IN DATE PURCHASE AGREEMENT BECOMES EFFECTIVE]**. Without limiting the generality of the foregoing, Purchaser shall maintain the Improvements on the Property in the same aesthetic and sound condition (or better) as the condition of the Property at the time that Successor Agency issues a Release of Construction Covenants as described in this Agreement, reasonable wear and tear and casualty damage excepted. This standard for the quality of maintenance of the Property shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, graffiti removal, fencing, walls, equipment, *etc.*, as necessary; emptying of trash receptacles and removal of litter; sweeping of any public sidewalks adjacent to the Property, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the building(s) on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; and maintaining security devices in good working order.

(b) If Successor Agency gives written notice to Purchaser that the maintenance or condition of the Property, the Project or any portion thereof or any other improvements thereon does not comply with this Agreement, then Purchaser shall correct, remedy or cure the deficiency within thirty (30) days following the date of such notice, unless the notice states that the deficiency is an urgent matter relating to public health and safety, in which case, Purchaser shall cure such deficiency within 48 hours following the date of the notice. Notwithstanding the foregoing, if any such matter cannot reasonably be corrected within the specified time, and Purchaser is proceeding with due diligence, and in good faith, to correct same, then the foregoing timeframes shall be extended, as reasonably necessary in order to allow Purchaser to complete such work of correction. In the event that Purchaser fails to cure any such deficiencies within the applicable period described above, Successor Agency shall have, in addition to any other rights and remedies hereunder, the right to enter onto the Property and correct such deficiencies or to contract for the correction of any deficiencies, and Purchaser shall be responsible for payment of all such costs actually and reasonably incurred by Successor Agency, and such payment shall constitute a lien on the Property until paid by Purchaser pursuant to California Civil Code Section 2881. Any such lien shall be subordinate and subject to the lien of any Permitted Deed of Trust.

4. Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Purchaser shall be responsible for the operation of the Improvements either by direct

management or by contracting its managerial functions to a third party property manager reasonably acceptable to Successor Agency, which property manager will be charged with managing the Improvements on behalf of Purchaser. Unless such property manager is an Affiliate of Purchaser, Successor Agency's Executive Director shall have the right to review and approve any such entity prior to its selection by Purchaser. Such approval shall not be unreasonably withheld or delayed. Purchaser shall include in any such property management agreement a provision providing for the termination of the property management agreement in the event that the property manager violates any federal, state or local health and safety laws and regulations which are not cured within thirty (30) days following the giving of notice of such violations by Successor Agency or any other governmental entity; provided, however, that in the case of a violation that cannot be cured within such thirty (30)-day period, that such cure shall be commenced within thirty (30) days of notification and shall be diligently prosecuted to completion.

5. Assignments and Transfers

(a) Purchaser represents and agrees that its undertakings pursuant hereto and pursuant to the Grant Deed by which Purchaser obtained the Property are for the purpose of redeveloping the Property as provided herein and therein, 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: (i) the importance of the development of the Property to the general welfare of the community; (ii) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (iii) 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 agreed to sell the Property to Purchaser. Therefore, no voluntary or involuntary transfer of the Property shall be completed, voluntarily or involuntarily, except as expressly permitted herein.

(b) Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein 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 that certain Purchase and Sale Agreement entered into by and between Successor Agency and Purchaser therein dated for identification purposes only as of _____, 201__ ("Purchase Agreement") or any interest therein, or transfer, convey, sell or lease such Parcel or Parcels or any portion thereof, without the prior written approval of the 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 Executive Director of 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 Property (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 Property, 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 the Purchase Agreement or any interest therein 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 the Purchase 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 the Purchase Agreement or any interest therein 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 Property so assigned or transferred and that is not conditioned upon the issuance of the Release of Construction Covenants for the portion of the Property so assigned or transferred. 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 Improvements on 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, the Purchase 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 17, 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, the 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 the applicable rights and obligations of Purchaser under this Agreement, the Grant Deed conveying the Property to Purchaser, and the Purchase Agreement

(and any documents entered into in accordance with the Purchase Agreement) pertaining to the assigned portion of the Property.

(g) The restrictions in, and provisions of, this Section 5 shall terminate and be of no further force or effect as to any portion of the Property upon the recordation of a Release of Construction Covenants for such portion of the Property.

(h) For purposes of this Section, 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 of Imperial Beach relating to any real or personal property, or any rights or obligations under this Agreement.

6. Indemnification

(a) To the extent permitted by law, Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that 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 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 in connection with the development of the Property, 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.

(b) To the maximum extent permitted by law, and in addition to any other provisions of this Agreement or other agreements, including without limitation, the Environmental Indemnity, independently requiring Purchaser to defend, indemnify, and hold harmless the Indemnified Parties, Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Purchaser 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:

(i) The existence, release, presence or disposal on, in, or under the Property 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");

(ii) The development, construction, marketing, use, operation or condition of the Property (other than Pre-Existing Site Conditions) and the Improvements by any Indemnifying Party;

(iii) Any accident, personal injury or casualty on the Property or the Improvements resulting from the acts or omissions of any Indemnifying Party;

(iv) 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 (A) none of the Indemnifying Parties develops the Property pursuant to this Agreement, and (B) upon assignment of the Plans to Successor Agency, Successor Agency uses the Plans or causes such Plans to be used to develop the Property; and

(v) 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 the Purchase 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.

7. Insurance Policies.

(a) Commencing upon the Phase 1 Closing, and at all times prior to the Completion of the entire Project ("the Term"), Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that Purchaser shall maintain in effect and deliver to Successor Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(i) 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 (A) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (B) a "Replacement Cost Endorsement" in amount sufficient to prevent 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 (C) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property, or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence;

(ii) 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 Property and the business of Purchaser on the Property, 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 Property, 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 (a)(i) and (a)(ii) of this Section, Purchaser shall ensure that the additional insureds specified in paragraph (c) of this Section derive the benefit of such increased or additional insurance coverage.

(iii) 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.

(iv) 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 Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by 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.

(b) All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) days prior written notice to 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.

(c) 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.

(d) 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).

8. Local, State and Federal Laws

Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that:

(a) Purchaser 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, until issuance of the Release of Construction Covenants relative to the Property or the applicable portion thereof in accordance with this Agreement, 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, until issuance of the Release of Construction Covenants relative to the Property or the applicable portion thereof in accordance with this Agreement, 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); (ii) 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; (iii) 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 (iv) 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; and

(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.

9. Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that:

(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 Property under this Agreement, consistent with the amounts set forth in Exhibit “F” (“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 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 Property whether by voluntary act of Purchaser or otherwise. The Successor Agency Executive Director or his or her designee agrees to make reasonable modifications of this Section that may be requested by a Permitted Lender, provided such modification does not adversely affect the receipt of any material benefit by Successor Agency thereunder. 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 the Purchase Agreement. The Successor Agency Executive Director shall respond to any request under this Section 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) 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 Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement;

(e) 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;

(f) 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;

(g) 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 Property, subordinate to the liens of any Permitted Lender, to the extent of such costs and disbursements; and

(h) 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 Property, 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 Property to the extent of such costs and expenses, subordinate to the liens of any Permitted Lender, to the extent of such costs and expenses.

The restrictions in, and provisions of, this Section 9 shall terminate and be of no further force or effect as to any portion of the Property upon the recordation of a Release of Construction Covenants for such portion of the Property and this Section 9 shall be of no further force or effect upon the recordation of a Release of Construction Covenants for the entire Property.

10. Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that:

(a) Subject to the provisions of Section 512(b) of the Purchase 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, and any future or current

litigation related thereto, including California Redevelopment Association v. Matosantos (S194861). Notwithstanding Part 5 of the Purchase Agreement, the Successor Agency's failure to meet its financial or other obligations under the Purchase 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 the Purchase Agreement;

(b) 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”;

(c) 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; and

(d) Notwithstanding the foregoing waiver and release, in the event of the Successor Agency's failure to meet its financial or other obligations under the Purchase 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.

11. Purchaser covenants and agrees for itself and any successors and assigns in the Property or any portion thereof or any improvements thereon or any interest therein that:

(a) Successor Agency makes no representation or warranty, express or implied, regarding any conditions of the Property, 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 Property 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 Property's environmental condition and the presence or absence of Hazardous Substances in, on or under the Property 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 Property 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 any of the Indemnified Parties first occurring after _____, 20__ [INSERT EFFECTIVE DATE OF PURCHASE AGREEMENT];

(b) It shall be the sole responsibility of Purchaser, at Purchaser's sole cost and expense, to investigate and determine all conditions of the Property and its suitability for the use to which the Property 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 Property, and the suitability of the Property 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;

(c) If conditions of the Property are not in all respects entirely suitable for the use or uses to which the Property 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 to take such action as may be necessary to place the Property in all material respects in a condition suitable for its development and use in accordance with this Agreement;

(d) In the event Purchaser incurs any costs to remove or remediate any Hazardous Substances from the Property ("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 any of the Indemnified Parties;

(e) The Property shall be/was 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; and

(f) Subject to paragraph (a) of this Section, from and after _____, 20___ [INSERT EFFECTIVE DATE OF PURCHASE AGREEMENT], Purchaser hereby waives, releases and discharges the Successor Agency, the City of Imperial Beach, 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 Property or any portion thereof, any Hazardous Substances on the Property or the existence of Hazardous Substances contamination in any state on the Property, 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.

12. 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 of Imperial Beach, 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 of Imperial Beach’s duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City of Imperial Beach in the furtherance of the public health, welfare and safety of the inhabitants thereof, 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 of Imperial Beach.

13. (a) In accordance with California Civil Code Section 1461 *et seq.*, all conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land for the respective periods of time set forth in Section 16, below. The parties acknowledge and agree that the conditions, covenants and restrictions directly benefit the Property and benefit property that the Successor Agency owns or will own (including, without limitation, underlying interests in streets) within the Project Area and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Successor Agency and its successors and assigns and any property the Successor Agency owns, now or in the future, (including, without limitation, underlying interests in streets) within the Project Area, against the Purchaser, its successors and assigns, to or of the Property or any portion thereof or any interest therein. Successor Agency shall be deemed the beneficiary of the covenants, conditions and restrictions of this Agreement both for and in its own right and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of Successor Agency, without regard to whether Successor Agency has been, remains or is an owner of any land or interest therein in the Property or the Project Area. Except

as provided in the preceding sentences and in applicable law (as now exists or as hereinafter may be amended), the covenants, conditions and restrictions contained herein shall not be enforceable by any third party.

(b) In addition to the authority provided under California Civil Code Section 1461 *et seq.*, the parties hereto acknowledge and agree that California Health and Safety Code Sections 33435, 33436, 33437, 33438 and 33439 provide legal authority, separate and apart from California Civil Code Section 1461 *et seq.*, for establishing the covenants running with the land set forth herein. Successor Agency deems the covenants, conditions and restrictions in this Agreement to be necessary to prevent speculation and to carry out the purposes of the Redevelopment Law.

(c) The covenants, conditions and restrictions contained in this Agreement shall be enforceable against the Purchaser while Purchaser is the owner of the Property (or portion thereof), or if the Purchaser is no longer the owner of the Property, then against Purchaser's Permitted Transferee or successors or assigns which have been expressly approved in writing by the Successor Agency as may be required by Section 5 of this Agreement; provided, however, the covenants, conditions and restrictions contained in this Agreement shall be enforceable against the Purchaser for any action or inaction taken during Purchaser's ownership.

14. Successor Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant. Without limiting the foregoing, additionally, Successor Agency shall have the right, but not the obligation, to seek injunctive relief of any violation of any of the restrictions on use and other negative covenants contained herein against the person or entity in violation thereof.

15. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other security instrument permitted by this Agreement.

16. In addition to any provisions of this Agreement which expressly provide that they are only effective until a Release of Construction Covenants is recorded, the restrictions contained in Sections 5 and 9 of this Agreement shall terminate as to any portion of the Property upon the recordation of a Release of Construction Covenants for such portion of the Property. The covenant, condition and restriction contained in Section 2.f. shall remain in effect for fifty-five (55) years from the date of recordation hereof. Every other covenant, condition and restriction contained in this Agreement shall remain in effect for fifty (50) years from the date of recordation hereof, at which point in time they shall automatically terminate and be of no further force or effect.

17. Prior to exercising any remedies hereunder, Successor Agency shall give Purchaser notice of such default. Except as otherwise set forth herein, if a non-monetary default is reasonably capable of being cured within thirty (30) days, then Purchaser shall have such period to effect a cure prior to exercise of remedies by Successor Agency. If the non-monetary

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, continually (subject to force majeure events) 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, that in no event shall Successor Agency be precluded from exercising remedies if Successor Agency's security in the Property becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given. Except as otherwise set forth herein, monetary defaults shall be cured within thirty (30) days. The notice and cure provisions herein are not intended to, nor shall they, extend, modify, change or amend in any way any notice and cure provision in any other agreement and any notice and cure provisions herein shall run concurrently with any notice and cure provision in any other agreement.

18. If a violation of any of the covenants or provisions of this Agreement remains uncured after the applicable time period set forth herein, then Successor Agency and its successors and assigns, without regard to whether Successor Agency or its successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Purchaser of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time. 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.

19. (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. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

(b) Except as otherwise expressly provided in this Agreement, approvals or consents required of the Successor Agency under this Agreement 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.

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

21. 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.

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

23. (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.

24. (a) Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City of Imperial Beach 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

(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.

25. Upon written request from Purchaser or any subsequent owner, Successor Agency shall provide, within fifteen (15) days from receipt of the written request, to Purchaser or such owner 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 or this Agreement, the status of all matters referenced herein, and 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.

Additionally, following the recordation of Release of Construction Covenants for the Property (or any portion thereof), the Successor Agency Executive Director or his or her designee shall reasonably consider any reasonable request of any lender making a loan as to which the Property (or such portion thereof) shall act as security to the extent any such request is consistent with the terms hereof and of any other then-binding agreements executed by the parties pursuant to the Purchase Agreement. The Successor Agency Executive Director shall respond to any such request within fifteen (15) 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.

26. Successor Agency shall have the right at all reasonable times to inspect and copy the books and records of Purchaser pertaining to the Property as pertinent to the purposes of this Agreement.

27. (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.

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

29. 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 or 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.

30. Each of the attachments and exhibits attached to this Agreement is incorporated herein by this reference.

31. 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.

32. (a) Promptly after Completion of the Improvements relative to any portion of the Property as required by the Purchase Agreement, Successor Agency shall deliver to Purchaser a Release of Construction Covenants relative to such portion of the Property, upon written request therefor by Purchaser. 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 the Purchase Agreement with respect to the portion of the Property described in the Release of Construction Covenants and a release of all other obligations in the Purchase Agreement relating to such portion of the Property—it being understood that once a Release of Construction Covenants has been recorded as to the entire Property, the Purchase Agreement shall be of no further force or effect.

(b) The Release of Construction Covenants shall be substantially in the form attached hereto as Exhibit "G" and incorporated herein by reference 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 Executive Director, in an amount representing Successor Agency Executive Director'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.

33. 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.

34. 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.

35. 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.

36. This Agreement shall not merge into any other agreement between Successor Agency and Purchaser.

37. 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 below. Such written notices, demands and communications may be sent in the same manner to such other addresses and/or notice recipients 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. Upon a permitted transfer of title to the Property or any portion thereof, the applicable assignment and assumption agreement shall provide Successor Agency with such assignee's address for notices for purposes of this Agreement.

The address of 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

With a copy to: McDougal, Love, Eckis, Boehmer & Foley
8100 La Mesa Boulevard, Suite 200
La Mesa, CA 91942
Attn: Jennifer Lyon

With a copy to: Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, California 90071
Attn: Kendall D. Berkey

The address of Purchaser for purposes of receiving notices pursuant to this Agreement shall be:

Sudberry-Palm Avenue LLC
c/o Sudberry Properties
5465 Morehouse Drive, Suite 260
San Diego, CA 92121
Attn: Colton T. Sudberry

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.

38. Nothing contained in this Agreement shall be deemed or construed to impose any obligation on any tenant of the Property (or any portion thereof) to design and/or construct the Project.

39. The Successor Agency Executive Director or his or her designee shall reasonably consider any reasonable request of any lender making a loan as to which the Property (or such portion thereof) shall act as security to the extent any such request is consistent with the terms hereof and of any other then-binding agreements executed by the parties pursuant to the Purchase Agreement and does not diminish the rights and benefits of the Successor Agency or increase the liability and obligations of the Successor Agency.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, Purchaser and Successor Agency have executed this Agreement as of the dates set opposite their signatures.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its manager

Dated: _____

By: _____
Colton T. Sudberry, President

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: _____

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit "A"

Legal Description

[behind this page]

Exhibit “B”

Site Map

[behind this page]

Exhibit “C”

Definitions

(a) “Acceptance and Maintenance Agreement” shall mean an Acceptance and Maintenance Agreement for Public Improvements substantially in the form attached hereto as Exhibit “E” which is incorporated herein by reference.

(b) “Acquisition and Development Costs” means properly documented costs incurred by Purchaser in connection with the acquisition of the Property and the entitlement, design, financing and construction of the Improvements, as set forth in the Project Budget.

(c) “Affiliate” means (i) any Person directly or indirectly controlling, controlled by or under common control with another Person; (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (iii) 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.

(d) “Approved Plans” shall mean the Plans approved by the Purchaser pursuant to Section 306 of the Purchase Agreement.

(e) “Assignee” shall mean any Person to whom or to which Purchaser assigns its interests in the Property or any portion thereof, which assignment shall be subject to the approval of Successor Agency as provided in Section 5 of this Agreement.

(f) “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 Property, and shall include Building Pads “A” through “G” inclusive, as shown on the Site Map attached hereto as Exhibit “B” and incorporated herein by reference.

(g) “Building Permits” shall mean all grading and building permits required to be obtained from the City of Imperial Beach for the construction of the Improvements.

(h) “Close of Escrow” shall mean the escrow closing for the sale of the Property to Purchaser pursuant to the Purchase Agreement.

(i) “Completion” means the completion of construction of the Improvements as required by all the requirements of the Purchase Agreement, evidenced by the occurrence of all of the following:

(i) Either of the following: (a) for any Private Improvements, the issuance by the City of Imperial Beach of a certificate of occupancy; or (b) for any Public Improvements, the execution and recordation of an Acceptance and Maintenance Agreement;

(ii) 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;

(iii) 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;

(iv) as to the Public Improvements only, approval of the Public Improvements by Cal-trans, as necessary;

(v) 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

(vi) completion to the reasonable satisfaction of the Successor Agency Executive Director of development of the Property (or portion thereof within, or directly serving, the applicable Phase) in accordance with the Purchase Agreement, Exhibit “D”, and plans approved by the Successor Agency pursuant to the Purchase 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.

(j) “Construction Lender” means the maker of any Construction Loan or beneficiary of any Construction Loan Deed of Trust.

(k) “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.

(l) “Construction Loan Deed of Trust” means a deed of trust securing a Construction Loan.

(m) “Conversion” means the date upon which a Construction Loan is converted to (or refinanced with) a Permanent Loan.

(n) “Dissolution Act” means AB x1 26 which was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law and the California Health and Safety Code by 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, and as further amended by Assembly Bill No. 1585 which was signed by the Governor of California on September 29, 2012.

(o) “Entitlements” shall mean all applicable land use approvals and all conditions of approval, legally required by the City of Imperial Beach or other governmental authority as a condition of subdivision of the Property, development of the Project and construction of the Improvements in accordance with the Purchase Agreement, including, without limitation, a Map and Building Permits.

(p) “Hazardous Substance,” 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.

(q) “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 Property and Property preparation in anticipation of construction of Vertical Improvements, as provided in Exhibit “D”, Approved Plans and Entitlements for the Project, not including the Vertical Improvements.

(r) “Improvements” shall collectively refer to the commercial retail shopping center to be constructed on the Property, consisting of the Horizontal Improvements and Vertical Improvements more particularly described in Exhibit “D”, and including the Private Improvements and the Public Improvements.

(s) “Indemnified Parties” shall mean Successor Agency, City, and each of their respective elected officials, officers, representatives, agents, employees, contractors and attorneys.

(t) “Instrument Terminating Option” shall mean an instrument that is mutually acceptable, in form and substance, to the Purchaser and Successor Agency Executive Director, which shall be recorded against Property 2 upon the Phase 2 Closing.

(u) “Manager” means Sudberry Development, Inc., a California corporation, its successors and assigns.

(v) “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.

(w) “Memorandum of Option” means an instrument that is mutually acceptable, in form and substance, to Purchaser and Successor Agency Executive Director, to be recorded against Property 2 at the Phase 1 Closing.

(x) “Notice of Completion” shall have the same definition as set forth in California Civil Code section 3093.

(y) “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.

(z) “Option Agreement” shall mean an Option Agreement and Joint Escrow Instructions, that is mutually acceptable, in form and substance, to Purchaser and Successor Agency Executive Director, granting the Option to the Successor Agency.

(aa) “Parcel” shall mean each Parcel “A”, “B”, “C”, “D”, “E”, “F” or “G”. “Parcels” shall mean two or more of Parcels “A”, “B”, “C”, “D”, “E”, “F” or “G”.

(bb) “Participation Component” shall mean that component of the purchase price Purchaser is required to pay to the Successor Agency pursuant to the Payment Agreement.

(cc) “Permanent Lender” means the maker of any Permanent Loan or beneficiary of any Permanent Loan Deed of Trust.

(dd) “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.

(ee) “Permanent Loan Deed of Trust” means a deed of trust securing a Permanent Loan.

(ff) “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.

(gg) “Permitted Lender” means the holder of a Permitted Deed of Trust, including a Construction Lender or Permanent Lender.

(hh) “Permitted Transfer” means any of the following:

(i) A conveyance of a security interest in the Property, or one or more Properties or one or more Parcels in connection with any Permitted Deed of Trust and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith, provided that Purchaser shall have no authority to encumber any portion of the Property until the occurrence of the Phase 1 Closing and the Close of Escrow, and shall have no authority to encumber Property 2 or any portion of Property 2 until the occurrence of the Phase 2 Closing;

(ii) A conveyance of the Property, or one or more Parcels, to any Affiliate of 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 of Purchaser, 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; and

(v) The granting of easements, licenses, rights of entry or permits to facilitate the development of the Property in accordance with the Purchase Agreement.

Any transfer described in clauses (i) through (v) 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.

(ii) “Permitted Transferee” means the transferee of a Permitted Transfer.

(jj) “Person” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

(kk) “Phase” means either Phase 1 or Phase 2.

(ll) “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 the Purchase 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 Exhibit “D”.

(mm) “Phase 1 Closing” shall mean the point in time when all conditions precedent to the escrow closing as set forth in Section 208 of the Purchase Agreement have been satisfied or waived in writing by the party benefiting from such condition; the Map has been approved and recorded; and this Grant Deed and the Covenant Agreement 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 of the Purchase Agreement have been recorded.

(nn) “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 the Purchase 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 Exhibit “D”.

(oo) “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 the Purchase 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 of the Purchase Agreement have been recorded.

(pp) “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 the Purchase Agreement.

(qq) “Pre-existing Site Conditions” shall mean the environmental condition of the Property, including any Hazardous Substances present in, on or under the Property, as of date of the Close of Escrow.

(rr) “Private Improvements” shall mean the portion of the Improvements described in Exhibit “D” that will be developed and constructed at no cost or expense to the Successor Agency, located on the Property, and owned by Purchaser or an Assignee.

(ss) “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).

(tt) “Project Budget” means the most recently updated Project Budget and schedule of sources and uses, agreed upon by Successor Agency and the Purchaser pursuant to the Purchase Agreement.

(uu) “Property 1” shall mean the portion of the Property depicted as Property 1 on the Site Map attached as Exhibit “B”, containing Parcels “A”, “B”, “C” and “D” and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

(vv) “Property 2” shall mean the portion of the Property depicted as Property 2 in the on the Site Map attached as Exhibit “B”, containing Parcels “E”, “F” and “G” and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

(ww) “Public Improvements” shall mean the off-site publicly-owned Improvements described below and Exhibit “D” (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 of Imperial Beach to disburse, the Remaining Public Improvement Funds as provided in Section 219 of the Purchase Agreement.

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:

- (i) 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”;
 - (E) Installation of new street lights; and
 - (F) Any other Cal-Trans requirements relating to the Public Improvements;
- (ii) Moving of traffic signals and interconnection of traffic signals and construction of curbs, gutters, sidewalks and landscaping on Palm Avenue and 9th Street;
 - (iii) 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 Engineer. 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”);
 - (iv) Removal and replacement of the concrete alley at the south end of the Property to the reasonable satisfaction of the City Engineer, including the adjustment to grade and/or replacement of all utility covers in such alley. The concrete section shall be designed to support the imposed load of fire apparatus to withstand a minimum 95,000 pound vehicle load (“Alley Improvements”); and
 - (v) The existing traffic signal pole signaling left turns from Westbound Silver Strand Boulevard to Palm Avenue shall be removed and replaced to the reasonable satisfaction of the City Engineer (“New Traffic Signal”).

(xx) “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 Property or any portion thereof.

(yy) “Remaining Public Improvement Funds” shall mean \$2,159,231.57, which shall 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 the Public Improvement Disbursement Agreement.

(zz) “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 attached as Exhibit “F” and incorporated herein by this reference.

(aaa) “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 Property, as provided in Exhibit “D”, Approved Plans and Building Permits for the Project, not including the Horizontal Improvements and Public Improvements.

Exhibit “D”

Scope of Development

[behind this page]

Exhibit “E”

Acceptance and Maintenance Agreement

[behind this page]

Exhibit “F”

Method of Financing

[behind this page]

Exhibit "G"

Release of Construction Covenants

[behind this page]

ATTACHMENT NO. 10

FORM OF ENVIRONMENTAL INDEMNITY

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ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this “Indemnity”), dated as of _____, 20____, is made by SUDBERRY-PALM AVENUE LLC, a California limited liability company (“Purchaser”), whose address for purposes of giving notices is c/o Sudberry Properties, 5465 Morehouse Drive, Suite 260, San Diego, CA 92121, Attn: Colton T. Sudberry, in favor of the CITY OF IMPERIAL BEACH, CALIFORNIA, a municipal corporation, (“City”), IMPERIAL BEACH SUCCESSOR AGENCY SUCCESSOR AGENCY, (“Successor Agency”), 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”), whose address for purposes of giving notices is 825 Imperial Beach Boulevard, Imperial Beach, California 91932.

WITNESSETH

WHEREAS, Purchaser is the owner of real property in the City of Imperial Beach, California, as more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference, and the improvements thereon (collectively referred to as the “Property”);

WHEREAS, the Purchaser acquired the Property from the Successor Agency pursuant to the terms of that certain Purchase and Sale Agreement between Successor Agency and Purchaser dated as of _____, 20____ (the “Purchase Agreement”), concerning the development of the Property;

WHEREAS, the Successor Agency previously acquired the Property from the City; and

WHEREAS, the purpose of the Purchase Agreement is to effectuate the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project by providing for the disposition of the Property to Purchaser, and for Purchaser’s development and use of the Property for an approximately 46,200 square foot first class commercial/retail project (the “Project”); and

WHEREAS, Purchaser agreed to execute and deliver to the Indemnified Parties this Indemnity in order to induce the Successor Agency to agree to convey the Property to Purchaser.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual agreements hereinafter set forth, Purchaser hereby agrees with the Indemnified Parties as follows:

SECTION 1. DEFINITION

For the purpose of this Indemnity, “Hazardous Substances” shall include, without limitation, any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, 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.

SECTION 2. COVENANTS AND INDEMNITY

The following covenants and indemnities are hereby given and made by Purchaser provided, however, such covenants and indemnities shall only apply to the portion of the Property which is owned by Purchaser if Purchaser is not the owner of the entire Property:

2.1 Covenants

(a) Purchaser covenants that while Purchaser is the owner of the Property or any portion thereof, that it shall comply with any and all laws, regulations and/or orders which may be promulgated, from time to time, to the extent applicable to the Property (or the portion so owned), with respect to the discharge and/or removal of Hazardous Substances, to pay immediately when due the costs of the removal of any such Hazardous Substances in accordance with and as may be required by all applicable laws, or any other action required by law with respect to such Hazardous Substances, and to keep the Property (or the portion so owned) free of any lien imposed pursuant to any such laws, regulations or orders. Nothing herein contained shall be deemed to prohibit Purchaser from contesting the validity or amount of any costs, action or lien, nor to limit the remedies available to Purchaser in respect thereto.

(b) Purchaser covenants that the Property (or applicable portion thereof) will not, while Purchaser is the owner thereof, be used for any activities involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any Hazardous Substances, except for customary quantities used at the Property in compliance with all applicable environmental laws and commonly used in connection with the construction of a commercial/retail project, as well as the routine operation and maintenance of the Property, and customary quantities of materials which are typically used or sold by tenants of similar projects to the Project, provided such substances are used, disposed of, and stored in accordance with all applicable laws.

(c) Purchaser further agrees that, while Purchaser is the owner of the Property or any portion thereof, it shall not release or dispose of any Hazardous Substances at the Property (or the portion so owned) except in compliance in all material respects with all applicable environmental laws.

(d) The Indemnified Parties shall have the right, but not the obligation, at any time, to conduct an environmental audit of the Property at the Indemnified Parties' expense, unless Hazardous Substances in violation of applicable laws are found, then at Purchaser's sole cost and expense, and Purchaser shall cooperate in the conduct of any such environmental audit but in no event shall such audit be conducted unless the Indemnified Parties believe that such audit is warranted. Other than in an emergency, such audit shall be conducted only after prior notice has been given to Purchaser and only in the presence of a representative of Purchaser. Purchaser shall give the Indemnified Parties and their agents and employees access to the Property to remove, or otherwise mitigate against the effects of, Hazardous Substances, or Purchaser shall perform such tasks itself.

(e) Purchaser, while Purchaser is the owner of the Property or any portion thereof, shall not install, or knowingly permit to be installed, on the Property (or the portion so owned) friable asbestos or any substance containing asbestos and deemed hazardous by federal or state regulations respecting such material, and, with respect to any such material currently present in the Property, Purchaser shall promptly either (i) remove or cause to be removed any material that such regulations require to be removed or (ii) otherwise comply in all material respects with such federal and state regulations, at Purchaser's sole cost and expense. If Purchaser shall fail to so do within all applicable notice and cure periods permitted under applicable law, regulation or order, then the Indemnified Parties may do whatever is commercially reasonable to comply in all material respects with the applicable law, regulation or order, at Purchaser's sole cost and expense (as between Purchaser and the Indemnified Parties) and the costs thereof shall be added to the Obligations (as hereinafter defined) of Purchaser under this Section 2.

(f) Purchaser covenants that while Purchaser is the owner of the Property or any portion thereof, Purchaser shall immediately advise the Indemnified Parties in writing of any of the following: (i) any pending or threatened environmental claim against Purchaser or the Property (or the portion so owned) or (ii) any condition or occurrence on the Property (or the portion so owned) that (A) results in noncompliance by Purchaser with any applicable environmental law, (B) could reasonably be anticipated to cause the Property (or the portion so owned) to be subject to any restrictions on the ownership, occupancy, use or transferability of the Property under any environmental law or (C) could reasonably be anticipated to form the basis of an environmental claim against the Property (or the portion so owned) or Purchaser.

2.2 Indemnity. Purchaser shall indemnify, protect and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements) of any kind or of

any nature whatsoever (collectively, the “Obligations”) which may at any time be imposed upon, incurred by or asserted or awarded against the Indemnified Parties and arising from or out of:

(1) The presence of any Hazardous Substances on, in, under or affecting all or any portion of the Property owned by Purchaser (including Hazardous Substances known or anticipated to be present), except to the extent that such Hazardous Substances: (A) were caused by the Indemnified Parties; or (B) otherwise existed on, in, under or affecting all or any portion of the Property or any surrounding areas prior to the time Purchaser became the owner of the Property; or (C) first came to be located on, in, under or affecting all or any portion of the Property after Purchaser ceased to own the Property, or the subject portion of the Property except to the extent caused by Purchaser;

(2) The breach of any covenant made by Purchaser in Section 2.1 hereof; or

(3) The enforcement by the Indemnified Parties of any of the provisions of this Section 2.2 or the assertion by Purchaser of any defense to its obligations hereunder.

Successor Agency shall reasonably consider an environmental insurance policy to cover some or all of Purchaser’s liability under this Agreement.

2.3 Notwithstanding any other provision herein, or as otherwise allowed by law, the Indemnified Parties may recover directly from any person or entity (including Purchaser) who is responsible for:

(1) any damages, costs and expenses incurred by the Indemnified Parties as a result of the negligence of such person or entity, involving, directly or indirectly, the use, generation, treatment, storage, release or disposal of any Hazardous Substances by such person or entity;

(2) and may also recover from Purchaser any damages, costs and expenses incurred by the Indemnified Parties as a result of fraud or any criminal act or acts of Purchaser or any member, manager, partner, shareholder, officer, director or employee of Purchaser, or of any affiliate of Purchaser, relating to the use, generation, treatment, storage, release or disposal of any Hazardous Substances; and

(3) may also recover from Purchaser all court costs and attorneys’ fees reasonably incurred in enforcing or collecting upon any of the foregoing exceptions.

SECTION 3. PURCHASER’S UNCONDITIONAL OBLIGATIONS

3.1 Unconditional Obligations. Purchaser hereby agrees that the Obligations shall be paid and performed strictly in accordance with the terms of this Indemnity, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting the Purchase Agreement or affecting any of the rights of the Indemnified Parties with respect thereto. The obligations of Purchaser hereunder shall be absolute and unconditional irrespective of:

(1) The validity, regularity or enforceability of the Purchase Agreement or any other instrument or document executed or delivered in connection therewith;

(2) Any alteration, amendment, modification, release, termination or cancellation of the Purchase Agreement, or any change in any term with respect to all or any of the obligations of Purchaser contained in the Purchase Agreement; and

(3) Any waiver of, or consent to any departure from, any provision contained in the Purchase Agreement.

3.2 Continuation. This Indemnity (i) is a continuing indemnity and shall remain in full force and effect until the satisfaction in full of all of the Obligations; and (ii) shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Indemnified Parties upon the insolvency, bankruptcy or reorganization of Purchaser or otherwise, all as though such payment had not been made.

3.3 Termination. Notwithstanding the payment (and performance) in full of all of the Obligations and the payment (or performance) in full of all of Purchaser's obligations under the Purchase Agreement, this Indemnity shall not terminate if any of the following shall have occurred:

(1) Successor Agency or City has at any time or in any manner participated in the management or control of, taken possession of (whether personally, by agent or by appointment of a receiver), or taken title to the Property or any portion thereof, whether by foreclosure, deed in lieu of foreclosure, sale under power of sale, exercise of option or otherwise; or

(2) There has been a change, between the date hereof and the date on which all of the Obligations are paid and performed in full, in any Hazardous Substances laws, the effect of which may be to make a lender or mortgagee liable with respect to any of the Obligations, notwithstanding the fact that no event, circumstance or condition of the nature described in paragraph (1) above ever occurred.

SECTION 4. WAIVER

4.1 Purchaser hereby waives the following:

(1) Promptness and diligence;

(2) Notice of acceptance and notice of the incurrence of any obligation by Purchaser;

(3) Notice of any action taken by the Indemnified Parties, Purchaser or any other interested party under any agreement or instrument relating to this Indemnity;

(4) All other notices, demands and protests, and all other formalities of every kind, in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Purchaser of its Obligations hereunder;

(5) Any requirement that any one of the Indemnified Parties protect, secure, perfect or insure any security interest or lien in or on any property subject thereto;

(6) Any requirement that any one of the Indemnified Parties exhaust any right or take any action against Purchaser or any other person or collateral;

(7) Any right to require any of the Indemnified Parties to pursue any remedy in any of the Indemnified Parties's power whatsoever;

(8) To the fullest extent permitted by law, all rights and benefits under Section 2809 of the California Civil Code or any other statute or rule of law or judicial decision purporting to reduce a surety's obligation in proportion to the principal obligation;

(9) The benefit of any statute of limitations affecting the liability of Purchaser hereunder or the enforcement thereof, including, without limitation, any rights arising under Section 359.5 of the California Code of Civil Procedure; and

(10) Any defense that may arise by reason of:

(i) The incapacity, lack of authority, death or disability of, or revocation hereof by, any person or persons;

(ii) The failure of any one of the Indemnified Parties to file or enforce any claim against the estate (in probate, bankruptcy or any other proceedings) of any person or persons;

(iii) Any defense based upon an election of remedies by any of the Indemnified Parties, including, without limitation, an election to proceed by nonjudicial foreclosure or which destroys or otherwise impairs the subrogation rights of Purchaser or any other right of Purchaser to proceed against any party; or

(iv) The cessation from any cause whatsoever of the liability of Purchaser or any other person other than payment in full of the Obligations.

SECTION 5. NOTICES

Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be personally served, mailed by first-class certified mail, return receipt requested, to the address set forth in the first paragraph of this Indemnity, which address and/or notice recipient may be changed from time to time by Purchaser or Successor Agency giving notice to the other party as provided herein.

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 6. MISCELLANEOUS

6.1 Purchaser shall make any payment required to be made hereunder in lawful money of the United States of America, and in same-day funds, to Successor Agency or City, as the case may be, at their address specified in the first paragraph hereof.

6.2 No amendment of any provision of this Indemnity shall be effective unless it is in writing and executed by Purchaser and the Indemnified Parties, and no waiver of any provision of this Indemnity, and no consent to any departure by Purchaser from any provision of this Indemnity, shall be effective unless it is in writing and executed by the Indemnified Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.3 No failure on the part of the Indemnified Parties to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Indemnified Parties provided herein and in the Purchase Agreement, if applicable, are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Indemnified Parties under the Purchase Agreement, if applicable, against any party thereto are not conditional or contingent upon any attempt by the Indemnified Parties to exercise any of its rights under any other document against such party or against any other person or collateral.

6.4 Any provision of this Indemnity that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction.

6.5 This Indemnity shall (i) be binding upon Purchaser and Purchaser's successors and assigns and (ii) inure, together with all rights and remedies of the Indemnified Parties, to the benefit of the Indemnified Parties, any successors to Successor Agency's or City's interest in the Property, any other person who acquires any portion of the Property at a foreclosure sale or otherwise through the exercise of Successor Agency's or City's rights and remedies, any successors to any such person, and all directors, officers, employees and agents of all of the aforementioned parties. Without limiting the generality of clause (ii) of the immediately preceding sentence, Successor Agency and City may assign or otherwise transfer all or any portion of their respective rights and obligations under this or any other document, to any other person, and such other person shall thereupon become vested with all of the rights and obligations in respect thereof that were granted to Successor Agency and City herein or

otherwise. None of the rights or obligations of Purchaser hereunder may be assigned or otherwise transferred without the prior written consent of the Indemnified Parties.

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 or 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.

6.6 Purchaser hereby (i) irrevocably submits to the jurisdiction of any California or federal court sitting, in each instance, in San Diego County in any action or proceeding arising out of or relating to this Indemnity, (ii) waives any defense based on doctrines of venue or *forum non conveniens* or similar rules or doctrines and (iii) irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such California or federal court. Purchaser irrevocably consents to the service of any and all process which may be required or permitted in any such action or proceeding to the address specified in the first paragraph of this Indemnity, above. Purchaser agrees that a final judgment in any such action or proceeding shall be inclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

6.7 The title of this document and the captions used herein are inserted only as a matter of convenience and for reference and shall in no way define, limit or describe the scope or the intent of this Indemnity or any of the provisions hereof.

6.8 This Indemnity shall be governed by, and construed and interpreted in accordance with, the laws of the State of California applicable to contracts made and to be performed therein, except to the extent that the laws of the United States preempt the laws of the State of California.

6.9 Nothing contained in this Indemnity shall be construed to obligate the Purchaser to indemnify the Indemnified Parties or any other person or entity with respect to Hazardous Substances that existed on, in, under or affecting all or any portion of the Property or any surrounding areas prior to the time Purchaser became the owner of the Property, nor as to any Hazardous Substances that first existed on, in, under or affecting all or any portion of the Property or any surrounding areas following the date upon which Purchaser ceased to be the owner of the Property (or the relevant portion thereof) except to the extent caused by Purchaser.

IN WITNESS WHEREOF, Purchaser has duly executed this Indemnity as of the date first set forth above.

SADBERRY-PALM AVENUE LLC,
a California limited liability company

By: SADBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated: _____

By: _____
Colton T. Sudberry, President

EXHIBIT "A"

LEGAL DESCRIPTION

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ATTACHMENT NO. 11

FORM OF PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT

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PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT

(Progress Payments)

THIS PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT (this “Agreement”) is made as of _____, 20__ by and between IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (“Successor Agency”) and SUDBERRY-PALM AVENUE, LLC, a California limited liability company (“Purchaser”). 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 and Purchaser have entered into that certain Purchase and Sale Agreement dated _____, 20__, which is incorporated herein by this reference (the “Purchase Agreement”), concerning the sale to Purchaser of certain real property described in Attachment No. 2 of the Purchase Agreement (the “Site”) and its development as a commercial/retail center (the “Project”). Any capitalized term not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Purchase Agreement.

B. As a condition to the Purchase Agreement, Purchaser has agreed to design, permit, construct and install certain off-site Public Improvements (as defined in the Purchase Agreement) needed for the development of the Project, which Public Improvements are described in Recital C, below, and Successor Agency has previously expended funds (the “Disbursed Funds” described in Section 3.b., below) to commence the preparation of plans for the Public Improvements and agreed to provide additional funds (the “Remaining Public Improvement Funds” described in Section 3.b., below) to pay or reimburse Purchaser for the cost of designing, permitting, constructing and installing the Public Improvements (the “Public Improvement Costs”).

C. The Public Improvements shall consist of the design, permitting, construction and installation of the work reflected on the approved construction drawings for the Public Improvements, including without limitation, the following, all of which shall meet all applicable City standards:

1. The intersection improvements at Delaware, Palm and State Route 75 (the “Highway 75 Access Improvements”) including, without limitation, the following:
 - (a) Removal of existing median and pavement between Palm Avenue and Site entrance;

- (b) Removal of existing curb/gutter, median and pavement along southern side of Palm Avenue, between 7th Avenue and State Route 75;
 - (c) Construction of new curb/gutter, pavement and median on Palm Avenue between 7th Avenue and State Route 75;
 - (d) Installation of landscaping and irrigation and storm water treatment “garden”, 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”).

D. Purchaser acknowledges and agrees that Successor Agency’s obligation to reimburse Purchaser hereunder is and shall be a special limited obligation, payable solely from

the 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 ("Series 2010 Bond Proceeds").

NOW, THEREFORE, Successor Agency and Purchaser agree as follows:

1. Deposit into Construction Escrow Account.

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

2. Conditions Precedent.

a. Notwithstanding any provision to the contrary set forth in this Agreement, Successor Agency shall have no obligation to approve disbursement of any funds from the Construction Escrow to or for Purchaser for the design, permitting, construction and installation of the Public Improvements, except for the Initial Deposit, unless and until the conditions precedent to Public Improvement Reimbursements set forth in this Section 2 have been satisfied in full. Prior to the satisfaction of the conditions set forth in Section 2.b., below, Successor Agency shall only be obligated to approve disbursements for eligible Public Improvement Costs that are incurred in the preparation of plans for the Public Improvements and costs for Site Preparation Design Work, to the extent of and as part of the Initial Deposit, as provided in this Agreement.

As condition precedents to the disbursement from escrow of any portion of the Initial Deposit, the following shall be satisfied:

- (i) Successor Agency, Purchaser and Escrow Agent shall execute a disbursement agreement ("Disbursement Agreement") substantially in the form of or consistent with this Agreement which shall provide for disbursement of funds by the Escrow Agent for costs incurred in the design, permitting, construction and installation of the Public Improvements and the Site Preparation Design Work, upon the written approval of such disbursements by the Successor Agency Executive Director or his or her designee; which approval shall be limited to confirming that the requested funds have been expended (or costs incurred) for Public Improvement Costs or costs for Site Preparation Design Work in accordance with this Agreement; and

(ii) Assignment and Assumption Agreements.

(A) If applicable pursuant to Section 13, below, Purchaser shall have executed the Assignment(s) of Agreement and Plans and Specifications (City to Purchaser) substantially in the form attached hereto as Exhibit A and incorporated herein by reference; and

(B) 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 hereto as Exhibit B and incorporated herein by reference.

b. Not later than five (5) Business Days after the satisfaction of the following conditions, Successor Agency shall deposit the \$1,900,000 balance of the Remaining Public Improvement Funds into the Construction Escrow:

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 and costs for Site Preparation Design Work (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 or the below-referenced Public Improvement Contract. 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 the Purchase 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 the Purchase Agreement or any related instrument or agreement.

c. Promptly after the Successor Agency deposits into Escrow the funds described in paragraph 2.b., above, Purchaser shall process the first application for payment to pay for the cost of, among other things, the following:

1. 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 2.c.1, shall be deemed satisfied in full by any Bond meeting the requirements of the City of Imperial Beach for public improvements.
2. Insurance. Purchaser shall obtain and pay the premium for the Insurance Policies required by Section 309 of the Purchase 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 of Imperial Beach as additional insureds.
3. Other Costs. The Successor Agency Executive Director may, in his sole discretion (as such phrase is defined in the Purchase Agreement), 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.

3. Disbursements.

a. Successor Agency shall direct the Escrow Agent to make disbursements of the Remaining Public Improvement Funds in accordance with the executed Disbursement Agreement. Notwithstanding anything to the contrary contained in this Agreement or in the Disbursement Agreement, in the event the Construction Escrow is opened and the Purchase Agreement is terminated for any reason and/or this Agreement or the Disbursement Agreement is/are terminated in accordance with the terms hereof and/or thereof, 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 and the Construction Escrow shall be closed and, if not already terminated, this Agreement and the Disbursement Agreement shall be automatically terminated; provided, however, that Purchaser shall be reimbursed in accordance with the Public

Improvement Disbursement Agreement for eligible Public Improvement Costs and costs for Site Preparation Design Work incurred prior to the date of any such termination.

b. Subject to the conditions precedent set forth in Section 2, above, Successor Agency shall pay to or for the benefit of or reimburse Purchaser for the cost of designing, permitting, constructing and installing the Public Improvements described in Recital C, above (the "Public Improvement Costs") and costs for Site Preparation Design Work, not to exceed the amount described in this Section 3.b. Successor Agency has committed the sum of \$2,200,000 (the "Public Improvement Funds") for the Public Improvements described in Recital C, above and costs for Site Preparation Design Work. Prior to the Effective Date, Successor Agency has incurred and disbursed to Project design consultants a portion of that amount for the preparation of plans for the Public Improvements, which is estimated to be \$40,768.43 (the "Disbursed Funds"). 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 C.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 Recital C., above, in accordance with the procedures set forth in the Disbursement Agreement. Escrow Agent shall remit to Successor Agency any Excess Funds remaining after paying for all the Public Improvements listed in Recital C, above.

c. Intentionally omitted.

d. The Escrow Agent shall be authorized to disburse funds from the Construction Escrow to pay eligible Public Improvement Costs and costs for Site Preparation Design Work, not to exceed the Remaining Public Improvement Funds, as follows:

(1) Predevelopment Costs.

(i) (a) At any time after execution of the Disbursement Agreement and deposit of the Initial Deposit, upon application for payment by Purchaser approved in writing by Successor Agency in accordance with the terms of this Agreement, Escrow Agent shall disburse to Purchaser, its contractor(s) or vendors or such other person or entity to whom such payment is due, amounts for payment to Purchaser or such other payee for the cost of preparing plans and related soft costs for the Public Improvements and, subject to subsection (i)(b), below, for costs for the Site Preparation Design Work, not to exceed the Initial Deposit.

(b) Funding for Site Preparation Design Work. A portion of the Remaining Public Improvement Funds, not to exceed the sum of \$100,000, may be disbursed as reimbursement for the Site Preparation Design Work. The obligation of the Successor Agency to reimburse funds for the Site Preparation Design Work shall be included in the Disbursement Agreement. 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 Site Preparation Design Funds shall be subject to and disbursed in accordance with the Disbursement Agreement. 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.

(2) 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 the Purchase Agreement.

(3) Not later than thirty (30) days after completion of the Site Preparation Design Work and acceptance of the Public Improvements pursuant to in Section 219.g. of the Purchase Agreement, 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 the Public Improvement Funds disbursed for all Public Improvements Costs and the costs 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.

(ii) Upon satisfaction of all Conditions Precedent set forth in Section 2.b., above and application for payment by Purchaser approved in writing by Successor Agency in accordance with the terms of this Agreement, Escrow Agent shall disburse to Purchaser any portion of the Remaining Public Improvement Funds intended to reimburse Purchaser for any eligible Public Improvement Costs incurred (not including costs paid out of the Initial Deposit), not to exceed the amounts set forth for such costs in the Public Improvement Budget, as such Public Improvement Budget has been revised from time-to-time with the reasonable approval of both Purchaser and Successor Agency Executive Director, and with Purchaser having the right, at its discretion (and without consent) to move amounts designated as contingency in such Public Improvement Budget to cover amounts incurred relative to other line items in such Public Improvement Budget (each a 'Line Item') which are in excess of such Line Item amounts, and to move excess amounts in any Line Item which Purchaser determines will not be needed into the contingency Line Item.

(2) Disbursements for Public Improvement Costs. Purchaser shall not request disbursement of funds until the funds are needed to pay eligible Public Improvement Costs or costs for the Site Preparation Design Work. The amount of each disbursement request shall be consistent with the approved Public Improvement Budget and limited to the amount needed. The Successor Agency shall have the right to disapprove any request if the Successor Agency determines the request is not consistent with the Public Improvement Budget, or is for an ineligible item or is otherwise not in compliance with or inconsistent with the Purchase Agreement or this Agreement. Disbursements shall be made by the Escrow Agent upon receipt of applications for payment signed by the representative of Purchaser and approved by the Successor Agency Executive Director or his or her designee, such approval not to be unreasonably withheld or delayed. Public Improvement Funds shall be used exclusively for the payment of or reimbursement for eligible Public Improvement Costs and costs for Site Preparation Design Work, as shown in the Public Improvement Budget, as the same may be amended from time to time with the written approval of Purchaser and the Successor Agency Executive Director or his or her designee, such payment of, or reimbursement to be made only after the same have been incurred by the Purchaser.

(3) Draw Requests. Disbursements shall be made upon submission by Purchaser to Successor Agency of a written itemized statement or draw request in a form that is reasonably acceptable to the Successor Agency Executive Director or his or her designee (the "Application for Payment" or "Draw Request"), subject to the conditions set forth in this Agreement. An Application for Payment shall be submitted not more frequently than once monthly. Successor Agency shall determine in its sole discretion whether or not the conditions precedent to its obligation to disburse funds have been satisfied or whether or not, in its sole discretion, to waive any condition precedent to its obligation to disburse funds which Successor Agency determines has not been satisfied. Successor Agency shall forward any approved Draw Requests to the Escrow Agent for disbursement of the approved amounts.

(4) Description of Work. Each Application for Payment shall set forth the following: (i) a description of the work performed, material supplied and/or Public Improvement

Costs or costs for Site Preparation Design Work incurred or due for which disbursement is requested with respect to any such costs shown as a Line Item in the Public Improvement Budget; and (ii) the total amount incurred, expended and/or due for each requested Line Item, less prior disbursements.

(5) Invoices. Purchaser shall attach to the Application for Payment invoices, bills or such other appropriate documentation to evidence, document, justify and support the request, which shall be an amount within the amount of the applicable Line Item in the Public Improvement Budget.

(6) Satisfaction of Requirements. Approval of each Draw Request shall be subject to satisfaction of the requirements of this Agreement and the Purchase Agreement.

(7) Approval of Draw Request. Successor Agency shall, within fifteen (15) days after receipt of an Application for Payment containing all of the items described above, determine the amount of the Application for Payment to be approved, notify Purchaser, and the Escrow Agent, who shall disburse the approved amount, by check, to Purchaser.

(8) Disapprovals. Any item in an Application for Payment which is not specifically disapproved in writing within fifteen (15) days shall be deemed approved; provided, however, that the Purchaser's submission of any such Application for Payment 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 FIFTEEN (15) DAYS AFTER RECEIPT SHALL BE DEEMED TO CONSTITUTE THE SUCCESSOR AGENCY'S APPROVAL REQUESTED IN THIS DOCUMENT PURSUANT TO THE DISBURSEMENT AGREEMENT"**. Successor Agency may disapprove all or part of a requested draw request, but only for failure to meet the requirements hereof. In the event Successor Agency disapproves any portion of the amount requested by Purchaser in an Application for Payment (the "disapproved amount"), Successor Agency shall promptly notify the Purchaser in writing of the disapproved amount and the reason for such disapproval and shall timely process an approval with Escrow Agent for the balance of the amount of such Application for Payment.

(9) Disputes. In the event of any dispute concerning whether any item listed in an Application for Payment should be approved for payment, Successor Agency shall authorize the Escrow Agent to disburse the amount not in dispute, and shall authorize the Escrow Agent to fund any disputed amounts promptly upon resolution of the dispute. In the event Successor Agency and the Purchaser are unable to resolve any dispute concerning the appropriateness of any item for payment in an Application for Payment, Successor Agency shall not deduct the disapproved amount from the Public Improvement Reimbursement, but shall authorize the Escrow Agent to disburse the disapproved amount for other approved Public Improvement Costs in accordance with the Public Improvement Budget. Successor Agency and the Purchaser shall seek to resolve any disputes promptly and in good faith.

(10) Conditional Payments. Successor Agency shall have the right to condition any disbursement by Escrow Agent upon receipt and approval of such documentation, evidence or information that Successor Agency may reasonably request, including, but not limited to, vouchers, invoices and similar documentation.

(11) Qualifications of Contractors. All construction and other work on the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and the City of Imperial Beach. Purchaser and all contractors and subcontractors working on the Project shall have a current City of Imperial Beach Business License.

(12) Other costs. Except as expressly provided otherwise in this Agreement and the Purchase Agreement, all costs incurred in predevelopment, development and operation of the Project shall be the responsibility and obligation of Purchaser without cost or expense to Successor Agency.

(13) Source of Reimbursement Funds. Purchaser acknowledges and agrees that Successor Agency's obligation to reimburse Purchaser hereunder is and shall be a special limited obligation, payable solely from Series 2010 Bond Proceeds. Purchaser shall have no obligation to design or construct the Public Improvements to the extent the Successor Agency does not provide, or cause to be provided, the Public Improvement Funds.

4. Conduct of Public Improvement Work. Subject to the obligation of the Successor Agency to provide the Public Improvement Funds in accordance with this Agreement, Purchaser shall commence and prosecute to completion, with diligence that is reasonable under all the circumstances (including the occurrence of Force Majeure Delays), the preparation of the plans for and the permitting, construction and installation of the Public Improvements in accordance with the Purchase Agreement and all of the requirements of the Successor Agency relating to the Public Improvements.

5. Inspection of the Project. Successor Agency shall have the right to inspect the Public Improvements and the Site during construction and agrees to deliver to the Purchaser copies of any inspection reports. Inspection of the Public Improvements and the Site shall be for the sole purpose of ensuring compliance with the Purchase Agreement and this Agreement and is not to be construed as a representation by Successor Agency that there has been compliance with plans or that any work of improvement or the Site will be free of faulty materials or workmanship. The Purchaser may make or cause to be made such other independent inspections as the Purchaser may desire for its own protection.

6. Supervision of Construction. Successor Agency shall be under no obligation to perform any of the construction or installation or complete the construction or installation of the Public Improvements, or to supervise any construction or installation of the Public Improvements, and shall not be responsible for inadequate or deficient contractors, subcontractors, materials,

equipment or supplies. Successor Agency is not the agent for Purchaser, neither are Successor Agency and Purchaser partners or joint venturers with each other.

7. Compliance with Laws. Purchaser shall comply and cause its contractor(s) to comply with all applicable laws in the construction of the Public Improvements, including but not limited to laws relating to the payment of prevailing wages set forth in the California Labor Code.

8. Insurance and Indemnification.

a. Before commencing any of the Public Improvements, Purchaser shall deliver to Successor Agency and shall maintain in force until Completion the Insurance Policies required by the Purchase Agreement.

b. Purchaser shall defend, indemnify and hold harmless the Successor Agency, the City of Imperial Beach ("City), and their respective elected officials, members, officers, representatives, agents, employees, contractors and attorneys (collectively, the "Indemnified Parties") from and against any and all actions, third party claims, liabilities, damages, injuries and/or challenges arising from the design, construction and installation of the Public Improvements or arising from this Agreement, except that the foregoing defense, indemnification and hold harmless obligations shall not apply to the proportional extent that the matter giving rise to such claims, liability, damages or injuries is due to the negligence or willful misconduct of Successor Agency (or any of the Indemnified Parties). Purchaser further agrees that, if Successor Agency, in good faith, determines that its interests are not adequately protected by being provided a defense by Purchaser, such indemnification obligation shall include all fees and costs reasonably incurred in the defense of the Indemnified Parties by counsel selected by Successor Agency and City in their sole discretion. The foregoing defense and indemnification obligations shall survive the termination of this Agreement and shall continue to remain in effect after any or all of the following events: Closing, Completion and recordation of any Release of Construction Covenants.

9. Maintenance of Records. Purchaser shall retain in the County of San Diego, all books and records relating to the Public Improvements and this Agreement for a minimum of three (3) years after the recordation of any Acceptance and Maintenance Agreement for Public Improvements or Notice of Completion applicable to the construction of Public Improvements and Site Preparation Design Work, including but not limited to all contractors' and subcontractors' invoices, payroll and other documentation of work performed, supplies purchased and other expenditures for which reimbursement has been requested from Successor Agency. The Successor Agency, and any of its representatives, shall have the right of access at all reasonable times, upon reasonable notice, to any pertinent books, documents, papers or other records of the Purchaser relative to the Public Improvements and the Public Improvement Costs and the Site Preparation Design Work, in order to make audits, examinations, excerpts and transcripts.

10. Inspection and Audit Rights. Successor Agency and its designated representatives, including any independent auditors engaged by Successor Agency to audit the Project or any part

thereof, shall have the right at all reasonable times to inspect and audit the books and records of Purchaser relating in any way to the Public Improvements and Site Preparation Design Work. Purchaser shall cooperate in all respects with any such inspections and audits. Successor Agency shall give Purchaser notice of any audit findings. Purchaser shall immediately remit to Successor Agency, with interest at the rate of ten percent (10%) per annum from the date of demand any amounts for which all or any part of any disbursement was correctly found by the auditor to have been overpaid, ineligible for reimbursement or without adequate documentation. In the event the aggregate amount of any such overpayments or other improper disbursements exceeds 5% of the total Public Improvement Funds disbursed to Purchaser, Purchaser shall also remit to Successor Agency an amount equal to the independent auditor's reasonable fees and expenses.

11. Integrated Agreement. This Agreement is made for the sole benefit and protection of the Parties hereto and no other person or persons shall have any right of action or right to rely hereon, except as otherwise expressly provided herein. As this Agreement contains all the terms and conditions agreed upon between the Parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any Party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend any of the Purchase Agreement and nothing in this Agreement, and no actions by any party hereunder, shall be deemed as a modification or waiver of either Party's rights under the Purchase Agreement.

12. Termination of this Disbursement Agreement. Except for provisions of this Agreement that are intended to survive the termination of this Agreement, this Agreement shall terminate as provided in Section 3.a. of this Agreement or when the City has executed an Acceptance and Maintenance Agreement for Public Improvements, as provided in Section 219.g. of the Purchase Agreement or upon a material uncured default of Purchaser which is not cured within the time periods provided in Section 17 of the Covenant Agreement.

13. Assignment of Plans.

(a) Prior to the execution of this Agreement, the City of Imperial Beach has entered into that certain Professional Services Agreement for Traffic Engineering Services dated September 28, 2011 (the "Traffic Engineering Agreement") with Urban Systems Associates (the "Traffic Engineer"), which is incorporated herein by this reference. Prior to the execution of this Agreement, City of Imperial Beach has also entered into that certain Professional Services Agreement for Civil Engineering Consultant Services dated June 15, 2011 (the "PDC Engineering Agreement") with Project Design Consultants (the "PDC Engineer"), which is incorporated herein by this reference.

(b) Subject to this Agreement, if the Traffic Engineering Agreement and/or the PDC Engineering Agreement is still in force and effect as of the date of this Agreement, Successor Agency shall, as applicable, cause the City of Imperial Beach to assign to Purchaser all of the City of Imperial Beach's right, title, and interest in and to the Traffic Engineering Agreement and all plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Traffic Plans and

Specifications”) prepared by the Traffic Engineer for or on behalf of the City of Imperial Beach pursuant to the Traffic Engineering Agreement and Purchaser shall accept and assume such right, title, and interest, and Successor Agency shall cause the City of Imperial Beach to assign to Purchaser all of the City of Imperial Beach’s right, title, and interest in and to the PDC Engineering Agreement and all plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “ PDC Engineering Plans and Specifications”) prepared by the PDC Engineer for or on behalf of the City of Imperial Beach pursuant to the PDC Engineering Agreement and Purchaser shall accept and assume such right, title, and interest. The City of Imperial Beach’s assignment and Purchaser’s acceptance and assumption as set forth in the preceding sentence shall be completed by the City of Imperial Beach and Purchaser entering into one or two, as applicable, Assignment of Agreement and Plans and Specifications (City to Purchaser) attached hereto as Exhibit A.

14. Counterparts. This Agreement may be signed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument with the same effect as if all signatories had executed the same instrument.

15. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their heirs, personal representatives, successors, and assigns, whether such succession or assignment is voluntary, involuntary, by force of law or otherwise, except as otherwise provided in this Agreement. 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.

16. Governing Law. This Agreement has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

17. Titles and Captions. Titles or captions contained herein are inserted as a matter of conveniences and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

18. Interpretation. No provision in this Agreement is to be interpreted for or against either Party because that party or his legal representatives drafted such provision.

19. Waiver; Amendments. No breach of any provision hereof may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the parties in interest at the time of the modification.

20. Further Assurances. The Parties hereto hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

21. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or enforceable, then such provision will be deemed to be severed and deleted from the agreement as a whole and neither such provision, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Agreement.

22. Independent Advice of Counsel. The Parties hereto and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.

23. Voluntary Agreement. The Parties hereto, and each of them, further represent and declare that they carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

24. Attorneys' Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing Party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.

25. Relation to Purchase Agreement. The Parties agree that this Agreement is a material part of the Purchase Agreement and that a default under this Agreement shall be deemed to be a default under the Purchase Agreement. Subject to the notice and cure provisions of Part 5 of the Purchase Agreement, a Party in default of this Agreement shall be deemed to be in default of the Purchase Agreement.

26. Reasonableness Standard. Except as otherwise expressly provided in this Agreement, approvals (which includes both approvals and consents and words of similar meaning contained herein) required of Successor Agency or Purchaser in this Agreement shall not be unreasonably withheld, conditioned or delayed. All approvals shall be in writing.

27. Lender Requests. The Successor Agency Executive Director or his or her designee shall reasonably consider any reasonable request of any lender making a loan as to which the Property (or such portion thereof) shall act as security to the extent any such request is consistent with the terms hereof and of any other then-binding agreements executed by the parties pursuant to the

Purchase Agreement and does not diminish the rights and benefits of the Successor Agency or increase the liability and obligations of the Successor Agency.

28. Estoppel Certificates. Upon written request from Purchaser, Successor Agency shall provide, within fifteen (15) days from receipt of the written request, to Purchaser or 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 or this Agreement, the status of all matters referenced herein, and 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.

IN WITNESS WHEREOF, the Successor Agency and Purchaser have executed this Disbursement Agreement as of the date set forth above.

SUDBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a
California corporation, its managing member

Dated: _____

By: _____
Colton T. Sudberry, President

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
Agency Special Counsel

By: _____

Exhibit A

Assignment of Agreement and Plans and Specifications (City to Purchaser)

[behind this page]

**ASSIGNMENT OF AGREEMENT
AND PLANS AND SPECIFICATIONS
(City to Purchaser)**

A. FOR VALUE RECEIVED, the City of Imperial Beach (“City”), assigns to Sudberry-Palm Avenue, a California limited liability company (“Purchaser”), and Purchaser hereby accepts and assumes, all of the City’s right, title and interest in and to:

1. That certain [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT] and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “Engineering Agreement”); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “Plans and Specifications”)

prepared by [INSERT TRAFFIC ENGINEER OR PDC ENGINEER] (“Traffic Engineer” or “Engineer”), for or on behalf of City pursuant to the [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]. The Plans and Specifications, as of the date hereof, are those which City has delivered to Purchaser.

B. Notwithstanding the foregoing, in the event any of the following occurs, all rights to the [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT] and the Plans and Specifications assigned to Purchaser hereunder shall revert to and revest in the City and Purchaser shall assign and release to City all of Purchaser’s right, title, and interest in and to the [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT] and the Plans and Specifications by executing and delivering to City an “Assignment and Release” in a form mutually reasonably acceptable to the City and Purchaser and, in such event, City shall have the right, without any further consent of or consideration to Purchaser and [INSERT TRAFFIC ENGINEER OR PDC ENGINEER] to use the Plans and Specifications as the City may determine, in the City’ sole and absolute discretion:

1. that certain Purchase and Sale Agreement entered into by and between the Imperial Beach Redevelopment Agency Successor Agency (“Successor Agency”) and Purchaser dated for identification purposes as of _____, 20__ (“Purchase Agreement”) is terminated for any reason;
2. that certain Public Improvement Disbursement Agreement entered into by and between the Successor Agency and Purchaser dated as of _____, 20__ (“Public Improvement Disbursement Agreement”) is terminated for any reason;
3. that certain Disbursement Agreement (as defined in the Public Improvement Disbursement Agreement) entered into by and between the Imperial Beach Redevelopment Agency Successor Agency (“Successor Agency”),

_____, and Purchaser dated as of _____, 20____
is terminated for any reason; or

4. The Phase 1 Closing or the Phase 2 Closing fails to occur when and as required by the Purchase Agreement.

The City and Purchaser shall negotiate and agree, in good faith, upon the final form and substance of any such “Assignment and Release”.

C. Subject to Section B., this assignment (“Assignment”) constitutes a present and absolute assignment to Purchaser as of the Effective Date. City represents and warrants to Purchaser, as of the Effective Date, that, to the actual knowledge of City: (1) the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** is in full force and effect and is enforceable in accordance with its terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]**; (2) all copies of the Plans and Specifications delivered to Purchaser are complete and correct copies; and (3) City has not assigned any of its rights under the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** or with respect to the Plans and Specifications.

D. The attached Consent, executed by the **[INSERT TRAFFIC ENGINEER OR PDC ENGINEER]**, confirming that City has paid in full for the Plans and Specifications, and consenting to this Assignment, is incorporated herein by this reference

E. This Assignment shall be governed by the laws of the State of California, and the City and Purchaser consent to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys’ fees and costs.

F. The “Effective Date” of this Assignment shall be the date this Assignment is executed by City as set forth below and the **[INSERT TRAFFIC ENGINEER OR PDC ENGINEER]** has executed the Consent.

G. This Assignment shall be binding upon and inure to the benefit of the permitted successors and assigns of the City and the Purchaser. The City shall have the right (upon written notice to the Purchaser) to assign its rights under this Assignment to the Successor Agency.

[remainder of page left blank]

[signatures on following page]

IN WITNESS WHEREOF, this Assignment has been executed by the City and Purchaser.

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: _____

CONSENT

The undersigned engineer (the "Engineer") hereby consents to the Assignment of Agreement and Plans and Specifications (the "Assignment") made by the City of Imperial Beach in favor of Sudberry-Palm Avenue LLC, to which this Consent (the "Consent") is part, and acknowledges that there presently exists no unpaid claims due to the Engineer arising out of the preparation and delivery of the Plans and Specifications to the City and/or the performance of the Engineer's obligations under the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** (as defined in the Assignment).

The Engineer agrees that if pursuant to Section B. of the Assignment any of the events listed in Sections B.1. through B.4. occurs, all rights to the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** and the Plans and Specifications assigned to Purchaser thereunder shall revert to and revest in the City and Purchaser shall assign and release to City all of Purchaser's right, title, and interest in and to the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** and the Plans and Specifications by executing and delivering to City an "Assignment and Release" in a form mutually reasonably acceptable to the City and Purchaser and, in such event, City shall have the right, without any further consent of or consideration to Purchaser and **[INSERT TRAFFIC ENGINEER OR PDC ENGINEER]** to use the Plans and Specifications as the City may determine, in the City' sole and absolute discretion, in accordance with the Plans and Specifications.

Engineer warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]**. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

IN WITNESS WHEREOF, this Consent has been executed by the Engineer.

[INSERT NAME]

Date: _____

Name: _____

Title: _____

Date: _____

Name: _____

Title: _____

Engineer's address:

[INSERT ADDRESS]

Purchaser's Address:

[INSERT ADDRESS]

Exhibit B

Assignment of Architectural Agreements and Plans and Specifications (Purchaser to City)

[behind this page]

**ASSIGNMENT OF ARCHITECTURAL AGREEMENTS
AND PLANS AND SPECIFICATIONS
(Purchaser to City)**

FOR VALUE RECEIVED, the undersigned, Sudberry-Palm Avenue, a California limited liability company (“Purchaser”), assigns to the City of Imperial Beach (“City”) all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “Architectural Agreements”); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “Plans and Specifications”)

heretofore or hereafter entered into or prepared by [_____] [NOTE: insert name of applicable architect, engineer or other person or entity] (collectively, “Architect”), for or on behalf of Purchaser in connection with the construction of the “Public Improvements” (as described on Exhibit A attached hereto) by Purchaser in accordance with that certain Purchase and Sale Agreement entered into by and between the Imperial Beach Redevelopment Agency Successor Agency (“Successor Agency”) and Purchaser dated for identification purposes as of _____, 20____, as such document has been and may hereafter be amended from time to time (collectively, the “Purchase Agreement”). Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Purchase Agreement. The Plans and Specifications, as of the date hereof, are those which Purchaser has heretofore, or will hereafter deliver to City. The Architectural Agreements consist of:

- a. **[INSERT DESCRIPTION]; and**
- b. **[INSERT DESCRIPTION].**

This ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS (“Assignment”) constitutes a present and absolute assignment to City as of the Effective Date (it being understood and agreed that Purchaser may also assign the Architectural Agreements and Plans and Specifications to a “Permitted Lender” (as defined in the Purchase Agreement) but to no other party).

Purchaser represents and warrants to City, as of the Effective Date, that: (a) the Architectural Agreements are in full force and effect and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and unmodified copies; and (c) Purchaser has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications, except to any Permitted Lender.

This Assignment shall be governed by the laws of the State of California, and the Purchaser consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

The "Effective Date" of this Assignment shall be the date this Assignment is executed by Purchaser as set forth below and the Architect has executed the Architect's/Engineer's Consent.

This Assignment shall be binding upon and inure to the benefit of the permitted successors and assigns of the Purchaser and the City. The City shall have the right (upon written notice to the Purchaser) to assign its rights under this Assignment to the Successor Agency.

The attached Exhibit A and Architect's/Engineer's Consent and are incorporated by reference.

IN WITNESS WHEREOF, this Assignment has been executed by the Purchaser.

SADBERRY-PALM AVENUE LLC,
a California limited liability company

By: SADBERRY DEVELOPMENT, INC., a
California corporation, its managing
member

Dated: _____

By: _____
Colton T. Sudberry, President

Exhibit A to
Assignment of Architectural Agreements and Plans and Specifications

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, including, but not limited to, coordination with Cal-Trans and any reimbursement Cal-Trans requires;
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”).

ARCHITECT’S/ENGINEER’S CONSENT

The undersigned architect and/or engineer (collectively, the “Architect”) hereby consents to the Assignment of Architectural Agreements and Plans and Specifications (the “Assignment”) made by Sudberry-Palm Avenue, LLC, in favor of the City of Imperial Beach, to which this Architect’s/Engineer’s Consent (the “Consent”) is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to the Purchaser and/or the performance of the Architect’s obligations under the Architectural Agreements (as defined in the Assignment).

The Architect agrees that if the City elects to undertake or cause the commencement and/or completion of construction of the Public Improvements, in accordance with the Plans and Specifications, and gives the Architect written notice of such election; THEN, so long as the Architect has received, receives or continues to receive the compensation called for under the Architectural Agreements, the City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and the Architect will continue to perform its obligations under the Architectural Agreements for the benefit and account of the City in the same manner as if performed for the benefit or account of the Purchaser in the absence of the assignment.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

IN WITNESS WHEREOF, this Consent has been executed by the Architect.

[INSERT NAME]

Date: _____

Name: _____

Title: _____

Date: _____

Name: _____

Title: _____

Architect’s address:

[INSERT ADDRESS]

City’s Address:

[INSERT ADDRESS]

Schedule 1 to
Architect's Consent

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Architectural Agreements and Plans and Specifications dated as of _____, by Sudberry-Palm Avenue, LLC.

[INSERT DETAIL OF UNPAID CLAIMS]

ATTACHMENT NO. 12

FORM OF OPTION AGREEMENT

[behind this page]

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

To: _____

("Escrow Holder" and "Title Company")

Escrow No.: _____
("Escrow")

_____, 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 SADBERRY-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.

RECITALS

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 and/or to such other notice recipient 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.

SADBERRY-PALM AVENUE LLC,
a California limited liability company

By: SADBERRY 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, SADBERRY-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.

SADBERRY-PALM AVENUE LLC,
a California limited liability company

By: SADBERRY 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:

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:

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)

ATTACHMENT NO. 13

FORM OF RELEASE OF CONSTRUCTION COVENANTS

[behind this page]

OFFICIAL BUSINESS

Document entitled to free
recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

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

Release of Construction Covenants

Page 1 of 3

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 re-vest 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.

Release of Construction Covenants

Page 2 of 3

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 NO. 14

INTENTIONALLY OMITTED

ATTACHMENT NO. 15

FORM OF PAYMENT AGREEMENT

[behind this page]

**ASSIGNMENT OF AGREEMENT
AND PLANS AND SPECIFICATIONS
(City to Purchaser)**

A. FOR VALUE RECEIVED, the City of Imperial Beach (“City”), assigns to Sudberry-Palm Avenue, a California limited liability company (“Purchaser”), and Purchaser hereby accepts and assumes, all of the City’s right, title and interest in and to:

1. That certain [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT] and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “Engineering Agreement”); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “Plans and Specifications”)

prepared by [INSERT TRAFFIC ENGINEER OR PDC ENGINEER] (“Traffic Engineer” or “Engineer”), for or on behalf of City pursuant to the [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]. The Plans and Specifications, as of the date hereof, are those which City has delivered to Purchaser.

B. Notwithstanding the foregoing, in the event any of the following occurs, all rights to the [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT] and the Plans and Specifications assigned to Purchaser hereunder shall revert to and revest in the City and Purchaser shall assign and release to City all of Purchaser’s right, title, and interest in and to the [INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT] and the Plans and Specifications by executing and delivering to City an “Assignment and Release” in a form mutually reasonably acceptable to the City and Purchaser and, in such event, City shall have the right, without any further consent of or consideration to Purchaser and [INSERT TRAFFIC ENGINEER OR PDC ENGINEER] to use the Plans and Specifications as the City may determine, in the City’ sole and absolute discretion:

1. that certain Purchase and Sale Agreement entered into by and between the Imperial Beach Redevelopment Agency Successor Agency (“Successor Agency”) and Purchaser dated for identification purposes as of _____, 20__ (“Purchase Agreement”) is terminated for any reason;
2. that certain Public Improvement Disbursement Agreement entered into by and between the Successor Agency and Purchaser dated as of _____, 20__ (“Public Improvement Disbursement Agreement”) is terminated for any reason;
3. that certain Disbursement Agreement (as defined in the Public Improvement Disbursement Agreement) entered into by and between the Imperial Beach Redevelopment Agency Successor Agency (“Successor Agency”),

_____, and Purchaser dated as of _____, 20____
is terminated for any reason; or

4. The Phase 1 Closing or the Phase 2 Closing fails to occur when and as required by the Purchase Agreement.

The City and Purchaser shall negotiate and agree, in good faith, upon the final form and substance of any such “Assignment and Release”.

C. Subject to Section B., this assignment (“Assignment”) constitutes a present and absolute assignment to Purchaser as of the Effective Date. City represents and warrants to Purchaser, as of the Effective Date, that, to the actual knowledge of City: (1) the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** is in full force and effect and is enforceable in accordance with its terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]**; (2) all copies of the Plans and Specifications delivered to Purchaser are complete and correct copies; and (3) City has not assigned any of its rights under the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** or with respect to the Plans and Specifications.

D. The attached Consent, executed by the **[INSERT TRAFFIC ENGINEER OR PDC ENGINEER]**, confirming that City has paid in full for the Plans and Specifications, and consenting to this Assignment, is incorporated herein by this reference

E. This Assignment shall be governed by the laws of the State of California, and the City and Purchaser consent to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys’ fees and costs.

F. The “Effective Date” of this Assignment shall be the date this Assignment is executed by City as set forth below and the **[INSERT TRAFFIC ENGINEER OR PDC ENGINEER]** has executed the Consent.

G. This Assignment shall be binding upon and inure to the benefit of the permitted successors and assigns of the City and the Purchaser. The City shall have the right (upon written notice to the Purchaser) to assign its rights under this Assignment to the Successor Agency.

[remainder of page left blank]

[signatures on following page]

IN WITNESS WHEREOF, this Assignment has been executed by the City and Purchaser.

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: _____

CONSENT

The undersigned engineer (the “Engineer”) hereby consents to the Assignment of Agreement and Plans and Specifications (the “Assignment”) made by the City of Imperial Beach in favor of Sudberry-Palm Avenue LLC, to which this Consent (the “Consent”) is part, and acknowledges that there presently exists no unpaid claims due to the Engineer arising out of the preparation and delivery of the Plans and Specifications to the City and/or the performance of the Engineer’s obligations under the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** (as defined in the Assignment).

The Engineer agrees that if pursuant to Section B. of the Assignment any of the events listed in Sections B.1. through B.4. occurs, all rights to the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** and the Plans and Specifications assigned to Purchaser thereunder shall revert to and revest in the City and Purchaser shall assign and release to City all of Purchaser’s right, title, and interest in and to the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]** and the Plans and Specifications by executing and delivering to City an “Assignment and Release” in a form mutually reasonably acceptable to the City and Purchaser and, in such event, City shall have the right, without any further consent of or consideration to Purchaser and **[INSERT TRAFFIC ENGINEER OR PDC ENGINEER]** to use the Plans and Specifications as the City may determine, in the City’ sole and absolute discretion, in accordance with the Plans and Specifications.

Engineer warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the **[INSERT TRAFFIC ENGINEERING AGREEMENT OR PDC ENGINEERING AGREEMENT]**. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

IN WITNESS WHEREOF, this Consent has been executed by the Engineer.

[INSERT NAME]

Date: _____

Name: _____

Title: _____

Date: _____

Name: _____

Title: _____

Engineer’s address:

[INSERT ADDRESS]

Purchaser’s Address:

[INSERT ADDRESS]

**ASSIGNMENT OF ARCHITECTURAL AGREEMENTS
AND PLANS AND SPECIFICATIONS
(Purchaser to City)**

FOR VALUE RECEIVED, the undersigned, Sudberry-Palm Avenue, a California limited liability company (“Purchaser”), assigns to the City of Imperial Beach (“City”) all of its right, title and interest in and to:

1. All architectural, design, engineering and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, “Architectural Agreements”); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively “Plans and Specifications”)

heretofore or hereafter entered into or prepared by [_____] [NOTE: insert name of applicable architect, engineer or other person or entity] (collectively, “Architect”), for or on behalf of Purchaser in connection with the construction of the “Public Improvements” (as described on Exhibit A attached hereto) by Purchaser in accordance with that certain Purchase and Sale Agreement entered into by and between the Imperial Beach Redevelopment Agency Successor Agency (“Successor Agency”) and Purchaser dated for identification purposes as of _____, 20____, as such document has been and may hereafter be amended from time to time (collectively, the “Purchase Agreement”). Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Purchase Agreement. The Plans and Specifications, as of the date hereof, are those which Purchaser has heretofore, or will hereafter deliver to City. The Architectural Agreements consist of:

- a. **[INSERT DESCRIPTION]; and**
- b. **[INSERT DESCRIPTION].**

This ASSIGNMENT OF ARCHITECTURAL AGREEMENTS AND PLANS AND SPECIFICATIONS (“Assignment”) constitutes a present and absolute assignment to City as of the Effective Date (it being understood and agreed that Purchaser may also assign the Architectural Agreements and Plans and Specifications to a “Permitted Lender” (as defined in the Purchase Agreement) but to no other party).

Purchaser represents and warrants to City, as of the Effective Date, that: (a) the Architectural Agreements are in full force and effect and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Architectural Agreements; (b) all copies of the Architectural Agreements and Plans and Specifications delivered to City are complete and unmodified copies; and (c) Purchaser has not assigned any of its rights under the Architectural Agreements or with respect to the Plans and Specifications, except to any Permitted Lender.

This Assignment shall be governed by the laws of the State of California, and the Purchaser consents to the jurisdiction of any federal or state court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

The "Effective Date" of this Assignment shall be the date this Assignment is executed by Purchaser as set forth below and the Architect has executed the Architect's/Engineer's Consent.

This Assignment shall be binding upon and inure to the benefit of the permitted successors and assigns of the Purchaser and the City. The City shall have the right (upon written notice to the Purchaser) to assign its rights under this Assignment to the Successor Agency.

The attached Exhibit A and Architect's/Engineer's Consent and are incorporated by reference.

IN WITNESS WHEREOF, this Assignment has been executed by the Purchaser.

SADBERRY-PALM AVENUE LLC,
a California limited liability company

By: SADBERRY DEVELOPMENT, INC., a
California corporation, its managing
member

Dated: _____

By: _____
Colton T. Sudberry, President

Exhibit A to
Assignment of Architectural Agreements and Plans and Specifications

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, including, but not limited to, coordination with Cal-Trans and any reimbursement Cal-Trans requires;
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”).

ARCHITECT’S/ENGINEER’S CONSENT

The undersigned architect and/or engineer (collectively, the “Architect”) hereby consents to the Assignment of Architectural Agreements and Plans and Specifications (the “Assignment”) made by Sudberry-Palm Avenue, LLC, in favor of the City of Imperial Beach, to which this Architect’s/Engineer’s Consent (the “Consent”) is part, and acknowledges that there presently exists no unpaid claims due to the Architect except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to the Purchaser and/or the performance of the Architect’s obligations under the Architectural Agreements (as defined in the Assignment).

The Architect agrees that if the City elects to undertake or cause the commencement and/or completion of construction of the Public Improvements, in accordance with the Plans and Specifications, and gives the Architect written notice of such election; THEN, so long as the Architect has received, receives or continues to receive the compensation called for under the Architectural Agreements, the City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and the Architect will continue to perform its obligations under the Architectural Agreements for the benefit and account of the City in the same manner as if performed for the benefit or account of the Purchaser in the absence of the assignment.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Architectural Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

IN WITNESS WHEREOF, this Consent has been executed by the Architect.

[INSERT NAME]

Date: _____

Name: _____

Title: _____

Date: _____

Name: _____

Title: _____

Architect’s address:

[INSERT ADDRESS]

City’s Address:

[INSERT ADDRESS]

Schedule 1 to
Architect's Consent

SCHEDULE OF UNPAID CLAIMS

Schedule 1 to Assignment of Architectural Agreements and Plans and Specifications dated as of _____, by Sudberry-Palm Avenue, LLC.

[INSERT DETAIL OF UNPAID CLAIMS]

ATTACHMENT NO. 16

SUCCESSOR AGENCY DEED OF TRUST

[behind this page]

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. Addresses and/or notice recipients of Trustor, Beneficiary and/or Trustee may be changed from time to time by Trustor, Beneficiary or Trustee, as applicable, providing written notice to the other parties as provided herein.

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 of 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.

SUSBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUSBERRY DEVELOPMENT, INC., a
California corporation, its manager

Dated: _____

By: _____
Colton T. Sudberry, President

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 subcontractors 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.

ATTACHMENT NO. 17
ACCEPTANCE AND MAINTENANCE AGREEMENT

FOR PUBLIC IMPROVEMENTS

[behind this page]

ATTACHMENT NO. 17
ACCEPTANCE AND MAINTENANCE AGREEMENT

FOR PUBLIC IMPROVEMENTS

[behind this page]

OFFICIAL BUSINESS
Document entitled to fee
Recording per California Government
Code Section 27383

Recording Requested by and
When Recorded Return to:

City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, 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.

SUSBERRY-PALM AVENUE LLC,
a California limited liability company

By: SUSBERRY 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:

ATTACHMENT NO. 18

FORM OF RIGHT OF ENTRY AGREEMENT

[behind this page]

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT (“Agreement”) is made as of this _____ day of _____, 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

Notice addresses and/or notice recipients may be changed from time to time by the parties giving notice as provided herein.

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

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ATTACHMENT NO. 18

FORM OF RIGHT OF ENTRY AGREEMENT

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ATTACHMENT NO. 16

SUCCESSOR AGENCY DEED OF TRUST

[behind this page]

ATTACHMENT NO. 15

FORM OF PAYMENT AGREEMENT

[behind this page]

ATTACHMENT NO. 14

INTENTIONALLY OMITTED

ATTACHMENT NO. 13

FORM OF RELEASE OF CONSTRUCTION COVENANTS

[behind this page]

ATTACHMENT NO. 12

FORM OF OPTION AGREEMENT

[behind this page]

ATTACHMENT NO. 11

FORM OF PUBLIC IMPROVEMENT DISBURSEMENT AGREEMENT

[behind this page]

ATTACHMENT NO. 10

FORM OF ENVIRONMENTAL INDEMNITY

[behind this page]

ATTACHMENT NO. 9

FORM OF AGREEMENT CONTAINING COVENANTS

[behind this page]

ATTACHMENT NO. 8

FORM OF GRANT DEED

[behind this page]

ATTACHMENT NO. 7

TITLE REPORT

[behind this page]

DUPLICATE

Recording Requested By and
When Recorded, Mail To:

City of Imperial Beach
Attn: Gary Brown, City Manager
825 Imperial Beach Avenue
Imperial Beach, CA 93550

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON JAN 17, 2013
DOCUMENT NUMBER 2013-0036059
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 10:55 AM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ NONE

Transaction Exempt Pursuant to Revenue &
Taxation Code §11922

GOVERNMENT BUSINESS

Document Entitled to Free Recording
Pursuant to Government Code §§6103 & 27383

QUITCLAIM DEED

San Diego County APNs: 626-250-04; 626-250-05; 626-250-06; 626-250-03

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF IMPERIAL BEACH, a general law city, duly formed, validly existing and in good standing under the laws of the State of California, herein called "Grantor", hereby remises, releases, and quitclaims to the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity, duly created, validly existing and in good standing under the laws of the State of California (Part 1 (commencing with Section 33000), Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the California Health and Safety Code), herein called "Grantee", all of the Grantor's right, title and interest in the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, hereinafter called the "Property".

(1) The Grantor's interests in certain encumbrances and liens of record as to the Property are held on behalf of and for the benefit of innocent third persons and, therefore, not susceptible to the doctrine of merger with the fee interest held by Grantor and being conveyed by Grantor and shall remain in full force and effect according to their respective terms following the recording of this instrument.

(2) The Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that Grantee, such successors and such assigns, shall develop, maintain, and use the Property in conformance with the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, which was approved and adopted by ordinance of the City Council of the City of Imperial Beach (the "Redevelopment Plan").

(3) The Grantee herein covenants by and for itself, its heirs, executors, administrators, successors, assigns, transferees, 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

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account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property herein conveyed, nor shall the Grantee or any person claiming under or through it, 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.

(4) All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

Notwithstanding the paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the above paragraph.

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or

(d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the above paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph.

3. In contracts entered into by the agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the agency within any survey area of redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

(5) All conditions, covenants and restrictions contained in this Quitclaim Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

(6) The conditions contained in paragraphs (3) and (4) of this Quitclaim Deed shall remain in perpetuity, except as otherwise expressly provided herein.

(7) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and such covenants shall run in favor of

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

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

(9) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instruments between the parties to this Quitclaim Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Quitclaim Deed.

(10) The covenants contained in this Quitclaim Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except for the covenant and condition contained in paragraph 2 of this Quitclaim Deed.

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SIGNATURES ON FOLLOWING PAGE]

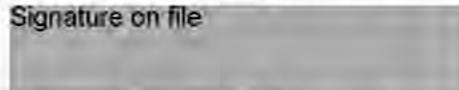
2697

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf in Imperial Beach, California by the undersigned officer hereunto duly authorized pursuant to the authority conferred by Resolution No. 2012-7243 adopted on August 15, 2012 and Resolution No. 2012-7282 adopted on December 5, 2012 by the City Council of Grantor, and Grantee has caused this instrument to be executed on its behalf in Imperial Beach, California by the undersigned officer hereunto duly authorized pursuant to the authority conferred by Resolution No. SA-12-15 adopted on August 15, 2012 by the Board of Directors of Grantee, by Resolution No. OB-12-10 adopted on August 15, 2012 by the Oversight Board of the Grantee, and by Resolution No. SA-12-19 adopted on December 5, 2012 by the Board of Directors of Grantee.

GRANTOR

Date: 12-27-12

CITY OF IMPERIAL BEACH,
a California municipal corporation

Signature on file


By: _____
Gary Brown, City Manager

ATTEST:

Signature on file


Jacqueline M. Hald, City Clerk

APPROVED AS TO FORM

Signature on file


Jennifer M. Lyon, City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the real property conveyed by this instrument to the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity, duly created, validly existing and in good standing under the laws of the State of California (Part 1 (commencing with Section 33000), Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the California Health and Safety Code), is hereby accepted by the undersigned officer on behalf of the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY pursuant to the authority conferred by Resolution No. SA-12-15 adopted on August 15, 2012 by the Board of Directors of Grantee, by Resolution No. OB-12-10 adopted on August 15, 2012 by the Oversight Board of the Grantee, and by Resolution No. SA-12-19 adopted on December 5, 2012 by the Board of Directors of Grantee, and Grantee hereby consents to recordation thereof by its duly authorized officers.

GRANTEE

IMPERIAL BEACH REDEVELOPMENT
AGENCY SUCCESSOR AGENCY,
a California public entity

Date: 12-27-12

Signature on file
By: _____
Gary Brown, Executive Director

ATTEST:

Signature on file

Jacqueline M. Hald, Secretary

APPROVED AS TO FORM

Signature on file

Jennifer M. Lyon, General Counsel

KANE, BALLMER & BERKMAN
Successor Agency Special Counsel

Signature on file

Kendall D. Berkey, Special Counsel

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ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On December 27, 2012 before me, Jacqueline M. Hald, a Notary Public, personally appeared Gary Brown, 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 Signature on file (Seal)

Handwritten signature



STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On December 27, 2012 before me, Jacqueline M. Hald, a Notary Public, personally appeared Gary Brown, 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 Signature on file (Seal)

Handwritten signature



EXHIBIT "A"

LEGAL DESCRIPTION

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

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.

2697

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

2697

**SUMMARY REPORT
REAL ESTATE APPRAISAL
OF
City of Imperial Beach Property
Proposed "Breakwater" Commercial Center Site
735-849 Palm Avenue
Imperial Beach, CA 91932
APNs: 626-250-03, 04, 05 & 06**

AS OF
September 10, 2013

PREPARED FOR
Gregory Wade
Assistant City Manager/Community Development Director
Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Blvd
Imperial Beach, CA 91932

PREPARED BY
Robert M. Backer, MAI, SRA
Robert Backer & Associates
990 Highland Drive, Suite 110B
Solana Beach, CA 92075

Robert M. Backer, MAI, SRA
Certified General Appraiser
AG 002082

appraisal of real estate

September 11, 2013

Gregory Wade
Assistant City Manager/Community Development Director
Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Blvd
Imperial Beach, CA 91932

Re: Imperial Beach Property
Proposed "Breakwater" Commercial Center Site
735-849 Palm Avenue
Imperial Beach, CA 91932

Dear Mr. Wade:

At your request, we have prepared an appraisal for the above referenced property. Please reference page 7 of this report for important information regarding the scope of research and analysis for this appraisal, including property identification, inspection, Highest and Best Use analysis and valuation methodology.

We certify that we have no present or contemplated future interest in the property beyond this estimate of value. Your attention is directed to the Limiting Conditions and Assumptions section of this report (page 5). Acceptance of this report constitutes an agreement with these conditions and assumptions. In particular, we note the following:

Hypothetical Conditions:

- The subject property was previously used as a shopping center and bank which have since been demolished. Tentative map approvals for development with new retail improvements and associated street vacations were obtained on December 14, 2011. The resolution documents are retained in the appraiser's files. There are several conditions and stipulations in the document which must be met in order to obtain final map recordation, including utilities improvement; storm drain and frontage improvement replacement; raising the site to street grade; and traffic flow and access enhancement. The first portion of this appraisal is conducted under the hypothetical condition that the site is vacant, in finished condition, with all frontage improvements, utilities and entitlements in place. The second portion of the appraisal adjusts to an as-is value by deducting the anticipated costs for the required improvements.

September 11, 2013

Page 2

Extraordinary Assumptions:

- The appraiser has relied on an offsite construction and grading cost estimate draft provided by CSI Construction (dated September 9, 2013) to derive the value of the subject as-is. A copy of the cost estimate is included in the report addenda. This appraisal is made under the extraordinary assumption that the reported costs are substantially accurate. If the anticipated development costs change in the future, this appraisal will need revision.
- The proposed project includes vacation of City-owned Streets and a portion of an alley that runs along the southern perimeter of the subject. Currently, the appraiser's calculations based on the assessor's parcel map indicates a site size of 3.91 acres *exclusive* of the City Streets that will be included in the project. The approved tentative map document (included in the report addenda) states a site size of 4.75 acres. For the purposes of this analysis, the area of 4.75 acres reflected in the resolution document is utilized.

Based on our review of national investor surveys, marketing times attributed to the sales comparables utilized in the sales comparison approach, and information gathered during the sales verification process, a reasonable exposure time for the subject property at the value reported herein is concluded at twelve to twenty four (12 - 24) months.

Based on the appraisal described in the accompanying report, subject to the Limiting Conditions and Assumptions, Extraordinary Assumptions and Hypothetical Conditions (if any), we have made the following value conclusion(s):

Imperial Beach Property Proposed "Breakwater" Commercial Center Site 735-849 Palm Avenue Imperial Beach, CA 91932	Value of the Subject – As-is: \$213,000
---	--

Respectfully submitted,

Robert M. Backer, MAI, SRA
AG002082

Kristen M. Magnussen
AG043553

September 11, 2013

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Summary of Salient Facts

Subject Property: Proposed "Breakwater" Commercial Center Site
735-849 Palm Avenue
Imperial Beach, CA 91932

Property Overview: The subject property consists of two and one-half city blocks of commercial land in Imperial Beach, California. The site is identified as Assessor's parcel numbers 626-250-03, 04, 05 & 06. The site was previously in use as a shopping center and bank before those improvements were demolished. As of the date of value of this report the site has an approved tentative map for 46,200 SF of retail space in seven buildings. The project also includes vacation of two city streets and an alley, which will bring the site size to a total of 4.75 acres (see extraordinary assumption). In order for new development to occur, the site will need to be elevated to street level as it is currently below grade; and extensive frontage, access, and utilities improvements are required. A detailed estimate of the anticipated costs is included in the report addenda.

Interest Appraised: Fee simple

Highest and Best Use As Vacant: Hold for Future Commercial or Mixed-Use Development

Highest and Best Use As Improved: The subject property is not improved.

Zoning: C-1 (commercial)

Concluded Value of the Subject As-is: \$213,000

Appraisal Specifics

Appraisal Purpose

The purpose of this appraisal is to provide an opinion of the fair market value of the subject property for the potential seller’s due diligence, asset management and disposition strategic planning.

Project Description

The subject was previously in use as a shopping center which has since been demolished. On December 14, 2011, the City approved Administrative Coastal Permit 110024, Design Review Case 110025, Site Plan Review 110026, Tentative Map 110027, and Mitigated Negative Declaration 110028 for development of a new 46,200 SF commercial/retail center named “Breakwater”. The development would include the seven new commercial buildings composed of a market, retail shops and a financial institution. The project would also include vacation of portions of City-owned Delaware and 8th Streets.

Several modifications are required in order to develop the subject property, including on- and off-site improvements such as grading; the installation of frontage improvements and perimeter utilities; and storm drain and traffic signal upgrades. Additionally, a reconfiguration of the design of the Palm Avenue/SR-75 intersection is necessary to improve traffic flow and modification of existing traffic signals as the current configuration inhibits visual and vehicular access to the site. A copy of the resolution document and cost estimate detailing the required configurations retained in the appraiser’s files.

It is important to note that the City would require any developer to install off-site public improvements along Palm Avenue/SR-75 in compliance with the Palm Avenue Commercial Corridor Master Plan which would include substantial reconfiguration of the highway/right-of-way, pedestrian improvements, intersection improvements and traffic signal improvements. Additionally, pursuant to Chapter 12.08 (Installation of Streets and Sidewalks for New Construction), Chapter 13.04 (Sewer) and Chapter 13.08 (Underground Utilities), all public rights-of-way adjacent to the property must be improved to current City standards, the sewer system must be installed/upgraded and connected to City standards and all on-site utilities serving the property must be placed underground. These improvements would necessitate significant on-site improvements including grading and fill to elevate the site to street level and other improvements necessary to prepare the site for development.

Appraisal Dates Defined

As used in this appraisal, the effective date of value is the effective date of the appraisal, either current or at a past point in time. The Date of the Appraisal is the date on which the appraisal process is completed to the point of submission of an appraisal report.

Three-Year Sale History

According to public records, APNs 626-250-04, 05 & 06 were acquired on March 19, 2009 for \$9,662,000 (doc#2009-137889) by the City of Imperial Beach Redevelopment Agency. APN 626-250-03 was acquired by the same ownership on February 13, 2009 for \$1,600,000 (doc#2009-070786). On March 10, 2011 the properties were transferred out of the previous Redevelopment Agency's ownership into the successor ownership of the City of Imperial Beach. On January 17, 2013, the City transferred the property to the Imperial Beach Redevelopment Agency Successor Agency (doc# 2013-0036059).

Current Listing/Pending Contracts

As of the date of value, the subject property is not listed for sale. On December 14, 2011, the City of Imperial Beach entered into a Development and Disposition Agreement (DDA) with a developer. Because of the required work and resulting high on and off site development costs necessary to develop the property by any applicable developer/user of the property, the purchase price for the property was determined to be nominal. This DDA was subsequently assigned to the Imperial Beach Redevelopment Agency Successor Agency on December 27, 2012. The Successor Agency owns the property and is currently in negotiations to replace and substitute the DDA with a new Purchase and Sale Agreement (PSA).

Definitions

Substitution

This appraisal principle states that when several similar or commensurate commodities, goods, or services are available, the one with the lowest price will attract the greatest demand and widest distribution. This is the primary principle upon which the cost and sales comparison approaches are based.

Fair Market Value

The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

Source: The Appraisal Institute's Dictionary of Real Estate Appraisal, 4th Edition.

A **Fee Simple** interest is defined¹ as:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Hypothetical Condition is defined² as:

A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Hypothetical conditions are contrary to known facts about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Extraordinary Assumption is defined³ as:

An assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Exposure Time is defined⁴ as:

1. The time a property remains on the market.
2. The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market. Exposure time is always presumed to occur prior to the effective date of the appraisal. The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time but also adequate, sufficient and reasonable effort. Exposure time is different for various types of real estate and value ranges and under various market conditions. (Appraisal Standards Board of The Appraisal Foundation, Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions")

¹ Appraisal Institute, The Dictionary of Real Estate Appraisal, 4th ed. (Chicago: Appraisal Institute, 2002).

² The Appraisal Foundation, USPAP 2012-2013 Edition

³ The Appraisal Foundation, USPAP 2012-2013 Edition

⁴ Ibid

3. Market value estimates imply that an adequate marketing effort and reasonable time for exposure occurred prior to the effective date of the appraisal. In the case of disposition value, the time frame allowed for marketing the property rights is somewhat limited, but the marketing effort is orderly and adequate. With liquidation value, the time frame for marketing the property rights is so severely limited that an adequate marketing program cannot be implemented. (The Report of the Appraisal Institute Special Task Force on Value Definitions qualifies exposure time in terms of the three above-mentioned values.) See also marketing time.

Limiting Conditions and Assumptions

A civil rights act passed by Congress guaranteeing individuals with disabilities equal opportunity in public accommodations, employment, transportation, government services, and telecommunications. Statutory deadlines become effective on various dates between 1990 and 1997. Robert Backer & Associates has not made a determination regarding the subject's ADA compliance or non-compliance, nor are we qualified to do so. Non-compliance could have a negative impact on value, however this has not been considered or analyzed in this appraisal.

Acceptance of and/or use of this report constitutes acceptance of the following limiting conditions and assumptions; these can only be modified by written documents executed by both parties.

This appraisal is to be used only for the purpose stated herein. While distribution of this appraisal in its entirety is at the discretion of the client, individual sections shall not be distributed; this report is intended to be used in whole and not in part.

No part of this appraisal, its value estimates or the identity of the firm or the appraiser(s) may be communicated to the public through advertising, public relations, media sales, or other media.

All files, work papers and documents developed in connection with this assignment are the property of Robert Backer and Associates. Information, estimates and opinions are verified where possible, but cannot be guaranteed. Plans provided are intended to assist the client in visualizing the property; no other use of these plans is intended or permitted.

No hidden or unapparent conditions of the property, subsoil or structure, which would make the property more or less valuable, were discovered by the appraiser(s) or made known to the appraiser(s). No responsibility is assumed for such conditions or engineering necessary to discover them. Unless otherwise stated, this appraisal assumes there is no existence of hazardous materials or conditions, in any form, on or near the subject property.

Unless stated herein, the property is assumed to be outside of areas where flood hazard insurance is mandatory. Maps used by public and private agencies to determine these

areas are limited with respect to accuracy. Due diligence has been exercised in interpreting these maps, but no responsibility is assumed for misinterpretation.

Good title, free of liens, encumbrances and special assessments is assumed. No responsibility is assumed for matters of a legal nature.

Necessary licenses, permits, consents, legislative or administrative authority from any local, state or Federal government or private entity are assumed to be in place or reasonably obtainable.

It is assumed there are no zoning violations, encroachments, easements or other restrictions which would affect the subject property, unless otherwise stated.

The appraiser(s) are not required to give testimony in Court in connection with this appraisal. If the appraisers are subpoenaed pursuant to a court order, the client agrees to pay the appraiser(s) our regular per diem rate plus expenses.

Appraisals are based on the data available at the time the assignment is completed. Amendments/modifications to appraisals based on new information made available after the appraisal was completed will be made, as soon as reasonably possible, for an additional fee.

The appraiser has relied on an offsite construction and grading cost estimate draft provided by CSI Construction (dated September 9, 2013) to derive the value of the subject as-is. A copy of the cost estimate is included in the report addenda. This appraisal is made under the extraordinary assumption that the reported costs are substantially accurate. If the anticipated development costs change in the future, this appraisal will need revision.

The proposed project includes vacation of City-owned Streets and a portion of an alley that runs along the southern perimeter of the subject. Currently, the appraiser's calculations based on the assessor's parcel map indicates a site size of 3.91 acres *exclusive* of the City Streets that will be included in the project. The approved tentative map document (included in the report addenda) states a site size of 4.75 acres. For the purposes of this analysis, the area of 4.75 acres reflected in the resolution document is utilized.

Appraisal Scope

According to the Uniform Standards of Professional Appraisal Practice, it is the appraiser's responsibility to determine the appropriate scope of work. USPAP defines the scope of work as:

The amount and type of information researched and the analysis applied in an assignment. Scope of work includes, but is not limited to, the following:

- the degree to which the property is inspected or identified;
- the extent of research into physical or economic factors that could affect the property;
- the extent of data research; and
- the type and extent of analysis applied to arrive at opinions or conclusions.

This appraisal is prepared for the Imperial Beach Redevelopment Agency Successor Agency of Imperial Beach, C/O Mr. Gregory Wade. The intended use is for the potential seller's due diligence, asset management and disposition strategic planning. This appraisal is intended for the use of the City of Imperial Beach Redevelopment Agency Successor Agency, its agents and representatives.

SCOPE OF WORK

Report Type:	This is a Summary Report as defined by Uniform Standards of Professional Appraisal Practice under Standards Rule 2-2(B). This format provides a summary of the appraisal process, subject and market data and valuation analyses.
Property Identification:	The subject has been identified using an assessor's parcel map and physical landmarks such as streets and fences.
Inspection:	A complete inspection of the subject site was made on June 22, 2012, and photographs were taken. A more recent limited inspection was conducted on September 5, 2013.
Market Area and Analysis of Market Conditions:	A limited analysis of market conditions was made. This analysis is appropriate to the appraisal problem to be solved.
Highest and Best Use Analysis:	Market conditions and relevant market data have been analyzed in the course of a complete Highest and Best Use analysis, both as vacant and as improved.
Type and Extent of the Data Researched:	The appraiser has searched the subject market area as well as other relevant market areas for similarly zoned land sales. Data and verification has been obtained from the following sources: <ul style="list-style-type: none"> • CoStar Comps

- Appraiser's files
- Loopnet.com
- Sandicor MLS
- Realquest.com
- Public records
- Local brokers

Type and Extent of
Analysis Applied:

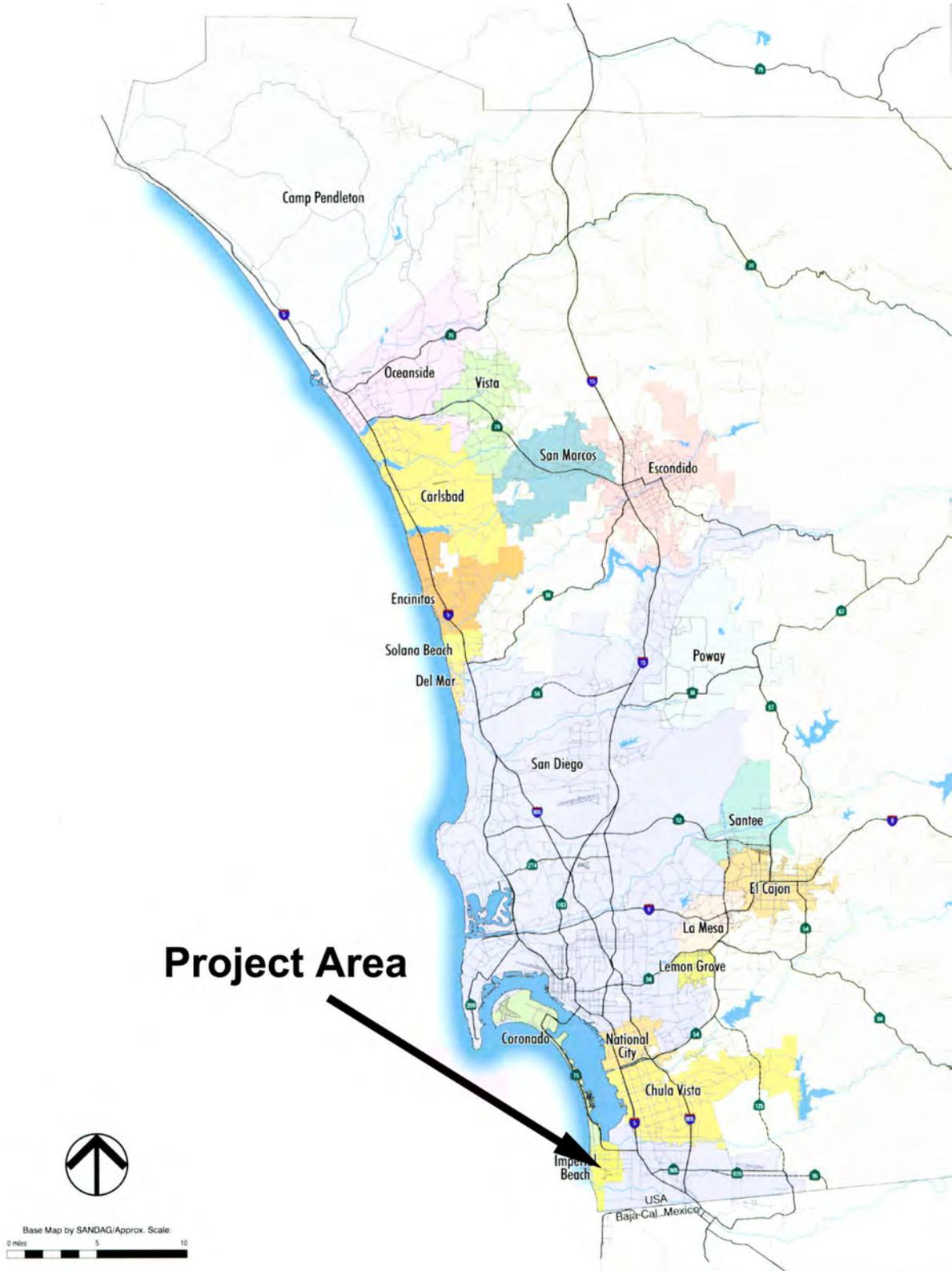
Cost Approach:	A cost approach was not applied as this approach has little relevancy to the valuation of vacant land.
Sales Comparison Approach:	A sales comparison approach was conducted as there was adequate market data to reflect market behavior for properties of this type.
Income Approach:	An income approach has not been developed because the subject does not generate income as vacant land.
Typical Client Expectations:	The extent of research and reporting conducted in course of this assignment is consistent with client expectations.
Typical Appraisal Work by Peers:	The level of research, verification and reporting conducted during the course of this assignment is similar to work produced by other appraisers specializing in appraisals for public agencies.
Professional Assistance:	No persons other than the signatories of this report assisted in the development of this appraisal.
Hypothetical Conditions:	The subject property was previously used as a shopping center and bank which have since been demolished. Tentative map approvals for development with new retail improvements and associated street vacations were obtained on December 14, 2011. The resolution documents are retained in the appraiser's files. There are several conditions and stipulations in the document which must be met in order to obtain final map recordation, including utilities improvement; storm drain and frontage improvement replacement; raising the site to street grade; and traffic flow and access enhancement. The first portion of this appraisal is conducted under the hypothetical condition that the site is vacant, in finished condition, with all frontage improvements, utilities and entitlements in place. The second portion of the appraisal adjusts to an as-is value by deducting the anticipated costs for the required improvements.

Extraordinary Assumptions:

The appraiser has relied on an offsite construction and grading cost estimate draft provided by CSI Construction (dated September 9, 2013) to derive the value of the subject as-is. A copy of the cost estimate is included in the report addenda. This appraisal is made under the extraordinary assumption that the reported costs are substantially accurate. If the anticipated development costs change in the future, this appraisal will need revision.

The proposed project includes vacation of City-owned Streets and a portion of an alley that runs along the southern perimeter of the subject. Currently, the appraiser's calculations based on the assessor's parcel map indicates a site size of 3.91 acres *exclusive* of the City Streets that will be included in the project. The approved tentative map document (included in the report addenda) states a site size of 4.75 acres. For the purposes of this analysis, the area of 4.75 acres reflected in the resolution document is utilized.

Regional Map



Regional Analysis

The following information has been compiled from various public agencies and the San Diego Chamber of Commerce.

The subject property is located in the County of San Diego. The county is considered one metropolitan region and an understanding of regional and more specific city influences on the subject property is an important part of the appraisal process. The county, 4,261 square miles, is the most southwesterly of the State of California and of the United States. The county is bounded on the south by the Mexican border, on the west by the Pacific Ocean, on the east by Imperial County, and on the north by Orange and Riverside Counties.

Environmental Forces

Environmental forces play a large part in area land use and development. The ocean to the west, Mexico to the south, mountains to the east and northeast and Camp Pendleton Marine Base to the north constrain growth. The area physically consists of a series of coastal mesas divided by canyons. Some of the canyons serve as watercourses providing drainage for the mountain areas to the east. These canyons have played a significant role in the development of municipal and neighborhood boundaries.

San Diego County Climate					
Month	High	Low	Humidity	Rainfall	Sunshine
January	65	48	63%	2.11"	72%
February	66	50	66%	1.43"	72%
March	66	52	67%	1.60"	70%
April	68	55	67%	0.78"	67%
May	69	58	70%	0.24"	59%
June	71	61	74%	0.06"	58%
July	76	65	74%	0.01"	68%
August	78	67	74%	0.11"	70%
September	77	65	72%	0.19"	69%
October	75	60	70%	0.33"	68%
November	70	54	65%	1.10"	75%
December	66	49	64%	1.36"	73%

Source: San Diego Convention and Visitors Bureau

The climate of the region is mild with warm dry summers and moderate winter rainfall. The average county wide high temperature range is 65-78 degrees with average annual rainfall of about 9 inches. The excellent climate supports a robust tourist industry and is a major force in attracting new tourist oriented businesses. The climate is clearly a major factor for immigration to the area. A negative aspect of the dry climate is the necessity to import

approximately 90% of the water needed to supply local needs.

Another important environmental feature of the San Diego region is the harbor. It is, of course, the harbor which was the impetus for the original founding settlement of the region by nonnative peoples. The excellent deep water harbor now serves as the major

west coast Navy home port and is also home to NASSCO, the only major ship building and repairing yard on the west coast. The port also handles significant cargo operations including imports from South America, Italy and Japan. Volkswagen imports cars into the United States from plants in Mexico to a facility in National City. Effort is currently being made to increase tourism activity in the harbor areas. A new 52,000 SF cruise terminal located at Broadway Pier opened in December 2010 as cruise lines such as Royal Caribbean and Carnival Cruises utilize the port (contributing an estimated \$2 million annually to the area's economy). Numerous yacht and sport fishing marinas take advantage of the harbor and its easy access to the ocean. A facelift of San Diego Bay's North Embarcadero district is underway, which will provide better access and public amenities. The plan includes construction of two new parks, Ruocco Park which opened in September 2012; and San Diego County Park, which is estimated for completion later this year. The San Diego Convention Center opened in November of 1989 (constructed by the Unified Port District at a cost of \$165 million); and the expansion to the convention center and Petco Park were both completed in 2003, contributing significantly to tourism in the area.

Social Forces

Tremendous growth occurred in San Diego County between 2000, when the total population was approximately 2.81 million and 2010, when the total population increased to 3.22 million. This increase equates to almost 15% over the decade. By the year 2050 the county population is predicted to increase to nearly 4.4 million. Approximately 60% of this growth is expected to come from births, with the remaining growth coming from immigration. With 10 Navy and Marine Corps installations throughout the county, the military has a significant influence on the region's growth with approximately 150,000 military personnel currently residing in the region. As of 2010, the San Diego metropolitan area is the 8th largest in the nation.

The social forces influencing the area are complex. The location of the region adjacent to the Mexican border and on the Pacific Rim results in significant migration into and through the area by Latin American and Asian immigrants. Less noticed but equally dramatic is the fact that between the years of 1970 and 2009, the number of foreign-born persons in California increased five-fold, from 1.8 million to almost 10 million. The greatest numbers of foreign-born persons are from Mexico, but in recent years significant numbers of immigrants have arrived from the Philippines, Vietnam, Guatemala, and Iran. The increasing multi-cultural nature of the region has many impacts. Some schools in the area have as many as 18 different native tongues represented.

San Diego has experienced a declining crime rate since the early 1990’s. In 2004, San Diego had the sixth lowest crime rate of any U.S. city with over 500,000 residents. According to the City of San Diego Mayor’s Office, the overall crime reported in 2012 was at the lowest level since 1969 (37.23 per 1,000 persons). There were a total of 5,529 violent crimes during 2012, an 8.3% increase from 2011 figures.

The metropolitan area has good transportation, an extensive freeway system, deep water port, a railroad offering freight and passenger service; trucking; air service; with local bus and trolley service systems available intra-county. Interstates 5, 805 and 15 provide excellent north-south transportation; and Interstate 8 runs from Point Loma east to Arizona for east-west travel. A myriad of intra-state freeways such as SR-78, SR-56 and SR-94 are also a part of the region’s freeway infrastructure, among others. The San Diego International Airport is the busiest single-runway airport in the U.S., serving over 18 million passengers each year. The San Diego Trolley serves downtown San Diego and many surrounding communities. The planned Mid-Coast Line will extend service to the UCSD campus (scheduled completion is December 2015) and the anticipated expansion of the Silver Line will utilize refurbished street cars for added transportation throughout the downtown area. The “Coaster” commuter line, a North County Transit District project, connecting downtown to the City of Oceanside has proved to be a success. NCTD began operations on a rail line paralleling State Route 78 with the “Sprinter”, an east west commuter line connecting the City of Escondido to the City of Oceanside in 2008. Data obtained from Site To Do Business Online reports that the average travel time to work within a 40 mile radius of downtown San Diego is roughly 25 minutes.

The region has an abundance of cultural and educational facilities including the San Diego Symphony Company, the world-famous Globe Theater and the California Center for the Performing Arts in Escondido. The University of California San Diego received 75,968 freshman applications for fall of 2012. The area also benefits from the presence of The University of San Diego, San Diego State University, Scripps Institute of Oceanography, many community colleges and the newest branch of the California State University system in San Marcos. The San Diego Unified School district consists of 113 elementary, 24 middle, and 27 high schools, not including those within the numerous surrounding school districts throughout the county. Census data released in 2009 reveals approximately 33.7% of San Diegans 25 or older hold bachelor’s degrees or higher, ranking the area as the 11th most-educated city in the United States.

Economic Forces

According to the National Bureau of Economic Research (NBER), “The Great Recession” (the greatest economic downturn since the Great Depression) began in

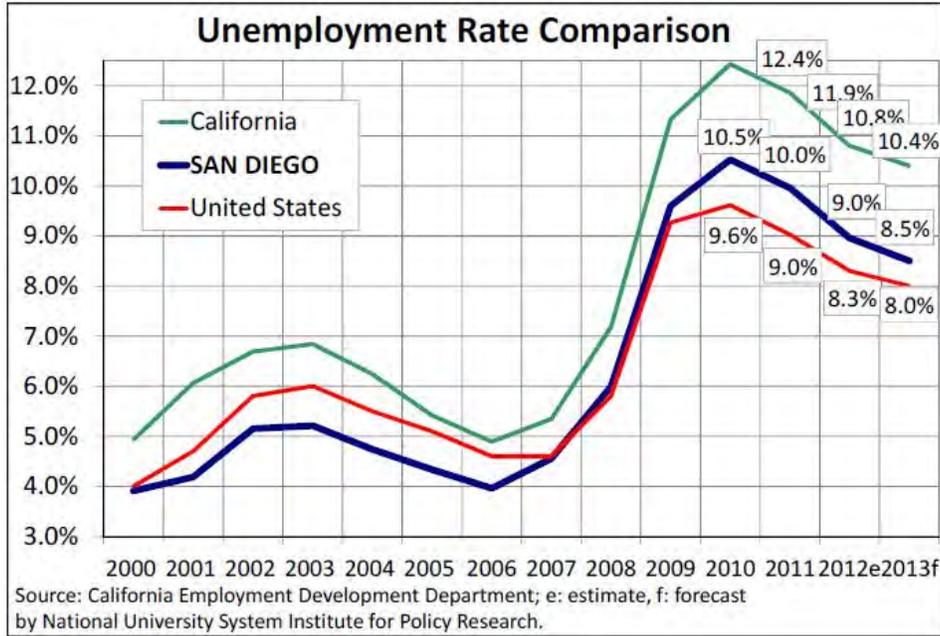
December 2007 and ended in June 2009. The deterioration of the economy began with the stalling of the residential housing market at the end of 2005, and employment and commercial/industrial real estate markets began to deteriorate in 2008. Construction, real estate sales and prices as well as employment conditions declined significantly, echoing the ongoing nation-wide recession. During 2009, the region's gross domestic product (GDP) shrank 1.3% (the first year of decline) from \$171.2 billion to \$169.0 billion. The growth reported in 2010 was only 1.5% (\$171.6 billion), but increased 4.3% to \$178.9 billion in 2011. The National University System Institute for Policy Research reports that the figure is estimated to have increased to \$185.5 billion in 2012, and forecasts another 4.3% rise to \$193.4 billion in 2013. A graph charting the comparison of annual change compared to California and the United States is displayed below:

SAN DIEGO GROSS DOMESTIC PRODUCT						
Year	GDP	Percent of		Constant Dollars*		
	(Billions)	Calif.	U.S.	S.D.	Cal.	U.S.
2001	\$114.372	8.54%	1.11%	1.3%	0.1%	1.1%
2002	\$123.180	8.88%	1.16%	5.3%	1.9%	1.8%
2003	\$130.944	8.96%	1.18%	3.9%	3.1%	2.5%
2004	\$141.549	9.02%	1.19%	5.2%	4.6%	3.5%
2005	\$151.571	8.97%	1.20%	3.9%	4.2%	3.1%
2006	\$159.813	8.89%	1.19%	2.2%	3.3%	2.7%
2007	\$166.387	8.89%	1.19%	1.3%	1.0%	1.9%
2008	\$171.174	9.01%	1.20%	1.0%	-0.4%	-0.3%
2009	\$168.976	9.24%	1.21%	-2.9%	-4.7%	-3.1%
2010	\$171.568	9.14%	1.18%	0.9%	1.7%	2.4%
2011	\$178.866	9.13%	1.19%	2.1%	2.0%	1.8%
2012e	\$185.759	9.14%	1.19%	1.7%	1.8%	1.7%
2013f	\$193.585	9.15%	1.19%	1.5%	1.6%	2.0%

*Adjusted by GDP implicit price deflator. e: estimate f: forecast
Source: Bureau of Economic Analysis, U.S. Department of Commerce;
National University System Institute for Policy Research.

Employment

The unemployment rate in San Diego County has fluctuated since 2009 but has generally remained between 8.5% and 11.0%. Since 2010, however, the unemployment rate has continued a generally declining trend as shown on the chart on the following page:



The June 2013 San Diego County unemployment rate of 7.3% is lower than the State level of 8.8% and the national level of 7.8%, as shown below.

REGIONAL & NATIONAL UNEMPLOYMENT RATES AS OF JUNE 2013*	
Jurisdiction	Unemployment Rate
Los Angeles County	10.2%
Riverside County	10.2%
Orange County	6.1%
Imperial County	23.6%
San Diego County	7.3%
State of California	8.8%
National	7.8%

Source: State of California Employment Development Department
*Not seasonally adjusted

Historically, a regional economy like San Diego has differed from the nation overall as to the timing and degree of decline during recessions. Today, some of the region’s largest employers such as Qualcomm employ 10,000 people or less. This has resulted in an economic situation which is less sensitive to downturns in one specific industry or product. San Diego remains a major defense station with a wide range of defense activities and many permanent installations oriented primarily to Navy and Marine operations related to the San Diego Harbor. The Navy has increased the number of ships

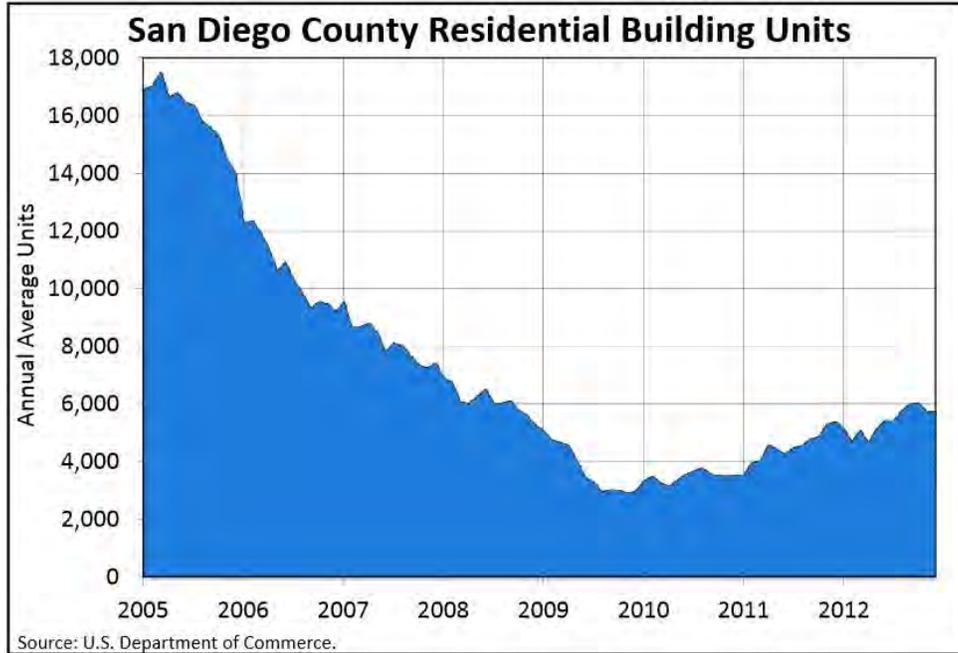
based in San Diego Harbor, closing other west coast facilities. In addition, shipbuilding and repair work has increased due to the closure of the Long Beach Naval Shipyard. The presence of the U.S. military in San Diego continues to have a major economic impact on the area, providing an estimated \$18.3 billion to the local economy annually. The convention and tourist industry is highly important to San Diego's economy, ranking third in importance behind manufacturing and the military.

According to the San Diego Convention & Visitors Bureau, San Diego attracted an estimated 32.3 million visitors in 2012, making it the third most revenue-generating industry in San Diego. Visitors in 2012 spent approximately \$8.0 billion at local businesses, higher than the 2011 figure of \$7.5 billion. The hospitality industry employed an estimated 160,000 San Diegans according to the Visitor's Bureau. Durable goods manufacturing (computers, electronics, aerospace and shipbuilding) is also bolstered by defense related spending. The California Employment Development Department reports that in San Diego County, occupations with the fastest job growth projected through 2018 are Information Security Analysts, web developers, home health aides, physical therapist aides, medical scientists and physician assistants.

Median Household Income within a 30-mile radius of downtown San Diego is reported to be \$59,138 in 2012, compared to \$50,157 for all US households. This figure is forecast to increase to \$70,163 by 2017 (according to data obtained from Site To Do Business (STDBOnline).

Residential Real Estate Market Conditions

During the recession, the entire state as well as San Diego has experienced a massive decline in residential construction. Depreciation resulted from price corrections in sub markets that appreciated rapidly without a significant reason other than low interest rates, inflated values and limited supply. After years of booming home sales and prices in the early 2000's, the residential market stalled at the end of 2005 as delinquencies and foreclosures began to rise. Residential construction permits plummeted from 9,191 in 2006 to 2,946 in 2009. In 2010, the number of permits increased 11.8% to 3,293; and again in 2011 with a total 5,220 residential building permits. Another slight increase was seen in 2012 with authorized permits approaching 6,000 units. The chart on the following page outlines the number of housing units authorized for construction since the height of the economy.



According to the MLS, county-wide detached product sales volume increased during 2012 (at 24,962 sales, up from 21,459 sales in 2011 and 21,040 during 2010). The average sales price increased from \$497,369 in 2010 and \$482,768 in 2011 to \$504,690 in 2012. First half 2013 figures indicate an average detached home price of \$567,665. This is a somewhat promising sign although many experts agree it will be many years before the residential market recovers to pre-recession levels.

Commercial Market Conditions

Throughout the earlier years of the economic downturn, San Diego’s commercial market remained strong. However, tumultuous financial events on Wall Street occurring in the latter part of 2008 (in addition to the already existing recession) gave way to a softening of commercial market conditions. Financing became scarce and expensive due to what many call the “credit crunch” and many construction plans were put on hold or cancelled.

Retail Market Conditions

Retailers were the hardest-hit in the commercial market when economic uncertainty lowered consumer confidence, and many major retail outfits laid off workers and closed their doors, raising vacancies. However, market conditions have improved slightly since the turn of the decade. CoStar Comps reports that the average NNN retail lease rate in San Diego County is \$1.78/SF during the first half of 2013, slightly higher than the average rate of \$1.76/SF reported during the first half of 2012, but lower than the \$1.82/SF average rate during the first half of 2011. However, vacancy has steadily

declined from 5.0% during the first half of 2011 to 4.5% during the first half of 2012, to 4.0% during the first half of 2013.

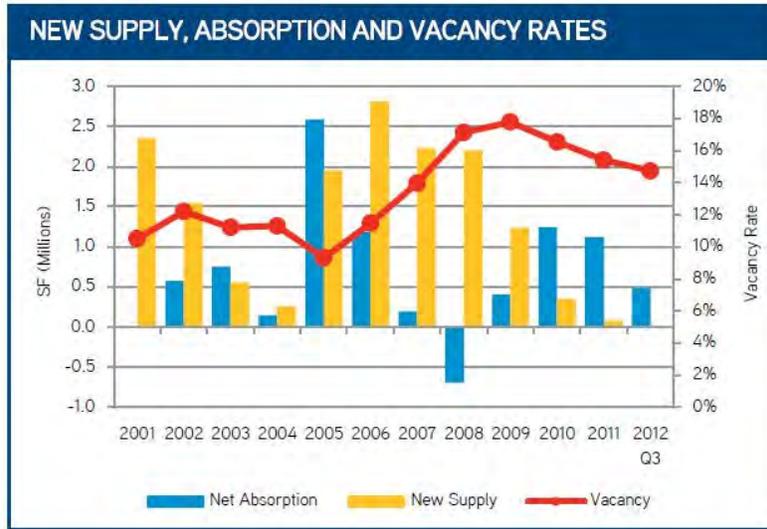
Voit Real Estate Services First Quarter 2013 Retail Market Report states that the market has continued the trend of improving vacancy, availability, and net absorption, however, further improvement hinges on continued employment gains. The combined amount of retail property sold and leased in the first quarter was 1.5 million square feet. The report confirms a decrease in the amount of available space being added per quarter, continued positive absorption and expected lease rate increases over the next year. However, demand remains soft for marginal product. PriceWaterhouseCoopers reports that during the second quarter of 2013, the national regional mall market average overall cap rate was 6.52%, down from 7.23% one year ago. The national power center market capitalization rate was reported at 6.67%, down from 7.14% one year ago. As job creation continues and consumer confidence stabilizes, the retail market should continue to recover.

While San Diego County's retail market is still feeling the recession's impact, there are a few new projects that are either under way, or expected to begin construction within the next year or two. These projects include the Civita project at the northwestern edge of Mission Valley, which will include about 900,000 SF of retail and office space; Palomar Airport Commons in Carlsbad, which will include a 185,000 SF Lowe's-anchored center; and La Costa Town Square which will include 265,000 SF of retail space anchored by Safeway. The proposed 482,000 SF Sunroad Otay Plaza development in southern San Diego County is planned to break ground in 2013. Based on these market conditions, it appears San Diego County's retail market may rebound more quickly than other overbuilt markets such as Phoenix, AZ and Las Vegas, NV.

Office Market Conditions

Office rents declined and vacancies rose during the recession; and remained sluggish in 2012. However, some positive trends were seen. According to a report issued by Cassidy Turley, during the first quarter of 2013, the San Diego office market recorded 142,152 SF of positive net absorption countywide. Of seven Class A projects under construction countywide, four projects (88.6%) are pre-leased. Average asking rent increased 2.3% over the last year after remaining nearly unchanged for six consecutive quarters. Voit Real Estate Services' First Quarter 2013 Office Market Report reports similar conditions, and states that office deliveries have consistently been around 700,000 SF a year over the past three years. This rate of construction is below the historical average and has helped to push vacancy down. The report forecasts an increase in leasing activity as many short-

term deals come up for renewal, and job creation and consumer confidence rises. The chart below outlines San Diego office market conditions since 2000:



Source: Colliers International

Price Waterhouse Coopers reported an average capitalization rate in the San Diego office market at 7.73% in the second quarter of 2013, down slightly from 7.88% during the same quarter in 2012. The chart on the following page outlines historical rental and vacancy rates in the San Diego office market since 2009:



Source: Cushman Wakefield

Although capitalization rates appear to be stabilizing and net absorption showed some promising trends during 2012, rents remain low. CoStar Comps reports an average county-wide office lease has remained between \$2.11/SF and \$2.13/SF full service since the beginning of 2007. This is down sharply from \$2.52/SF full service during the first

half of 2010. Many experts agree that San Diego's office market will likely continue at a sluggish pace over the next few years as our region and nation recovers from "The Great Recession" of 2007-2009.

Industrial Market Conditions

The industrial sector of the market declined in 2010, however, Cassidy Turley's first-quarter 2013 Industrial Market Snapshot report indicates that over the last seven quarters, (3Q11-1Q13), tenants have absorbed an average of 571,429 SF of industrial space countywide per quarter, compared to the quarterly average of 185,500 SF during 3Q09-3Q11. There is one R&D project or 31,246 SF under construction in Torrey Pines scheduled to be delivered in November, which is 100% pre-leased.

According to data obtained from CoStar, the average county-wide industrial lease rate has remained between \$0.66/SF - \$0.70/SF since the beginning of 2010 through the first half of 2013. However, vacancy shows slight improvement, dropping from 8.6% during the first half of 2010, to 8.4% during first half 2011, to 7.5% during first half 2012 and 6.9% during first half 2013. Price Waterhouse Coopers reports that during the second quarter of 2013, the national warehouse market sold at an average cap rate of 6.4% (down from 7.33% one year ago); and the Pacific Region Warehouse Market sold at an average cap rate of 6.0% (down from 6.5% one year ago). While the industrial has shown some signs of recovery from the recession, further improvements will depend heavily on improvements in the national and local economies.

Market Outlook for 2013

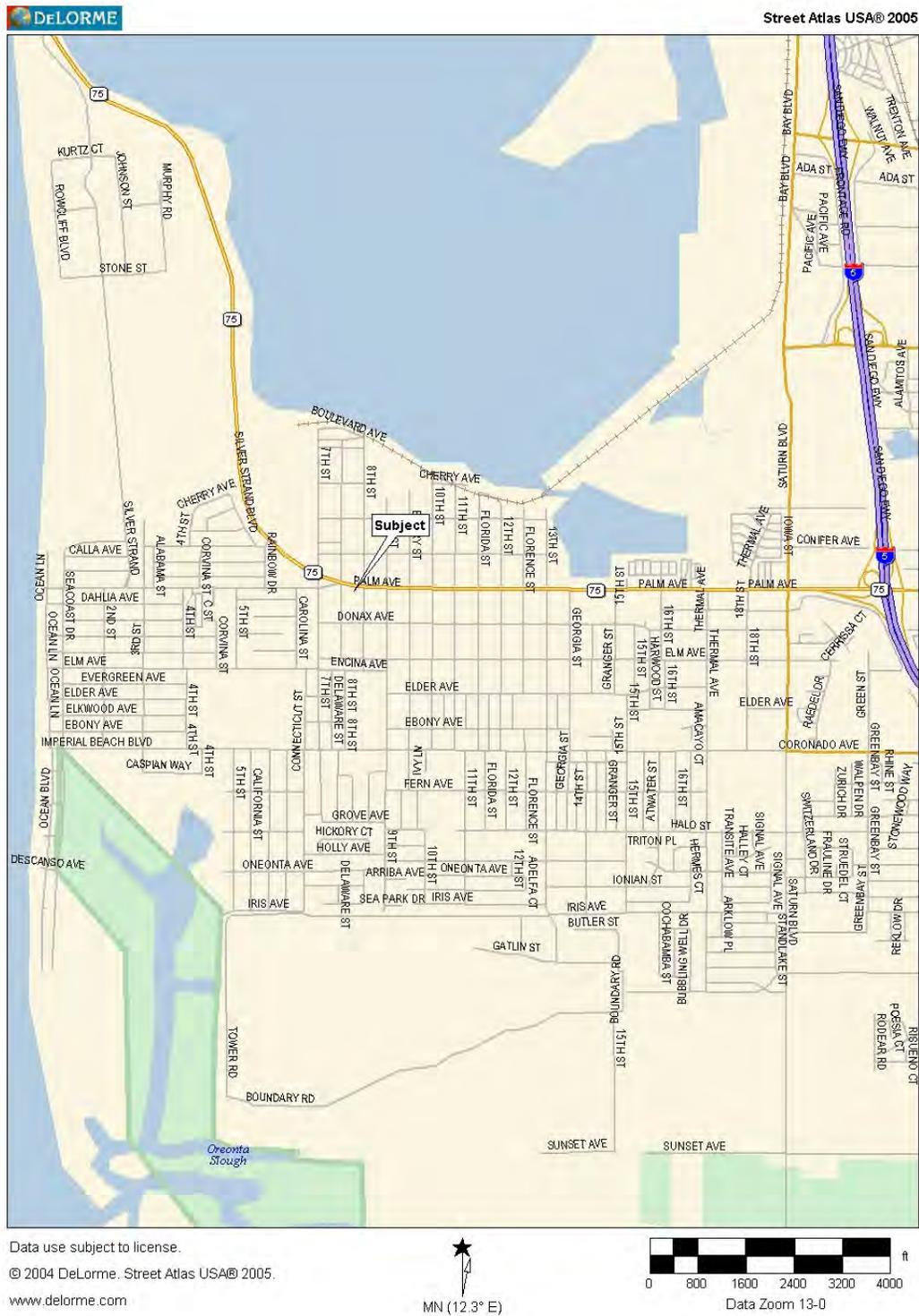
Market conditions throughout 2013 have shown some promising signs after a tepid 2012 year. However, most economic forecasters are predicting a continuing slow economic recovery to occur over the next several years. Since 2010, San Diego's economic recovery has gained some traction, experiencing gains in employment, home sales prices, and consumer spending. Despite these signs of stabilization, however, in August 2011 Standard & Poor's lowered the United States' credit rating for the first time in history. As a result, financial markets declined suddenly and significantly, signalling that full economic recovery is anything but near. As we progress through 2013, most experts predict a somewhat shaky and drawn-out economic recovery to occur over the next several years (perhaps as late as 2018 or later).

While the real estate market begins to recover from a precarious period, some analysts maintain a positive outlook for long term investment in the San Diego County area because of the region's geographic limitations and ever growing population. The superb quality of life offered by the city of San Diego and neighboring communities has

consistently enabled the region to sustain its growth as economic conditions improve. The local presence of the military, tourism, and biotechnology which contribute to the area’s resilient and entrepreneurial atmosphere. The combination of quality of life, research institutions, educational facilities and a healthy business climate has encouraged entrepreneurs to develop their ideas into profits in the area. San Diego continues to outpace the rest of the state with respect to job growth, increases in home prices, and construction activity, and many experts concur that a slow improvement in our region’s economy will occur at a slightly faster pace than most areas of the state and nation.

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Neighborhood Map



Neighborhood Description

Located just north of the Mexico Border, the City of Imperial Beach is bounded by the Pacific Ocean to the west, the City of San Diego to the east, the San Diego Bay and military facilities to the north and the Tijuana River Valley to the south. The city boundaries currently encompass a total area of 4.4 square miles. The modern history of Imperial Beach begins in 1887 with the first subdivision map in the area referred to as South San Diego Beach. The area was later developed as a resort community geared towards residents of the Imperial Valley, which gave birth to the name Imperial Beach. The history of Imperial Beach has also been influenced by the Imperial Beach Auxiliary Land Field (Ream Field) which is located immediately to the south. In the early years of the city, the civilian employment provided by the base made a significant impact on the local economy, periods when the field was decommissioned often increased the city's unemployment dramatically. Since the 1960's the field has operated as an extension of Naval Air Station North Island primarily for helicopter training.

With recent improvements in water quality due to reduced pollution from Mexico, Imperial Beach has once again become a sought after surfing community and beach resort. The Imperial Beach Pier is a popular destination for fishing and walking, it was reconstructed in 1988 after severe storm damage. The Tijuana Estuary Natural Preserve Visitor Center is also located nearby which allows visitors to the area to observe preserved coastal wetlands and the inhabiting wildlife. Border crossings to Mexico are located nearby, the San Ysidro crossing is just southeast of the city and the Otay Mesa crossing to the east is easily accessible by way of SR-905. Imperial Beach offers public school from kindergarten to High School. The nearest junior college is Southwestern College approximately 6 miles away in Chula Vista. San Diego State University is 14 miles away and the University of California San Diego is 15 miles away.

The current city general plan was updated in 2010, and is aimed at adding amenities for visitors while increasing the quality of life for residents. Many commercial zones now allow for residential development above commercial uses and maximum densities have been increased in several residential areas. Other than the beach oriented businesses, most employment in the area is located outside of the city limits in areas such as Chula Vista, Otay Mesa and National City. Otay Mesa, located approximately eight miles to the east is a continually expanding industrial and business center.

As of January 1, 2012, the estimated population for the City of Imperial Beach is 26,609, down slightly from 26,992 as of the 2000 census (the county as whole had a population increase of 11.7% within the same period.) The median household income for Imperial

Beach is estimated at \$48,925 as of January 1, 2011, an increase of 36% from \$35,949 in 1999. SANDAG reports a total of 9,863 total housing units in Imperial Beach as of January 1, 2012. As indicated on the chart below, the average home price in Imperial Beach is significantly lower than average county-wide figures. This data is based on information found on the MLS.

Average Home Prices (January 1 through September 1, 2013)	Attached	Detached
Imperial Beach	\$290,076	\$338,359
County of San Diego	\$348,461	\$581,539

Retail lease rates in Imperial Beach are also lower as compared to the county; however, Imperial Beach has encountered improving lease rates while county figures have remained virtually flat. CoStar Comps reports that average NNN retail lease rate in Imperial Beach increased steadily from \$1.20/SF NNN as of first-half 2011 to \$1.41/SF NNN as of current (third) quarter 2013 (countywide figures show relatively flat conditions with a narrow range of \$1.75/SF to \$1.83/SF NNN during the same time frame.) Retail vacancy in Imperial Beach has fluctuated from 3.2% during first-quarter 2011 to a peak of 7.3% during third-quarter 2012, then down again to 2.7% during the second and third quarters of 2013. Increasing lease rates coupled with declining vacancy rates indicate improving conditions in the Imperial Beach retail market.

Property Description

SITE

- Site Size:** The area of 4.75 acres which includes city streets as depicted on the site plan is used in this appraisal (see extraordinary assumption).
- Site Shape:** As shown on the assessor's parcel map, the site consists of two and one-half city blocks which are generally rectangular in shape. The blocks are split by Delaware and Eighth Streets which are planned to be vacated and included as part of the proposed project.
- Site Topography:** Topography on-site is mainly below street-grade and will need substantial fill and grading in order to be developed. Storm drain improvements will also be necessary. Terrain slopes gently upwards towards the west and downward to the south.
- Road Frontage/Access:** The subject property is bound on the north by Palm Avenue, on the west by 7th Street, on the east by 9th Street, and on the south by an unnamed alley. The site is split by Delaware and 8th Streets. Currently, access to the property is challenging to westbound Palm Avenue traffic which must make a U-turn in order to enter the property. The proposed project includes significant reconfiguration for access enhancement as shown in the resolution document included in the report addenda. The sales comparison approach *as-if vacant, entitled, and finished with all frontage improvements and utilities* values the property as-if access is adequate.
- Utilities:** Water is supplied by a private water company. Sewer service is provided by the City. Electricity and gas is provided by San Diego Gas and Electric. Telecommunications are available from a variety of service providers. Utilities extension is required in order to develop the site. The first portion of this appraisal values the site as-if all utilities are adequately stubbed at the property line.
- Site Improvements:** The previously existing site improvements have been removed and/or demolished. This appraisal first values the subject under the hypothetical condition that the site is finished at grade with all frontage improvements such as curbs, gutters and sidewalks; that value is then adjusted by the cost to achieve that condition.
- Flood Zone:** The subject is located in an area mapped by the Federal Emergency Management Agency (FEMA). The subject is not located in flood hazard zone.

FEMA Map Number: 060-2912153F

FEMA Map Date: 6/19/1997
FEMA Zone Classification: X

**Easements/
Encroachments:** A title report has been provided to the appraiser from Chicago Title Company (order no. 880026434-P05); and Stewart Title of California (order no. 29735). Several of the items pertain to taxes, assessments, trust deeds and utilities and have little relevance to this appraisal. The title report contains these additional items:

- An easement for water pipe line and incidental purposes over and across the NW ¼ of the NW ¼ of section 29 was granted to FD Warner and later passed to Hobart Homes, Inc. The recording date and exact location of the easement is not disclosed on the title report.
- Right of public use for public street purposes within the boundaries of all the streets and alleys was filed in the county recorder's office July 29, 1908.
- An easement for road purposes and rights incidental was granted to Davies Motors, Inc. on January 17, 1949 in book 3081, page 189. This easement affects the northerly 40 feet of that portion of the NW ¼ of the NW ¼ of section 29.
- A sewer pipeline incidental easement was granted to the Imperial Beach Sanitary District; recorded on March 11, 1951 in book 4095, page 353; and affects the south 10 feet of the property west of the west line of 8th Street.
- An easement for incidental public road purposes was granted to the County of San Diego on August 9, 1951, book 4198, page 174. This easement affects the area over and across the south 20 feet of the NW ¼ of the NW ¼ of section 29. This easement also contains the privilege and right to extend drainage structures and excavation and embankment slopes beyond the limits of this right-of-way where required for construction and maintenance.
- An easement for ingress and egress road purposes was recorded July 30, 1953 in book 4938, page 199 of official records; the area affected is not disclosed in the title report.
- An "underground agreement" was made by and between the City of Imperial Beach and Sam Dimenstein; recorded November 18, 1981 as file no. 81-364713 of official records. The full particulars of this agreement are not disclosed in the title report.
- A covenant was recorded March 19th, 1952 stating that no one is to build in the front yard setback area described as the distant 140 feet from the center line of Palm Avenue.
- An easement for public highway was granted to the County of San Diego on August 9, 1951 (book 4198, page 173 of Official Records). This easement encumbers the south 20

feet of the parcel which is currently utilized as an unnamed alley.

- An easement for water pipe line and incidental purposes was granted to F. O. Warner on October 7, 1925 in Book 1109 page 212 of Deeds.
- A grant deed recorded on February 7, 1952 states that no structure shall be erected within 140 feet of the centerline of Palm Avenue (book 4457 page 294 of Official Records)

None of the above items are considered to impact the value of the subject property at its appraised Highest and Best Use.

Owner of Record: City of Imperial Beach Redevelopment Agency Successor Agency

Legal Description: See report addenda

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Assessor's Parcel Map



*Note – Portions of Delaware and 8th Streets adjacent to the subject are planned for vacation of public use, and will be included as part of the proposed project as depicted on the aerial photograph and site plan shown on the following pages.

Aerial Photograph



*Parcel boundaries are approximate

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Site Plan



Subject Photographs



Subject Site – Facing Northeast from Southern Perimeter



Unnamed Alley Along Southern Perimeter of Property



Frontage Along Ninth Street – Facing South



Frontage Along Palm Avenue – Facing West



Southwest Corner of Property Facing Northeast



View of Subject From Across Delaware Street – Facing East



Frontage Along Delaware Street – Facing South

Assessment & Taxes

The subject property is owned by a public agency and is therefore not assessed. When the property is in private ownership, the tax rate is 1.14453% of assessed value for the tax bill year 2012-2013.

Assessment Analysis

State of California Proposition 13 was implemented in 1978, which provides that the maximum amount of any real property tax shall not exceed 1% of the full cash value of such property, plus any interest and redemption charges on any indebtedness approved by the voters. Under Proposition 13, real property is reappraised only upon a change of ownership, typically at or near the sale price, or if there is new construction. Except for these two instances, the assessed valuation cannot be increased by more than a 2% inflation factor annually. Because of these limitations, there is not necessarily a correlation between assessed value and current market value.

Zoning Analysis

District:	C-1 (General Commercial)
Applicable Permitted Uses:	<ul style="list-style-type: none"> • Stores, shops and offices • Restaurants • Banks • Personal service enterprises • Hotels/motels • Residential dwelling units above the first floor at a maximum density of 1DU per 1,000 SF of lot area with approval of conditional use permit • A variety of other businesses/establishments are allowed with a conditional use permit only
Development Standards:	
Minimum Lot Size:	3,000 square feet
Minimum Road Frontage:	30 feet
Front Setback:	0 feet
Side Setback:	0 feet
Rear Setback:	0 feet
Maximum Building Height:	4 stories or 40 feet
Parking:	As outlined in Chapter 19.48.051 of the City of Imperial Beach Municipal Code, centers with two or more commercial uses are required to have one parking space per 250 SF of net floor area plus one space per two employees.

General Plan/Local Coastal Program Analysis

The Imperial Beach General Plan was updated in October 2010 and designates the subject as C-1 “General Commercial (4 stories)” Coastal Plan L-6 Land Use Element which is consistent with the underlying zoning. The resolution included in the report addenda states that the subject’s proposed plans conform to current zoning. Several amendments are currently proposed for the subject property’s area. The amendments would apply a C/MU-1 General Plan/Zone designation to the subject property. The following text is excerpted from the General Plan document:

“The General Commercial land use designation provides for land to meet the local demand for commercial goods and services, as opposed to the goods and services required primarily by the tourist population. It is intended that the dominant type of commercial activity in this designation will be 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 square feet of land. Discretionary permit review by the City shall be required for such residential use.”

Highest and Best Use

Highest and best use may be defined as

the reasonably probable and legal use of vacant land or improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.⁵

- **Permissible Use.** What uses are permitted by zoning and other legal restrictions?
- **Possible Use.** To what use is the site physically adaptable?
- **Feasible Use.** Which possible and permissible use will produce any net return to the owner of the site?
- **Maximally Productive.** Among the feasible uses which use will produce the highest net return, (i.e., the highest present worth)?

Highest and Best Use As Vacant

Imperial Beach's C-1 zoning designation allows for a wide variety of uses defined as commercial. Development of community- and neighborhood-serving retail/office uses is permitted by right. Residential dwelling uses may be permitted above the first floor with a discretionary permit review. Development of a multi-tenant commercial or mixed-use center on the subject property is legally permissible.

The subject property has sufficient area to support a multi-tenant or mixed-use commercial center. However, much of the site is below street level, and the site will need to be elevated in order for development to occur. Additionally, access to the subject is insufficient. The physical limitations of the site are outlined in the cost estimate included in the report addenda, and the costs to overcome these limitations is adjusted for and reflected in the value reported herein. If the site is elevated and access enhancements are made, development of a multi-tenant commercial or mixed-use center in conformance with Imperial Beach's C-1 zoning designation is physically possible.

New commercial development has remained slow in the subject area. Retail vacancies have lowered and lease rates have increased slightly. While the San Diego County retail market has shown some recent signs of possible recovery, market conditions are still soft. Based on market conditions it is probably not financially feasible to develop the property at this time, but should be in the relatively near future as the economy continues to improve.

Future development of the subject property with a multi-tenant commercial or mixed-use center under the guidelines of the C-1 zone is the legally permissible, physically possible,

⁵ *The Appraisal of Real Estate* 11th Edition, Page 297, Appraisal Institute

financially feasible and most productive use of the subject property. The Highest and Best Use as Vacant of the subject property is to hold for future development with a multi-tenant commercial center.

Highest and Best Use As Improved

The subject is not improved.

Valuation Methodology

Three basic approaches may be used to arrive at an estimate of market value. They are:

- The Cost Approach
- The Income Approach
- The Sales Comparison Approach

This appraisal includes the following:

- **Cost Approach:** This approach has been considered, however it has not been developed because this approach has little relevancy in the valuation of vacant land.
- **Sales Comparison Approach:** This approach is applicable, necessary and has been fully developed to determine a value as-if vacant, entitled and finished with all frontage improvements in place. Then, an as-is value is derived by deducting anticipated costs to achieve this condition.
- **Income Approach:** The subject property does not generate income as vacant land and therefore this approach is not relevant.

Land Value – As-if Vacant, Entitled and Finished with Frontage Improvements and Utilities

The subject's land value as-if vacant, entitled and finished at street grade with frontage improvements and utilities has been developed via the sales comparison approach. We have researched and analyzed nine comparables for analysis. These comparables are detailed on the following page, followed by a location map, analysis grid, analysis narrative and value conclusion. Imperial Beach is largely built out. Therefore, it was necessary to expand the data search to other competitive neighborhoods. Additionally, due to lack of recent market activity, the data search for closed sales was extended back two years. Because of the sparse data, an analysis of active commercial land listings is included following the closed sales analysis.

Land Comparable 1



Transaction			
Property Type	Land - Commercial	Date	2/21/13
Address	980-986 Broadway	Price	\$3,005,000
City	Chula Vista	Price Per Land SF	\$27.59
State	CA	Financing	Cash
Zip	91911	Property Rights	Fee simple
Grantor	Elizabeth S Del Pozo	Days on Market	132
Grantee	Nikki Properties LLC	Verification Source	CoStar Comps, public records, Rex Huffman (listing broker)

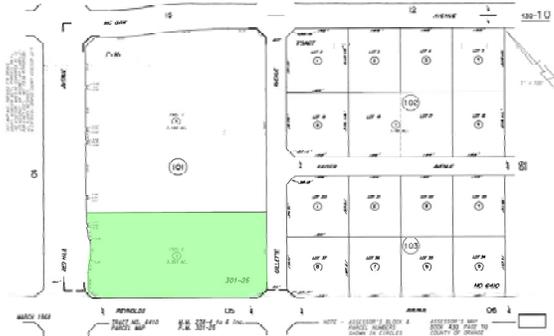
APN: 618-010-17

Site			
Land SF	108,900	Topography	Mostly level
Access	Corner	Zoning	CCP
Road Frontage	294' on Broadway; 370' on Moss Street	Flood Zone	None
Shape	Rectangular	Entitlements	None
Utilities	All available and connected	Condition	~25% previously developed; ~75% raw

Improvements			
Improvements	Retail building	Year Built	Public records do not indicate
GBA	3,490	Frontage Improvements	Curb, gutter, sidewalk

Comments
This property was improved with a 3,490 SF building that was leased on a month-to-month basis. The buyer intends to redevelop the property, however, no approvals were in place at time of sale. This was an arms-length transaction according to the broker.

Land Comparable 2



Transaction			
Property Type	Land - Commercial	Date	11/15/12
Address	17330 Red Hill Avenue	Price	\$4,533,500
City	Irvine	Price Per Land SF	\$29.65
State	CA	Financing	Cash
Zip	92614	Property Rights	Fee simple
Grantor	Bixbybit-Inwood Park II LLC	Days on Market	150
Grantee	Barto-Patel LLC	Verification Source	CoStar Comps, public records, John Collins (buyer's broker)
APN:	430-101-03		
Site			
Land SF	152,900	Topography	Mostly level
Access	Corner	Zoning	IBC Mixed Use
Road Frontage	250' on Red Hill Avenue & Gillette Avenue; 477' on Reynolds Avenue	Flood Zone	None
Shape	Roughly rectangular	Entitlements	CUP needed for hotel development
Utilities	All available	Condition	Raw
Improvements			
Improvements	Vacant	Year Built	NA-vacant
GBA	NA-vacant	Frontage Improvements	Curb, gutter, sidewalk
Comments			
The buyer intends to construct a hotel which requires a conditional use permit. However, this use was a "preferred use" by the City (according to the broker) and no impediments were anticipated.			

Land Comparable 3



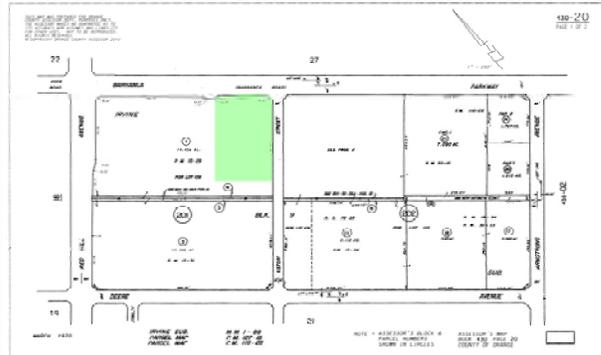
Transaction			
Property Type	Land - Commercial	Date	10/22/12
Address	Muirlands Blvd	Price	\$4,100,000
City	Irvine	Price Per Land SF	\$23.36
State	CA	Financing	Seller-typical
Zip	92618	Property Rights	Fee simple
Grantor	Shepherd of the Hills Church of Laguna Niguel	Days on Market	61
Grantee	NHIF Holdings LLC	Verification Source	CoStar Comps, public records, Brian Booth (listing broker)
APN:	590-031-03		

Site			
Land SF	175,547	Topography	Level to gentle slopes
Access	Corner	Zoning	4.2 (Community Commercial)
Road Frontage	324' on Muirlands Blvd; 340' on Mason; 625' on Marconi	Flood Zone	None
Shape	Irregular	Entitlements	Buyers obtained preliminary site plan
Utilities	All available	Condition	Raw

Improvements			
Improvements	Vacant	Year Built	NA-vacant
GBA	NA-vacant	Frontage Improvements	Curb, paving

Comments
This property was sold arms-length and the buyer obtained a preliminary site plan prior to close of escrow. The land was in raw condition with curbs, but no sidewalk improvements.

Land Comparable 4



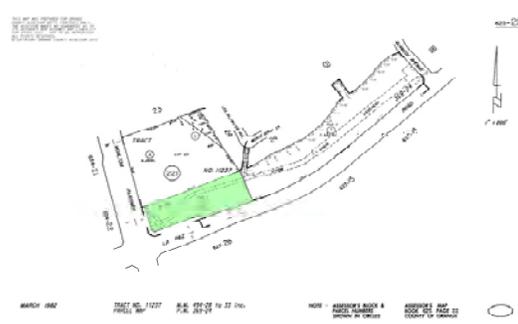
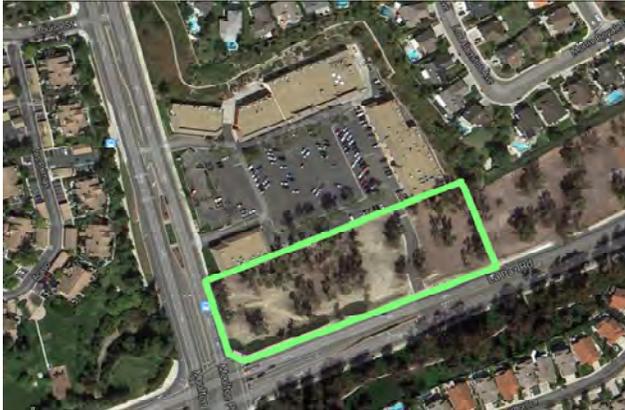
Transaction			
Property Type	Land - Commercial	Date	9/21/12
Address	1600 Barranca Parkway	Price	\$4,635,000
City	Irvine	Price Per Land SF	\$30.00
State	CA	Financing	Cash
Zip	92606	Property Rights	Fee simple
Grantor	Graphic Packaging International Inc.	Days on Market	931
Grantee	Braille Institute of America Inc.	Verification Source	CoStar Comps, public records, Jeff Chiate (listing broker)
APN:	430-201-01		

Site			
Land SF	154,500	Topography	Mostly level
Access	Corner	Zoning	IBC Mixed Use
Road Frontage	390' on Barranca Parkway	Flood Zone	None
Shape	Rectangular	Entitlements	None
Utilities	All available	Condition	Finished

Improvements			
Improvements	Vacant	Year Built	NA-vacant
GBA	NA-vacant	Frontage Improvements	Curb, gutter, sidewalk

Comments
The broker stated that there was a road dedication prior to sale, and the negotiated price was based on \$30/SF of net land. The land was unentitled but in finished condition. There were no unusual conditions of sale.

Land Comparable 5



Transaction			
Property Type	Land - Commercial	Date	9/13/12
Address	26564 Moulton Parkway	Price	\$2,750,677
City	Laguna Hills	Price Per Land SF	\$27.18
State	CA	Financing	Cash
Zip	92653	Property Rights	Fee simple
Grantor	City of Laguna Hills	Days on Market	Unknown
Grantee	Moulton La Paz LLC	Verification Source	CoStar Comps, public records, David Chantarangsu (listing broker)
APN:	625-221-03		
Site			
Land SF	101,190	Topography	Mostly level
Access	Corner	Zoning	CC "Community Commercial"
Road Frontage	~500' on La Paz Road; ~175' on Moulton Parkway	Flood Zone	None
Shape	Roughly rectangular	Entitlements	Buyer obtained prior to COE
Utilities	All available	Condition	Mainly raw
Improvements			
Improvements	Vacant	Year Built	NA-vacant
GBA	NA-vacant	Frontage Improvements	Curb, gutter, sidewalk

Comments

The sale included dedication of several easements to the City, and the net usable size after dedication is utilized in this analysis. The buyer obtained all entitlements for development prior to close of escrow, and none were provided by the seller.

Land Comparable 6



Transaction			
Property Type	Land - Commercial	Date	6/15/12
Address	1105-1123 National City Boulevard	Price	\$1,165,000
City	National City	Price Per Land SF	\$21.35
State	CA	Financing	Conventional
Zip	91950	Property Rights	Fee simple
Grantor	East West Bank	Days on Market	Unknown
Grantee	Focus Holding Co LLC	Verification Source	CoStar Comps, public records, Timothy Arguello (listing broker)
APN:	556-554-16,17,18,19,20		

Site			
Land SF	54,555	Topography	Level
Access	Corner	Zoning	GP - "Commercial and Office"
Road Frontage	255' on 11th St; 155' on National City Blvd; 260' on A Ave; 140' on 12th St	Flood Zone	None
Shape	Rectangular/L-shape	Entitlements	Previous parking garage
Utilities	All available and connected	Condition	Previously developed

Improvements			
Improvements	Parking garage	Year Built	Public records do not indicate
GBA	--	Frontage Improvements	Curbs, gutters, sidewalks

Comments
This property was previously used as a parking garage, however, the improvements are old and the site is designated "commercial and office" in the current general plan. The listing broker stated that there were no unusual conditions of sale, and no entitlements were in place at time of sale.

Land Comparable 7



Transaction			
Property Type	Land - Commercial	Date	5/1/12
Address	Hacienda Drive	Price	\$850,000
City	Vista	Price Per Land SF	\$17.44
State	CA	Financing	Cash
Zip	92083	Property Rights	Fee simple
Grantor	James & Theoni Kefallin	Days on Market	213
Grantee	Mossy European Imports Inc	Verification Source	CoStar Comps, public records, Rob Bloom (listing broker)
APN:	166-440-47		

Site			
Land SF	48,744	Topography	Mostly level
Access	Inside	Zoning	C-2; GP - GC
Road Frontage	260' on Hacienda Dr	Flood Zone	None
Shape	Irregular	Entitlements	None
Utilities	All available	Condition	Partially paved

Improvements			
Improvements	Vacant	Year Built	NA
GBA	NA-vacant	Frontage Improvements	Curb, gutter, sidewalk

Comments
An adjacent BMW dealership purchased the property to display and store automobiles. The site was partially paved and there were no unusual conditions of sale according to the broker.

Land Comparable 8



Transaction			
Property Type	Land - Mixed Use	Date	2/2/12
Address	6303-6363 El Cajon Blvd	Price	\$14,000,000
City	San Diego	Price Per Land SF	\$35.99
State	CA	Financing	Cash
Zip	92115	Property Rights	Fee simple
Grantor	CentrePoint, LLC	Days on Market	1029
Grantee	CPIII Centre Point LLC	Verification Source	CoStar Comps, public records, Victor Krebs (listing broker)

APN: 467-300-05,06,13 thru 17, 20, 21, 30, 31, 33, 34

Site			
Land SF	388,991	Topography	Mostly level
Access	Corner	Zoning	CU-2-3, CT-2-3
Road Frontage	480' on El Cajon Blvd; 551' on 63rd St; 256' on Art St; 406' on Seminole Ave; 407' on Stanley Ave	Flood Zone	None
Shape	Irregular	Entitlements	All
Utilities	All available	Condition	Previously developed

Improvements			
Improvements	Vacant	Year Built	NA
GBA	NA-vacant	Frontage Improvements	Curb, gutter, sidewalk

Comments
This site was a former shopping center. At time of sale, the land was fully entitled for development of 312 residential units and 4,000 SF of commercial space. The broker stated that 14 offers were submitted, two of which were for retail development at a lower price.

Land Comparable 9



Transaction			
Property Type	Land - Commercial	Date	9/10/13
Address	1225 N Santa Fe Ave	Price	\$950,000
City	Vista	Price Per Land SF	\$18.33
State	CA	Financing	Typical
Zip	92084	Property Rights	Fee simple
Grantor	Hamid & Farzaneh Raissi	Days on Market	Unknown
Grantee	NA-pending	Verification Source	CoStar Comps, public records, Kazem Zomorrodian (listing broker)
APN:	173-091-28		

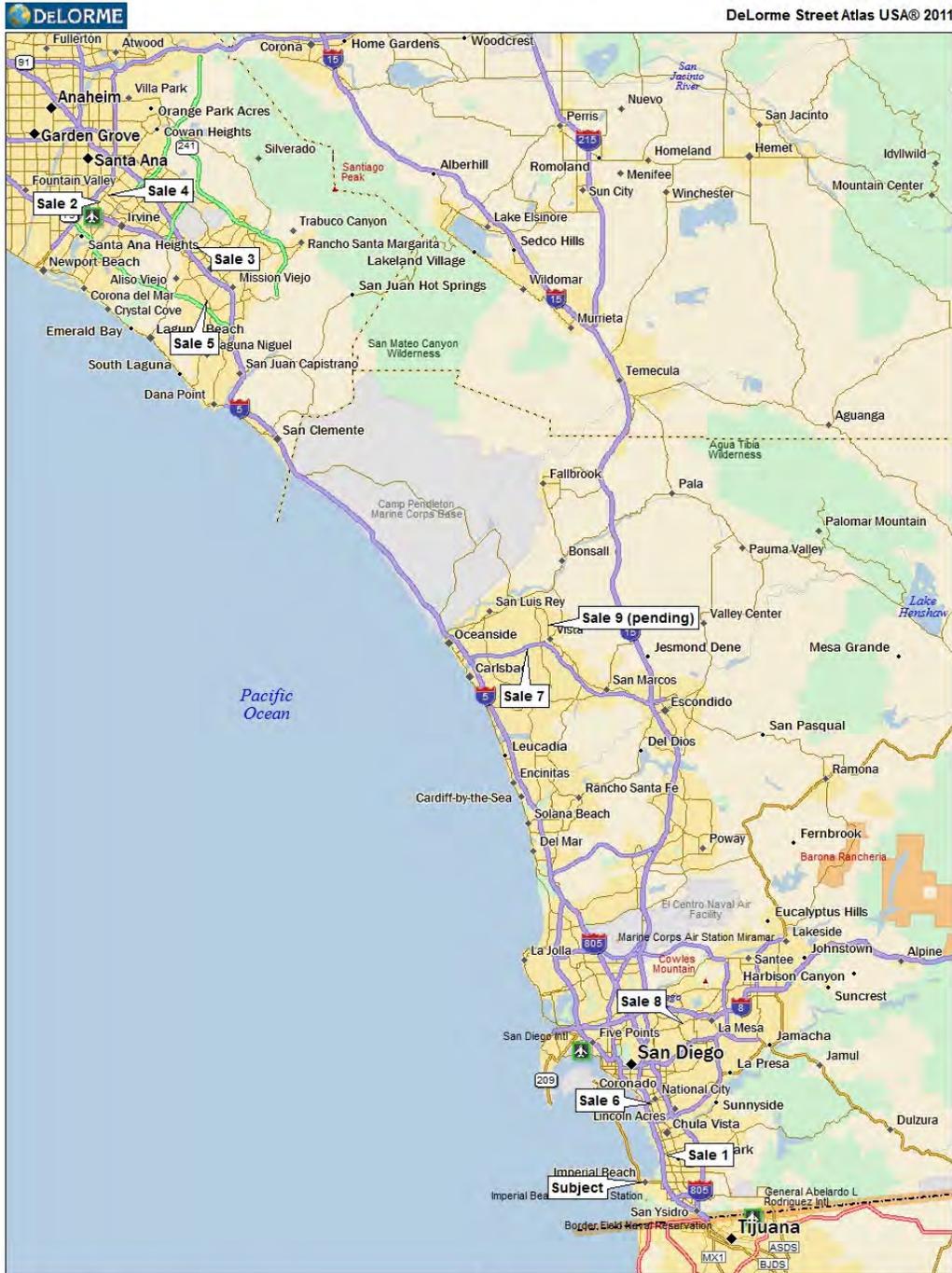
Site			
Land SF	51,836	Topography	Mostly level
Access	Inside	Zoning	C1
Road Frontage	231' on N Santa Fe Ave	Flood Zone	None
Shape	Polygon	Entitlements	Approved site plan; modification needed
Utilities	All available	Condition	Previously developed

Improvements			
Improvements	Two retail buildings	Year Built	Public records do not indicate
GBA	Unknown	Frontage Improvements	Curb, gutter, sidewalk

Comments

Although this sale is slated to close escrow at the end of September 2013, the buyer has the option to extend escrow until September 2014. Although the site is improved with two retail buildings on month-to-month leases totaling roughly \$2,000/month, the property was marketed as a development opportunity. The site has an approved plan for a strip center. The buyer will modify these plans to include multi-use residential/retail. This is a pending sale, and while the broker would not divulge the sales price, he stated that it is "near the asking price" which is utilized in this analysis.

Comparables Map



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www.delorme.com

MN (12.0° E)

0 3 6 9 12 15 18 mi
Data Zoom 8-3

Analysis Grid - As-if Vacant, Entitled and Finished with Frontage Improvements and Utilities

The above sales have been analyzed and compared with the subject property. We have considered adjustments in the areas of:

- Property Rights Sold
- Financing
- Conditions of Sale
- Economic Trends (time)
- Location
- Physical Characteristics

On the following page is a sales comparison grid displaying the subject property, the comparables and the adjustments applied.

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Adjustment Notes

Financing and Conditions of Sale

All of the comparables utilized in this analysis have been purchased with cash or cash equivalent financing; no adjustments for financing are necessary. Sales one and nine included interim income and are adjusted down 2.5%. Sale six was bank-owned and is adjusted up 5%. Sale nine is pending and the appraiser was not made aware of the offer amount. Therefore, the listing price is utilized and this sale is adjusted down 5% for conditions of sale (resulting in a net downwards 7.5% adjustment after accounting for the interim income adjustment.)

Economic Trends

The appraiser has studied average county-wide retail lease rates and capitalization rates (obtained from CoStar) during the period encompassed by the comparable sales as a proxy for land value. During the first half of 2012, the average county-wide lease rate was \$1.76/SF and the median cap rate was 7.4%. If 100 SF were rented by this amount (\$2,112/year) the capitalized value would be \$28,541. During the beginning of 2013 to date, (applicable to the date of value of this report), the average lease rate was \$1.77/SF and the median capitalization rate was 6.8%. If 100 SF were rented at this rate (\$2,124/year) the capitalized value is then \$31,235. The appraiser has calculated the difference between the two values, which equates to an annual increase of 5.5% (rounded to the nearest 0.1%). All of the comparables are adjusted accordingly, except for sale nine which is pending as of the date of value.

Location

The appraiser has studied average historical retail lease rates (obtained from CoStar Comps) and median household income figures (from STDB.com) for each of the comparables' neighborhoods. Most of the comparables' neighborhoods had superior lease rates and/or median household income, and are adjusted down between 2.5% and 20% depending on the degree difference.

Site Size

When conducting an analysis using a unit of comparison as opposed to sale price, it is necessary to consider the correlation between the quantity of units purchased and unit price. Since unit price often decreases as an increasing number of units are purchased, the larger comparable sales are considered inferior. Several of the comparables are adjusted down at a rate of 5% per approximate doubling or halving in site size.

Average Daily Traffic

The most recent traffic study available to the appraiser states that an average of 23,400 cars per day pass by the subject on Palm Avenue. Traffic volumes have been provided for each of the comparables. Several of the comparables are adjusted between 2.5% and 10% based on differences in average daily traffic count.

Condition

The subject property is appraised as-if being in finished condition. Properties in rough-graded or previously developed condition will require additional development costs and are adjusted up 2.5%. Comparables in raw condition are adjusted up 5%.

Site Shape

The subject site is mostly rectangular, allowing maximum utility. Most comparables have similar site utility and are not adjusted. Comparables which are irregular in shape are adjusted up 5%. Sale nine is a polygon shape and is adjusted up 2.5%.

Zoning

Most of the comparables have similar zoning allowances as compared to the subject. Sale eight is permitted significant residential development as compared to the subject's zone. The appraiser has interviewed area brokers who stated that residential mixed-use properties are selling at a premium as compared to strictly commercial sites. The subject is allowed second-floor residential development at a density of one dwelling unit per 1,000 SF, however, approval of a conditional use permit is required. Therefore, sale eight is adjusted down 20% for having superior zoning allowances.

Entitlements

This portion of the appraisal values the subject as-if entitled for 46,200 SF of retail space consisting of seven buildings. Most of the comparables were either unentitled, or had previous entitlement only at time of sale, and are adjusted up 5%. Sale two needed a conditional use permit, however, the intended hotel use was a preferred use by the City and no impediments to development were anticipated; this sale is adjusted up 2.5%. Sale nine needed modification to its approved site plan and is adjusted up 2.5%. Sale eight is fully entitled and is not adjusted.

Frontage Improvements

The subject is appraised as-if all frontage improvements are in place (actual costs are adjusted for later in this report). All of the comparables have all frontage improvements in place such as curbs, gutters and sidewalks; no adjustments are made in this category and therefore this category is excluded from the adjustment grid.

Sales Comparison Approach Conclusion – As-if Vacant, Entitled and Finished with Frontage Improvements and Utilities

Before adjustments, the comparables range from \$17.44/SF to \$41.76/SF. After adjustments the sales comparables range from \$16.10/SF to \$32.36/SF. The mean is \$24.60/SF and the median is \$24.49/SF. A trimmed mean has been calculated by eliminating the highest and lowest values. The trimmed mean is \$24.70/SF. After careful consideration of the market data, and in consideration of the definition of value utilized herein, the land value of the subject property is concluded near the measures of central tendency at **\$25.00SF**. As a test of reasonableness, we have researched current comparable market offerings outlined on the following page:

Analysis of Active Listings

In addition to the sales data used in the above analysis, the appraiser has also searched the market for current offerings of similar properties and found the following active listings:

<i>Property</i>	LISTING 1 550 Highway 75 Imperial Beach	LISTING 2 Woodside Ave @ Channel Rd Lakeside	LISTING 3 Near Intersection of Tiburon St & Thunder Dr Oceanside	LISTING 4 8606 Graves Ave Santee
				
<i>Site Size</i>	47,916 SF	174,240 SF	458,251 SF	42,253 SF
<i>Zoning</i>	C-1	C-36	CC (Community Commercial)	GC
<i>Daily Traffic</i>	17,500 on Highway 75	15,900 on Woodside Ave; 8,900 on Channel Rd	13,600 on Plaza Dr; 5,500 on Thunder Dr	85,000 on Hwy 67
<i>Condition/Topo</i>	Rough graded	Rough graded/level	Raw/gentle slopes	Rough graded
<i>Entitlements</i>	None	None	None	Preliminary site plan
<i>Asking Price/SF</i>	\$62.51/SF	\$15.00/SF	\$25.97/SF	\$21.18
<i>Days on Market</i>	120	>365	~700	>365
<i>Verification</i>	Stephen Lloyd, listing broker	Mark Robak, listing broker	Gale Bucciarelli (listing broker)	Mark Robak, listing broker
<i>Notes</i>	Offers in low-two- million range (~\$40/SF) not accepted.	Pending offer at \$20/SF includes rezone to residential mixed use as contingency of sale.	No recent offer; one "low" offer made 6 months ago (broker would not divulge amount)	Some offers made but not accepted; requires extensive public works improvement. Site has inferior triangular shape

Analysis of Active Listings

As a test of reasonableness to the sales comparison approach, the appraiser has researched the listings outlined on the previous page. Listing one is located very close to the subject property in Imperial Beach. Additionally, this property has identical C-1 zoning. However, the site is located closer to the ocean, and second-floor units would likely enjoy ocean views. The site is significantly smaller than the subject (47,916 SF) which results in a higher price-per-square-foot. The broker involved stated that there have been some offers in the "low-two-million" range. An offer of \$2,000,000 equates to \$41.74/SF. Due to this property's proximity to the ocean and smaller size, this figure reflects very superior conditions as compared to the subject.

The remaining listings are located throughout other areas of the County that have somewhat similar lease rates as compared to Imperial Beach. Listing 2 has a pending offer at \$20.00/SF that includes a rezone to mixed-use commercial/residential as a contingency of sale. Because the buyer must complete the re-zone, this price reflects slightly inferior conditions. However, this property has similar average daily traffic and is very similar in size compared to the subject.

Listing three is a large site with similar average daily traffic; and is listed at \$25.97/SF. It is inferior overall due to its large size and completely raw condition. Listing four is smaller than the subject and has very high average daily traffic (superior features). However, the site requires extensive public works improvement, and has an inferior triangular shape. This listing is overall inferior as compared to the subject with an asking price of \$21.18/SF.

Based on this data, the concluded value of **\$25.00SF** for the subject is reasonable and is the concluded value of the subject as-if vacant, entitled, in finished condition with full frontage improvements.

Land Value Conclusion – As-if Vacant, Entitled and Finished with Frontage Improvements and Utilities

The land value of the subject property *as-if vacant, entitled and finished with all frontage improvements and utilities* is calculated below:

$$\text{\$25.00SF} \times \text{206,910 SF} = \text{\$5,172,750}$$

Land Value Conclusion – As-is

The previously derived value of \$5,172,750 for the subject reflects the value of the land as-if vacant, entitled, and finished with all frontage improvements and utilities stubbed at the property line. As discussed throughout the report and as detailed in the resolution document included in the report addenda, the subject property will need extensive grading, utilities, street and traffic control improvements, and a reconfiguration of the current access in order for the site to be developed.

To determine the value of the subject as-is, the appraiser has relied on a cost estimate provided by CSI Construction which is included in the report addenda. The total on- and off-site construction costs are estimated at **\$4,816,412** as outlined below:

Cost Type		Amount
General Conditions – Direct Contractor Costs		\$165,000
Soft Costs		\$620,730
Onsite Improvement Costs		\$1,406,540
Off-Site Improvement Costs		\$2,309,050
	Sub Totals	\$4,501,320
	Insurance @ 1%	\$45,013.20
	Overhead & Profit @ 1%	\$180,052.80
	Contingency @ 2%	\$90,026.40
	TOTALS	\$4,816,412

It is estimated that it will take roughly one year to complete the required on- and off-site improvements in order for the site to be developed. The appraiser has calculated carrying costs of one year based on an equal monthly draw at a 5.5% interest rate. A copy of the calculations spreadsheet is included in the report addenda. The total cost to carry is **\$143,489**.

To derive the value of the subject property after consideration of the on- and off-site costs, along with carrying costs, the amounts are deducted from the concluded value *as-if vacant, entitled and finished with all frontage improvements and utilities*:

$$\$5,172,750 - \$4,816,412 - \$143,489 = \$212,849 \text{ say, } \$213,000 \text{ (rounded)}$$

Final Reconciliation

The process of reconciliation involves the analysis of each approach to value. The quality of data applied, the significance of each approach as it relates to market behavior and defensibility of each approach are considered and weighed.

In this appraisal, only one approach to value (the sales comparison approach) was utilized. Therefore, no further reconciliation is necessary.

Value Indications

Sales Comparison Approach (Land as-if vacant, entitled, and finished with frontage improvements/utilities).....	\$5,712,750
Anticipated Development Costs.....	\$4,816,412
Carrying Costs.....	\$143,489
Value of the Subject As-Is.....	\$213,000 (rounded)

Value Conclusion – As-is

Based on the data and analyses developed in this appraisal, we have reconciled a **\$213,000** for the subject *as-is*, as of September 10, 2013, subject to the Limiting Conditions and Assumptions of this appraisal.

Certification Statement

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analyses, opinions and conclusions.
- We have no present or contemplated future interest in the property that is the subject of this report, and have no personal interest or bias with respect to the parties involved.
- Our compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- Our analyses, opinions, and conclusions were developed and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP).
- Robert M. Backer, MAI, SRA has made a personal inspection of the property that is the subject of this report.
- Robert Backer, MAI, SRA, has not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- We certify sufficient competence to appraise this property through education and experience, in addition to the internal resources of the appraisal firm.
- The value conclusion(s) and other opinions expressed herein are not based on a requested minimum value, a specific value or approval of a loan.
- As of the date of this report, I Robert M. Backer, MAI, SRA have completed the continuing education program of the Appraisal Institute.
- No one outside the signatories of this report provided significant assistance in the development of this appraisal.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

Robert M. Backer, MAI, SRA
AG002082

Kristen M. Magnussen
AG043553

September 11, 2013

Addenda

Carrying Cost Calculation
Estimate of Anticipated Development Costs – CSI Construction
Legal Description
Appraiser's Qualifications

DRAFT



9272 Jeronimo Rd., Suite 116
 Irvine, CA 92679
 (949) 380-3900
 (949) 380-3930 Fax

Successor Agency - City of Imperial Beach Breakwater Project - Prevailing Wage Budget ATTN: Gregory Wade - Deputy Director Civic Center 825 Imperial Beach BLVD Imperial Beach, CA 91932 Imperial Beach, CA 9/9/2013					
DIVISION BREAKOUT					
GENERAL CONDITIONS - DIRECT CONTRACTOR COSTS SOFT COSTS ONSITE IMPROVEMENT COSTS OFF-SITE IMPROVEMENT COSTS				\$ 165,000 \$ 620,730 \$1,406,540 \$2,309,050	
SUB TOTALS INSURANCE 1% OVERHEAD & PROFIT 4% CONTINGENCY 2% TOTALS				\$ 4,501,320 \$45,013.20 \$180,052.80 \$90,026.40 \$4,816,412	
DETAIL BREAKOUT					
01000	GENERAL CONDITIONS - DIRECT CONTRACTOR COSTS				QTY UNIT PRICE UNIT COST
	TEMP FACILITIES (toilets, dumpsters, fuel, water, etc)	6	\$ 12,500.00	MO	\$ 75,000
	PROJECT MANAGER - 50% TIME COMMITMENT	6	\$ 5,000.00	MO	\$ 30,000
	SUPERVISION	6	\$ 10,000.00	MO	\$ 60,000
SUBTOTAL GENERAL CONDITIONS - DIRECT COSTS					\$ 165,000
01000	SOFT COSTS				QTY UNIT PRICE UNIT COST
	INSPECTIONS, PERMITS AND FEES	206910	\$ 1.20	SF	\$ 248,292
	DESIGN COSTS	206910	\$ 1.80	SF	\$ 372,438
SUBTOTAL SOFT COSTS					\$ 620,730
02000	ONSITE IMPROVEMENTS				QTY UNIT PRICE UNIT COST
	UTILITY DEMOLITION	1	\$30,000.00	LS	\$30,000
	DELAWARE STREET DEMOLITION	1	\$15,000.00	LS	\$15,000
	SITE SWPPP INSTALL	1	\$20,000.00	LS	\$20,000
	SITE SWPPP MAINTENANCE	1	\$20,000.00	LS	\$20,000
	ROUGH GRADE (27,000 CY, 13,000 CY PAD OX, 10,000 CY GEN OX IMPORT	50000	\$2.40	CY	\$120,000
	WATER 8" PVC	25000	\$12.00	CY	\$300,000
	WATER 8" PVC	1350	\$45.00	LF	\$60,750
	WATER BACKFLOW AT SITE ENTRY	1	\$12,500.00	EA	\$12,500
	REPLACE 8" WATER AT DELAWARE STREET	240	\$45.00	LF	\$10,800
	SEWER 8" VCP	1500	\$45.00	LF	\$67,500
	SEWER MANHOLES & CLEANOUTS	1	\$15,000.00	LS	\$15,000
	STORM DRAIN - 12" RCP	200	\$50.00	LS	\$10,000
	STORM DRAIN - 18" RCP	1100	\$60.00	LS	\$66,000
	STORM DRAIN - 24" RCP	120	\$75.00	LS	\$9,000
	STORM DRAIN - 36" RCP	500	\$120.00	LS	\$60,000
	STORM DRAIN - INLETS, BOXES, CLEANOUTS	18	\$5,000.00	EA	\$90,000
	STORMCEPTOR FILTER BOXES - 8'X12'	2	\$25,000.00	EA	\$50,000
	DRY UTILITIES, INCL PULLBOXES, ETC.	900	\$70.00	LS	\$63,000
	RETAINING WALLS & FOOTINGS	3357	\$60.00	SF	\$201,420
	9TH ST PHASED TRAFFIC CONTROL	1	\$12,500.00	LS	\$12,500
	9TH ST SAWCUT & DEMO	1200	\$4.00	SF	\$4,800
	9TH ST ROUGH GRADE	1	\$12,500.00	LS	\$12,500
	9TH ST STORM DRAIN - 36" RCP	250	\$150.00	LS	\$37,500

	9TH ST WATER TIE-IN	1	\$7,500.00	EA	\$7,500
	9TH ST SEWER TIE-IN	1	\$7,500.00	EA	\$7,500
	9TH ST GRIND & OVERLAY 1/2 STREET WIDTH AT SC	13000	\$1.75	SF	\$22,750
	9TH ST CURB & GUTTER	240	\$28.00	LS	\$6,720
	9TH ST SIDEWALK	1200	\$7.50	SF	\$9,000
	9TH ST BUS STOP	250	\$10.00	SF	\$2,500
	9TH ST ASPHALT PAVING/SLOT PATCH	240	\$20.00	LF	\$4,800
	9TH ST STRIPING & SIGNAGE	1	\$12,500.00	LS	\$12,500
	9TH ST LANDSCAPE	1	\$20,000.00	LS	\$20,000
	9TH ST STREET LIGHT REMOVAL & RELOCATE	2	\$12,500.00	EA	\$25,000
SUBTOTAL DIVISION ONSITE OPERATIONS					\$1,406,540
02000	OFF-SITE IMPROVEMENTS	QTY	UNIT PRICE	UNIT	COST
	SR75 PHASED TRAFFIC CONTROL	1	\$50,000.00	LS	\$50,000
	SR75 SAWCUT & REMOVALS FOR NEW C&G	2000	\$7.50	SF	\$15,000
	SR75 ROUGH GRADE	1	\$10,000.00	LS	\$10,000
	SR75 CURB GRADE	1000	\$5.00	SF	\$5,000
	SR75 CURB & GUTTER	990	\$35.00	LF	\$34,650
	SR75 ASPHALT PAVING - ENTRIES	10000	\$5.00	SF	\$50,000
	SR75 SLOT PATCH	450	\$20.00	LF	\$9,000
	SR75 STRIPING & SIGNAGE	1	\$30,000.00	LS	\$30,000
	SR75 STREET LIGHT REMOVAL & RELOCATE	10	\$12,000.00	LS	\$120,000
	SR75 SIGNAL MOD - PALM & SR75 - NEW POLE	1	\$200,000.00	EA	\$200,000
	SR75 SIGNAL MOD - SR75 & 9TH ST - NEW POLE	1	\$175,000.00	EA	\$175,000
	SR75 LEFT TURN - DEMO/GRADE	1	\$20,000.00	LS	\$20,000
	SR75 LEFT TURN - MEDIUM/C&G	1	\$20,000.00	LS	\$20,000
	SR75 LEFT TURN - STRIPE & SIGNAGE	1	\$15,000.00	LS	\$15,000
	SR75 LEFT TURN - SIGNAL MODS	1	\$75,000.00	LS	\$75,000
	SR75 LEFT TURN SLOT PATCH	1	\$5,000.00	LS	\$5,000
	SR75 LEFT TURN TRAFFIC CONTROL	1	\$15,000.00	LS	\$15,000
	PALM FRONTAGE PHASED TRAFFIC CONTROL	1	\$15,000.00	LS	\$15,000
	PALM FRONTAGE SWPPP INSTALL	1	\$5,000.00	LS	\$5,000
	PALM FRONTAGE SWPPP MAINTENANCE	1	\$2,500.00	LS	\$2,500
	PALM FRONTAGE MEDIUM SAWCUT AND REMOVALS	25000	\$2.00	SF	\$50,000
	PALM FRONTAGE UNDERGROUND UTILITY LOCATE/REMOVALS	1	\$25,000.00	LS	\$25,000
	PALM FRONTAGE ROUGH GRADE	5000	\$5.00	CY	\$25,000
	SWALE STORM DRAINAGE	1	\$20,000.00	LS	\$20,000
	SWALE SANDY LOAM/FILTER MATERIAL	200	\$50.00	CY	\$10,000
	PALM FRONTAGE FINE GRADE	25000	\$0.50	LF	\$12,500
	CURB & GUTTER, SR75 TO 7TH STREET	960	\$35.00	LF	\$33,600
	SIDEWALK 9TH ST TO 7TH ST	7000	\$7.50	LS	\$52,500
	CONCRETE PAVE - DRIVE APPROACH OFF PALM	1	\$7,500.00	EA	\$7,500
	ASPHALT PAVING - FULL DEPTH EASTBOUND FROM SR75 TO 7TH	10000	\$4.00	SF	\$40,000
	GRIND & OVERLAY - WESTBOUND FROM SR75 TO 7TH ST	10000	\$1.75	SF	\$17,500
	LANDSCAPE AT PALM/SR75 FRONTAGE	7500	\$7.00	LS	\$52,500
	PALM ENTRY LANE STRIPING & SIGNAGE	1	\$12,500.00	LS	\$12,500
	DRY UTILITY VAULT REPLACEMENT	2	\$30,000.00	EA	\$60,000
	POTHOLING	1	\$25,000.00	LS	\$25,000
	8" WATER LINE R&R AT BIOSWALE, INC FITTINGS, 2 HOT TAPS	300	\$65.00	LF	\$19,500
	FULL REMOVAL OF ALLEY CONCRETE PAVING	43200	\$2.00	SF	\$86,400
	UNDERGROUND SDGE POWER	1080	\$275.00	LF	\$297,000
	ROUGH GRADE	7500	\$3.00	CY	\$22,500
	OVEREX/REMOVE UNSUITABLE SOILS - 2' DEEP	3200	\$12.00	CY	\$38,400
	IMPORT REPLACE UNSUITABLE SOILS - 2' DEEP	3200	\$12.00	CY	\$38,400
	FORCE MAIN REPLACEMENT	500	\$95.00	LF	\$47,500
	STORM DRAIN REPLACEMENT	200	\$100.00	LF	\$20,000
	SEWER REPLACEMENT	400	\$65.00	LF	\$26,000
	SEWER TIE-IN FROM SITE TO EXISTING SEWER IN ALLEY	1	\$7,500.00	EA	\$7,500
	STORM DRAIN TIE-IN FROM SITE TO EXISTING SD IN ALLEY	1	\$7,500.00	EA	\$7,500
	FINE GRADE FOR PAVING	6400	\$1.50	CY	\$9,600
	BASE & CONCRETE PAVE	43200	\$7.50	SF	\$324,000
	WOOD FENCE ALONG ADJACENT PROPERTIES	900	\$50.00	SF	\$45,000
	POTHOLING	1	\$5,000.00	LS	\$5,000
SUBTOTAL - OFF-SITE IMPROVEMENTS					\$2,309,050

ALTERNATES:

Bond - Add 1% if Required

EXHIBIT "A"

LEGAL DESCRIPTION

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

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.

2697

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

2697

Robert M. Backer, MAI, SRA
Certified General Appraiser
AG 002082

appraisal of real estate

ROBERT M. BACKER, MAI, SRA QUALIFICATIONS OF APPRAISER

EDUCATION

- Bachelors Degree, University of North Carolina, Chapel Hill, 1972
- Practicing Law Institute seminars on Public and Private Real Estate Limited Partnerships and Evaluating Tax Shelter Offerings
- Crittenden seminar on Mobile Home Park Development and Finance
- Various Real Estate Courses including:

Real Estate Appraisal	Real Estate Finance
Real Estate Practice	Real Estate Law
Real Estate Principles	Real Estate Economics
- Principles of Appraisal (AIREA) - April 1987
- Basic Valuation Procedures (AIREA) - October 1987
- Standards of Professional Practice (AIREA) - June 1988
- Capitalization Theory and Techniques (Part A) (AIREA) - 8/89
- Capitalization Theory and Techniques (Part B) (AIREA) - 9/89
- Case Studies in Real Estate Valuation (AIREA) - June 1990
- Report Writing and Valuation Analysis (AIREA) - August 1990
- Litigation Valuation (AI) - June 1991
- Uniform Residential Appraisal Report (SREA Seminar)
- Appraisal of Partial Acquisitions (IRWA)
- Engineering Plan Development and Application (IRWA)
- Uniform Commercial & Industrial Report (AIREA/SREA Seminar)
- Environmental Hazards (SREA Seminar)
- Subdivision Map Act Update (UCSD Extension Seminar)
- Fundamentals of Construction (UCSD Extension)
- Understanding Limited Appraisals - General (AI Seminar) - July 1994
- The Appraiser's Complete Review (AI Seminar) - July 1994
- California's Appraiser Licensing Law and FIRREA (AI Seminar) - September 1995
- The Appraiser in Cyberspace (AI Seminar) - December 1995
- Environmental Issues - Past, Present & Future (AI Seminar) - March 1996
- Affordable Housing (AI Seminar) - April 1996
- Interpreting Development Plans and Blueprints (AI Seminar) - May 1996
- Property Profile of Operating Expenses (AI Seminar) - June 1996
- Changing Markets and New Research Methods (AI Seminar) - July 1996
- Attorneys, Appraisers and Real Estate - (AI Seminar) - September 1996
- Market Analysis from the Buyer's Viewpoint (AI Seminar) - October 1996
- Applying Economic Forecasts (AI Seminar) - February 1997
- Eminent Domain Case Update (IRWA) Seminar) - March 1997
- Mitigation Land Update and Valuation - (AI Seminar) - April 1997
- Tax Assessment - (AI Seminar) - July 1997
- Easement Valuation (AI Seminar) - November 1997
- Appraisal of Partial Interests - (AI Seminar) - June 1998
- Valuation of detrimental Conditions - (AI Seminar) - September 1998
- Valuation of Contaminated Properties - (IRWA Seminar) - November 1999
- Standards of Professional Practice - Part C - (AI) - November 1999
- Appraisal of Non-conforming Uses - (AI Seminar) - January 2001
- Applying Economic Forecasts - (AI Seminar) - February 2001
- Real Estate Disclosure - (AI Seminar) - January 2002
- Partial Interest Valuation - Divided - (AI Seminar) - March 2002
- Emerging Demands in R & D and Office - (AI Seminar) - May 2002
- Statistical Analysis Using the Database Parts 1 & 2 - (AI Seminar) July 2002
- International Valuation Standard - (AI Seminar) - July 2002
- Valuation of Unique Properties - (AI Seminar) - March 2004
- USPAP Update 2003 - (AI Seminar) - December 2003
- Unleash the MLS - (AI Seminar) - April 2004
- Advanced Appraisal Refresher - (AI Seminar) - June 2004
- Deal and Development Analysis of Downtown San Diego - (AI Seminar) September 2005
- Subdivision Valuation (AI Seminar) - April 2006
- Residential Market Value and Highest and Best Use - (AI Course Instructor) June 2007
- South Bay Development - Past, Present and Future - (AI Seminar) September 2007
- USPAP Update 2007 - (AI Seminar) September 2007
- Uniform Appraisal Standards for Federal Land Acquisition - (AI Seminar) - May 2008
- 2008 San Diego Apartment and Housing Seminar - (AI Seminar) May 2008
- Unique Assignments in Real Estate Appraisal - (AI Seminar) October 2010

LICENSES

Certified General Real Estate Appraiser - State of California
Appraiser Number AG002082 - Expires December 29, 2013

TEACHING

Instructor - Real Estate 110 - Principles of Real Estate Appraisal I - Mesa College (1990-2004)
Instructor - Real Estate 140 - Principles of Real Estate Appraisal II - Mesa College (1991-2004)
Instructor - Basic Appraisal Principles - Appraisal Institute
Instructor - Residential Highest and Best Use and Market Analysis- Appraisal Institute
Instructor – Basic Appraisal Procedures – Appraisal Institute

PREVIOUS EXPERIENCE

February 88 - August 1992
Roberts and Roberts Appraisal
Associate

Associate appraiser with concentration on residential, office, commercial, apartment, industrial and subdivision properties for the purpose of loan underwriting, estate tax and public acquisition purposes. Special emphasis on eminent domain, easement valuation, computer modeling and cash flow analysis. Qualified as expert witness, San Diego County Superior Court and U.S. Bankruptcy Court.

July 86 to January 88
Robert Backer & Associates

Independent fee appraiser specializing in single family homes, condos and small income properties. Clients include: Coldwell Banker Mortgage, Rainier Mortgage, All Coast Financial, Loan America, Glendale Federal, Ameristar Financial, several attorneys and the U.S. Attorney Office. During this period completed over 700 appraisal assignments including, single family homes, lots, small income properties, condominiums and PUDs.

March 86 to June 86
Brumley & Associates
Staff Appraiser

Staff appraiser specializing in single family homes, and condo-PUD units for conventional lenders. Performed appraisals for Coldwell Banker Mortgage, Rainier Mortgage, Mesa Mortgage and P.R. Mortgage.

During the period from 1981-1986, I was an acquisitions officer for two large Real Estate syndication firms. During that time period, I was responsible for the acquisition of over 45 Million Dollars of income property. These properties were located all across the U.S. in major population centers as well as smaller towns. Each acquisition required extensive evaluation of the locality as well as a valuation of the proposed acquisition from a cost, income, and sales comparison approach.

AFFILIATIONS

Appraisal Institute
International Right-of-Way Association

REPRESENTATIVE CLIENT LISTAttorneys

Seltzer, Caplan, McMahon, Vitek
 Solomon, Ward, Seidenwurm & Smith
 Barker, Olmstead & Barnier
 Pyle, Sims, Duncan, & Stevenson
 Freeland, McKinley & McKinley
 Law Office of Don Detisch
 Musick, Peeler & Garrett
 McDougal & Associates
 Gatzke, Dillon & Ballance
 Law Offices of Peter J. Mueller
 Endeman, Lincoln, Turek & Heater
 Stephenson, Worley, Garratt, Schwartz, Garfield & Prairie
 Luce Forward
 Best, Best & Krieger
 DLA Piper
 Kolodny & Pressman
 Sheppard, Mullin, Richter & Hampton
 Gordon & Rees
 Sullivan Hill
 White & Bright
 Mike Poynor
 Manatt, Phelps & Phillips
 The Law Offices of Robert Miller

Klinedinst PC
 McKenna, Long & Aldridge
 Law Office of F. Shaun Burns
 Law Offices of Linda Bartz
 John Freni, Esq.

Financial Institutions

Imperial Bank
 First Interstate Bank
 Carteret Savings Bank
 Merrill Lynch Credit Corporation

Sanwa Bank
 Coldwell Banker Mortgage
 American Financial Services

Other

Wildlife Conservation Board (State of California)
 U.S. Fish and Wildlife
 City of Vista
 City of National City
 City of Santee
 City of San Marcos
 Imperial Irrigation District
 UCSD Office of Planned Giving
 San Diego Housing Commission
 Point Loma Nazarene College
 The McMillin Company
 City of Lemon Grove
 San Diego Community College District
 City of Imperial Beach
 Grossmont Union High School District

Encina Wastewater Authority
 Home Depot
 County of San Diego
 City of San Diego
 William E. Simon & Sons, LLC
 U.S. Post Office
 City of Hope
 Pardee Construction Company
 Westbrook Communities
 Poway Unified School District
 City of Encinitas
 City of Calexico
 Helix Water District
 San Diego Unified School District
 City of Oceanside

SUMMARY TABLE A-1
**ECONOMIC IMPACT TO CITY AND OTHER TAXING ENTITIES - PER YEAR
 9TH AND PALM
 CITY OF IMPERIAL BEACH**

	Sudberry Proceeds with Approved 9th & Palm Development					
	State of California	County of San Diego	City of Imperial Beach	TransNet	K - 14 School Districts	Total
A. Annual Sales Tax Distribution	\$700,000	-	\$112,000	\$56,000	-	\$868,000
B. Annual Property Tax Distribution	-	\$32,000	\$26,000	-	\$63,000	\$121,000 (1)
C. Total Annual Sales and Property Tax	\$700,000	\$32,000	\$138,000	\$56,000	\$63,000	\$989,000

(1) Excludes property tax allocations to taxing entities receiving less than 0.50% of the 1.0% property tax.

Prepared by: Keyser Marston Associates, Inc.

Filename i:\Imperial Beach_9th & Palm_DOE_v4;8/10/2012;lag

SUMMARY TABLE A-2

**ESTIMATE OF EMPLOYMENT GENERATION
9TH AND PALM
CITY OF IMPERIAL BEACH**

	Sudberry Proceeds with Approved 9th & Palm Development	
	Direct Impacts of Construction	Total Impact of Construction Including Direct, Indirect, and Induced Impacts ⁽²⁾
I. Economic Impacts of Construction ⁽¹⁾		
Economic Output	\$12.5 Million	\$17.0 Million
Payroll	\$3.9 Million	\$5.3 Million
Employment (during one year construction period)	68 workers	98 workers
II. Permanent Employment		
Project Description		46,200 SF
Employment @		3.00 jobs/1,000 SF
Total Permanent Jobs (FTEs)		139 jobs

Notes

⁽¹⁾ See Worksheet A-5 for derivation of these estimates. Economic Output and Payroll estimates represent total impacts during construction.

Employment estimate represents the average annual employment impact during a one-year construction period.

⁽²⁾ Indirect and Induced Impacts are also referred to as "multiplier effects."

Prepared by: Keyser Marston Associates, Inc.

Filename i:\Imperial Beach_9th & Palm_DOE_v4;8/10/2012;lag

APPENDIX A

Sudberry Proceeds with Approved 9th & Palm Development

City of Imperial Beach

WORKSHEET A-1

**ESTIMATE OF SALES TAX DISTRIBUTION
 9TH AND PALM
 CITY OF IMPERIAL BEACH**

	<u>Square Feet (SF)</u>	<u>Average Annual Sales Productivity Per SF (1)</u>	<u>2011 Estimated Sales Potential</u>	<u>Percentage Taxable</u>	<u>Estimated Annual Taxable Sales</u>
I. Annual Taxable Sales					
Building A - Market	14,800	\$400	\$5,920,000	30.0%	\$1,776,000
Buildings B, C, D - Shops	10,400	\$300	\$3,120,000	100.0%	\$3,120,000
Building E - Shops	4,700	\$300	\$1,410,000	100.0%	\$1,410,000
Building F - Retail	12,300	\$300	\$3,690,000	100.0%	\$3,690,000
Building G - Retail	<u>4,000</u>	<u>\$300</u>	<u>\$1,200,000</u>	<u>100.0%</u>	<u>\$1,200,000</u>
Totals/Average	46,200	\$332	\$15,340,000	73.0%	\$11,196,000
Sales Tax Rate					<u>7.75%</u>
Total Sales Tax Distributed to Taxing Entities					\$868,000

II. Distribution by Taxing Entity (2)

A. State of California		
General Fund	3.9375%	\$441,000
Fiscal Recovery Fund	0.2500%	\$28,000
Local Public Safety Fund	0.5000%	\$56,000
Local Revenue Fund for Health and Social Services	0.5000%	\$56,000
Local Revenue Fund 2011	<u>1.0625%</u>	<u>\$119,000</u>
Total State of California	6.2500%	\$700,000
B. City of Imperial Beach		
City Operations	1.0000%	\$112,000
C. TransNet		
San Diego County Regional Transportation Commission (SDTC)	<u>0.5000%</u>	<u>\$56,000</u>
D. Total Sales and Use Tax	7.7500%	\$868,000

(1) Represents an average of retail and restaurant average annual sales productivity per SF.

(2) Source: California State Board of Equalization

WORKSHEET A-2

**ESTIMATE OF PROPERTY TAX DISTRIBUTION
 9TH AND PALM
 CITY OF IMPERIAL BEACH**

I. Projected Assessed Value ⁽¹⁾

			<u>Total</u>
Building A - Market	14,800 SF @	\$300 /SF	\$4,440,000
Buildings B, C, D - Shops	10,400 SF @	\$250 /SF	\$2,600,000
Building E - Shops	4,700 SF @	\$250 /SF	\$1,175,000
Building F - Retail	12,300 SF @	\$250 /SF	\$3,075,000
Building G - Retail	<u>4,000 SF @</u>	<u>\$250 /SF</u>	<u>\$1,000,000</u>
Total/Average	46,200 SF @	\$266 /SF	\$12,290,000
Property Tax Rate			1.0%
Total Property Tax Distributed to Taxing Entities			\$123,000

	<u>Tier 1 Pass-Through @ 25.0%</u>		<u>Tier 2 Pass-Through @ 21.0%</u>		<u>Remainder @ 54.0%</u>		
	<u>ATI Ratio</u>	<u>Tier 1</u>	<u>ATI Ratio</u>	<u>Tier 2</u>	<u>ATI Ratio</u>	<u>Remainder</u>	<u>Total</u>
		<u>\$30,750</u>		<u>\$25,830</u>		<u>\$66,420</u>	<u>\$123,000</u>
II. Distribution by Taxing Entity							
A. County of San Diego							
County General	20.22%	\$6,218	27.69%	\$7,152	20.22%	\$13,430	\$26,801
County Library	3.21%	\$988	4.40%	\$1,136	3.21%	\$2,133	\$4,257
County School Service	0.63%	\$194	0.86%	\$223	0.63%	\$419	\$837
County School Service - Capital Outlay	<u>0.16%</u>	<u>\$49</u>	<u>0.22%</u>	<u>\$56</u>	<u>0.16%</u>	<u>\$106</u>	<u>\$211</u>
Total County of San Diego	24.22%	\$7,449	33.17%	\$8,568	24.22%	\$16,089	\$32,106
B. City of Imperial Beach							
Imperial Beach City	26.98%	\$8,295	0.00%	\$0	26.98%	\$17,917	\$26,212
C. K - 14 School Districts							
General Elementary South Bay Union	27.78%	\$8,544	38.05%	\$9,828	27.78%	\$18,455	\$36,826
High Sweetwater Union	15.69%	\$4,826	21.49%	\$5,551	15.69%	\$10,423	\$20,800
Southwestern Community College	<u>4.23%</u>	<u>\$1,300</u>	<u>5.79%</u>	<u>\$1,496</u>	<u>4.23%</u>	<u>\$2,809</u>	<u>\$5,605</u>
Total K - 14 School Districts	47.71%	\$14,670	65.33%	\$16,875	47.71%	\$31,687	\$63,231

WORKSHEET A-2

ESTIMATE OF PROPERTY TAX DISTRIBUTION
9TH AND PALM
CITY OF IMPERIAL BEACH

	Tier 1 Pass-Through @ 25.0%		Tier 2 Pass-Through @ 21.0%		Remainder @ 54.0%		Total to Taxing Entities \$123,000
	\$30,750		\$25,830		\$66,420		
II. Distribution by Taxing Entity (Cont'd.)	ATI Ratio	Tier 1	ATI Ratio	Tier 2	ATI Ratio	Remainder	Total
D. Other							
Regional Occupational Centers	0.40%	\$124	0.55%	\$142	0.40%	\$267	\$534
Physically Handicapped Minors Elementary Comp	0.28%	\$86	0.38%	\$99	0.28%	\$185	\$370
Trainable Mentally Retarded Minors Elementary Comp	0.18%	\$56	0.25%	\$64	0.18%	\$120	\$240
Childrens Institutions Tuition	0.13%	\$41	0.18%	\$48	0.13%	\$89	\$179
Development Centers for Handicapped EC56811 Elem.	0.04%	\$12	0.05%	\$14	0.04%	\$26	\$52
Chula Vista Project (19/84602)	0.03%	\$10	0.04%	\$12	0.03%	\$22	\$44
Chula Vista Project (19/84601)	0.02%	\$5	0.02%	\$6	0.02%	\$11	\$22
Autistic Pupils Minors Elementary Comp	0.01%	\$3	0.01%	\$3	0.01%	\$6	\$11
County Service Area No 135 Regional 800MHZ Radio	0.00%	\$0	0.00%	\$0	0.00%	\$0	\$0
County Service Area No 135 Imperial Beach 800MHZ	0.00%	\$0	0.00%	\$0	0.00%	\$0	\$0
Educational Revenue Augmentation Fund	0.00%	\$0	0.00%	\$0	0.00%	\$0	\$0
San Diego Unified Port	0.00%	\$0	0.00%	\$0	0.00%	\$0	\$0
Total Other	1.09%	\$337	1.50%	\$387	1.09%	\$727	\$1,451
E. Total Property Tax	100.00%	\$30,750	100.00%	\$25,830	100.00%	\$66,420	\$123,000

(1) KMA estimates.

NOTE: No assurances are provided by KMA as to the certainty of the projected property tax revenues shown in this document. While we believe our estimates to be reasonable, actual taxable values will vary from the amounts assumed in the projection.

WORKSHEET A-3

**ESTIMATE OF CONSTRUCTION EMPLOYMENT - ESTIMATED DEVELOPMENT COSTS
9TH AND PALM
CITY OF IMPERIAL BEACH**

<u>Project Description</u>			
Gross Building Area (GBA)		Site Area	4.75 Acres
Market	14,800 SF		206,910 SF
Shops	15,100 SF		
Retail	<u>16,300</u> SF		
Total GBA	46,200 SF		

<u>Development Costs</u>	<u>Totals</u>	<u>Comments</u>
I. Direct Costs (1)		
Off-Site Improvements (2)	\$1,350,000	\$7 Per SF Land
On-Site Improvements	\$2,200,000	\$11 Per SF Land
Parking	\$0	Included in On-Sites
Shell Construction	\$2,795,000	\$89 Per SF GBA - Excluding Market
Tenant Improvements	\$211,000	\$14 Per SF GBA - Shops
Amenities/FF&E	\$100,000	Allowance
Contingency	<u>\$359,000</u>	5.4% of Directs
Total Direct Costs	\$7,015,000	\$152 Per SF GBA - Total
		\$223 Per SF GBA - Excluding Market
II. Indirect Costs		
Architecture & Engineering	\$550,000	7.8% of Directs
Permits & Fees (2)	\$100,000	\$2 Per SF GBA - Total
Legal & Accounting	\$225,000	3.2% of Directs
Taxes & Insurance	\$130,000	1.9% of Directs
Developer Fee	\$350,000	5.0% of Directs
Marketing/Lease-Up	\$370,000	\$8 Per SF GBA - Total
Contingency	<u>\$86,000</u>	5.0% of Indirects
Total Indirect Costs	\$1,811,000	25.8% of Directs
III. Financing Costs		
Loan Fees	\$112,000	1.6% of Directs
Interest during Construction/Lease-Up	<u>\$309,000</u>	4.4% of Directs
Total Financing Costs	\$421,000	6.0% of Directs
IV. Total Development Costs		
	\$9,247,000	\$200 Per SF GBA - Total
		\$294 Per SF GBA - Excluding Market

(1) Includes the payment of prevailing wages.
(2) Per Developer. Not verified by KMA or City.

WORKSHEET A-4

**ESTIMATE OF CONSTRUCTION EMPLOYMENT - LOCAL EXPENDITURES
 9TH AND PALM
 CITY OF IMPERIAL BEACH**

	Direct Costs	Indirect Costs	Total
I. Development Costs			
Project Costs - Sudberry	\$7,015,000	\$2,232,000 32% of Directs	\$9,247,000
Market Costs - Tesco	\$1,850,000 \$125 /SF	\$555,000 30% of Directs	\$2,405,000
Public Improvements - City	<u>\$1,913,000</u>	<u>\$287,000</u> 15% of Directs	<u>\$2,200,000</u>
Total Development Costs	\$10,778,000	\$3,074,000	\$13,852,000
II. County Capture	90.0%	90.0%	----
III. Total Local Expenditures	\$9,700,000	\$2,767,000	\$12,467,000

WORKSHEET A-5

ESTIMATE OF CONSTRUCTION EMPLOYMENT IMPACTS
9TH AND PALM
CITY OF IMPERIAL BEACH

			<u>Direct Impacts</u>	<u>Regional Multiplier⁽²⁾</u>	<u>Indirect & Induced Impact</u>	<u>Total Direct, Indirect, and Induced Impacts</u>
I. Economic Output from Construction						
From Direct Construction			\$9,700,000 ⁽¹⁾	1.336	\$3,263,000	\$12,963,000
From Indirects			<u>\$2,767,000</u> ⁽¹⁾	1.981	<u>\$2,714,000</u>	<u>\$5,481,000</u>
Total Development Costs			\$12,467,000 ⁽¹⁾		\$5,230,000	\$17,000,000
II. Construction Payroll						
From Direct Construction	30% of cost	⁽³⁾	\$2,910,000	1.238	\$694,000	\$3,604,000
From Indirects	35% of cost	⁽³⁾	<u>\$968,000</u>	1.796	<u>\$771,000</u>	<u>\$1,739,000</u>
Total Development Costs			\$3,878,000		\$1,465,000	\$5,343,000
III. Construction Employment						
From Direct Construction	\$52,000 avg pay	⁽⁴⁾	56 person years ⁽⁵⁾	1.331	19 person years ⁽⁵⁾	74 person years ⁽⁵⁾
From Indirects	\$83,000 avg pay	⁽⁴⁾	<u>12 person years</u> ⁽⁵⁾	2.007	<u>12 person years</u> ⁽⁵⁾	<u>23 person years</u> ⁽⁵⁾
Total Development Costs			68 person years ⁽⁵⁾		30 person years ⁽⁵⁾	98 person years ⁽⁵⁾
Number of Years to Construct			1.0 Year		1.0 Year	1.0 Year
Average Annual Employment During Construction Period (rounded)			68 workers		30 workers	98 workers

⁽¹⁾ Based on cost of Project inclusive of direct construction and soft costs.

⁽²⁾ Bureau of Economic Analysis RIMS II multipliers for the region defined as Imperial County. Multiplier for direct construction based on North American Industrial Classification System (NAICS) Code 230000 which corresponds to the construction industry. Multipliers for soft costs based on average for representative NAICS codes: 541300 (architecture, engineering, and related), 524100 (insurance carriers), 541100 (legal).

⁽³⁾ Based on the 2007 Economic Census. Percentage for construction based on ratio of net value of construction to gross payroll for commercial building construction contractors. Ratio for soft costs based on ratio of gross receipts to payroll for architecture / engineering firms, legal services, and insurance.

⁽⁴⁾ Based on California Employment Development Department (EDD) data on average annual pay levels for the San Diego County (San Diego-Carlsbad-San Marcos MSA) in 2011. For construction, estimate based on construction and extraction occupations. For soft costs, average pay represents an approximation based on EDD averages for relevant occupation categories including A&E, insurance, and legal.

⁽⁵⁾ A person year of employment is equivalent to full time employment of one person for one year.

Sources: Bureau of Economic Analysis, California Employment Development Department, and 2007 Economic Census

Prepared by: Keyser Marston Associates, Inc.

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WORKSHEET A-6

**ESTIMATE OF STATE INCOME TAX FROM CONSTRUCTION EMPLOYMENT
9TH AND PALM
CITY OF IMPERIAL BEACH**

	<u>Direct Construction</u>	<u>Indirect Construction</u>	<u>Total</u>
I. Average Annual Construction Employment (person years) (1)	56	12	68
II. Average Pay	<u>\$52,000</u>	<u>\$83,000</u>	
III. Total Income Construction Employment	\$2,910,000	\$968,000	\$3,878,000
IV. California Income Tax Rate (2)	9.3%	9.3%	9.3%
Number of Years to Construct	<u>1.0 Year</u>	<u>1.0 Year</u>	<u>1.0 Year</u>
V. Total State Income Tax During Construction Period	\$271,000	\$90,000	\$361,000

(1) A person year of employment is equivalent to full-time employment of one person for one year.

(2) Source: State of California Franchise Tax Board.

Prepared by: Keyser Marston Associates, Inc.

Filename i:\Imperial Beach_9th & Palm_DOE_v4;8/10/2012;lag

DISPOSITION AND DEVELOPMENT AGREEMENT
(Seacoast Inn)

by and between

IMPERIAL BEACH REDEVELOPMENT AGENCY,

and

IMPERIAL COAST, L.P., a California limited partnership
DEVELOPER

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY (the "Agency") and IMPERIAL COAST, L.P., a California limited partnership (the "Developer") as of Dec. 14, 2010. Agency and Developer agree as follows:

PART 1. SUBJECT OF AGREEMENT

SECTION 101 Purpose of the Agreement

The Developer is the owner of an approximately 49,560 square foot site located at 800 Seacoast Drive, in the City of Imperial Beach, California ("Property"). The purpose of this Agreement is to effectuate the Redevelopment Plan for the Palm/Commercial Redevelopment Project by providing for the following: (i) Agency's purchase of the Property from Developer, (ii) Agency's payment to Developer for certain off-site public improvements ("Public Improvements"), and (iii) Agency's leasing of the Property back to Developer in accordance with the Ground Lease (collectively, "Agency Subsidy"). The Agency Subsidy shall be in consideration for the following: (x) Developer's demolition of existing improvements and construction of a full service hotel on the Property with seventy-eight (78) lodging rooms known as the Seacoast Inn ("the Project"), in accordance with this Agreement, the Development Agreement, and any permits for development by and between Developer and the City; (y) Developer's satisfactory construction of the Public Improvements; and (z) Developer's operation of the Seacoast Inn in accordance with the Ground Lease. The development and use of the Property 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.

SECTION 102 Definitions

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

"Acquisition and Development Costs" means the total cost of acquiring the leasehold interest in the Property and developing and constructing the Improvements thereon, 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 managing General Partner of a limited partnership controls the limited partnership.

“Approved Title Conditions” means title that is subject to current property taxes and assessments, easements and other encumbrances specifically approved by the Executive Director.

“Assignment and Assumption Agreement” means that agreement substantially in the form attached hereto as Attachment No. 16.

“Assignment of Agreements” means that agreement substantially in the form attached hereto as Attachment No. 17.

“Attornment Agreement” means an instrument substantially in the form attached to this Agreement as Attachment No. 12.

“City” means the City of Imperial Beach, California.

“Closing” means the point in time when all conditions precedent to close of escrow for Agency’s purchase of the Property from Developer and Agency’s conveyance of the Leasehold to Developer have been satisfied, and all Recorded Documents, as set forth in Section 206, have been recorded.

“Closing Date” means the date on which the Closing has occurred.

“Completion” means the point in time when all of the following shall have occurred: (1) issuance of a certificate of occupancy by the City; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (with the exception of minor “punchlist” items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic’s liens that have been recorded or stop notices that have been delivered; and (5) the Property has been developed in accordance with this Agreement, the Scope of Development and plans approved by the Agency pursuant to this Agreement.

“Construction Lender” means the maker of any Construction Loan or beneficiary of any Construction Loan deed of trust.

“Construction Loan” means, collectively, the Source of Financing in the form of a loan made to the Developer at the time of the Closing for construction of the Improvements, secured against the Leasehold by the Construction Loan Deed of Trust.

“Construction Loan Deed of Trust” means the deed of trust securing the Construction Loan.

“Conversion” means the date upon which the Construction Loan is converted to the Permanent Loan.

“Declaration of CC&Rs” means the Declaration of CC&Rs in form agreed to in writing by Developer and Agency prior to recordation.

“Development Agreement” means the *Development Agreement by and between the City of Imperial Beach and Imperial Coast Limited Partnership Relative to the Development Known as the Seacoast Inn Development Project*, adopted by Ordinance No. 2007-1, and recorded on December 18, 2007 in the San Diego County Recorder’s Office as Document No. 2007-0778555.

“Disbursement Agreement” means an agreement substantially in the form attached to this Agreement as Attachment No. 9.

“Effective Date” means the date when this Agreement has been executed by the Agency.

“Environmental Indemnity” means an instrument substantially in the form attached to this Agreement as Attachment No. 8.

“Escrow Agent” means an escrow agent mutually acceptable to Agency and Developer.

“Executive Director” refers to the Executive Director of the Imperial Beach Redevelopment Agency or designee.

“General Partner” means Pacifica – Hospitality Group Inc., a Nevada Corporation, as Managing General Partner, and Pacifica Pima, Inc., a Nevada Corporation, as co-General Partner.

“Grant Deed” means the instrument evidencing the Developer’s conveyance of the Property to Agency substantially in the form attached to this Agreement as Attachment No. 7.

“Ground Lease” means the ground lease to be executed by Agency and Developer substantially in the form as attached to this Agreement as Attachment No. 10.

“Guaranty Agreement” means the guaranty agreement to be executed by Ashok Israni substantially in the form as attached to this Agreement as Attachment No. 15.

“Hazardous Substances” shall have the meaning set forth in Section 212.1 and the Environmental Indemnity.

“Improvements” means the improvements more particularly described in the Scope of Development, including the Public Improvements.

“Leasehold” means that leasehold estate in the Property created by the execution of the Ground Lease.

"Leasehold Permitted Exceptions" refers to those permitted exceptions to title as agreed to by Developer and Agency for the Leasehold.

"LEED Certification" means the Leed Certification provided by the U.S. Green Building Council.

"Legal Description" means the legal description of the Property attached to this Agreement as Attachment No. 2.

"Memorandum of Ground Lease" means that document substantially in form attached hereto as Attachment 10A.

"Memorandum of Option to Purchase Leasehold Interest" means that document substantially in form attached hereto as Attachment 11A.

"Method of Financing" means Attachment No. 3 to this Agreement.

"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 to Purchase Leasehold Interest" means the agreement providing Developer with the option to purchase the Leasehold and Improvements, substantially in the form of Attachment No. 11.

"Pedestrian and Vehicular Access Easement Agreement" means the Pedestrian and Vehicular Access Easement Agreement recorded on September 8, 2010 in the San Diego County Recorder's Office as Document No. 2010-0472741.

"Permanent Lender" means the maker of any Permanent Loan or beneficiary of any Permanent Loan deed of trust.

"Permanent Loan" means the Source of Financing in the form of a permanent loan to be made to the Developer at Conversion, secured against the Leasehold by the Permanent Loan Deed of Trust.

"Permanent Loan Deed of Trust" means the deed of trust securing the Permanent Loan.

"Permitted Mortgage" means a mortgage approved by the Agency as a Source of Financing for the Project. For purposes herein, the Construction Loan originated by Wells Fargo Bank for construction of the Improvements constitutes a Permitted Mortgage.

"Permitted Mortgagee" means the holder of a Permitted Mortgage, including the Construction Lender or Permanent Lender.

"Permitted Transfer" means any of the following:

A conveyance of a security interest in the Leasehold in connection with any Permitted Mortgage and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;

A conveyance of the Leasehold to any Affiliate of Developer, including, but not limited to, a conveyance to Developer's General Partner or Affiliate assignee pursuant to an option agreement with Developer;

The admission of limited partners to Developer's limited partnership, or similar mechanism, and the purchase of any such limited partnership interest or interests by the General Partner;

The removal for cause of any General Partner by a limited partner of the Developer's partnership, and the replacement thereof;

The lease for occupancy of all or any part of the Improvements within the Leasehold;

The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement; and

The withdrawal, removal and/or replacement of any limited partner of Developer, provided that any substitute limited partner is reasonably acceptable to Agency and is selected with reasonable promptness.

Any transfer described above shall be subject to the reasonable approval of documentation by the Executive Director for conformance with this Agreement.

"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.

"Project" refers to the construction of the Improvements on the Property.

"Project Budget" means the schedule of sources and uses attached to this Agreement as Attachment No. 6.

"Property" means the real property described in Section 104 of this Agreement.

"Public Improvements" means the off-site public improvements referenced in the Scope of Development.

"Release of Construction Covenants" means the certificate, substantially in form attached hereto as Attachment No. 14, to be issued by the Agency upon Completion in accordance with Section 324 of this Agreement.

“Resort Covenants” means those Resort Covenants in form agreed to in writing by the Developer and Agency prior to recordation.

“Schedule of Performance” means the document attached to this Agreement as Attachment No. 5.

“Scope of Development” means the document attached to this Agreement as Attachment No. 4.

“Site Map” means the document which is attached to this Agreement as Attachment No. 1.

“Source of Financing” means a source of financing the Project which has been approved by the Agency, as more specifically described in the Method of Financing.

“Specific Plan” means the Seacoast Inn Specific Plan adopted by Ordinance No. 2007-1060.

“Temporary Encroachment Permit” means the Temporary Encroachment Permit recorded on Feb. 11, ~~2010~~ 2011 in the San Diego County Recorder’s Office as Document No. ~~2010-~~ 0096022 2011

“Title Company” means Chicago Title Company or another title insurance company mutually acceptable to Agency and Developer.

“Title Insurance Policy” means and includes any of the following, as appropriate: (i) a leasehold policy of title insurance in favor of Developer with respect to the Leasehold in an amount as reasonably requested by Developer (the “Leasehold Title Policy”); or (ii) a standard form ALTA owner’s policy of title insurance in favor of Agency, together with such endorsements as Agency may reasonably require (the “Agency’s Title Policy”).

“Title Report” means the Preliminary Title Report, dated September 1, 2010, attached to this Agreement as Attachment No. 13.

SECTION 103 The Redevelopment Plan

This Agreement is subject to the Redevelopment Plan for the Palm/Commercial Redevelopment Project Area, which was approved and adopted on February 6, 1996 by the City Council of the City of Imperial Beach, by Ordinance No. 96-901, as thereafter lawfully amended (“Redevelopment Plan”). The Redevelopment Plan is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 104 The Property

The “Property” is located at 800 Seacoast Drive, in the City of Imperial Beach, California. The Property is depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the Property is set forth in the Legal Description attached hereto as Attachment No. 2. In the event that Developer subdivides the Property into a vertical

subdivision, each parcel within the vertical subdivision shall be subject to the rights and obligations under this Agreement, and the Legal Description referenced herein for the Property shall be modified to reflect the legal descriptions associated with each vertical parcel.

SECTION 105 Agency

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

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement shall be:

Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attn: Executive Director
Tel: 619-423-0314
Fax: 619-628-1395

With a copy to: Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, California 90071
Attn: Susan Y. Cola
Tel: 213-617-0480
Fax: 213-625-0931

c. "Agency" as used in this Agreement includes the Imperial Beach Redevelopment Agency and any assignee or successor to its rights, powers and responsibilities.

SECTION 106 Developer

a. Developer is IMPERIAL COAST, L.P., a California limited partnership, whose Managing General Partner is Pacifica – Hospitality Group, Inc., a Nevada Corporation and co-General Partner is Pacifica Pima, Inc., a Nevada Corporation. The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

IMPERIAL COAST, L.P.
1785 Hancock Street, Suite 100
San Diego, California 92110
Attn: Ashok Israni
Tel: (619) 296-9000
Fax: (619) 296-9090

b. Whenever the term "Developer" is used herein, such term means and include the Developer as of the date hereof, and any assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

SECTION 107 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping the Property as a full service hotel with seventy-eight (78) hotel rooms, and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the City and the Agency, in light of the following: (1) the importance of the development of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer, is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly permitted herein.

b. Prior to Completion, Developer shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Agency. Subject to review of documentation effectuating any such proposed assignment or transfer, the Agency agrees to reasonably give such approval if the assignment is a Permitted Transfer.

c. For the reasons cited above, Developer represents and agrees for itself and any successor in interest that prior to Completion, without the prior written approval of the Agency, there shall be no significant change in the ownership of Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means, except Permitted Transfers.

d. Any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer, other than certain Permitted Transfers, shall require the approval of the Agency, which shall not be unreasonably withheld. To the extent Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, 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 a full service hotel comparable in quality and size to the hotel contemplated by the Specific Plan and Development Agreement, and (ii) the proposed transferee's financial commitments and resources are reasonably satisfactory to the Agency. In addition, Agency shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer that results in payment of consideration to any Person prior to the issuance of the Release of Construction Covenants and that is not conditioned upon the issuance of the Release of Construction Covenants.

e. Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by the Agency if there is any significant change

(voluntary or involuntary) in membership, management or control, of Developer (other than such changes occasioned by the death or incapacity of any individual) prior to Completion.

f. Permitted Transfers and any other assignments or transfers approved by the Agency in conformance with this Agreement shall be evidenced by the Developer's, assignee's, and Agency's execution of an Assignment and Assumption Agreement.

g. The restrictions of this Section 107 shall terminate upon Completion.

PART 2. PURCHASE OF THE PROPERTY, DISPOSITION OF LEASEHOLD AND REIMBURSEMENT FOR PUBLIC IMPROVEMENTS

SECTION 201 Agency's Purchase of the Property from Developer

Subject to the conditions precedent set forth in Section 204, herein, Agency shall purchase the Property from the Developer for the amount of FIVE MILLION SEVEN HUNDRED AND SIXTY THOUSAND DOLLARS AND NO CENTS (\$5,760,000.00)("Purchase Price"). The disbursement of the Purchase Price shall occur upon Closing, in accordance with the Disbursement Agreement.

SECTION 202 Agency's Lease of the Property to Developer

Subject to the conditions precedent set forth in Section 204, herein, Agency shall convey the Leasehold to Developer in consideration for and on such terms and conditions as are contained in the Ground Lease. Developer understands, acknowledges and agrees that nothing herein authorizes the Developer, Permitted Mortgagee, or any Person, to pledge the Agency's fee interest as security for any purpose whatsoever.

SECTION 202.1 Option to Purchase Leasehold

Agency and Developer shall enter into that certain Option to Purchase Leasehold Interest and Memorandum of Option to Purchase Leasehold Interest, concurrently with Agency's conveyance of the Leasehold to Developer.

SECTION 202.2 Agency Purchase of Plans

Agency shall purchase from the Developer all Plans (as defined in Section 305, herein) that have been approved by the Agency in accordance with Sections 303 through 306, herein, for an amount not to exceed THREE HUNDRED AND FIFTY-FOUR THOUSAND ONE HUNDRED AND NINETY-THREE DOLLARS AND NO CENTS (\$354,193.00)("Plans Price").

SECTION 203 Reimbursement for Public Improvements

Subject to the conditions precedent set forth in Section 204, herein, Agency shall reimburse Developer for the cost of constructing the Public Improvements set forth in the Scope of Development in an amount not to exceed EIGHT HUNDRED AND EIGHTY FIVE THOUSAND SEVEN HUNDRED AND NINETY SEVEN DOLLARS AND NO CENTS

(\$885,797.00)(“Reimbursement Amount”). The Agency’s reimbursement shall occur in accordance with the Disbursement Agreement.

SECTION 204 Conditions Precedent to Agency Subsidy

The Agency’s obligations to Developer under Sections 201-203, hereunder, constitute the Agency’s subsidy for the Project (“Agency Subsidy”). Subject to the notice and cure provisions of Sections 501 through 510, inclusive, of this Agreement and to the enforced delay provisions of Section 602 of this Agreement, the Agency at its option may terminate this Agreement pursuant to Section 510 if any of the following conditions precedent are not satisfied by the Developer or waived in writing by the Agency within the time limits set forth in the Schedule of Performance:

SECTION 204.1 Conditions Precedent to Agency’s Purchase of the Property and Plans from Developer and Agency’s Conveyance of Leasehold to Developer

For the benefit of the Agency, Closing and disbursement of any proceeds constituting the Agency Subsidy, are conditioned upon the occurrence of each of the following conditions on or prior to the scheduled Closing Date as set forth in the Schedule of Performance:

- a. Limited Partnerships. The limited partnership agreement (but only with respect to whether such limited partnership agreement is consistent with this Agreement) has been approved by the Executive Director.
- b. Title Insurance Policies. The Title Company shall be committed to issue the Agency’s Title Policy in accordance with Section 209, herein.
- c. Final Construction Drawings. Developer shall have submitted and Agency shall have approved Final Construction Drawings for all Improvements, in accordance with Section 305, herein.
- d. Project Budget. Developer shall have delivered to the Agency final revisions to the Project Budget, which have been approved by the Executive Director and certified by Developer’s Construction Lender, demonstrating to the satisfaction of the Agency the availability of sufficient funds to pay all Acquisition and Development Costs (“Final Project Budget”).
- e. Construction Contract. Developer shall have delivered to the Agency a general construction contract between the Developer and a licensed general contractor, covering all construction required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the Final 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 fixturation

of the Project, and demonstrating that construction will be completed within the time provided in the Schedule of Performance.

- f. Evidence of Financing. Developer shall have submitted and the Executive Director shall have approved evidence relating to all Sources of Financing, 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 loan documents relating to the Construction Loan, certified by Developer to be a true and correct copy or copies thereof;
 - (2) evidence of immediately available funds in a construction escrow account for the Project in the total amount necessary to Complete construction of the Project, including the Public Improvements, in accordance with a Project Budget approved, in writing, by the Agency and certified by the Construction Lender. If the amount necessary to complete the Project is less than the amount indicated in the Project Budget attached hereto as Attachment No. 6, the Agency shall have the option of crediting the difference against the Plans Price so that the Agency benefits from the reduction.
- g. Insurance. Developer shall have submitted to the Agency evidence of the insurance policies required by Section 309, herein.
- h. Permits. Developer shall have delivered to the Agency a list of all permits required for the construction of the Improvements including, without limitation, the Pedestrian and Vehicular Access Easement Agreement and the Temporary Encroachment Permit, and shall have demonstrated that all variances, entitlements and approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget).
- i. Developer's Formation Documents. Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Developer and its general partner(s), including, without limitation and as applicable: limited partnership agreements and any amendments thereto; articles of incorporation; Limited Liability Company Articles of Incorporation (LLC-1); Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of 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.

- j. Recording Instructions. Escrow Agent shall have approved such supplemental recording instructions as may have been prepared on behalf of the Agency.
- k. Documents. Agency, Developer and/or other parties, as appropriate, shall have executed, and filed or recorded as appropriate, the following documents:
- (1) Grant Deed (Attachment No. 7), to be signed and acknowledged by Agency and Developer);
 - (2) Ground Lease (Attachment No. 10) and Memorandum of Ground Lease (Attachment No. 10A), to be signed and acknowledged by Agency and Developer;
 - (3) Attornment Agreement (Attachment No. 12), to be signed and acknowledged the Construction Lender;
 - (4) Environmental Indemnity (Attachment No. 8), to be signed by Developer;
 - (5) Disbursement Agreement (Attachment No. 9), to be signed by Agency, Developer, and the Construction Lender;
 - (6) Option to Purchase Leasehold Interest (Attachment No. 11) and Memorandum of Option to Purchase Leasehold Interest (Attachment No.11A), to be signed and acknowledged by Agency and Developer;
 - (7) Guaranty Agreement (Attachment No. 15), to be signed and acknowledged by Ashok Israni; and
 - (8) Assignment of Agreements (Attachment No. 17), to be signed by Developer.
- l. Current Payment of In-Lieu TOT. Developer shall have paid, by cashier's check or money order, all in-lieu transient occupancy taxes owed to the City, at the rate of \$6,666 per month, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Closing.
- m. Current Payment of Fees. Developer shall have paid all City's/Agency's staff, consultant, and legal fees to negotiate, draft, and process this Agreement, in accordance with Section 3(f) of the Memorandum of Understanding by and among the City, Agency and Developer, dated April 21, 2010 ("Agency Fees"). If Developer has made any partial payments of Agency Fees, Developer shall pay, as a condition to Closing,

any outstanding amounts of Agency Fees invoiced to Developer prior to Closing.

- n. Closing Certificate. When all conditions precedent have been satisfied to the satisfaction of the Executive Director, the Executive Director shall execute and submit to the Escrow Agent a certificate stating that all conditions precedent to recording of the documents have been satisfied or waived, if such be the case.
- n. No default. Developer shall not be in default of this Agreement.

SECTION 204.2 Conditions Precedent to Agency's Reimbursement for the Public Improvements

a. Completion. Completion of the Public Improvements to the satisfaction of the City's Public Works Director.

b. Current Payment of In-Lieu TOT. Developer shall have paid, by cashier's check or money order, all in-lieu transient occupancy taxes owed to the City, at the rate of \$6,666 per month, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Completion of the Public Improvements. In the event that Developer is current on all payments of in-lieu transient occupancy taxes at the time of Completion of the Public Improvements, Agency shall withhold TWO HUNDRED THOUSAND DOLLARS (\$200,000) ("Withholding Amount") from the Reimbursement Amount as estimated withholding of in-lieu transient occupancy taxes that will be incurred and paid on a monthly basis to the City by the Agency (on Developer's behalf) during the period from Completion of the Public Improvements through Completion of the Project. In the event that Developer is not current on all payments of in-lieu transient occupancy taxes at the time of Completion of the Public Improvements, Agency shall withhold from the Reimbursement Amount and pay directly to the City the amount of in-lieu transient occupancy taxes owed to the City, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Completion of the Public Improvements plus the Withholding Amount. Within thirty (30) days of Completion of the Project, Agency shall cause to be provided to Developer by the City a written invoice documenting the outstanding amount of in lieu transient occupancy taxes owed to the City at the time of Completion. If any amounts are outstanding, Agency shall withhold the outstanding amount from any remaining Withholding Amount for direct payment to the City and disburse the balance of the Withholding Amount to Developer within ten (10) business days of City's issuance of the written invoice to Developer. If no amounts are outstanding, Agency shall disburse the entire balance of the Withholding Amount to Developer within ten (10) business days of City's issuance of the written invoice to Developer. Developer understands, acknowledges and agrees that that nothing herein shall be construed or interpreted as the Agency's assumption of Developer's obligations to make payments of in-lieu transient occupancy taxes to the City in accordance with the Development Agreement and that in the event the Agency's withholding is not enough to pay for all of the in-lieu transient occupancy taxes owed under the Development Agreement, Developer shall nevertheless be liable for any deficiency amounts. Furthermore, nothing herein shall be deemed to modify or waive the City's

rights to receive in-lieu transient occupancy taxes as provided under the Development Agreement.

c. No default. Developer shall not be in default of this Agreement, including Section 204.1.

SECTION 205 Escrow

Agency agrees to open an escrow in the County of San Diego for the Agency's purchase of the Property from Developer and conveyance of the Leasehold to Developer with Title Company or such other escrow company, escrow department of a bank, or escrow department of a title insurance company first approved by Agency and Developer (the "Escrow Agent"), no later than the applicable dates established in the Schedule of Performance.

Sections 201 through 209 (inclusive) of this Agreement shall constitute the joint escrow instructions of Agency and Developer with respect to the Agency's purchase of the Property from Developer and Agency's conveyance of the Leasehold to Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

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

Upon receipt by the Escrow Agent of all executed and acknowledged documents, as required by Section 204, herein, the Escrow Agent shall record all documents in accordance with Section 206 of this Agreement when the fee interest of the Property can be vested in the Agency and the Leasehold can be vested in Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any insurance policies governing the Property or any portion thereof are not to be transferred.

Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not earlier than three (3) days prior to the Closing Date:

- a. Escrow fee;
- b. Recording fees;
- c. Notary fees;
- d. Premiums for the Title Insurance ordered by Agency and Developer as set forth in Section 209 of this Agreement.

- e. Costs necessary to place the title in the condition required by the provisions of this Agreement;
- g. Ad valorem taxes and any other taxes, assessments or impositions of any kind, if any, attributable to the Property prior to conveyance of the Leasehold.
- h. State, county, city or other documentary stamps and transfer taxes, if any.

The Escrow Agent is authorized to:

1. Pay, and charge Agency and Developer, respectively, for any fees, charges and costs payable under this Section 205. Before such payments are made, the Escrow Agent shall notify Developer of such fees, charges and costs;
2. Disburse funds and deliver all documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by Agency and Developer; and
3. Record any instruments delivered through the escrow if necessary or proper to vest the applicable interests in Developer and Agency in accordance with the terms and provisions of this Agreement.

All funds received in the escrow shall be deposited by the Escrow Agent in an interest bearing account for the benefit of the depositing party as directed by the depositing party.

If any escrow is not in condition to close on or before the Closing Date, either party who then shall have fully performed the acts to be performed before the Closing Date may, in writing, demand the return of its money, papers or documents. No demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party 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 ten- (10) day period. If any objections are raised within the ten- (10) day period, the Escrow Agent is authorized to hold the money, paper and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. Notwithstanding the foregoing, the termination rights of Agency and Developer and other rights and remedies on default are governed by Sections 501 through 510, inclusive, of this Agreement, and no demand for such return shall affect such rights or remedies. If no such demands are made, the escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both Agency and Developer affected thereby, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendments to these escrow instructions shall be in writing and signed by both Agency and Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as escrow agent under such amendment.

All communications from the Escrow Agent to Agency or Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between Agency and Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 201 through 209, inclusive of this Agreement.

SECTION 206 Recordation of Documents

Agency and Developer, respectively, agree to perform all acts necessary to achieve recordation and delivery of documents in sufficient time for escrow to be closed in accordance with the foregoing provisions.

a. The following documents shall be recorded in the following order ("Recorded Documents"):

ORDER OF RECORDATION	DOCUMENT NAME
1	Grant Deed (Attachment No. 7)
2	Memorandum of Ground Lease (Attachment No. 10A)
3	Construction Loan Security Instruments
4	Attornment Agreement (Attachment No. 12)
5	Memorandum of Option Agreement (Attachment No. 11A)

b. All documents to be recorded shall be recorded in the Official Records.

c. Unless recording against the Agency's fee is required by law, as determined in the reasonable discretion of the Agency and the California Department of Real Estate ("DRE"), Developer shall record the Declaration of CC&Rs and the Resort Covenants against the Leasehold no earlier than Completion of the Improvements and prior to issuance of the Certificate of Occupancy for the Project and as a condition to the Agency's issuance of a Release of Construction Covenants in accordance with Section 324, herein.

d. The Declaration of CC&Rs and Resort Covenants shall be consistent with the provisions of the Development Agreement and Specific Plan. Without limiting the generality of the foregoing sentence, the Declaration of CC&Rs and Resort Covenants shall, at a minimum, contain all of the following provisions:

(i) language mirroring Section 401 herein regarding collection of transient occupancy taxes ("TOT");

(ii) language requiring the City's written consent to any provisions of, or amendments to, the Declaration of CC&Rs and Resort Covenants, before they are final;

(iii) language designating the City as a third party beneficiary; and

(iv) if both the Agency and DRE reasonably determine that recording of the Declaration of the CC&Rs against the fee is required by law, then the Declaration of CC&Rs and the Resort Covenants shall contain provisions that require termination of the Declaration of CC&Rs and the Resort Covenants no later than the end of the 55 year term of the Ground Lease or earlier termination of the Ground Lease, except in the event that Developer exercises the Option.

Developer shall obtain Agency's written approval of the form and content of the Declaration of CC&Rs and Resort Covenants prior to recordation. The Agency's review of the Declaration of CC&Rs and Resort Covenants shall include, but is not limited to, a comparison of the Declaration of CC&Rs and Resort Covenants with the Development Agreement, the Specific Plan and this Agreement (including all attachments) to ensure consistency amongst these documents. The Agency shall not unreasonably withhold such approval. Any changes in form or content to the Declaration of CC&Rs and/or the Resort Covenants shall be subject to Agency's written approval.

SECTION 207 Possession of Leasehold Upon Close of Escrow

Possession of the Leasehold shall be delivered to Developer concurrently with Close of Escrow.

SECTION 208 Condition of Title

Developer shall convey fee title to the Agency free and clear of all liens, encumbrances, covenants, restrictions, easements, leases, taxes and other defects, but subject to (a) the covenants, conditions, restrictions and easements arising out of the provisions of this Agreement; and (b) unless caused to be removed by Developer with the Agency's consent, which shall not be unreasonably or untimely withheld, the following exceptions ("Permitted Exceptions") that are listed in the Title Report (Attachment No. 13): 3, 4.

The Leasehold shall be conveyed free of any possession or right of possession except that of Developer, unless waived in writing by Developer.

SECTION 209 Title Insurance

SECTION 209.1 Agency's Title Insurance

Concurrently with the recordation of the Grant Deed, Title Company shall provide and deliver to Agency a 2006 ALTA owner's policy of Title Insurance, issued by the Title Company, insuring that the fee interest of the Property is vested in Agency in the condition required by Section 208 of this Agreement, together with any endorsements as the Agency may reasonably require ("Agency's Title Policy"). The Title Company shall provide Agency and Developer with

a copy of the Agency's Title Policy. The Agency's Title Policy shall be in the amount of the Purchase Price. If Title Company is unable or unwilling to deliver the Agency's Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Agency, Agency may terminate this Agreement pursuant to Section 510.

SECTION 209.2 Leasehold Title Policy

Concurrently with the recordation of the Memorandum of Ground Lease, Title Company shall provide and deliver to Developer a Title Insurance Policy, issued by Title Company, insuring that the Leasehold is vested in Developer in the condition required by Section 208 of this Agreement, together with any endorsements as the Developer may reasonably require ("Leasehold Title Policy"). The Title Company shall provide Agency and Developer with a copy of the Leasehold Title Policy. The Leasehold Title Policy shall be in the amount of the Purchase Price. If Title Company is unable or unwilling to deliver the Leasehold Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Developer, Developer may terminate this Agreement pursuant to Section 509.

SECTION 210 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property

In accordance with California Revenue and Taxation Code section 107.6(a) and California Health and Safety Code section 33673, Agency states that by entering into the Ground Lease, a possessory interest subject to property taxes shall be created. Developer and/or its successors or other party(ies) in whom the possessory interest is vested shall be subject to the payment of property taxes, liens or encumbrances levied on such interest, unless an exemption is otherwise available.

Developer acknowledges and agrees that the Leasehold and/or the Improvements thereon, and any possessory interest therein, shall at all times after the commencement of the Ground Lease, be subject to ad valorem taxes levied, assessed or imposed on such property, and that Developer shall pay taxes upon the assessed value of the entire property unless exempt, and not merely upon the assessed value of its leasehold interest.

SECTION 211 Contests

a. Developer shall refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Property; provided, however, that such prohibition shall not apply to an appeal, challenge or contesting of the erroneous initial assessment for property tax purposes of the Property in the fiscal year of the completion of the Improvements to be constructed pursuant to the Agreement, and further provided that in the absence of transfer of ownership or new construction Developer shall not be prohibited from appealing, challenging or contesting any increases in assessment of the Property for property tax purposes over and above the current 2% per annum permitted amount.

b. Developer agrees that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Developer shall give Agency prompt notice in writing of any such

contest at least ten (10) days before filing any contests. Developer may only exercise its right to contest an imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the imposition so contested, or the sale of the Property, or any part thereof, to satisfy the same, and only if Developer shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Agency from time to time in order to insure the payment of such imposition to prevent any sale, foreclosure or forfeiture of the Property, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Developer, Developer shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Developer and, after such payment and discharge by Developer, Agency will promptly return to Developer such security as Agency shall have received in connection with such contest.

c. Agency shall cooperate reasonably in any such contest permitted by this Section 211, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Developer shall be prosecuted by Developer at Developer's sole cost and expense; and Developer shall indemnify and save harmless Agency 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 Agency in connection therewith.

SECTION 212 Condition of the Property

SECTION 212.1 Hazardous Substances

a. "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.

b. Developer hereby represents and warrants that the development, construction and uses of the Leasehold permitted under this Agreement (i) will comply with all applicable environmental laws; and (ii) do not require the presence of any Hazardous Substance on the Property.

c. Within five (5) days of request by Agency, Developer shall deliver to Agency, if not previously delivered, all documents relevant to the condition of the Property within the Developer's possession or control, including, without limitation, a preliminary title report with underlying exceptions, environmental reports, studies, surveys, and all other relevant documents within the Agency's possession or control (collectively referenced as "Documents").

SECTION 212.2 Suitability of the Property

a. Prior to Closing, Agency shall have the right to engage, at its sole cost and expense, its own environmental consultant ("Environmental Consultant"), to make such investigations as Agency deems necessary, including without limitation any "Phase 1" and/or "Phase 2" investigations of the Property or any portion thereof, and the Developer shall promptly be provided a copy of all reports and test results provided by the Environmental Consultant (the "Environmental Reports").

b. The Leasehold shall be delivered to Developer in an "as is" physical condition, with no warranty, express or implied by Agency as to the presence of Hazardous Substances, or the condition of the soil, its geology or the presence of known or unknown faults. If the condition of the Leasehold is not in all respects entirely suitable for the use or uses to which such Leasehold will be put, then it is the sole responsibility and obligation of Developer to place the Leasehold in all respects in a condition entirely suitable for the development thereof, solely at Developer's expense.

c. Effective upon Closing, Developer agrees to indemnify, defend and hold harmless Agency and City and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity.

d. On and after the Effective Date of this Agreement, Developer hereby waives, releases and discharges the Agency, the City and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the use, maintenance, ownership or operation of the Property or any portion thereof, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Agency

or its employees, officers or agents. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

To the extent of the release set forth in this Section 212.2, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

SECTION 213 Method of Financing

The Acquisition and Development Costs shall be financed with a combination of Sources of Financing as provided in the Method of Financing.

SECTION 214 Evidence of Financing

a. Not later than fifteen (15) days prior to the scheduled Closing Date and in no event later than as provided in the Schedule of Performance, Developer shall submit to the Agency evidence satisfactory to the Executive Director that Developer has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement. Such evidence of financing shall include all items referenced under subsection (f) of Section 204.1, herein.

b. The Executive Director shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance (Attachment No. 5). Such approval shall not be unreasonably withheld. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to Developer stating the reasons for such disapproval.

SECTION 215 Reserved

SECTION 216 Designation as Point of Sale

Developer and its successors and assigns shall maintain such licenses and permits as may be required by any governmental agency to conduct taxable sales arising from any project on the Property and, to the extent permitted by law, shall designate City as the “point of sale” for all taxable sales and lease transactions occurring from any project on the Property 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 Property.

PART 3. DEVELOPMENT OF THE PROPERTY

SECTION 301 Land Use Approvals

It is the responsibility of Developer, without cost to Agency, to ensure that zoning of the Property and all applicable City land use requirements will permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. The following shall be conditions of the Closing and shall be accomplished by the date set forth in the Schedule of Performance: (A) Developer shall submit and Executive Director shall approve complete Final Construction Drawings; (B) Developer shall obtain all entitlements, approvals, variances and permits necessary for the construction of the Improvements and (C) Developer shall satisfy all other conditions precedent to the Closing as set forth in the Method of Financing. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Property, 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 Property shall be developed in accordance with and within the parameters established in the Scope of Development.

SECTION 303 Basic Concept Drawings

- a. Developer has prepared basic concept and schematic drawings and related documents for the development of the Property, which have been approved by the Agency.
- b. The Property shall be developed as established in the basic concept and schematic drawings and related documents except as changes may be mutually agreed upon between Developer and the Executive Director. Any such changes shall be within the limitations of the Scope of Development.

SECTION 304 Landscaping and Grading Plans

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

SECTION 305 Construction Drawings and Related Documents

a. Developer shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the 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 Executive Director if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the Executive Director shall not be subject to subsequent disapproval.

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

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

SECTION 306 Agency Approval of Plans

a. Subject to the terms of this Agreement, the 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 Agency. Upon receipt of any disapproval, Developer shall revise the Plans, and shall resubmit to the Executive Director as soon as possible after receipt of the notice of disapproval. The 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 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. Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder shall revise the Plans, and shall resubmit to the Executive Director as soon as possible after receipt of the notice of disapproval.

b. If Developer desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the 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 as expressly provided in Section 203, herein, the cost of demolishing any improvements on the Property and developing the Property and constructing the Improvements, including, without limitation, pre-development costs and any offsite or onsite improvements required by the City in connection therewith, whether Developer has commenced such demolition, development and/or construction prior to or after Closing, or at any time, shall be the responsibility of Developer, without any cost to 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, 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 Agency and Developer; provided, however, that the Executive Director shall have the authority and discretion, which shall not be unreasonably withheld, to grant two 30-day extensions of the Closing Date in order to effect Closing.

b. After the Closing, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided herein and in the Scope of Development.

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

SECTION 309 Indemnification and Insurance

a. Developer's Indemnity. To the maximum extent permitted by law, and in addition to any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the Agency, the City, and their respective officers, employees, contractors and agents, including, without limitation, the Environmental Indemnity and the Ground Lease, Developer agrees to and shall defend, indemnify and hold harmless Agency, the City, and their respective officers, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees 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 Developer shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the Agency, City, or their respective officers, employees, contractors or agents:

1. The existence, release, presence or disposal on, in, or under the Property of any Hazardous Substances resulting from the acts or omissions of Developer, its contractors, subcontractors, agents or other persons acting on Developer's behalf (individually, "Indemnifying Party," and collectively, "Indemnifying Parties");
2. The development, construction, marketing, use, operation or condition of the Property and the Improvements by any Indemnifying Party;
3. Any accident, personal injury or casualty on the Property 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 Property pursuant to this Agreement, and (ii) upon assignment of the Plans to Agency, Agency uses the Plans or causes such Plans to be used to develop the Property;
5. Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer, under this Agreement; and
6. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City or the Agency.

The foregoing indemnity obligations shall continue to remain in effect after the Completion. Developer understands, acknowledges and agrees that nothing in this Section shall be deemed or interpreted as a limitation, modification or waiver of any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the Agency, the City, and their respective officers, employees, contractors and agents.

b. Insurance Policies.

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

(a) All-Risk Policies: Developer shall maintain or cause to be maintained coverage of the type now known as builder's completed value risk insurance, as delineated on an All Risk Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance, excluding earthquake(s). Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a "Replacement Cost Endorsement" in amount sufficient to prevent Developer from

becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by 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 Property, or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence;

(b) Liability Insurance: Developer shall maintain or cause to be maintained general liability insurance or an equivalent owner contractors protective policy, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer, or any person acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Four Million Dollars (\$4,000,000), Four Million Dollars (\$4,000,000) Products and Completed Operations Aggregate, and Two Million Dollars (\$2,000,000) each Occurrence. Developer shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the occurrence of the Closing. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of Agency or the payment of damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible. To the extent that Developer maintains increased or additional insurance coverage during the Term, in excess of the minimum coverage requirements prescribed by paragraphs (b)(1)(b) and (b)(1)(c) of this Section 309, Developer shall ensure that the additional insureds specified in paragraph (b)(3) of this Section 309 derive the benefit of such increased or additional insurance coverage.

(c) Automobile Insurance: Developer shall maintain or cause to be maintained automobile insurance on any automobiles owned by Developer, maintained in full force and effect in an amount of not less than Two Million Dollars (\$2,000,000) per accident.

(d) Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance, if required, for any employees of Developer, issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by

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

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 Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Agency and Developer as insureds, additional insureds, and/or loss payable parties as their interests may appear.

3. The Insurance Policies shall name as additional insureds the following:

"The City of Imperial Beach, the Imperial Beach Redevelopment Agency, and their respective officers, employees, contractors, agents and attorneys."

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

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

SECTION 310 Nondiscrimination

Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. After the Effective Date, this language shall be incorporated into all contracts between Developer and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

SECTION 311 Local, State and Federal Laws

The Developer shall carry out development and construction (as defined by applicable law) of the Improvements on the Property, including, without limitation, any and all public works, (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the Agency, City, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer 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) the implementation of Chapter 804, Statutes of 2003; (3) the 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; (4) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (5) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. 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), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Chapter 804, Statutes of 2003 and/or 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 Notice of Non-Responsibility

Agency shall, at any and all times during the term of this Agreement, have the right to post and maintain on the Property, and record against the Property, as required by law, any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California; provided, however, that Developer shall, on behalf of the Agency, post and maintain on the Property, and record against the Property, all notices of non-responsibility provided for by the mechanics' lien laws of the State of California.

SECTION 313 Permits

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

SECTION 314 Rights of Access

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

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

SECTION 315 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Property, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of construction, improvement or development of the Property.

SECTION 316 Taxes, Assessments, Encumbrances and Liens

Commencing upon the Closing, Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. Developer shall not place, or allow to be placed, against the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Leasehold and/or Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Under no circumstances whatsoever shall the Developer allow any security instruments to be recorded against the Agency's fee interest in the Property.

SECTION 317 Reserved.

SECTION 318 No Encumbrances Except Permitted Mortgages

a. Notwithstanding Section 107, upon and after the Closing, Developer shall have the right to encumber the Leasehold with a Permitted Mortgage, 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 Property under this Agreement, consistent with the amounts to be financed by Developer per the Method of Financing ("Permitted Financing Purposes"). Developer has no authority to encumber the Agency's fee interest in the Property at any time and for any purpose, whatsoever. The maker of any loan approved by the 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, Developer shall promptly notify the Agency of any security interest created or attached to the Leasehold or Property whether by voluntary act of Developer or otherwise.

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. Except for the provision that Developer has no authority to encumber the Agency's fee interest in the Property at any time and for any purpose, whatsoever, the requirements of this Section 318 shall not apply following Completion.

SECTION 319 Lender Not Obligated to Construct Improvements

No lender shall be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the Ground Lease.

SECTION 320 Notice of Default to Lenders; Right of Lender to Cure Defaults

Whenever the Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Improvements, the Agency shall at the same time deliver the notice or demand to each Permitted Mortgagee that requests such notice or demand, in writing, from the Agency and provides its contact information for the notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee upon obtaining possession of the Leasehold, such Permitted Mortgagee 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 Mortgagee 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 Agency agrees to further extensions in its reasonable discretion; and provided further that such Permitted Mortgagee shall not be required to remedy or cure any non-curable default of Developer. Any Permitted Mortgagee who forecloses on its Permitted Mortgage, or is assigned or otherwise succeeds to Developer's rights under this Agreement, shall have the right to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the Agency by which such Permitted Mortgagee expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

SECTION 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by Developer, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Leasehold (or portion thereof) 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 Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder 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 Agency.

SECTION 322 Right of the Agency to Cure Defaults

In the event of a default or breach by Developer of a Permitted Mortgage prior to Completion and prior to completion of a foreclosure by a Permitted Mortgagee, and the Permitted Mortgagee has not commenced to complete the development, the Agency may cure the default at any time prior to completion by a Permitted Mortgagee of any foreclosure under its security. In such event, the Agency shall be entitled to reimbursement from Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien

upon the Leasehold, subordinate to the liens of any Permitted Mortgagee, to the extent of such costs and disbursements.

SECTION 323 Right of the Agency to Satisfy Other Liens on the Property

Prior to Completion and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Property, the Agency shall have the right, without obligation, to satisfy any such liens or encumbrances. In such event, the Agency shall be entitled to reimbursement from Developer of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Leasehold to the extent of such costs and expenses, subordinate to the liens of any Permitted Mortgagee, to the extent of such costs and expenses.

SECTION 324 Release of Construction Covenants

a. Promptly after Completion of the Improvements as required by this Agreement, and subject to Agency's written approval of the form of the Declaration of CC&Rs and Resort Covenants in conformance with Section 206, herein, Agency shall deliver to Developer a Release of Construction Covenants, upon written request therefor by Developer. The Agency's issuance of the Release of Construction Covenant shall signify Developer's satisfaction of Sections 302 - 308 of this Agreement. The Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the Scope of Development required by this Agreement.

b. The Release of Construction Covenants shall be substantially in the form attached hereto as Attachment No. 14 so as to permit it to be recorded in the Official Records.

c. If Agency fails to deliver the Release of Construction Covenants within ten (10) days after written request from Developer, Agency shall provide Developer with a written statement of its reasons (the "Statement of Reasons") within that ten (10)-day period. The statement shall also set forth the steps Developer must take to obtain the Release of Construction Covenants. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by Agency, Agency will issue the Release of Construction Covenants upon the posting of a bond by Developer with Agency in an amount representing Agency's estimate of the cost to complete the work.

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

PART 4. USE OF THE PROPERTY

SECTION 401 Uses

a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Developer, such successors and such assignees shall use the Property only for the uses specified in the Specific Plan, Development Agreement, the Pedestrian and Vehicular Access Easement Agreement, the Temporary Encroachment Permit, the Declaration of CC&Rs, the Resort Covenants, the Ground Lease and this Agreement. No change in the use of the Property shall be permitted without the prior written approval of Agency.

b. Notwithstanding the generality of subsection (a), above, Developer, its successors and assigns, shall use the Property and/or Improvements only for the following uses: operation of a four story full service hotel with a minimum of seventy-eight (78) guest rooms ("Hotel"). The Hotel shall be rated not less than three diamonds by AAA or three stars by the Mobile Travel Guide, and shall also have the following characteristics:

- a) The Hotel shall contain an on-site, full service (sit down) three-meal restaurant and lounge.
- b) The Hotel shall have at least one swimming pool.
- c) The Hotel shall have a fully-equipped exercise room/fitness center.
- d) The Hotel shall have a business center.
- e) The Hotel shall have a minimum of 2,080 square feet of meeting and conference space.

Developer, and/or Hotel owner or Hotel operator ("Developer" for purposes of this section) shall be required to provide for collection and payment of the transient occupancy tax ("TOT") to the City for all guest units/hotel units that are occupied on the Property and/or Improvements, regardless of the occupant's status as guest unit owner, lessee, private guest or guest. If a guest unit/hotel unit is occupied by a guest unit/hotel unit owner, the TOT shall be based upon the nightly rate then in effect for the unit as if it were being occupied by a third party renter. For occupancies of the guest unit/hotel unit other than by a unit owner, the TOT shall be based on the actual rent charged. This requirement to collect and pay TOT to the City exists regardless of whether the unit is booked in person through the Registration System, via telephone or through online means via agents of the Developer. If there is a legal reason why Developer cannot collect the TOT from owner/occupants of a guest unit, the Developer shall be required to provide to the City an amount of TOT equivalent to the amount that should have been collected from the owner/occupant for each night a guest unit is occupied by the owner/occupant.

SECTION 402 Maintenance

Developer shall maintain the Property in accordance with the requirements of the Ground Lease.

SECTION 403 Obligation to Refrain from Discrimination

Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, 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 land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.

SECTION 404 Form of Nondiscrimination and Nonsegregation Clauses

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

a. In deeds: "The grantee herein covenants by and for 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. 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.”

c. In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

SECTION 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of and enforceable against the original Developer and successors in interest by the Agency or the City. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Closing and shall be set forth in the Ground Lease.

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.

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

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of thirty (30) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days after such notice is received, and the party in default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in any event no more than one hundred and twenty (120) days of receipt of such notice of default from the injured party.

SECTION 502 Institution of Legal Actions

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

SECTION 503 Applicable Law

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

SECTION 504 Acceptance of Service of Process

a. In the event that any legal action is commenced by Developer against the Agency, service of process on the Agency shall be made by personal service upon the 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 Agency against Developer, service of process on Developer shall be made by personal service upon Developer (or upon the General Partner or General Partner's managing member, as applicable, or any officer of the General Partner or General Partner's managing member, as applicable) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

SECTION 505 Rights and Remedies Are Cumulative

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

SECTION 506 Damages

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

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

SECTION 508 Reserved.SECTION 509 Termination by Developer

Prior to the Closing, subject to the notice and cure provisions of Section 501, Developer shall have the right to terminate this Agreement, by providing written notice to the Agency, in the event of a default by Agency pursuant to this Agreement.

SECTION 510 Termination by Agency

a. Prior to the Closing, subject to the notice and cure provisions of Section 501, Agency shall have the right to terminate this Agreement, by providing written notice to the Developer, in the event of a default by Agency pursuant to this Agreement.

b. After the Closing, but before Completion, and subject to the notice and cure provisions of Section 501, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

1. Developer fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 501 of this Agreement, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to Section 602 hereof; or

2. Developer abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided Developer has not obtained an extension or postponement to which Developer may be entitled to pursuant to Section 602 hereof; or

3. Developer assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or

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

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

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

SECTION 602 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 Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver

such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and Developer.

SECTION 603 Conflict of Interest

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

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

SECTION 604 Nonliability of Agency Officials and Employees

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

SECTION 605 Inspection of Books and Records

Agency shall have the right at all reasonable times to inspect and copy the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement.

SECTION 606 Approvals

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

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

SECTION 607 Real Estate Commissions; Finder's Fee

The Agency shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The Agency and Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

SECTION 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

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

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

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) 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 hereto or cause Agency to be responsible in any way for the debts or obligations of Developer or any other Person.

SECTION 611 Compliance with Law

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

SECTION 612 Binding Effect

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

SECTION 613 No Third Party Beneficiaries

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

SECTION 614 Authority to Sign

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

SECTION 615 Incorporation by Reference

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

SECTION 616 Counterparts

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

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended hereto, constitutes the entire understanding and agreement of the parties.

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

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

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency within sixty (60) days after date of signature by Developer or this Agreement may be terminated by Developer upon written notice to Agency.

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

IMPERIAL COAST, L.P.,
a California limited partnership

By: PACIFICA – HOSPITALITY GROUP,
a Nevada corporation

Signature on file

Dated: 12/1/10

By: _____
Ashok Israni, President

IMPERIAL BEACH REDEVELOPMENT
AGENCY

Signature on file

Dated: 12/16/10

By: _____
Gary Brown
Executive Director

SIGNATURES CONTINUE ON NEXT PAGE

APPROVED AS TO FORM
AND LEGALITY

Agency General Counsel

Signature on file

B

Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

Signature on file

By:

Susan Y. Cola

ATTACHMENT NO. 1

SITE MAP

[behind this page]

GROUND LEASE

by and between

THE IMPERIAL BEACH REDEVELOPMENT AGENCY,

“Landlord”

and

SEACOAST INN, L.P., a California limited partnership

“Tenant”



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GROUND LEASE

This Ground Lease ("Lease") is dated for reference purposes as of the 15th day of March, 2011, and is entered into by and between the following (collectively, the "Parties"): THE IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency" or "Landlord"), and SEACOAST INN, L.P., a California limited partnership ("Tenant").

RECITALS

A. The subject property (the "Property") is located in the Palm Avenue/Commercial Redevelopment Project Area, within the City of Imperial Beach, California, on certain real property located at 800 Seacoast Drive.

B. This Ground Lease is entered into pursuant to that certain Disposition and Development Agreement, dated as of Dec. 16, 2010 (the "DDA"), by and between Landlord (as "Agency") and Imperial Coast, L.P., a California limited partnership (as "Developer"), the predecessor in interest to Tenant, for the purpose of providing part of the financing for the redevelopment of the Property with a full service, beach resort hotel with seventy-eight (78) rooms and appurtenant parking facilities (collectively, "the Project"), which shall be operated to meet certain criteria, as more specifically described herein and in the DDA. DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the DDA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the DDA.

NOW, THEREFORE, in consideration of the payments to be made hereunder and the covenants and agreements contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property hereinafter defined as the "Leased Premises" upon the following terms and conditions.

ARTICLE 1 - DEFINITIONS

1.1 Additional Rent. The term "Additional Rent" means all sums of money required to be paid pursuant to the terms of this Lease other than Rent, including, but not limited to, unpaid utilities, unpaid maintenance, unpaid Impositions, or unpaid liens or encumbrances.

1.2 Agreed Rate. The term "Agreed Rate" as used herein shall mean an annual rate of interest equal to the lesser of (i) two percent (2%) above the rate of interest announced from time to time by the Bank of America, Downtown San Diego, Main Branch, as the prime or reference rate (or, in the event said bank ceases to announce a prime or reference rate or is acquired or ceases operations and there is no successor bank, another established and financially secure commercial

bank, having a headquarters in California, selected by Landlord), or (ii) the highest rate permitted by law, if any.

1.3 Bankruptcy Code. The term "Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time.

1.4 Commencement Date. The Commencement Date is the date that the Memorandum of Ground Lease (Attachment No. 11A to the DDA) is fully executed by Landlord and Tenant and recorded in the official records of San Diego County, signifying the commencement of this Lease.

1.5 Covenant Period. The term "Covenant Period" means Term of this Lease.

1.6 Default(s). The term "Default(s)" as used herein shall have the meaning described in Section 14.1.

1.7 Environmental Laws. The term "Environmental Laws" means any federal, state or local environmental, health and/or safety-related law, rule, regulation, requirement, order, ordinance, directive, guideline, permit or permit condition, currently existing and as amended, enacted, issued or adopted in the future. The term "Environmental Laws" includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and similar state or local laws.

1.8 Force Majeure Events. The term "Force Majeure Events" shall have the meaning described in Section 14.8.

1.9 Governmental Restrictions. The term "Governmental Restrictions" as used herein shall mean and include any and all laws, statutes, official policies, ordinances, codes, formal decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorizations of any governmental entity, agency or political subdivision, now in force or hereafter adopted, which are applicable to the Leased Premises or the use thereof as of the date such term is being applied.

1.10 Improvements. The term "Improvements" shall mean and include all buildings, structures, fixtures, excavation, parking areas, walkways, drives, landscape areas, underground installations and all other improvements of whatsoever character constructed on, around, under or over the Leased Premises.

1.11 Institutional Lender. The term "Institutional Lender" means:

(1) a bank, trust company, insurance company, credit union, savings bank, pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a public real estate investment trust is the majority owner), federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500

company (such as AT&T Capital Corporation or General Electric Capital Corporation), real estate mortgage investment conduit, or securitization trust; (2) a trustee or issuer of collateralized mortgage obligations or similar investment entity (provided that such trustee, issuer, or other entity is publicly traded or is sponsored by an entity that otherwise constitutes an Institutional Lender); (3) any entity of any kind actively engaged in commercial real estate financing and having total assets of at least \$1,000,000; or (4) a corporation, other entity, or joint venture that is a wholly owned subsidiary of or is a combination of any one or more of the foregoing entities, including any of the foregoing when acting as trustee for other lender(s) or investor(s), whether or not such other lender(s) or investor(s) are themselves Institutional Lenders.

1.12 Leased Premises. The term "Leased Premises" as used herein shall have the meaning described in Article 2 below.

1.13 Leasehold Mortgage. The term "Leasehold Mortgage" shall mean any Permitted Mortgage.

1.14 Lease Year. The term "Lease Year" as used herein shall mean each of the consecutive twelve (12) calendar month periods beginning on the first day of the first calendar month following the Commencement Date unless the Commencement Date falls on the first day of a calendar month, in which event the Lease Year shall commence on the Commencement Date. As an example, "Lease Year 55" means the Lease Year commencing after the fifty-fourth (54th) anniversary of the Commencement Date.

1.15 Lender. The term "Lender" shall mean the owner and holder of any Mortgage or Leasehold Mortgage permitted by this Lease.

1.16 Lender's Affiliate. The term "Lender's Affiliate" shall mean any affiliate of Lender that takes title to the Leasehold either (i) upon foreclosure under the applicable Leasehold Mortgage or assignment in lieu thereof, or (ii) in connection with a new lease entered into pursuant to Section 8.5 hereof.

1.17 Losses and Liabilities. The term "Losses and Liabilities" as used herein shall mean all liabilities, claims, losses, causes of action, charges, penalties, damages, costs and expenses (including reasonable attorneys' fees and costs), of whatsoever character, nature and kind, whether to property or person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, latent or patent.

1.18 Mortgage. The term "Mortgage" as used herein shall mean and include any mortgage, deed of trust, monetary lien, financing conveyance or other voluntary monetary lien of any kind and all appropriate modes of financing real estate ownership, which encumbers Landlord's fee estate.

1.19. **Operating Year.** The term "Operating Year" as used herein shall mean each of the consecutive twelve (12) calendar month periods beginning on the first day of the first calendar month following the date of opening for business of the Seacoast Inn ("Opening Date"); unless the Opening falls on the first day of a calendar month, in which event the Operating Year shall commence on the Opening Date. As an example, "Operating Year 15" means the Operating Year commencing after the fourteenth (14th) anniversary of the Opening Date. The Opening Date shall be evidenced by documentation, showing advertisement to the general public of offers to let hotel rooms for rent. In no event shall the Opening Date occur prior to issuance of a permanent certificate of occupancy for the Project.

1.20. **Party or Parties.** The term "Party" shall refer to one of Landlord or Tenant; the term "Parties" shall refer to both Landlord and Tenant.

1.21. **Permitted Exceptions.** The term "Permitted Exceptions" shall have the same meaning as set forth in Section 208 of the DDA.

1.22. **Rent.** The term "Rent" as used herein shall have the meaning described in Section 4.1 below.

1.23. **Representatives.** The term "Representatives" as used herein shall mean the agents, contractors, employees (to the extent acting on behalf of such entity and within the scope of its employment or contract).

1.24. **Room Revenue.** The term "Room Revenue" as used herein shall mean revenues generated from letting of hotel rooms and shall exclude all other revenues, including revenues from beverage and food service, sales of gifts and sundries, use fees, parking fees, management fees, maintenance fees, association fees, spa, and salon services.

1.25. **Term.** The term "Term" as used herein shall mean the term of this Lease as described in Section 3.1 below.

1.26. **Title Insurer.** The term "Title Insurer" as used herein shall mean the Stewart Title of California, Inc.

1.27. **Title Policy.** The term "Title Policy" as used herein shall mean and include the most current form of ALTA owner's policy of title insurance, dated as of the Commencement Date, and with liability in the amount of the value of the land and completed improvements, insuring Tenant as the owner of the leasehold estate under the Lease, subject only to the Permitted Exceptions allowed by Section 208 of the DDA.

1.28. **Transfer Documents.** The term "Transfer Documents" as used herein shall have the meaning described in Section 9.1.

1.29 Transfer/Transferee. The term "Transfer" as used herein shall mean and include any conveyance, transfer, sale, assignment, lease, license, concession, franchise, gift, hypothecation, Mortgage, pledge, encumbrance, or the like, to any person or entity ("Transferee"), excluding any Leasehold Mortgage which encumbers Tenant's leasehold estate created by this Lease.

1.30 Uncured Default(s). The term "Uncured Default(s)" as used herein shall have the meaning described in Section 14.2.4.

ARTICLE 2 - LEASED PREMISES

2.1 Leased Premises.

The premises demised and leased hereunder ("Leased Premises") consist of the real property located in the City of Imperial Beach ("City"), County of San Diego, State of California, and more particularly described in the Legal Description for that property attached hereto as Exhibit A, and depicted on the Site Map attached hereto as Exhibit B, together with all right, title and interest of Landlord in and to all rights of way or use, servitudes, licenses, easements, tenements, hereditaments and appurtenances now or hereafter belonging or pertaining to the use of such real property during the Term. The parties agree that Tenant alone shall be entitled to all federal tax attributes of ownership of the Improvements.

2.2 Leased Premises; Condition of Premises; Zoning.

Prior to the Commencement Date, Tenant, at Tenant's sole expense, shall have investigated and approved the physical condition of, and the condition of title with respect to, the Leased Premises and the Improvements. Tenant acknowledges and agrees that Landlord makes no representation or warranty, express or implied, written or oral, with respect to the condition of the Leased Premises or the Improvements, or their fitness or availability for any particular use. Tenant shall provide the Title Policy, insuring Tenant as the owner of the leasehold estate under the Lease, subject only to the Permitted Exceptions.

2.2.1 Landlord makes no representations, express or implied, with respect to the legality, fitness, or desirability of the Leased Premises for Tenant's intended use. If Tenant desires to do so, Tenant shall have the right to conduct its own investigation, to its satisfaction, with respect to any matters affecting Tenant's ability to use the Leased Premises for Tenant's intended use. Landlord shall deliver title to the Leased Premises to Tenant in the condition required by Section 208 of the DDA.

2.2.2 The Leased Premises shall be delivered from Landlord to Tenant in an "as is" physical condition, with no warranty, express or implied by Landlord as to the presence of Hazardous Substances, or the condition of the soil, its geology or the presence of known or unknown faults. If the condition of the Leased Premises is not in all respects entirely suitable for the use or

uses to which such Leased Premises will be put, then it is the sole responsibility and obligation of Tenant to place the Leased Premises in all respects in a condition entirely suitable for the development thereof, solely at Tenant's expense.

2.2.3 Effective on the Commencement Date, Tenant agrees to indemnify, defend and hold harmless Landlord and City of Imperial Beach ("City"), and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity (Attachment No. 8 to the DDA).

2.2.4 Effective on the Commencement Date, Tenant waives, releases and discharges the Landlord, the City and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the Landlord's or Tenant's use, maintenance, ownership or operation of the Leased Premises, any Hazardous Substances on the Leased Premises, or the existence of Hazardous Substances contamination in any state on the Leased Premises, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Landlord or its employees, officers or agents. Tenant 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 2.2.4, Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

2.3 Designation as Point of Sale

Tenant 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 Property and, to the extent permitted by law, shall designate City of Imperial Beach as the "point of sale" for all taxable sales and lease transactions occurring from any project on the Property 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 Property.

ARTICLE 3 - TERM

3.1 Term

The Term of this Lease shall be that period of time beginning on the Commencement Date and ending at midnight on the fifty-fifth (55th) anniversary of the Commencement Date, unless the Term of this Lease is sooner terminated as provided for herein.

3.2 Reserved.

3.3 Possession; Covenant of Quiet Enjoyment.

3.3.1 Sole possession of the Leased Premises shall be delivered to Tenant on the Commencement Date free and clear of any other tenancies or rights of occupancy or use, and Tenant shall take possession as of that date.

3.3.2 Landlord covenants that, subject to the limitations expressly set forth herein, Tenant, upon Tenant's timely payment of the Rent and performance of Tenant's covenants and obligations under this Lease, may quietly have, hold, and enjoy the Leased Premises during the Term of this Lease, without hindrance or interruption by Landlord or anyone claiming by or through Landlord, subject to Landlord's right to enter upon the Leased Premises as expressly provided herein.

3.4 Reserved.

3.5 Right of Option.

At any time commencing upon Completion and ending upon expiration of the Term, and subject to the Conditions Precedent to Right of Option, below, Tenant shall have the option to purchase the Property for a price equal to ONE DOLLAR AND NO CENTS (\$1.00) ("Option"). The Option shall be exercised in accordance with the procedures set forth in the Option Agreement, substantially in form attached to the DDA as Attachment No. 11. Upon Tenant's acquisition of the Agency's fee interest in the Leased Premises, the Ground Lease shall terminate. Such right also may be exercised by any holder of a Leasehold Mortgage.

3.5.1 Conditions Precedent to Right of Option

Tenant's right to exercise the Option shall be conditioned upon the following events:

i Commencing upon Completion until on or before Operating Year 10, the City of Imperial Beach's receipt of transient occupancy taxes ("TOT") from the operation of the Hotel on the Property, in the cumulative amount of at least THREE MILLION TWO HUNDRED AND TWO THOUSAND DOLLARS AND NO CENTS (\$3,202,000);

ii. Commencing upon Completion and after Operating Year 10, the City of Imperial Beach's receipt of transient occupancy taxes ("TOT") from the operation of the Hotel on the Property, in the cumulative amount of at least TWO MILLION THREE HUNDRED AND FIFTY ONE THOUSAND DOLLARS AND NO CENTS (\$2,351,000).

ARTICLE 4 - RENT PAYMENTS

4.1 Rent.

The Rent payable for each Lease Year (the "Rent") during the Term shall be as set forth in Section 4.2 hereto. The Rent for a particular Lease Year shall be paid no later than April 30 of the following calendar year during the Term. The Rent shall be prorated on a per diem basis for the first and last partial years of the Term (assuming the Commencement Date is not May 1). The last payment of Rent shall be due within twenty (20) days following the termination of this Lease.

4.2 Rent Amounts.

The Rent shall be ONE DOLLAR AND NO CENTS (\$1.00) per Lease Year.

4.3 Additional Rent.

Tenant shall pay any as Additional Rent any expenses incurred by the Landlord resulting from Tenant's failure to pay or cause to be paid any amounts owed to the Landlord under this Lease or any person or entity, including, but not limited to, unpaid utilities, unpaid maintenance, unpaid Impositions, or unpaid liens or encumbrances.

4.4 Miscellaneous.

All payments of Rent shall be made to Landlord as they become due in lawful money of the United States of America in cash or by corporate check drawn on sufficient available funds, at such place as is designated herein by Landlord for the receipt of notices or such other place as shall be designated to Tenant by Landlord in writing from time to time.

4.5 Triple Net Lease; No Counterclaim, Abatement, etc.

All Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the installments of all Rent throughout the Term, and (unless otherwise expressly provided herein) shall be paid without assertion of any counterclaim, setoff, deduction or defense and, except as otherwise expressly provided herein, without abatement, suspension, deferment, diminution or reduction. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever, including without limitation, any regular or special assessments levied against the Property, or be under any obligation or liability hereunder,

except as herein expressly set forth. Landlord shall have no responsibility for any costs of repair, maintenance or replacement whatsoever. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Leased Premises or Improvements or any part thereof or any Taking of the Leased Premises or the Improvements or any part thereof; (b) any restriction or prevention of or interference with any use of the Leased Premises or the Improvements or any part thereof which materially interferes with Tenant's possession or use of the Leased Premises (other than a breach of Landlord's covenant of quiet enjoyment set forth at Section 3.3); (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any proceeding; (d) any claim which Tenant has or might have against Landlord; or (e) any failure on the part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant. Except as expressly provided in this Lease, the obligations of Tenant shall be separate and independent covenants and agreements.

ARTICLE 5 - USE OF THE LEASED PREMISES, MAINTENANCE AND HAZARDOUS SUBSTANCES

5.1 Use of the Leased Premises.

5.1.1 Tenant covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Tenant, such successors and such assignees shall use the Property only for the uses specified in the Seacoast Inn Specific Plan adopted by Ordinance No. 2007-1060 ("Specific Plan"), any development agreements entered into by and between the City and Tenant, including the *Development Agreement by and between the City of Imperial Beach and Imperial Coast Limited Partnership Relative to the Development Known as the Seacoast Inn Development Project*, recorded on December 18, 2007 as Document Number 2007-0778555 in the San Diego County Recorder's Office ("2007 Development Agreement"), the Pedestrian and Vehicular Access Easement Agreement, recorded on _____, 2010 as Document Number 20107-_____ in the San Diego County Recorder's Office, the Temporary Encroachment Permit recorded on _____, 2010 as Document Number 2010-_____ in the San Diego County Recorder's Office, the DDA, and this Lease. No change in the use of the Property shall be permitted without the prior written approval of Agency.

5.1.2 Notwithstanding the generality of Section 5.1.1, Tenant, its successors and assigns, shall use the Leased Premises and/or Improvements only for the following uses: operation of a full service four story hotel with a minimum of seventy-eight (78) guest rooms ("Hotel"). The Hotel shall be rated not less than three diamonds by AAA or three stars by the Mobile Travel Guide, and shall also have the following characteristics:

- a) The Hotel shall contain an on-site, full service (sit down) three-meal restaurant and lounge.
- b) The Hotel shall have at least one swimming pool.
- c) The Hotel shall have a fully-equipped exercise room/fitness center.
- d) The Hotel shall have a business center.
- e) The Hotel shall have a minimum of 2,080 square feet of meeting and conference space.

5.1.3 Tenant, Hotel owner and/or Hotel operator ("Tenant" for purposes of this section) shall be required to provide for collection and payment of the transient occupancy tax ("TOT") to the City for all guest units/hotel units that are occupied on the Leased Premises, regardless of the occupant's status as guest unit owner, lessee, private guest or guest. If a guest unit/hotel unit is occupied by a guest unit/hotel unit owner, the TOT shall be based upon the nightly rate then in effect for the unit as if it were being occupied by a third party renter. For occupancies of the guest unit/hotel unit other than by a unit owner, the TOT shall be based on the actual rent charged. This requirement to collect and pay TOT to the City exists regardless of whether the unit is booked in person through the Registration System, via telephone or through online means via agents of the Tenant. If there is a legal reason why Tenant cannot collect the TOT from owner/occupants of a guest unit, the Tenant shall be required to provide to the City an amount of TOT equivalent to the amount that should have been collected from the owner/occupant for each night a guest unit is occupied by the owner/occupant.

5.1.4 Unless recording against the Landlord's fee is required by law, as determined in the reasonable discretion of the Landlord and the California Department of Real Estate ("DRE"), Tenant shall record the Declaration of CC&Rs and the Resort Covenants against the Leasehold no earlier than Completion of the Improvements and prior to issuance of the Certificate of Occupancy for the Project and as a condition to the Landlord's issuance of a Release of Construction Covenants in accordance with Section 324 of the DDA.

5.1.5 The Declaration of CC&Rs and Resort Covenants shall be consistent with the provisions of the Development Agreement and Specific Plan. Without limiting the generality of the foregoing sentence, the Declaration of CC&Rs and Resort Covenants shall, at a minimum, contain all of the following provisions:

- (i) language mirroring Section 5.1.3 herein regarding collection of transient occupancy taxes ("TOT");

(ii) language requiring the City's written consent to any provisions of, or amendments to, the Declaration of CC&Rs and Resort Covenants, before they are final;

(iii) language designating the City as a third party beneficiary; and

(iv) if both the Landlord and DRE reasonably determine that recording of the Declaration of the CC&Rs against the fee is required by law, then the Declaration of CC&Rs and the Resort Covenants shall contain provisions that require termination of the Declaration of CC&Rs and the Resort Covenants no later than the Term of this Lease or earlier termination of the this Lease, except in the event that Tenant exercises the Option.

Tenant shall obtain Landlord's written approval of the form and content of the Declaration of CC&Rs and Resort Covenants prior to recordation. The Landlord's review of the Declaration of CC&Rs and Resort Covenants shall include, but is not limited to, a comparison of the Declaration of CC&Rs and Resort Covenants with the Development Agreement, the Specific Plan, the DDA, and this Lease to ensure consistency amongst these documents. The Landlord shall not unreasonably withhold such approval. Any changes in form or content to the Declaration of CC&Rs and/or the Resort Covenants shall be subject to Landlord's written approval.

5.2 No use of Hazardous Substances on the Leased Premises.

Tenant covenants and agrees that it shall not, and that any Lease shall provide that the Subtenant shall not, treat, use, store, dispose, release, handle or otherwise manage Hazardous Substances on the Leased Premises except in connection with any construction, operation, maintenance or repair of the Improvements or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Tenant's violation of the foregoing prohibition shall constitute a breach hereunder and Tenant shall indemnify, hold harmless and defend the Landlord for such violation as provided below.

5.3 Notice and Remediation by Tenant.

Tenant shall promptly give the Landlord written notice of any reportable release of any Hazardous Substances, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Substances which may affect the Leased Premises.

5.4 Environmental Indemnity.

Tenant agrees to indemnify, defend and hold harmless Agency and City, and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity (Attachment No. 8 to the DDA). The indemnity provided in this Section shall survive the Termination of the Lease.

5.5 Termination; Subtenants.

The agreements and obligations of Tenant under this Article 5 with regard to indemnification of Landlord shall survive the scheduled termination or sooner expiration of the Term for any reason, for five (5) years and all claims relating thereto must be delivered in writing to Tenant within such period. No action by any subtenant in violation of its Lease shall constitute a cause to terminate this Lease provided that Tenant diligently pursues its available remedies against such subtenant.

ARTICLE 6 - OWNERSHIP OF IMPROVEMENTS

Notwithstanding anything that is or appears to be to the contrary herein, any and all Improvements erected on the Leased Premises as permitted by this Lease, as well as any and all alterations or additions thereto or any other Improvements or fixtures on the Leased Premises, shall be owned by Tenant until the expiration of the Term or sooner termination of this Lease. Upon the expiration or sooner termination of this Lease, all Improvements and all alterations, additions or improvements thereto that are made to or placed on the Leased Premises by Tenant or any other person shall be considered part of the real property of the Leased Premises and shall remain on the Leased Premises and become the property of Landlord; provided that Tenant shall retain ownership of and shall be required to remove furniture, equipment, machinery, trade fixtures and removable personal property except as may be left on the Leased Premises with Landlord's prior written approval. Except as otherwise expressly provided in this Lease, any non-disturbance agreement approved by Landlord, any easement approved by Landlord, or any written instrument executed by Landlord which expressly states that Landlord is waiving its rights under this Article 6 to receive such Improvements free and clear of all other claims, said Improvements shall become Landlord's property free and clear of any and all rights to possession and all claims to or against them by Tenant or any third person or entity.

ARTICLE 7 - REPAIRS AND MAINTENANCE

7.1 Landlord's Nonresponsibility.

During the Term of this Lease, Landlord shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Leased Premises or the Improvements thereon, except as expressly provided elsewhere herein.

7.2 Tenant's Duty to Maintain Premises.

Except as expressly otherwise provided for herein, throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, maintain or cause to be maintained the Leased Premises and the Improvements now or hereafter located on the Leased Premises in good and clean condition and repair, free of debris, and in compliance with (i) all Governmental Restrictions and (ii) all applicable rules, orders, and regulations of any insurance company insuring all or any part of the Leased

Premises or the Improvements thereon or both, and Tenant shall make or cause to be made whatever repairs and replacements are required by such enactments or provisions or future enactments or provisions. Maintenance of the Leased Premises and the Improvements shall include, without limitation, maintenance and irrigation of the off-site landscaping on Date Avenue using Tenant's water supply from the Leased Premises.

7.3 Damage or Destruction.

7.3.1 In the event any of the Improvements are damaged by an insured casualty, Tenant promptly shall remove the debris resulting from such event, and within a reasonable time thereafter shall apply insurance proceeds to the repair or restoration of the Improvements so damaged to their condition immediately prior to such casualty, such repair or restoration to be performed in accordance with all provisions of this Lease.

7.3.2 In the event any of the Improvements are damaged by an uninsured casualty, or the insurance proceeds are insufficient to repair or restore the Improvements to their condition prior to the casualty, Tenant promptly shall remove the debris resulting from such event, and within a reasonable time thereafter shall either (i) repair or restore the Improvements so damaged to the extent economically feasible, such repair or restoration to be performed in accordance with all provisions of this Lease, or (ii) erect other Improvements in such location, provided all provisions of this Lease are complied with to the extent economically feasible, or (iii) if the damage occurs after the end of the Covenant Period, demolish the damaged portion of such Improvements, restore any remaining Improvements to an architectural whole, remove all rubbish, and pave or plant grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Landlord shall have the option to choose among the aforesaid alternatives, subject to rights of permitted Lenders secured by the Lease, but Tenant shall be obligated to perform one of such alternatives, provided that nothing herein obligates Tenant to obtain financing exceeding the insurance proceeds, if any. Tenant shall give notice to Landlord within a reasonable time of which alternative it elects. Nothing contained in subsections 7.3.1 or 7.3.2 shall be construed as permitting the abatement or reduction of Rent, or the termination of this Lease.

7.3.3 Notwithstanding anything to the contrary contained in this Lease, if (i) there is damage to or destruction of the Improvements on the Leased Premises during the last five (5) years of the Term and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements on the Leased Premises, or (ii) there is damage to or destruction of the Improvements on the Leased Premises which (1) arises from a cause which is not required to be insured against under any provision of this Lease, or (2) arises from a cause which is in fact insured against in compliance with the terms of this Lease, but for which the recoverable proceeds of such insurance are less than 90% of the cost to repair said damage or destruction, and (3) the cost to Tenant (which is not covered by insurance proceeds) of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements on the

Leased Premises, or (iii) there is damage to or destruction of the Improvements on the Leased Premises and the Governmental Restrictions then in effect with respect to the Leased Premises prohibit the construction of economically viable replacement Improvements with respect to a use which Tenant either has the right to engage in under this Lease or which Tenant desires to engage in and Landlord will permit to be engaged in, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (A) Tenant shall, within ninety (90) days after the event giving rise to such right to terminate, give Landlord written notice of its election to terminate ("Notice of Election to Terminate"); and (B) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("Demolition Notice") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements on the Leased Premises that Landlord may designate in the Demolition Notice, and shall complete said demolition and removal and shall vacate the Improvements on the Leased Premises within ninety (90) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease); and (C) Tenant shall comply with all provisions of Article 15 of this Lease consistent with this Section 7.3 prior to or concurrent with Tenant's vacation of the Improvements on the Leased Premises. If Tenant fails to satisfy the requirements set forth in (B) or (C) above, the failure to meet such conditions shall not invalidate the termination of this Lease, although, in that event and notwithstanding anything else in this Lease that may be or appear to be to the contrary, Tenant shall remain liable to Landlord in damages for such breach. Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's trade fixtures, equipment or personal property that would be retained by Tenant at the end of the Term) paid to Tenant as a result of the damage or destruction giving rise to the termination shall be distributed to the Parties, and any Lender, as their interest are determined.

7.3.4 Except as expressly provided in this Lease, no deprivation, impairment, or limitation of use resulting from any damage or destruction or event or work contemplated by this Section shall entitle Tenant to any offset, abatement, or reduction in Rent, nor to any termination or extension of the Term hereof.

ARTICLE 8 - LEASEHOLD FINANCING

8.1 Conditions To Obtaining Leasehold Mortgage. 8.1.1 Tenant shall not encumber the estate created by this Lease, except as expressly provided in this Article 8.

8.1.2 Tenant shall have the right, without Landlord's prior written consent, to encumber Tenant's estate created by this Lease with any Leasehold Mortgage; provided, that such Leasehold Mortgage shall meet each of the following terms, conditions and requirements:

(i) The Leasehold Mortgage shall contain provisions requiring that copies of all notices of default under said Leasehold Mortgage must be sent to Landlord;

(ii) The Leasehold Mortgage shall not permit or authorize, or be construed to permit or authorize, any Lender to devote the Leased Premises to any uses, or to construct any Improvements thereon, other than those uses and Improvements provided for and authorized by this Lease; and

(iii) The originator of the loan secured by the Leasehold Mortgage is made by an Institutional Lender.

8.2 Lender's Rights.

So long as any Leasehold Mortgage permitted by this Lease exists, or any Lender (or its nominee) owns all or any portion of the leasehold estate created hereunder, and until such time as the lien (or estate) of any Leasehold Mortgage (or its holder) has been extinguished (which provisions shall be for the benefit of the Leasehold Mortgagee):

8.2.1 Notwithstanding anything to the contrary in this Lease, any judicial or non judicial foreclosure by a Lender under any Leasehold Mortgage, or any exercise of rights or remedies under or pursuant to any Leasehold Mortgage, including the appointment of a receiver, shall not in and of itself be deemed to violate this Lease or, in and of itself, entitle Landlord to exercise any rights or remedies;

8.2.2 Following Lender's or Lender's Affiliate's acquisition of Tenant's interest in this Lease pursuant to a foreclosure or an assignment in lieu of foreclosure, the Lender or Lender's Affiliate (as applicable) shall be entitled to assign its interest in this Lease without Landlord's prior consent, subject to compliance with the terms and conditions of this Article 8. All subsequent Transfers by the Transferee of Lender or Lender's Affiliate (as applicable) shall comply with the provisions of this Lease, including all restrictions on Transfer set forth in Article 9 hereof; and

8.2.3 If, in connection with securing by Tenant of any Leasehold Mortgage, the affected Lender requests an amendment with respect to the Lender protection rights set forth in this Article 8, Landlord agrees not to unreasonably withhold its consent to any such amendment; provided, that Landlord shall not be required to consent to such an amendment if it would, in Landlord's reasonable determination, materially impair any of Landlord's rights or materially increase any of Landlord's obligations under this Lease.

8.2.4 Default Notice. Landlord, upon providing Tenant with any "Notice of Default" (as defined below) under this Lease, shall, at the same time, provide a copy of such notice to every Lender who has given written notice to Landlord of its interest in the leasehold estate. From and after such notice has been given to a Lender, such Lender shall have the same period for

remedying the Default complained of as the cure period provided to Tenant pursuant to Section 14.2, plus the additional period provided to such Lender as specified below. Regardless of whether a Default exists, Landlord shall accept performance by or at the instigation of such Lender as if the same had been done by Tenant.

8.3. Lender Cure Rights.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall have no right to terminate this Lease on account of an Uncured Default of Tenant unless, following expiration of Tenant's applicable cure period, Landlord first provides each Lender not less than sixty (60) days notice of its intent to terminate, if Tenant's Default can be cured by the payment of money (a "Monetary Default"), and not less than ninety (90) days notice of its intent to terminate, if Tenant's Default is of any other type (a "Non-monetary Default"), and each Lender fails to cure such Monetary Default within sixty (60) days after receipt of such notice or each Lender fails to cure or, in good faith and with reasonable diligence and continuity, commence to cure such Non-monetary Default within said ninety (90) day period. If such Non-monetary Default cannot reasonably be cured by such Lender within said ninety (90) day period (or is such that possession of the Leased Premises is necessary for Lender to obtain possession and to remedy the Default), the date for termination shall be extended for such period of time as may be reasonably required to remedy such Default, if (a) Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within sixty (60) days after its receipt of notice of Landlord's intent to terminate, and shall continue to pay currently such monetary obligations as and when the same are due, and (b) Lender continues its good faith and diligent efforts to remedy such nonmonetary Default (including its acquisition of possession of the Leased Premises if necessary to the cure of such Default), provided, however, that in no event shall the Agency be precluded from exercising remedies if its rights become or are 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 Lender's first notice of default. For purposes hereof, commercially reasonable efforts to appoint a receiver, seek relief from the automatic stay provisions of the Bankruptcy Code and generally opposing any plan of reorganization or other proceedings in a proceeding by Tenant under the Bankruptcy Code (if such proceeding does not cure any Tenant Default) shall be deemed "good faith and diligent efforts" as herein used. It is expressly understood and agreed upon that the cure period herein provided for Non-monetary Defaults shall be tolled upon the Tenant being enjoined from pursuing remedies under the Bankruptcy Code or if Lender is otherwise enjoined from pursuing remedies.

8.3.1 Landlord agrees that, notwithstanding anything to the contrary in this Section 8.3, any Non-monetary Default that is not susceptible of cure shall be waived by Landlord upon Lender's or Lender's Affiliate's acquisition of the leasehold estate created hereby (whether by foreclosure or otherwise) or pursuant to a new lease entered into pursuant to Section 8.5, and the cure of all Monetary Defaults and Non-monetary Defaults.

8.3.2 Nothing in this Section 8.3 shall be construed to require a Lender to continue any foreclosure proceeding it may have commenced against Tenant after all Defaults have been cured by Lender or Tenant, and if such Defaults shall be cured and the Lender shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

8.4 Obligations of Lender and Purchaser.

8.4.1 No Lender, acting in such capacity, shall be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Lender, in that capacity, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder, unless and until it acquires the interest of Tenant hereunder. Upon acquiring Tenant's leasehold, a Lender or (to the extent title is taken in an affiliate of Lender) a Lender's Affiliate may, without the consent of Landlord, sell and assign the leasehold estate on such terms and to such persons and entities as are acceptable to such Lender and thereafter be relieved of all obligations on the part of Tenant first arising under this Lease after the date of such sale or assignment; provided, that such assignee of the Lender shall have delivered to Landlord an assumption agreement as provided by Section 9.1.1(iv) of this Lease. Any such assignee of Lender or Lender's Affiliate (as applicable), or any other assignee of this Lease or of the leasehold estate created hereby by a conveyance in lieu of foreclosure or any purchaser at any foreclosure sale of this Lease or of the leasehold estate hereby created (other than, in any case, the Lender), shall be deemed to be a Transferee of this Lease, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment and, from and after such date, shall be subject to all the terms of this Lease, including all restrictions on further Transfer set forth in Article 9.

8.4.2 Notwithstanding any other provision of this Lease, any bona fide sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage or a bona fide assignment or transfer of this Lease and of the leasehold estate hereby created in lieu of foreclosure of a Leasehold Mortgage (collectively, "Proceedings") shall be deemed to be a permitted sale, transfer or assignment of this Lease and of the leasehold estate hereby created so long as Agency is given timely notice of any default of Tenant and of any such Proceeding and is afforded the cure periods specified in Section 8.14 and so long as any such deed in lieu of foreclosure has not been undertaken for the purpose or with the intent of circumventing any otherwise applicable restrictions upon Transfers of Tenant's interest under this Lease. Notwithstanding the foregoing, any transfer by foreclosure or deed in lieu of foreclosure to Tenant or any Affiliate of Tenant shall not be deemed a permitted sale, transfer or assignment of this Lease and the leasehold estate created hereby.

8.5 New Lease.

Except as expressly provided in the last sentence of this Section, in the event of a termination of this Lease for any reason including, without limitation, by reason of any Default or the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditors rights, or upon a termination of this Lease by Landlord pursuant to any proceeding under the Bankruptcy Code (including without limitation pursuant to Sections 363 and 365 of the Bankruptcy Code), Landlord shall give prompt notice thereof to any Lenders who have requested notice from Landlord in writing and furnished their names and addresses to Landlord.

8.5.1 Upon written request of any such Lender, made at any time within ninety (90) days after the giving of such notice by Landlord, Landlord shall enter into a new lease of the Leased Premises with such Lender within twenty (20) days after the receipt of such request, which new lease shall be effective as of the date of such termination of this Lease and shall be for the remainder of the Term of this Lease, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Lender shall: (i) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for Rent payable by Tenant hereunder to and including the date thereof, less the net amount (i.e., net of all reasonable expenses) of all sums received by Landlord from any Subtenants in occupancy of any part or parts of the Leased Premises and/or Improvements up to the date of commencement of such new lease; (ii) pay all reasonable costs resulting from the preparation and execution of such new lease; and (iii) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such Lender will perform or cause to be performed all of the other covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of such new lease. Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Leased Premises to such Lender unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof.

8.5.2 During the ninety (90) day period commencing from Landlord's notice to Lender under this Section 8.5, Landlord shall not, except with the written consent (which shall not be unreasonably withheld) of each holder of a Leasehold Mortgage, (i) cancel any such direct lease or accept any cancellation, termination, or surrender of subleases (unless such termination shall be effected as a matter of law upon the termination of this Lease, in which case such subleases shall, at Lender's option, be reinstated concurrent with the delivery of such new lease); or (2) enter into any new leases of the Leased Premises or any portion thereof, except with the written consent (which shall not be unreasonably withheld) of each holder of a Leasehold Mortgage.

8.6 New Lease Priority.

8.6.1 It is the intent of the Parties that any new lease made pursuant to Section 8.5 shall have the same priority with respect to any lien, charge or encumbrance on the fee of the Leased

Premises as did this Lease and that the Tenant under such new lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease.

8.6.2 The provisions of this Section 8.6 and Sections 8.4 and 8.5 shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if Sections 8.4, 8.5 and this Section 8.6 were a separate and independent contract made by Landlord, Tenant and such Lender.

8.7 Liability of New Tenant.

The Lender or Lender's Affiliate which becomes the tenant under the Lease pursuant to Section 8.4 or any such new lease made pursuant to Section 8.5 shall be liable to perform the obligations imposed on the Tenant by the Lease or by the tenant by such new lease to the same extent as Tenant hereunder for the period of ownership of Lender or Lender's Affiliate. Notwithstanding the foregoing, a Lender or (to the extent title is taken in an affiliate of Lender) a Lender's Affiliate may, without the consent of Landlord, sell and assign the leasehold estate acquired by foreclosure of the applicable Leasehold Mortgage or assignment in lieu thereof pursuant to Section 8.4 or created by the new lease entered into pursuant to Section 8.5 on such terms and to such persons and entities as are acceptable to such Lender, subject to Section 9.1. Thereafter, Lender or Lender's Affiliate (as applicable) shall be relieved of all obligations on the part of the "tenant" first arising under this Lease after the date of such sale or assignment; provided, that such assignee of the Lender shall have delivered to Landlord an assumption agreement as provided by Section 9.1.1(iv) of this Lease.

8.8 Further Assurances. Upon request by Tenant or by any existing or prospective holder of a Leasehold Mortgage, Landlord shall deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to further effectuate the intentions of the parties as set forth in this Lease.

8.9 Legal Proceedings.

Landlord shall give each Lender who has given written notice of its interest in the leasehold estate to Landlord prompt notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each said Lender shall have the right to intervene in any such proceeding to protect its interest and be made a party thereto, and the parties hereto do hereby consent to such intervention. In the event that any such Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Lenders not intervening after receipt of notice of the legal proceeding. In addition, Landlord further agrees that Lender shall have standing and shall be a party in interest in any case or proceeding commenced by Landlord under the Bankruptcy Code, including without limitation in any proceeding under Section 363 of the Bankruptcy Code to sell the Lease free and clear of the interests of Lessee and Lender or to reject the Lease pursuant to Section 365 of the Bankruptcy Code.

8.10 Notices.

Notices from Landlord to any Lender shall be mailed to the address of the Lender set forth in the Leasehold Mortgage furnished to Landlord or at such other address as may have been furnished to Landlord by such Lender. All notices from the Lender to Landlord shall be mailed to the address designated pursuant to the provisions of Section 17.6 or such other address as Landlord may designate in writing from time to time. All notices to a Lender or to Landlord shall be given in the manner described in Section 17.6 and shall in all respects be governed by the provisions of such Section.

8.11 Encumbrance of Landlord's Fee Estate.

Neither Tenant nor any Lender or Leasehold Mortgagee has any rights to encumber or any interest in Landlord's fee estate in the Property. To the extent Landlord encumbers Landlord's fee estate, Landlord shall specifically provide that the leasehold estate created hereby shall be superior to any such financing. Further, Landlord shall give notice to Tenant and all holders of a Leasehold Mortgage and, upon request of any of the foregoing, Landlord shall require the holder of any Mortgage to enter into a non-disturbance and attornment agreement with Tenant and each such holder of a Leasehold Mortgage providing for the continuation of this Lease (including any options to purchase the Landlord's fee interest hereunder) upon any foreclosure under such Mortgage.

8.12 Amendments, Modifications and Surrender.

No cancellation, termination (including Tenant's termination of this Lease pursuant to any express right of termination in this Lease or under applicable law), surrender, acceptance of surrender, abandonment, amendment, modification, or rejection of this Lease, or subordination of this Lease to any Mortgage or other encumbrance on the Landlord's fee estate, shall bind a Lender under a Leasehold Mortgage if done without such Lender's consent. Nothing in this paragraph shall limit the right of Landlord to terminate this Lease upon occurrence of a Tenant's Default and the expiration of all applicable cure rights in favor of a Lender under a Leasehold Mortgage pursuant to Section 8.3 hereof; subject however to (i) provisions of this Lease that limit the right of Landlord to terminate this Lease on account of Tenant Defaults not susceptible of cure; and (ii) the right of any Lender under a Leasehold Mortgage to obtain a new lease as provided for in Section 8.5 of this Lease.

8.13 Insurance and Condemnation.

In the event of any casualty or condemnation affecting all or any portion of the Leased Premises, notwithstanding any other provision to the contrary herein contained, the insurance or condemnation proceeds shall be delivered to Lender and disbursed upon the terms and subject to the conditions set forth in the applicable Leasehold Mortgage. If and only to the extent, there are any remaining casualty or condemnation proceeds, such proceeds shall be disbursed to Landlord and

allocated between Landlord and Tenant as provided in the Lease (with, in the instance of application by Lender of any such proceeds, Tenant's allocated amount reduced by the amount retained and so applied by Lender).

8.14 Landlord Right to Cure.

Notwithstanding anything to the contrary contained in this Lease, Lender shall have no right to complete a foreclosure on account of an uncured default of Tenant ("Uncured Loan Default") unless Lender, following expiration of Tenant's applicable cure period under the Leasehold Mortgage, first provides Landlord not less than sixty (60) days notice of its intent to foreclose, if Tenant's Uncured Loan Default can be cured by the payment of money ("Tenant Monetary Default"), and not less than ninety (90) days notice of its intent to foreclose, if Tenant's Uncured Loan Default is of any other type ("Tenant Non-monetary Default"), and Landlord fails to cure such Tenant Monetary Default within sixty (60) days after receipt of such notice or Landlord fails to cure such Tenant Non-monetary Default within a period of ninety days (90) days. Nothing herein shall be deemed to restrict Lender's rights to initiate statutory foreclosure proceedings or obtain a receiver during Lender's cure period. If all Uncured Loan Defaults have been cured by Landlord in accordance with this Section, the Leasehold Mortgage shall be reinstated in accordance with California Civil Code Section 2924c. Nothing herein shall be construed or deemed as an obligation by Landlord to cure any Uncured Loan Default.

ARTICLE 9 - ASSIGNMENT AND TRANSFER

9.1 Transfer of the Lease, the Leased Premises or the Improvements Thereon.

(1) Transfer(s) occurring prior to Completion shall be made in accordance with Section 107 of the DDA. Transfer(s) occurring after Completion shall be subject to the prior written consent of Landlord, which consent will not be unreasonably withheld or delayed; provided, however, that notwithstanding anything to the contrary herein, Tenant may Transfer its interest in the Lease to Permitted Transferees under the same terms and conditions as set forth under Section 107 of the DDA.

(2) For Transfers to a Person other than a Permitted Transferee, Landlord shall have the right to consider the following factors in determining whether or not to consent to any proposed Transfer of Tenant's rights under or interest in this Lease, the Leased Premises, or the Improvements constructed thereon: (1) The financial condition of the proposed Transferee and its ability to perform all of the financial and other obligations of Tenant under this Lease, (2) the Transferee's business reputation, and (3) the Transferee's ability to demonstrate its capability to manage or provide for the management of the Improvements located on the Leased Premises.

(3) Upon any approved or Permitted Transfer of this Lease or the Leased Premises (other than for security purposes), said Transferee shall expressly assume in writing liability for all of

Tenant's obligations accruing under this Lease after the date of such Transfer. Except as to any Permitted Transferee (as defined in the DDA), Tenant shall not be released of its obligations under this Lease unless either (A) pursuant to the process described in subparagraph (ii) immediately above, Tenant has demonstrated to Landlord's reasonable satisfaction that Transferee's net worth at the time of the Transfer is equal to or greater than the net worth of Tenant as of the Commencement Date (adjusted to correspond to any changes in the CPI since the Commencement Date), or (B) an individual(s) or an entity(ies) with substantially equal or greater net worth than that of Tenant, has guaranteed Tenant's obligations under this Lease. If Transferee's net worth satisfies the foregoing test, then Tenant (as well as former Tenants still liable hereunder) shall be released of all liability under this Lease accruing after the date of such Transfer.

(4) At any time Tenant desires to effect a Transfer which requires Landlord's consent pursuant to clause (ii) or (iii) above, Tenant shall request consent from Landlord in writing and shall submit to Landlord in connection with such request all proposed agreements and documents (collectively, the "Transfer Documents") memorializing, facilitating and/or evidencing such proposed Transfer, as well as all other information Tenant reasonably believes is necessary for Landlord to properly evaluate the proposed Transferee pursuant to the criteria set forth in Section 9.1.1(a)(ii) and, if applicable, Section 9.1.1(a)(iii) above. Landlord agrees to advise Tenant in writing of its decision on Tenant's request for consent to such Transfer, as promptly as possible, and, in any event, not later than thirty (30) days after Landlord receives all of the items required by the preceding sentence. If such request is denied, Landlord shall state the reasons for such denial in its notice of denial of Tenant's request. If Landlord fails to respond to Tenant's request within thirty (30) days after its receipt of all of the items required above, Tenant's request shall be deemed disapproved. Upon a deemed disapproval, Tenant may deliver a notice to Landlord which states that there has been a deemed disapproval, requesting that Landlord consent to the proposed Transfer, stating that Landlord must consent to or deny the proposed Transfer within thirty (30) days after Landlord's receipt of this notice, and that failure by Landlord to either consent to or deny such Transfer within such 30 day period will result in deemed consent. If Landlord fails to consent to or deny the proposed Transfer within such second thirty (30) day period, the Transfer shall then be deemed approved by Landlord.

9.2 Transfer of Tenant's Interest in Lease and Tenant's Ownership.

The restrictions on Transfer contained in this Article 9 shall be binding on any successors, heirs or permitted Transferees of Tenant. The provisions of this Article 9 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Tenant under the terms set forth herein.

ARTICLE 10 - TAXES AND IMPOSITIONS

10.1 Tenant To Pay Impositions.

10.1.1 In addition to the Rent and other payments required to be paid under this Lease, Tenant shall pay or cause to be paid any and all taxes (including possessory interest taxes) and assessments (collectively, "Impositions") levied or assessed from the Commencement Date until the termination of this Lease by any governmental agency or entity on or against the Leased Premises or any portion thereof, or on or against any interest in the Leased Premises (including the leasehold interest created by this Lease); or any Improvements or other property in or on the Leased Premises. The timely payment of the Impositions is a material term of this Lease, and, to the extent the above-referenced items are payable to Landlord or its successors or assigns, they shall constitute Additional Rent hereunder.

10.1.2 If, by law, any such Imposition is payable, or may, at the option of Tenant be paid, in installments, Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in such installments as those installments respectively become due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

10.2 Proration of Impositions.

All Impositions levied or assessed on or against the Leased Premises shall be prorated, based on a 365-day year, between Landlord and Tenant as of the Commencement Date of this Lease, and as of the expiration or earlier termination of this Lease. On service of written request by Landlord, Tenant shall promptly pay to Landlord Tenant's share of such Impositions paid by Landlord on Tenant's behalf and, on service of written request by Tenant, Landlord shall promptly pay to Tenant Landlord's share of such Impositions paid by Tenant on Landlord's behalf.

10.3 Payment Before Delinquency.

Subject to Section 10.4, any and all Impositions and installments of Impositions required to be paid by Tenant under this Lease shall be paid by Tenant prior to delinquency, and, upon Landlord's written request, copies of the official and original receipt for the payment of each such Imposition or installment thereof or other reasonably satisfactory evidence of payment shall promptly be given to Landlord.

10.4 Contest of Imposition.

Tenant shall refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Leased Premises; provided, however, that such prohibition shall not apply to an appeal, challenge or contesting of the erroneous initial

assessment for property tax purposes of the Leased Premises in the fiscal year of the completion of the Improvements to be constructed pursuant to the Agreement, and further provided that in the absence of transfer of ownership or new construction Tenant shall not be prohibited from appealing, challenging or contesting any increases in assessment of the Leased Premises for property tax purposes over and above the current 2% per annum permitted amount.

Tenant 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. Tenant shall give Agency prompt notice in writing of any such contest at least ten (10) days before filing any contests, except for related to the welfare exemption. Tenant 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 Leasehold and/or Improvements, or any part thereof, to satisfy the same, and only if Tenant shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Agency from time to time in order to insure the payment of such imposition to prevent any sale, foreclosure or forfeiture of the Leased Premises, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Tenant, Tenant shall, before any fine, interest, penalty or cost may be added thereto 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 Tenant and, after such payment and discharge by Tenant, Agency will promptly return to Tenant such security as Agency shall have received in connection with such contest.

Agency shall cooperate reasonably in any such contest permitted by this Section 10.4, 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 Tenant shall be prosecuted by Tenant at Tenant's sole cost and expense, and Tenant shall indemnify and save harmless Agency 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 Agency in connection therewith.

10.5 Tax Returns And Statements.

Tenant shall, as between Landlord and Tenant, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any Imposition that is or may be levied on or assessed against the Leased Premises, or any portion thereof, or any interest therein, or any Improvements or other property on the Leased Premises.

10.6 Possessory Interest Taxes.

Landlord is a public entity, and as such, Landlord's underlying fee in the Leased Premises is, or may be, exempt from property tax assessments. In accordance with California Revenue and Taxation Code Section 107.6(a), Landlord states that by entering into this Lease, a Possessory interest in Tenant subject to property taxes will be created. Tenant or any other party in whom the Possessory interest is vested may be subject to the payment of property taxes levied on such interest. In addition, pursuant to Health and Safety Code Section 33673, the Leased Premises shall be assessed and taxed in the same manner as privately owned property, and Tenant shall pay taxes upon the assessed value of the entire Leased Premises and not merely the assessed value of its leasehold interest; provided however, that Landlord recognizes that Tenant will apply for and may receive a welfare exemption for all or a portion of the Improvements.

ARTICLE 11 - UTILITY SERVICES

11.1 Tenant's Responsibility.

During the Term of this Lease, Tenant shall pay, or cause to be paid, and shall indemnify, defend and hold Landlord and the property of Landlord harmless from all charges for water, sewage, gas, heat, air conditioning, light, power, steam, telephone service and all other services and utilities used, rendered or supplied to, on or in the Leased Premises during the Term.

11.2 Landlord Has No Responsibility.

Landlord shall not be required to furnish to Tenant or any other occupant of the Leased Premises during the Term of this Lease, any water, sewage, gas, heat, air conditioning, light, power, steam, telephone, or any other utilities, equipment, labor, materials or services of any kind whatsoever.

ARTICLE 12 - INSURANCE

12.1 Fire and Extended Coverage Insurance.

Throughout the term of this Lease, Tenant, at no cost or expense to Landlord, shall keep or cause to be kept, for the mutual benefit of Landlord and Tenant, a policy of standard fire insurance, with extended coverage and vandalism and malicious mischief endorsements, excluding earthquake insurance. The amount of insurance required hereunder shall in no event be less than one hundred percent (100%) of the full replacement cost of the Improvements on the Leased Premises (exclusive of foundations and footings), including tenant improvements or betterments. Tenant shall not be obligated to obtain flood insurance as part of the extended coverage required hereunder. Coverage shall be "property broad form" and shall include rent interruption insurance, which insurance shall also cover all real estate taxes and insurance costs for the purposes of continuing rental payments to

the landlord for the duration of the Lease. Coverage shall not include a coinsurance penalty provision.

12.2 Commercial General Liability Insurance. Tenant, commencing on the Commencement Date and continuing throughout the Term hereof, shall maintain or cause to be maintained, at no cost or expense to Landlord, comprehensive broad form commercial general liability insurance or an equivalent owner, contractor protective policy insuring against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Leased Premises, the Improvements thereon, which insurance shall provide combined single limit protection of at least Four Million Dollars (\$4,000,000) for bodily injury or death to one or more persons, and at least Four Million Dollars (\$4,000,000) for property damage, which limits shall be increased by Tenant from time to time based upon Tenant's reasonable assessment of the limits carried by prudent and responsible property owners of similar property in the geographic area of the Leased Premises.

12.3 Worker's Compensation Insurance. Tenant shall carry worker's compensation insurance for any employees it has as required by the State of California, and employer's liability insurance with a liability insurance minimum of \$1,000,000 per accident for bodily injury or disease.

12.4 Course of Construction Insurance. Course of construction insurance coverage for all risk of loss shall be maintained at one hundred percent of the completed value basis on the insurable portion of the work including materials at the project site, stored off the project site, or in transit. Tenant shall include the interests of the Landlord and subcontractors in the work and shall insure against the perils of physical loss or damage. Nothing in this Article, however, shall be construed to relieve the Tenant of full responsibility for loss of or damage to materials not yet incorporated in the work or the Tenant's tools and equipment used to perform the work, whether on the project site or elsewhere, or to relieve the Tenant of any other responsibility under the Lease. If the Landlord is damaged by the failure of the Tenant to purchase or maintain such insurance, the Tenant shall bear all losses attributable thereto and indemnify the Landlord therefrom.

12.5 Business Automobile Liability Insurance. If not covered by its other insurance policies, Tenant shall carry business liability insurance on an occurrence form covering owned, hired, leased and non-owned automobiles used by or on behalf of the Tenant and providing insurance for bodily injury, property damage and contractual liability.

12.6 Policy Form, Content And Insurer.

12.6.1 All insurance required by the provisions of this Lease shall be carried only with insurance companies licensed to do business in this state with Best's Financial Rating of A VII or better or otherwise acceptable to Landlord.

12.6.2 All such policies required by the provisions of this Lease shall be nonassessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by Landlord, (ii) the policies cannot be canceled or materially changed except after thirty (30) days notice by the insurer to Landlord and (iii) Landlord shall not be liable for any premiums or assessments. The insurer under the policy of property insurance for the Leased Premises shall also waive its rights of subrogation against Landlord and Landlord's Representatives.

12.6.3 All deductibles or self-insured retentions shall be commercially reasonable for companies of similar net worth as Tenant.

12.6.4 Upon Tenant's execution and delivery of this Lease, Tenant shall deliver to Landlord certificates of insurance evidencing the insurance coverages specified in this Article. Tenant shall thereafter deliver to Landlord original certificates and amendatory endorsements evidencing the insurance coverages required by this Article upon renewal of any insurance policy. Full copies of the policies shall be made available to Landlord upon request. Tenant may provide any insurance required under this Lease by blanket insurance covering the Leased Premises and any other location or locations, provided that the specific policy of blanket insurance proposed by Tenant provides the coverages required by this Lease taking into account the other properties, persons and risks covered by such blanket policy. All policies shall name Landlord and each Lender as an additional insured or loss payee (as applicable) as their interests may appear, and shall contain the following special endorsements:

"The Imperial Beach Redevelopment Agency, the City of Imperial Beach, and their officers, employees and agents, are hereby declared to be additional insureds under the terms of this policy as to the activities of Landlord, Tenant and its sublessees, if any.

"This insurance policy will not be canceled without 30 days prior written notice to the Trustees and the Corporation. The Redevelopment Agency of the City of Imperial Beach is not liable for the payment of premiums or assessments on this policy."

12.6.5 For any claims related to this project, the Tenant's insurance coverage shall be primary insurance as respects the Landlord. Any insurance or self-insurance maintained by the Landlord shall be excess of the Tenant's insurance and shall not contribute with it.

12.6.6 Tenant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all requirements stated herein.

12.7 Waiver of Subrogation.

The Landlord and Tenant hereby release the other and its Representatives from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any insured loss or damage to the Leased Premises, any Improvements thereon, or any of Landlord's or Tenant's property thereon caused by or arising from a fire or any other event even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

12.8 Indemnification.

12.8.1 Tenant shall indemnify, defend and hold harmless the Landlord, the City and their respective members, officers, employees, agents, contractors and consultants, and the property of Landlord, including the Leased Premises, from and against any and all Losses and Liabilities of every nature arising out of or in connection with the use, occupancy or enjoyment of the Leased Premises by Tenant or any person thereon or holding under Tenant arising from any action, inaction, events or facts occurring during the Term from any cause, provided, that nothing in this Section 12.8.1 or this Lease shall be construed to require Tenant to rebuild the Improvements, or to pay charges to Landlord in connection therewith as a result of damage to or destruction of the Improvements or any taking of the Improvements except to the extent expressly provided in the other Sections of this Lease. The above indemnification includes, without limitation, any Losses and Liabilities arising by reason of:

(1) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while such person or property is in or on the Leased Premises;

(2) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (A) the condition of the Leased Premises or some Improvements on said premises, or (B) some act or omission on the Leased Premises by Tenant or any person in, on, or about the Leased Premises with the permission and consent of Tenant;

(3) Any work performed on the Leased Premises or materials furnished to said premises at the insistence or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(4) Tenant's failure to perform any provision of this Lease or to comply with any Governmental Restriction.

However, the foregoing indemnification shall not extend to any Loss or Liability to the extent (1) it arises out of the gross negligence or intentional or willful misconduct of Landlord or its Representatives.

ARTICLE 13 - CONDEMNATION

13.1 General.

If any portion of or interest in the Leased Premises shall be condemned (including, without limitation, inverse condemnation) or taken by any public authority or by any other person or entity with the power of condemnation, by eminent domain or by purchase in lieu thereof (a "Taking"), and such Taking renders the Leased Premises unsuitable in the commercially reasonable judgment of Tenant for Tenant's business operations; Tenant may terminate this Lease by giving notice to Landlord, such termination to be effective as of the date specified in such notice. If this Lease is not terminated, Tenant's condemnation award shall be used for the purpose of repairing or restoring the Improvements in accordance with Section 7.3.

13.2 Award.

Whether or not this Lease is terminated as a result of any Taking, Landlord and Tenant shall together make one claim for an award for their combined interests in the Leased Premises including an award for severance damages if less than the whole shall be so taken. The condemnation proceeds shall be distributed to Landlord and Tenant as their respective interests appear. Both parties shall have the right to appear in and defend against such action as they deem proper in accordance with their own interests at their own expense. To the extent possible, the parties shall cooperate to maximize the condemnation proceeds payable by reason of the condemnation. Issues between Landlord and Tenant required to be resolved pursuant to this Article shall be joined in any such condemnation proceeding to the extent permissible under then applicable procedural rules of such court of law or equity for the purpose of avoiding multiplicity of actions and minimizing the expenses of the parties. If this Lease is not terminated pursuant to this Article, it shall continue, except that commencing with the date on which Tenant is deprived of the use of any portion of the Leased Premises or of any rights under this Lease, Rent shall be abated or reduced according to the extent to which Tenant is deprived of the use or benefit of the Leased Premises or of any rights under this Lease. If the Taking occurs in the last five (5) years of the Term, either Landlord or Tenant, by written notice to the other, may terminate this Lease, such termination to be effective as of the date that the condemnor acquires title to all or a portion of the Leased Premises.

13.3 Taking for Temporary Use.

If there is a Taking of the Leased Premises for temporary use for a period equal to or less than eight (8) months, this Lease shall continue in full force and effect, Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, neither the Term nor the Rent shall be reduced or affected in any way, but the Rent shall continue at the level of the last Rent paid prior to the Taking (including any subsequent increases in such Rent provided for under this Lease), and Tenant shall be entitled to any and all Awards for the use or estate taken. If any such Taking is for a period extending beyond such eight (8) month period, the Taking shall be treated as a total, substantial or partial taking, as appropriate.

ARTICLE 14 - DEFAULT

14.1 Default. The occurrence of any one or more of the following events shall, after the giving of the Notice of Default required by Section 14.2 or 14.4, constitute a default ("Default(s)") under this Lease by Tenant on Landlord, as applicable:

14.1.1 any failure by Tenant to pay the Rent or make any other payment required to be made by Tenant hereunder, on the date the payment is due; or

14.1.2 any breach by Tenant of its obligations under the Specific Plan, 2007 Development Agreement, or DDA, including, without limitation, failure to construct the Project in accordance with the Schedule of Performance or the Scope of Development, and the failure to cure such default under the terms of such documents; or

14.1.3 any breach by Tenant of its obligations under Section 5.1 of this Lease, including, without limitation, the Tenant's failure to continuously operate the Hotel; or

14.1.4 a failure by Tenant or Landlord to observe and perform any other condition, restriction, covenant, obligation or provision of this Lease to be observed or performed by Tenant or Landlord, as applicable.

14.2 Notice of Default; Tenant's Right to Cure.

14.2.1 If Tenant has committed or permitted to exist a breach of any provision of this Lease or has committed or permitted any other breach described above in Section 14.1, Landlord shall give notice of said breach ("Notice of Default") to Tenant.

14.2.2 Tenant shall be in default hereunder from Landlord if Rent for the prior calendar year is not paid by the twentieth (20th) day of July of each year of the Term or Extended

Term, if applicable (or if the twentieth day falls on a Saturday or Sunday, the first Monday following the twentieth (20th) day of July).

14.2.3 If the alleged Default is nonpayment of Rent, Additional Rent, Impositions or other sums to be paid by Tenant as provided in this Lease, Tenant shall have thirty (30) days after the Notice of Default is given to cure the Default. For any other Default, Tenant shall, after the Notice of Default, promptly and diligently commence curing the Default and shall have thirty (30) days after the Notice of Default to complete the cure of said Default; provided, however, that if the nature of said Default is such that the same cannot reasonably be cured within said thirty (30) day period, Tenant shall have such additional time as is reasonably necessary to cure such Default, but in any event no more than one hundred and twenty (120) days of receipt of the Notice of Default.

14.2.4 As used in this Lease, the term "Uncured Default" shall mean any Default by Tenant which continues uncured, following the giving of a Notice of Default as required by this Lease, for the entire cure period applicable to that Default under the provisions of this Lease.

14.2.5 Cures offered on behalf of Tenant by the limited partner of Tenant shall be received by Landlord as if offered by Tenant itself hereunder.

14.3 Landlord's Right to Cure Tenant's Defaults.

After expiration of the applicable time granted to Tenant for curing a particular Default and upon not less than five (5) business days' notice (unless a longer period of time is otherwise expressly provided by this Lease, in which case such longer period shall apply), Landlord may, at Landlord's election, make any payment (other than Rent payable to Landlord) required of Tenant under this Lease or perform or comply with any covenant or condition imposed on Tenant under this Lease, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Agreed Rate, from the date of payment, performance, or compliance until the date of repayment by Tenant, shall be due and payable by Tenant on the first day of the next calendar month following any such payment, performance or compliance by Landlord as Additional Rent hereunder. No such act shall constitute a waiver of any Default or of any remedy for Default or render Landlord liable for any loss or damage resulting from any such act (except to the extent such loss or damage arises from Landlord's or Landlord's Representatives' negligence or intentional or willful misconduct).

14.4 Notice of Landlord's Default; Tenant Waiver.

14.4.1 If Landlord has committed a breach under this Lease, as described in Section 14.1, Tenant shall deliver a Notice of Default to Landlord. Each Notice of Default shall specify the alleged Default.

14.4.2 Landlord shall, after notice, promptly and diligently commence curing the Default and shall have sixty (60) days after notice is given to complete the cure of said Default; provided, however, that if (i) the nature of said Default is such that the same cannot reasonably be cured within said sixty (60) day period, and (ii) Landlord shall have in good faith commenced and diligently and continuously pursued such cure, then Landlord shall have such time as is reasonably necessary to complete the cure of said Default. If it is determined that Landlord is liable to Tenant for damages pursuant to this Lease Landlord shall pay such damages to Tenant in accordance with such judgment within 30 days after such determination. Tenant shall have no right to offset any amount of damages owed by Landlord to Tenant against the Rent owed by Tenant to Landlord under this Lease. If any amount owed to the Tenant by Landlord is not paid when due, interest shall accrue on such amount at the Agreed Rate from the date due until the date that such amount is paid. After expiration of the applicable time for Landlord to cure a particular Default and upon not less than five (5) business days' notice (unless a longer period of time is otherwise expressly provided by this Lease, in which case such longer period shall apply), Tenant may, at Tenant's election, make any payment required of Landlord under this Lease or perform or comply with any covenant or condition imposed on Landlord under this Lease, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the Agreed Rate, from the date of payment, performance, or compliance until the date of repayment by Landlord, shall be due and payable by Landlord on the first day of the next calendar month following any such payment, performance or compliance by Tenant. No such act shall constitute a waiver of any Default or of any remedy for Default or render Tenant liable for any loss or damage resulting from any such act (except to the extent such loss or damage arises from Tenant's or Tenant's Representatives' negligence or intentional or willful misconduct).

14.5 Landlord's Remedies.

14.5.1 In the event of any Uncured Default, then, subject to the rights of a Lender expressly set forth in this Lease, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such termination, in which event the Parties shall have no further obligation to one another under this Lease.

14.5.2 Notwithstanding the provisions of this Article 14 above to the contrary, if, within ten (10) days of Tenant's receipt of a Notice of Default with respect to a Non-monetary Default by Tenant, Tenant shall in good faith notify Landlord in writing that it disputes the existence of such Non-monetary Default and that it requests a determination of the existence or non-existence of such Non-monetary Default, then Landlord may not exercise its right to terminate this Lease pursuant to this Article 14 on account of such Non-monetary Default of Tenant until the expiration of the applicable cure period measured as if such cure period commenced upon the earlier of (i) the date of the determination that such Non-monetary Default exists, or (ii) the failure by Tenant to diligently and continuously pursue the legal proceeding. Subject to the rights of Lenders, if there is no express cure period for the default set forth in the Notice of Default, then the cure periods shall be

the same as those provided in Section 14.2.3 herein. The exercise of Tenant's rights pursuant to this paragraph shall not impair or delay the ability of Landlord to exercise any rights or remedies other than to delay Landlord's right to terminate this Lease.

14.5.3 In the event the Uncured Default consists of Tenant's failure to pay Rent to Landlord, Landlord shall also have the right to pursue all of its legal and equitable remedies against Tenant for collection of such amounts, including without limitation the remedy described in California Civil Code Section 1951.4 which provides that a lessor may continue a lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if the lessee has the right to sublet or assign, subject only to reasonable limitations.

14.5.4 Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage, deed of trust, or bonded indebtedness. Accordingly, if any installment of Rent shall not be received by Landlord or its designee within ten (10) days after Rent is due, or if any Additional Rent or Impositions shall not be received by Landlord within twenty (20) days after the Notice of Default is given, then without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge to Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

14.6 Tenant Remedies; Remedies Cumulative.

Except as otherwise expressly provided in this Lease, Tenant shall have all rights and remedies at law or equity upon the occurrence of an Uncured Default by Landlord hereunder including, but not limited to, the remedies provided under California Civil Code Sections 1951.2 (pursuant to California Civil Code Section 1951.2, the damages Landlord may recover against Tenant include, but are not limited to, the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award, exceeds the amount of such rental loss for the same period that the Tenant proves could be reasonably avoided). Each right and remedy of Landlord and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease except as otherwise limited by this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease, except as otherwise limited by this Lease, shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease, except as otherwise limited by this Lease.

14.7 No Waiver.

Landlord's or Tenant's failure to enforce any provision of this Lease with respect to a Default hereunder shall not constitute a waiver of Landlord's or Tenant's right to enforce such provision or any other provision with respect to any future Default. The acceptance of Rent by Landlord shall not be deemed a waiver of Landlord's right to enforce any term or provision hereof. The waiver of any term or condition of this Lease shall not be deemed to be a waiver of any other term or condition hereof or of any subsequent failure of any term or condition hereof.

14.8 Delays in Performance.

The time within which the Parties hereto shall be required to perform any obligation under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, strikes, lockouts, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, application of governmental restrictions, regulations or controls not contemplated by this Lease or otherwise reasonably foreseeable, court order, delays or inaction of independent contractors, remediation of Hazardous Substances located upon the Leased Premises, litigation brought against the Leased Premises or a Party without that Party's consent, or other like events which are completely and strictly beyond a Party's control (the "Force Majeure Events"). The additional grace period or extension of time provided above shall be equal to the period of delay caused by the above-described event, which period shall commence to run from the time of the commencement of the cause for delay and shall terminate upon termination of that cause. A Party wishing to invoke this Section must notify in writing the other Party to this Lease of that intention within sixty (60) days of the commencement of any such cause for delay and shall, at that time, specify the reasons therefor, the specific provision of this Lease which will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable estimate thereof.

ARTICLE 15 - EXPIRATION; TERMINATION

At the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord possession of the Leased Premises free and clear of all liens, encumbrances and Mortgages other than those, if any, created by Landlord, those which both extend beyond the Term or Extended Term, if applicable, of this Lease and were expressly approved in writing by Landlord, or those which encumbered the Leased Premises prior to the Commencement Date of this Lease. Tenant shall leave the Leased Premises and any other property surrendered in its then existing, "as is" condition. As provided above at Article 6, all property that Tenant is required to surrender shall become Landlord's property at termination or expiration of this Lease. In addition, Tenant shall surrender to Landlord all residential leases, and all records related to the residential leases and compliance with the Agreement Affecting Real Property. All property that Tenant is not required to surrender but that Tenant does abandon by failure to remove said property within sixty (60) days after the expiration or

earlier termination of this Lease shall, at Landlord's election, become Landlord's property. At Landlord's request Tenant shall execute and deliver to Landlord assignments of leases and a quitclaim deed, both in commercially reasonable form and as prepared by Landlord. By the quitclaim deed Tenant shall quitclaim any right, title or interest which Tenant may have or claim to have in the Improvements.

ARTICLE 16— NO DISCRIMINATION

16.1 Tenant herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Lease is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

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

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(3) In contracts: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee, itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.

ARTICLE 17 - MISCELLANEOUS

17.1 Landlord's Representations and Warranties: Landlord, covenants, represents and warrants to Tenant, as of the date of execution of this Lease, as follows:

17.1.1 Landlord is a public body corporate and politic under the laws of the State of California, has full legal right, power, and authority to enter into this Lease and to carry out and consummate all transactions contemplated by this Lease, and by appropriate corporate action has duly authorized the execution and delivery of this Lease. Further, Landlord will take those actions required to remain in good standing under the laws of the state of California during the term of this Lease.

17.1.2 To Landlord's actual knowledge, the execution, delivery and performance of this Lease by Landlord does not result in a material violation of, or constitute a material default under, any provision of any existing agreement, judgment or court order.

17.1.3 Except as revealed in writing by Landlord to Tenant, Landlord has not been served with any pending, and knows of no threatened, litigation or claims against the Leased Premises or against Landlord in connection with the Leased Premises which would have an adverse effect on the transactions contemplated herein.

17.1.4 Copies of all documents heretofore delivered by Landlord to Tenant are true, correct and complete copies of such documents in all material respects.

17.1.5 Landlord makes no representation or warranty as to the condition of the title to the Leased Premises except as provided in Section 208 of the DDA.

17.2 Tenant's Representations and Warranties.

Tenant covenants, represents and warrants to Landlord, as of the date of execution of this Lease, as follows:

17.2.1 Tenant is a limited partnership or corporation duly formed and in good standing under the laws of the State of California, has full legal right, power, and authority to enter into this Lease and to carry out and consummate all transactions contemplated by this Lease, and by appropriate action has duly authorized the execution and delivery of this Lease. Further, Tenant will take those actions required to remain in good standing under the laws of the state of California during the term of this Lease.

17.2.2 The representatives of Tenant executing this Lease are fully authorized to execute the same.

17.2.3 This Lease has been duly authorized, executed, and delivered by Tenant, and will constitute a legal, valid, and binding agreement of Tenant.

17.2.4 Except as may be revealed in writing by Tenant to Landlord, Tenant has not been served with any pending, and knows of no threatened, litigation or claims against Tenant which would have an adverse effect on the transactions contemplated herein.

17.2.5 Copies of all documents heretofore delivered by Tenant to Landlord are true, correct and complete copies of such documents in all material respects;

17.3 Survival of Representations, Warranties and Covenants.

The respective representations, warranties and covenants contained herein shall survive the Commencement Date and continue throughout the Term.

17.4 Further Assurances.

Each party hereto will promptly execute and deliver without further consideration such additional agreement, assignments, endorsements and other documents as the other party hereto may reasonably request to carry out the purposes of this Lease.

17.5 Estoppel Certificate.

Within thirty (30) days after request by Landlord or Tenant (which request may be from time to time as often as reasonably required by Landlord or Tenant) Landlord or Tenant shall execute and deliver to the other, without charge, a statement (the "Estoppel Certificate") in the form of Exhibit D attached hereto or in such other similar form as Landlord or Tenant may reasonably request. Any such statement may be conclusively relied upon by any Lender, Subtenant or prospective purchaser of the Leased Premises.

17.6 Notices.

All notices, requests, demands and other communications under this Lease shall be in writing and shall be deemed to have been given on (a) the date of service if served personally on the Party to whom notice is to be given, (b) the date of actual or attempted delivery provided such attempted delivery is made on a business day, if served by Federal Express, Express Mail or another like overnight delivery service, (c) the date of actual delivery as shown by the addressee's registry or certification of receipt or the date of addressee's refusal to accept delivery, if mailed to the person to whom notice is to be given, by first class U.S. mail, registered or certified, postage prepaid, return receipt requested and properly addressed as follows (or to such other address as either Party may from time to time direct by written notice given in the manner herein prescribed), or (d) (except for Permitted Lenders) one day after receipt of a confirmed facsimile transmission provided any such communication is concurrently given by one of the above methods:

If to Landlord: The Imperial Beach Redevelopment Agency
 825 Imperial Beach Boulevard
 Imperial Beach, California 91932
 Attn: Executive Director
 Tel: 619-423-0314
 Fax: 619-628-1395

With a copy to: Kane, Ballmer & Berkman
 515 S. Figueroa Street, Suite 1850
 Los Angeles, California 90071
 Attn: Susan Y. Cola
 Tel: 213-617-0480
 Fax: 213-625-0931

and, if to Tenant: SEACOAST INN, L.P.
 1785 Hancock Street, Suite 100
 San Diego, California 92110
 Attn: Ashok Israni

Tel: (619) 296-9000
Fax: (619) 296-9090

17.7 Attorneys' Fees:

In the event that either Party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease or as a consequence of any breach by the other party of its obligations under this Lease, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees (including allocable costs for any in-house counsel) and out-of-pocket expenditures paid by the losing Party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit on this Lease shall be entitled to its attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment on this Lease.

17.8 Headings.

The headings used in this Lease are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

17.9 Rights of Successors.

All of the rights and obligations of the Parties under this Lease shall bind and inure to the benefit of their respective heirs, successors and assigns; provided, however, that nothing in this Section 17.9 shall be construed to limit or waive the provisions concerning restrictions on Transfer set forth in Article 9 hereof.

17.10 Amendments in Writing.

This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and signed by the Party to be charged.

17.11 No Brokers.

Each Party shall defend, indemnify, and hold the other harmless from all costs and expenses, including attorneys' fees, arising out of any and all claims for broker's agent's or finder's fees or commissions in connection with the negotiation, execution or consummation of this transaction incurred as a result of any statement, representation or agreement alleged to have been made or entered into by the indemnifying Party. Neither Tenant nor Landlord is entitled to receive any brokerage commission as a consequence of this transaction.

17.12 Negation of Partnership.

Nothing in this Lease shall be construed to render Landlord, a partner, joint venturer, or associate in any relationship or for any purpose with Tenant, other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

17.13 Time of Essence. Time is of the essence of each provision in this Lease, subject to delays caused by any of the force majeure events set forth in Section 14.8.

17.14 Interpretation.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The term "Person" as used in this Lease means a natural person, corporation, limited liability company, association, partnership, organization, business, trust, individual, or a governmental authority, agency, instrumentality or political subdivision, and whenever the word "day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Lease, it shall mean and include all subsections and subparts thereof. The word "include" or "including" shall describe examples of the antecedent clause, and shall not be construed to limit the scope of such clause.

17.15 Applicable Law; Severability.

The interpretation and enforcement of this Lease shall be governed by the laws of the State of California. Should any part, term, portion or provision of this Lease, or the application thereof to any person or circumstances be held to be illegal or in conflict with any Governmental Restrictions, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

17.16 Exhibits.

All exhibits referred to in this Lease are attached hereto and incorporated herein by reference.

17.17 Short Form of Lease.

Prior to Agency's conveyance of the Leased Premises to Tenant, the Parties shall execute and thereafter record with the County Recorder of San Diego County a Memorandum of Lease, attached hereto as Exhibit C, giving notice of the existence of this Lease and the Term hereof.

17.18 Landlord's Rights of Inspection.

Landlord and its authorized Representatives shall have the right during business hours, upon not less than twenty-four (24) hours' oral or written notice to Tenant (except that in the case of an emergency, the existence of which shall be determined by Landlord in its reasonable discretion, no advance notice shall be required) to enter upon the Leased Premises for purposes of inspecting the same and exercising its rights under this Lease, provided that such inspections shall not unreasonably interfere with Tenant's or its Subtenant's construction or business activities. Tenant has the right to designate representatives to accompany the Landlord's representatives on such inspections. Landlord agrees to coordinate with Tenant to schedule such inspections so that Tenant's representatives may attend the inspections, in the discretion of such Tenant.

17.19 Nonmerger of Fee and Leasehold Estates.

If both Landlord's and Tenant's estates in the Leased Premises become vested in the same owner (other than by termination of this Lease following an Uncured Default hereunder, subject to the rights, if any, of a Lender pursuant to Article 8 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of each Lender holding a Leasehold Mortgage.

17.20 Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

17.21 Interest On Past Due Obligations.

Except where another rate of interest is specifically provided for in this Lease, any amount due from either Party to the other under this Lease which is not paid within ten (10) days after receipt of written notice that such amount is due (or in the case of Rent, within three (3) days after such Rent is due), shall bear interest at the Agreed Rate from the date such amount was originally due to and including the date of payment.

17.22 Holding Over.

Any holding over by Tenant after the expiration of the Term shall be construed as a tenancy from month to month and shall be subject to all of the terms and conditions which are provided for in this Lease except that the Rent shall be in an amount equal to 150% of the Rent in effect immediately prior to the expiration of the Term.

17.23 Access for Lender.

Landlord and Tenant authorize each holder of a Leasehold Mortgagee to enter the Leased Premises as necessary to effect such Lender's cure rights hereunder, to take any action(s) reasonably necessary to effect such cure, to preserve and protect the Leased Premises and to otherwise exercise its right and remedies under such Lender's Leasehold Mortgage. A Leasehold Mortgagee's rights under this paragraph or exercise of such rights shall not constitute control of the Leased Premises or mean that such Lender has possession of the Leased Premises or liability to Landlord or Tenant.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

TENANT:

SEACOAST INN, L.P., a California limited partnership

By: PAC SEACOAST LLC, a California limited liability company/its General Partner

Signature on file

Dated: 3-9-11

By:

Deepak Isiani, Secretary

LANDLORD:

IMPERIAL BEACH REDEVELOPMENT AGENCY

Signature on file

Dated: 3/10/11

By:

Gary Brown
Executive Director

APPROVED AS TO FORM AND LEGALITY

KANE, BALLMER & BERKMAN
Agency Special Counsel

Signature on file

By:

Susan Cola

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PREMISES

LEGAL DESCRIPTION

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

Lot 1 ~~and Lot A~~ of Seacoast Inn in the City of Imperial Beach, County of San Diego, State of California, according to Official Map thereof No. 15792 recorded September 8, 2010 in the Office of the County Recorder of San Diego County.

Excepting therefrom, that portion of Date Avenue dedicated and accepted on said Map in favor of the City of Imperial Beach.

The following information is being provided to you for your information only. It is not intended to be used as a basis for any legal action. The information is provided as a courtesy and is not a guarantee of any kind. The information is provided as a courtesy and is not a guarantee of any kind.

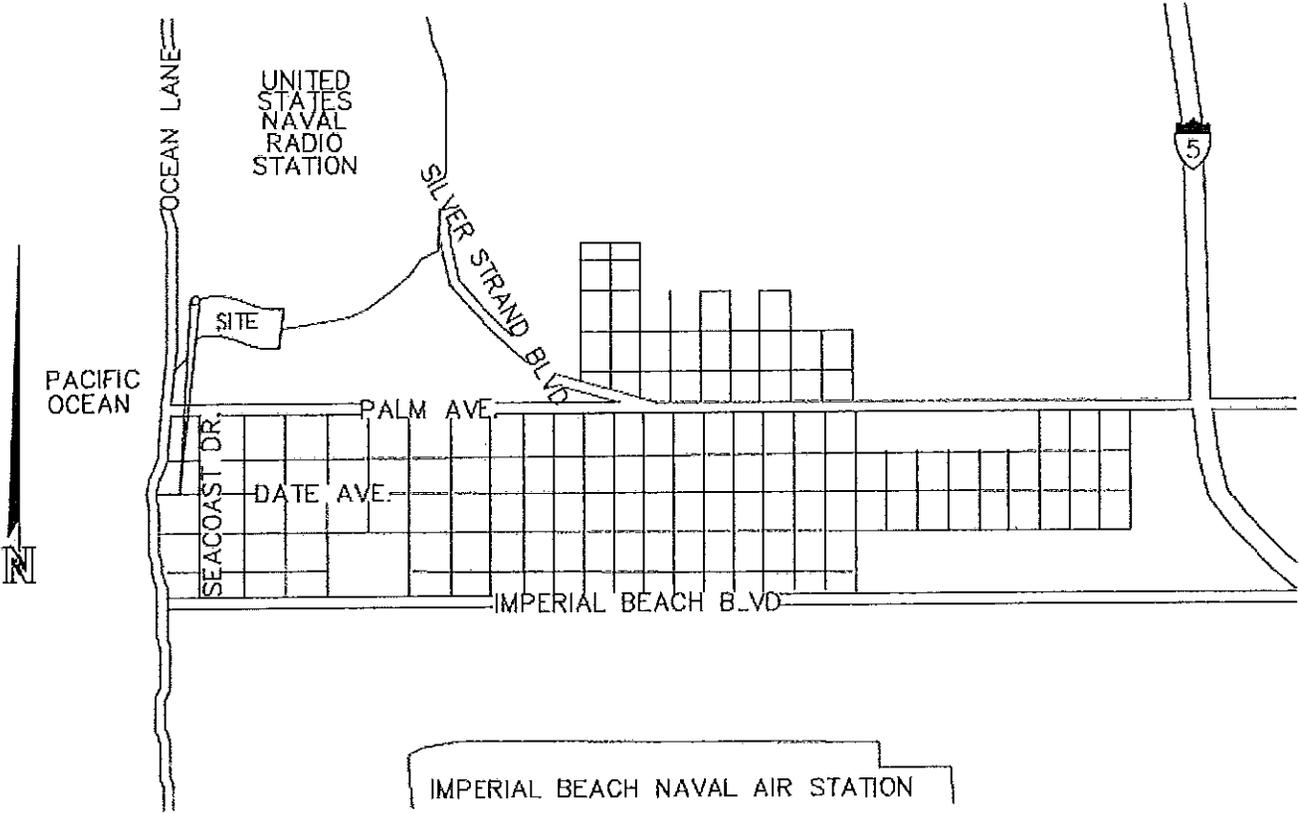
The information is provided as a courtesy and is not a guarantee of any kind. The information is provided as a courtesy and is not a guarantee of any kind.

The information is provided as a courtesy and is not a guarantee of any kind. The information is provided as a courtesy and is not a guarantee of any kind.

EXHIBIT B
SITE MAP

EXHIBIT B

SITE MAP

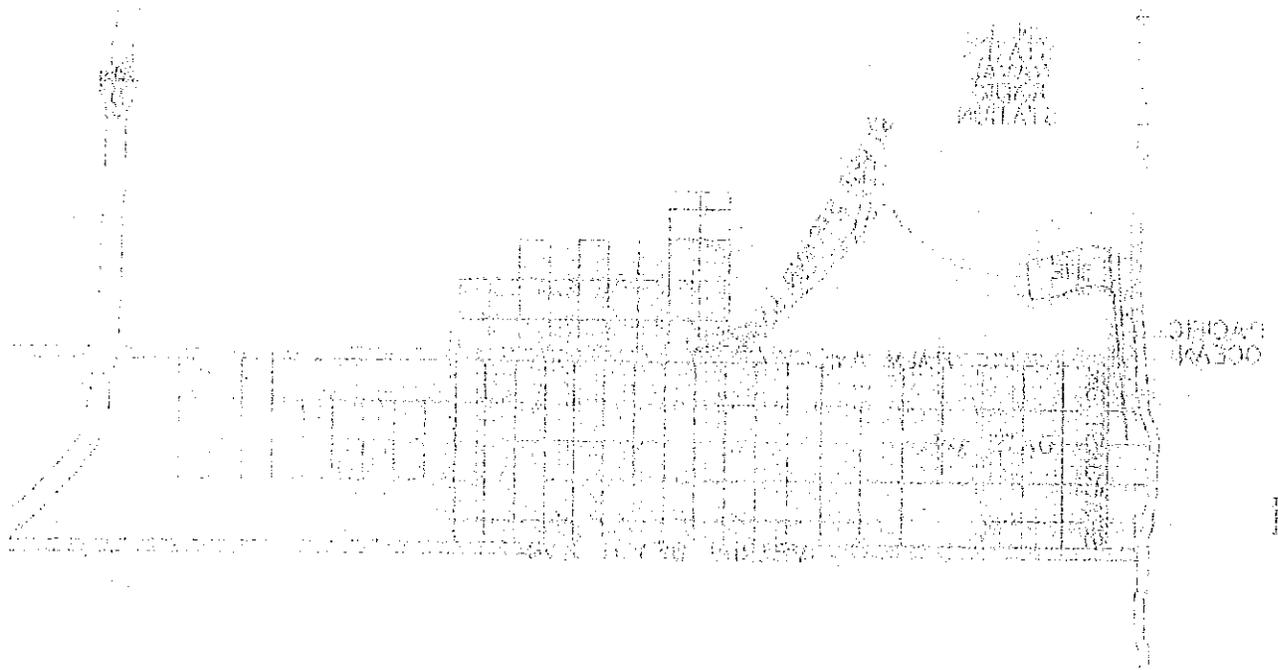


VICINITY MAP

NO SCALE

PLANNING

TAMM CITY



INDUSTRIAL BEACH PLANNING ZONING MAP

TAMM CITY PLANNING DEPARTMENT
 1000 WEST 10TH AVENUE
 TAMM CITY, ALABAMA 36561
 PHONE (205) 336-1234
 FAX (205) 336-1235
 WWW.TAMMCITYALABAMA.GOV

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EXHIBIT C

MEMORANDUM OF LEASE

OFFICIAL BUSINESS

Document entitled to free recording per Government Code Section 6103.

Recording Requested by and When Recorded Mail to:

THE IMPERIAL BEACH REDEVELOPMENT AGENCY
825 Imperial Beach Boulevard
Imperial Beach, California 91932

Attn: Executive Director

MEMORANDUM OF LEASE

1. Parties. This Memorandum of Lease is entered into by IMPERIAL BEACH REDEVELOPMENT AGENCY ("Landlord"), and SEACOAST INN, L.P., a California limited partnership ("Tenant"). The Lease (as defined below) was executed by Landlord on March 15, 2011. The "Commencement Date" of the Lease is the date this Memorandum of Lease is recorded in the official records.

2. Grant of Lease: Term. For good and valuable consideration received, Landlord leases to Tenant, and Tenant leases from Landlord, that certain real property (the "Property") located in the City of Imperial Beach, County of San Diego, State of California, described in Exhibit A attached hereto and incorporated herein by this reference, for a term ("Term") commencing on the Commencement Date and ending on the fifty-fifth (55th) anniversary of the Commencement Date. All of the terms, provisions and covenants of the Lease are incorporated in this Memorandum of Lease by reference as though written out at length herein, and the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document.

3. Purpose of Memorandum of Lease. This Memorandum of Lease is prepared for recordation purposes only, and it in no way modifies the terms, conditions, provisions and covenants of the Lease. In the event of any inconsistency between the terms, conditions, provisions and

covenants of this Memorandum of Lease and the Lease, the terms, conditions and covenants of the Lease shall prevail.

The parties hereto have executed this Memorandum of Lease on the dates specified immediately below their respective signatures.

“Landlord”

IMPERIAL BEACH REDEVELOPMENT AGENCY

Dated: 3/10/11

Signature on file
By: Gary Brown
Executive Director

“Tenant”

SEACOAST INN, L.P.,
a California limited partnership

By: Pacifica Hospitality Group, Inc.
a Nevada corporation,
Its General Partner

Deepak Israni, Secretary

STATE OF CALIFORNIA)
)ss.
COUNTY OF SAN DIEGO)

On MARCH 10, 2011 before me, TINA MARIE A. C. BARCLAY, a Notary Public, personally appeared GARY BROWN, 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 on file

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 paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)

)ss.

COUNTY OF SAN DIEGO)

On this _____ day of _____, 2002, 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.
JANE MARIE A. C. BARCLAY
Commissioner & 130488
Notary Public - California
San Diego County
W. C. STEINBERG & SONS



[Handwritten signature]
(Seal)

EXHIBIT D

Estoppel Certificate

The undersigned, as Tenant [Landlord] under that lease dated _____ (the "Lease") made between IMPERIAL BEACH REDEVELOPMENT AGENCY ("Landlord"), and SEACOAST INN, L.P., a California limited partnership ("Tenant"), hereby certifies as follows:

(1) That Tenant has entered into occupancy of the premises described in said lease (the "Leased Premises");

(2) That the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except as follows: _____;

(3) That the Commencement Date of the Lease is _____;

(4) That there is an unexpired term thereunder of _____ years;

(5) That to the knowledge of the undersigned there are no defaults by either Tenant or Landlord thereunder, except as follows: _____;

(6) That no rents have been prepaid, other than as provided in the Lease.

EXECUTED THIS _____ day of _____, _____.

[Tenant] [Landlord]

By: _____
Print Name: _____
Its: _____

By: _____
Print Name: _____
Its: _____

