



# Special Meeting A G E N D A

**IMPERIAL BEACH CITY COUNCIL  
REDEVELOPMENT AGENCY  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY**



**FEBRUARY 9, 2011 – 5:45 P.M.**

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

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

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## **SPECIAL MEETING CALL TO ORDER BY MAYOR**

## **ROLL CALL BY CITY CLERK**

## **PUBLIC COMMENT**

## **REPORTS**

- 1. RESOLUTION NO. 2011-6997 – AUTHORIZING CHANGE ORDER NO. 4 TO SEALING & REPAIRING WET WELLS & MANHOLES W05-401 CONTRACT WITH NEWEST CONSTRUCTION COMPANY AND AUTHORIZING A BUDGET AMENDMENT OF \$20,000 TO SEALING & REPAIRING WET WELLS & MANHOLES W05-401 CIP PROJECT. (0830-35)**

City Manager's Recommendation:

1. Receive report and
2. Adopt Resolution No. 2011-6997 authorizing Change Order No. 4 to the NEWest Construction Company Sealing & Repairing Wet Wells & Manholes (W05-401) contract for additional work in sealing of Sewer Pump Station No. 5, authorizing the City Manager to approve the NEWest Construction Company purchase order increase by \$18,702, and authorizing the transfer of \$20,000 from the Sewer Enterprise Fund Reserve (601) Account to the Sealing & Repairing Wet Wells & Manholes (W05-401) CIP project to cover the design, construction and project administration costs (including Change Order No. 4) for the "Sealing & Repairing Wet Wells & Manholes (W05-401)" project.

***Continued on Next Page***

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

**REPORTS (Continued)**

2. **RESOLUTION NOS. 2011-7005 AND R-11-246 AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO ENTER INTO A COOPERATION AGREEMENT AND NECESSARY SECURITY INSTRUMENTS BETWEEN THE CITY OF IMPERIAL BEACH AND THE REDEVELOPMENT AGENCY FOR PAYMENTS OF CERTAIN COSTS ASSOCIATED WITH CERTAIN REDEVELOPMENT AGENCY FUNDED PROJECTS. (0640-05)**

City Manager's Recommendation: Adopt resolutions.

3. **ADOPTION OF RESOLUTION NOS. 2011-7003 AND R-11-247 AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO EXECUTE A LEASE AGREEMENT FOR 495 10<sup>th</sup> STREET ("PUBLIC WORKS YARD"); APN 626-060-05. (0640-05 & 0910-30)**

City Manager's Recommendation: Adopt Resolution Numbers 2011-7003 and R-11-247 authorizing:

1. The City Manager/Executive Director to finalize and execute a lease for real property located at 495 10<sup>th</sup> Street; and
2. The City Manager/Executive Director to take any implementing actions to carry out the intent and purposes of the lease agreement.

**ADJOURNMENT**

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Jacqueline M. Hald, CMC  
City Clerk



STAFF REPORT  
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: FEBRUARY 9, 2011

ORIGINATING DEPT.: PUBLIC WORKS *HAL*

SUBJECT: RESOLUTION AUTHORIZING CHANGE ORDER NO. 4 TO SEALING & REPAIRING WETWELLS & MANHOLES W05-401 CONTRACT WITH NEWEST CONSTRUCTION COMPANY AND AUTHORIZING A BUDGET AMENDMENT OF \$20,000 TO SEALING & REPAIRING WETWELLS & MANHOLES W05-401 CIP PROJECT

**BACKGROUND:** On June 15, 2010, City Council adopted resolution No. 2010-6904 awarding a contract for certain public works project – Sealing & Repairing Wet Wells & Manholes (W05-401) to NEWest Construction Company at a contract price of \$656,515. Construction work commenced September 21, 2010. At the November 3, 2010 City Council meeting, City Council adopted Resolution No. 2010-6960 approving Change Order No. 1 for \$19,293. The new NEWest Construction Company contract was increased to \$675,808. The allocated Sewer Enterprise Funds were increased to \$809,000.

At the November 17, 2010 City Council Meeting, City Council adopted Resolution No. 2010-6969 authorizing Change Order No. 2 for \$50,322. The allocated Sewer Enterprise Funds were increased to \$859,500.

On January 20, 2011, the City Manager authorized Change Order No. 3 for \$3,608.

Change Order No. 1 was to repair a manhole that had been missed when one of the 53 manholes the City marked out had been mismarked at the beginning of work. Change Order No. 2 was to correct an error in the scope of work in that the size of the wet wells specified for repair were shown with incorrect dimensions – thus increasing the scope of work within these wet wells. Change Order No. 3 was to repair three (3) previously sealed manhole coatings that had subsequently failed and had water infiltration.

**DISCUSSION:** Change Order No. 4 is proposed to perform additional work in Sewer Pump Station No. 5 wet well (corner Seacoast Drive / Dahlia Avenue). The contract called for cleaning and sealing the wet well, while preserving a sealing installation of 20-years ago. However the Contractor found the old seal was deteriorated and peeling off during their cleaning process. The engineer has determined that this old seal was not repairable and it should be removed and replaced. The agreed price for this extra work was \$18,702.

In order to cover the costs to clean and seal the complete wet well, the CIP budget will need to be increased by the amount of \$20,000. There are sufficient funds in the Sewer Enterprise Fund, Reserve Account to transfer the \$20,000 for this purpose.

**ENVIRONMENTAL DETERMINATION:**

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

**FISCAL IMPACT:**

Budget Allocated from Sewer Enterprise Fund:

- Sealing & Repairing Wet Wells & Manholes (CIP W05-401) \$463,000
- Sewer Manholes (CIP W05-301) \$ 70,000
- Pump Station No. 7 Wet Well Replacement (CIP W06-1101) \$221,000
- Budget Amendment – Resolution 2010-6904 \$ 35,000
- Budget Amendment – Resolution 2010-6960 \$ 20,000
- Budget Amendment – Resolution 2010-6969 \$ 50,500
- **TOTAL BUDGET ALLOCATED** **\$859,500**

Expenditure & Encumbrances

- Tran Engineering (design services) \$ 63,350
- NEWest Construction Company, Inc. contract \$656,515
- Change order No. 1 to NEWest Construction Co. contract \$ 19,293
- Change order No 2 to NEWest Construction Co. contract \$ 50,322
- Change order No. 3 to NEWest Construction Co. contract \$ 3,608
- Change order No. 4 to NEWest Construction Co. contract \$ 18,702
- Project Administration \$ 63,000
- **ESTIMATED TOTAL PROJECT COST** **\$874,790**

Recommended budget amendment to cover the remaining cost of the project:

- Sewer Enterprise Fund \$ 20,000

**New Total Sewer Enterprise Fund Allocation** **\$879,500**

**DEPARTMENT RECOMMENDATION:**

1. Receive this report.
2. Adopt attached resolution No. 2011-6997 authorizing Change Order No. 4 to the NEWest Construction Company Sealing & Repairing Wet Wells & Manholes (W05-401) contract for additional work in sealing of Sewer Pump Station No. 5.
3. Authorize the City Manager to approve the NEWest Construction Company purchase order increase by \$18,702.
4. Authorize the transfer of \$20,000 from the Sewer Enterprise Fund Reserve (601) Account to the Sealing & Repairing Wet Wells & Manholes (W05-401) CIP project to cover the design, construction and project administration costs (including Change Order No. 4) for the “Sealing & Repairing Wet Wells & Manholes (W05-401)” project (Resolution 2011-6997).

**CITY MANAGER’S RECOMMENDATION:**

Approve Department recommendation.

  
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 Gary Brown, City Manager

Attachments:

1. Resolution No. 2011-6997

## RESOLUTION NO. 2011-6997

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING CHANGE ORDER NO. 4 TO SEALING & REPAIRING WETWELLS & MANHOLES W05-401 CONTRACT WITH NEWEST CONSTRUCTION COMPANY AND AUTHORIZING A BUDGET AMENDMENT OF \$20,000 TO SEALING & REPAIRING WETWELLS & MANHOLES W05-401 CIP PROJECT**

**WHEREAS**, on June 15, 2010, City Council adopted resolution No. 2010-6904 awarding a contract for certain public works project – Sealing & Repairing Wet Wells & Manholes (W05-401) to NEWest Construction Company at a contract price of \$656,515; and

**WHEREAS**, at the November 3, 2010 City Council meeting, City Council adopted Resolution No. 2010-6960 approving Change Order No. 1 for \$19,293, authorizing the NEWest Construction Company contract be increased to \$675,808 and appropriated a total Sewer Enterprise Funds for the project to \$809,000; and

**WHEREAS**, at the November 17, 2010 City Council Meeting, City Council adopted Resolution No. 2010-6969 approving Change Order No. 2 for \$50,322, authorizing the NEWest Construction Company contract be increased to \$726,130 and appropriated a total Sewer Enterprise Funds for the project to \$859,500; and

**WHEREAS**, on January 20, 2011, the City Manager authorized Change Order No. 3 for \$3,608; and

**WHEREAS**, Change Order No. 1 was to repair a manhole that had been missed when one of the 53 manholes the City marked out had been mismarked at the beginning of work; and

**WHEREAS**, Change Order No. 2 was to correct an error in the scope of work in that the size of the wet wells specified for repair were shown with incorrect dimensions – thus increasing the scope of work within these wet wells; and

**WHEREAS**, Change Order No. 3 was to repair three (3) previously sealed manhole coatings that had subsequently failed and had water infiltration; and

**WHEREAS**, Change Order No 4 is proposed to perform additional work in Sewer Pump Station No. 5 wet well (corner Seacoast Drive / Dahlia Avenue); and

**WHEREAS**, the agreed price for this extra work (Change Order No. 4) is \$18,702; and

**WHEREAS**, in order to cover the costs of additional work to clean and seal Pump Station No. 5 wet well, the CIP budget will need to be increased by the amount of \$20,000; and

**WHEREAS**, there are sufficient funds in the Sewer Enterprise Fund, Reserve Account to transfer the \$20,000 for this purpose.

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

1. The above recitals are true and correct.
2. This legislative body authorizes Change Order No. 4 to the NEWest Construction Company Sealing & Repairing Wetwells & Manholes CIP Project W05-401 contract for the additional cleaning and sealing to Sewer Pump Station No. 5 wet well.
3. This legislative body authorizes the City Manager to approve the NEWest

Construction Company purchase order increase by \$18,702.

4. This legislative body authorizes the transfer of \$20,000 from the Sewer Enterprise Fund Reserve (601) Account to the Sealing & Repair Wet Wells & Manholes (W05-401) CIP project to cover the added costs to the "Sealing & Repair Wet Wells & Manholes (W05-401) project for a total CIP Project W05-401 budget allocation of \$879,500.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 9th day of February 2011, by the following vote:

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

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**JAMES C. JANNEY, MAYOR**

**ATTEST:**

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**JACQUELINE M. HALD, CMC**  
**CITY CLERK**



**STAFF REPORT  
CITY OF IMPERIAL BEACH/  
REDEVELOPMENT AGENCY**

**TO:** HONORABLE MAYOR AND CITY COUNCIL AND REDEVELOPMENT AGENCY

**FROM:** GARY R. BROWN, CITY MANAGER & EXECUTIVE DIRECTOR

**MEETING DATE:** FEBRUARY 9, 2011

**ORIGINATING DEPT.:** FINANCE DEPARTMENT

**SUBJECT:** ADOPTION OF RESOLUTION NOS. 2011-7005 AND R-11-246 AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO ENTER INTO A COOPERATION AGREEMENT AND NECESSARY SECURITY INSTRUMENTS BETWEEN THE CITY OF IMPERIAL BEACH AND THE REDEVELOPMENT AGENCY FOR PAYMENTS OF CERTAIN COSTS ASSOCIATED WITH CERTAIN REDEVELOPMENT AGENCY FUNDED PROJECTS

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**BACKGROUND:**

On January 26, 2011, the City Council and Agency Board authorized the City Manager and Executive Director to enter into a cooperative agreement between the City and Agency so that the City can implement certain Agency funded projects. On January 26, 2011, the City Council/Agency Board also approved the list of projects that would be included in the Cooperation Agreement.

**CURRENT CONSIDERATION:**

Agency Special Counsel has recommended evidencing and securing the Agency's obligations under the Cooperation Agreement with certain security instruments which will be attachments to the Cooperation Agreement, including an option for the City to purchase Agency property located at 9<sup>th</sup> and Palm so that the City can carry out improvements along Highway 75. Therefore, if the attached resolutions are approved, the City Manager and Executive Director will be authorized to execute the necessary security instruments.

**FISCAL IMPACT:**

The Council has approximately \$11.4 million of available bond proceeds to address the projects approved on January 26, 2011. Repayment by the Agency for the delivery of these public improvement projects by the City will occur as the services are delivered. New tax exempt bond proceeds are to be utilized in less than 5 years.

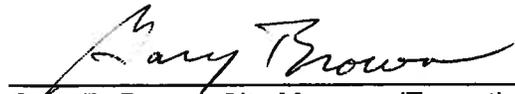
**DEPARTMENT RECOMMENDATION:**

That the City Council and Redevelopment Agency adopt resolution numbers 2011-7005 and R-11-241 authorizing the City Manager/Executive Director to (1) finalize and execute the Cooperation

Agreement and any necessary security instruments with the assistance of legal counsel and (2) take all further actions necessary to carry out the intent of the agreement.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
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Gary R. Brown, City Manager/Executive Director

**Attachments:**

1. City Council Resolution No. 2011-7005
2. Redevelopment Agency Resolution No. R-11-246
3. Revised Cooperation Agreement

**RESOLUTION NO. 2011-7005****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
IMPERIAL BEACH AUTHORIZING THE CITY OF  
IMPERIAL BEACH TO ENTER INTO A COOPERATION  
AGREEMENT WITH THE IMPERIAL BEACH  
REDEVELOPMENT AGENCY AND MAKING CERTAIN  
DETERMINATIONS AND FINDINGS RELATED  
THERETO**

**WHEREAS**, the City Council of the City of Imperial Beach (the "City Council") adopted the redevelopment plan (the "Redevelopment Plan") for the Palm Avenue/Commercial Redevelopment Project Area on February 6, 1996 (the "Project Area") by Ordinance No.96-901; and

**WHEREAS**, the Redevelopment Plan was subsequently amended on July 18, 2001 by Ordinance No. 2001-70 (the "First Amendment") to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the "Second Amendment") to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the "Third Amendment") to extend the Agency's eminent domain authority; and

**WHEREAS**, Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment shall be referred to herein as the "Redevelopment Plan"; and

**WHEREAS**, the Redevelopment Plan results in the allocation of taxes from the Project Area to the Imperial Beach Redevelopment Agency (the "Agency") for purposes of redevelopment; and

**WHEREAS**, the intent of the Redevelopment Plan is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the repair, restoration and/or replacement of existing public facilities and to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; and to increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside the Redevelopment Project Area; and to take all other necessary actions to implement the Redevelopment Plans for the Project Area and to expend tax increment to accomplish the goals and objectives of the respective redevelopment projects; and

**WHEREAS**, the Agency has adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan") with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization. To implement the programs and activities associated with each goal, the Agency has made redevelopment fund commitments based on estimated available tax increment revenue and debt financing structures; and

**WHEREAS**, the City of Imperial Beach (the "City") and the Agency wish to cooperate with one another to bring about the redevelopment of the Project Area and accomplish various tasks set forth in the Redevelopment Plan and the Implementation Plan; and

**WHEREAS**, pursuant to Section 33220 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "CRL") certain public bodies, including the City, may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

**WHEREAS**, the City Council considered a list of public projects within the Project Area as identified Exhibit 1 to the Staff Report dated January 26, 2011, which was presented to the City Council for consideration at the regular meeting of the City Council on January 26, 2011; and

**WHEREAS**, the Agency has selected certain projects on the list ("Projects"), to be considered as priorities necessary to carry out the Redevelopment Plan and Implementation Plan; and

**WHEREAS**, on January 26, 2011, the City and the Agency authorized the City Manager and Executive Director to enter into a Cooperation Agreement (the "Agreement") to provide for implementation of the Projects under which payments will be made by the Agency to the City as otherwise necessary to reimburse the City for the cost to the City of installing and constructing the Projects; and

**WHEREAS**, Agency Special Counsel has recommended evidencing and securing the Agency's obligations under the Cooperation Agreement with certain security instruments which are attachments to the Cooperation Agreement, including an option for the City to purchase Agency property located at 9<sup>th</sup> and Palm so that the City can carry out improvements along Highway 75; and

**WHEREAS**, the programs and activities associated with the Projects include, but are not limited to, acquisition and disposition of property, development of design criteria, design, planning, preparation of construction bid documents, financial analysis, financing and new construction or rehabilitation; and

**WHEREAS**, to carry out the Projects in accordance with the objectives and purposes of the Redevelopment Plan for the Project Area and the Implementation Plan, the Agency desires assistance and cooperation in the implementation and completion of the Projects; and

**WHEREAS**, the City wishes to enter into the Agreement with the Agency to aid the Agency and cooperate with the Agency to expeditiously implement the Projects in accordance with the Redevelopment Plans for the Project Area and the Implementation Plan and undertake and complete all actions necessary or appropriate to ensure that the objectives of the Redevelopment Plan for the Project Area and the Implementation Plan are fulfilled within the time effectiveness of the Project Area; and

**WHEREAS**, in considering the Agency's desire to ensure timely implementation and completion of the Projects, the City wishes to enter into the Agreement with the Agency for the pledge of net available tax increment; and/or bond proceeds secured by a pledge of net available tax increment to finance the Projects. The purpose of the Agreement is to facilitate the implementation of the Projects and to provide funding necessary to effectuate the completion of the Projects with net available tax increment and/or bond proceeds in this current fiscal year and forthcoming fiscal years; and

**WHEREAS**, net available tax increment is defined as any tax increment, net of existing debt service payments, and existing contractual obligations received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. The pledge of net available tax increment will constitute obligations to make payments authorized and incurred pursuant to Section 33445 of the CRL and other applicable statutes. The obligations set forth in the Agreement will be contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies; and

**WHEREAS**, by approving and entering into the Agreement, the Agency will approve the pledge of net available tax increment from the Project Area and/or bond proceeds to pay for the Projects. In the event that additional funds are required in order to make the Agency payments to the City required by the Agreement, the Agency shall make such payments from income received by the Agency from its projects and programs or any other additional funds available to it; and

**WHEREAS**, the obligations of the Agency under the Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area; and

**WHEREAS**, it is in the best interests of the City and for the common benefit of residents, employees, business tenants and property owners within the Project Area and the City as a whole for the Projects to be developed and constructed in accordance with the Agreement; and

**WHEREAS**, the Agreement shall require City to comply with Public Resources Code sections 21000 *et seq.* ("CEQA") before undertaking each Project and, pursuant to CEQA Guideline Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because the Agreement consists of the creation of a governmental funding mechanism for various public improvements, and environmental review required by CEQA shall be completed prior to the commencement of any public improvement listed in the Agreement; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE**, the City Council of the City of Imperial Beach **DOES HEREBY RESOLVE**, as follows:

Section 1. The City Council has received and heard all oral and written objections to the proposed payments by the Agency to the City for the Projects described in Exhibit 1 to the Staff Report, and to other matters pertaining to this transaction, and all such oral and written objections are hereby overruled.

Section 2. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 3. Based on the evidence in the record, the City Council hereby finds and determines, with respect to the Projects that are publicly owned and are located in or contiguous to the Project Area as identified in Exhibit 1 to the Staff Report, that:

(a) Said Projects and the programs and activities associated therewith are of benefit to the Project Area by helping to eliminate blight within the Project Area or providing housing for low- or moderate income persons; and

(b) No other reasonable means of financing said Projects and the programs and activities associated therewith are available to the community; and

(c) The payment of funds by the Agency for the costs related to said Projects and the programs and activities associated therewith is consistent with the respective Implementation Plan adopted pursuant to Section 33490 of the CRL.

Section 4. The City Manager, or designee, is hereby authorized to draft and execute the Agreement on behalf of the City, subject to the approval as to form by the City

Attorney.

Section 5. The City Manager, or designee, is hereby authorized, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Agreement, including, without limitation, any security instruments to be recorded against Agency assets to secure the Agency's obligations under the Cooperation Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement.

Section 6. In the event the Agency desires to issue bonds, notes, or other instruments of indebtedness of the Agency to carry out redevelopment projects, then any indebtedness of the Agency to the City, including any interest accrued thereon, shall be deemed not to be a first pledge of tax increment allocations received by the Agency pursuant to Section 33670 of the CRL; and any indebtedness of the Agency to the City, including any interest accrued thereon, shall be subordinate to any pledge of tax increments to bondholders or the holders of other such instruments of indebtedness.

Section 7. The City Manager shall ensure conformance with CEQA prior to undertaking each Project.

Section 8. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 9<sup>th</sup> day of February, 2011, by the following vote:

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

\_\_\_\_\_  
JAMES C. JANNEY, MAYOR

ATTEST:

\_\_\_\_\_  
JACQUELINE M. HALD  
CITY CLERK

**RESOLUTION NO. R-11-246**

**RESOLUTION OF THE IMPERIAL BEACH  
REDEVELOPMENT AGENCY AUTHORIZING THE  
AGENCY TO ENTER INTO A COOPERATION  
AGREEMENT WITH CITY AND MAKING CERTAIN  
DETERMINATIONS AND FINDINGS RELATED  
THERE TO**

**WHEREAS**, the City Council of the City of Imperial Beach (the "City Council") adopted the redevelopment plan (the "Redevelopment Plan") for the Palm Avenue/Commercial Redevelopment Project Area on February 6, 1996 (the "Project Area") by Ordinance No.96-901; and

**WHEREAS**, the Redevelopment Plan was subsequently amended on July 18, 2001 by Ordinance No. 2001-70 (the "First Amendment") to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the "Second Amendment") to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the "Third Amendment") to extend the Agency's eminent domain authority; and

**WHEREAS**, the Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment, shall be referred to herein as the "Redevelopment Plan"; and

**WHEREAS**, the Redevelopment Plan results in the allocation of taxes from the Project Area to the Imperial Beach Redevelopment Agency (the "Agency") for purposes of redevelopment; and

**WHEREAS**, the intent of the Redevelopment Plan is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the repair, restoration and/or replacement of existing public facilities and to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; and to increase, improve and preserve the community's supply of low and moderate income housing; and to take all other necessary actions to implement the Redevelopment Plan for the Project Area and to expend tax increment to accomplish the goals and objectives of the respective redevelopment projects; and

**WHEREAS**, the Agency has adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (the "Implementation Plan") with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization. To implement the programs and activities associated with each goal, the Agency has made redevelopment fund commitments based on estimated available tax increment revenue and debt financing structures; and

**WHEREAS**, the City of Imperial Beach (the "City") and the Agency wish to cooperate with one another to bring about the redevelopment of the Project Area and accomplish various tasks set forth in the Redevelopment Plan and the Implementation Plan; and

**WHEREAS**, pursuant to Section 33220 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the "CRL") certain public bodies, including the City, may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

**WHEREAS**, the Agency considered a list of public projects within the Project Area, as identified in Exhibit 1 of the Staff Report, dated January 26, 2011, which was presented to the Agency Board for consideration at the regular meeting of the Agency Board on January 26, 2011; and

**WHEREAS**, the Agency has selected certain projects on the list ("Projects"), to be considered as priorities necessary to carry out the Redevelopment Plan and Implementation Plan; and

**WHEREAS**, on January 26, 2011, the Agency and City authorized the City Manager and Executive Director to enter into a Cooperation Agreement (the "Agreement") to provide for implementation of the Projects, under which payments will be made by the Agency to the City as otherwise necessary to reimburse the City for the cost to the City of installing and constructing the Projects; and

**WHEREAS**, Agency Special Counsel has recommended evidencing and securing the Agency's obligations under the Cooperation Agreement with certain security instruments which are attachments to the Cooperation Agreement, including an option for the City to purchase Agency property located at 9<sup>th</sup> and Palm so that the City can carry out improvements along Highway 75; and

**WHEREAS**, the programs and activities associated with the Projects include, but are not limited to, acquisition and disposition of property, development of design criteria, design, planning, preparation of construction bid documents, financial analysis, financing and new construction or rehabilitation; and

**WHEREAS**, to carry out the Projects in accordance with the objectives and purposes of the Redevelopment Plan for the Project Area and the Implementation Plan, the Agency desires assistance and cooperation in the implementation and completion of the Projects; and

**WHEREAS**, the City wishes to enter into the Agreement with the Agency to aid the Agency and cooperate with the Agency to expeditiously implement the Projects in accordance with the Redevelopment Plan for the Project Area and the Implementation Plan and undertake and complete all actions necessary or appropriate to ensure that the objectives of the Redevelopment Plan for the Project Area and the Implementation Plan are fulfilled within the time effectiveness of the Project Area; and

**WHEREAS**, in considering the Agency's desire to ensure timely implementation and completion of the Projects, the Agency wishes to enter into the Agreement with the City for the pledge of net available tax increment and/or bond proceeds secured by a pledge of net available tax increment to finance the Projects. The purpose of the Agreement is to facilitate the implementation of the Projects and to provide funding necessary to effectuate the completion of the Projects with net available tax increment and/or bond proceeds in this current fiscal year and forthcoming fiscal years; and

**WHEREAS**, net available tax increment is defined as any tax increment, net of existing debt service payments, and existing contractual obligations received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. The pledge of net available tax increment will constitute obligations to make payments authorized and incurred pursuant to Section 33445 of the CRL and other applicable statutes. The obligations set forth in the Agreement will be contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies; and

**WHEREAS**, by approving and entering into the Agreement, the Agency will approve the pledge of net available tax increment from the Project Area and/or bond proceeds to pay for the Projects. In the event that additional funds are required in order to make the Agency payments to the City required by the Agreement, the Agency shall make such payments from income received by the Agency from its projects and programs or any other additional funds available to it; and

**WHEREAS**, the obligations of the Agency under the Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area; and

**WHEREAS**, it is in the best interests of the City and for the common benefit of residents, employees, business tenants and property owners within the Project Area and the City as a whole for the Projects to be developed and constructed in accordance with the Agreement; and

**WHEREAS**, the Agreement shall require the City to comply with Public Resources Code sections 21000 *et seq.* ("CEQA") before undertaking each Project and, pursuant to CEQA Guideline Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), and environmental review required by CEQA shall be completed prior to the commencement of any public improvement listed in the Agreement; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE**, the Imperial Beach Redevelopment Agency **DOES HEREBY RESOLVE**, as follows:

Section 1. The Agency has received and heard all oral and written objections to the proposed payments by the Agency to the City for the Projects as described in Exhibit 1 to the Staff Report, and to other matters pertaining to this transaction, and all such oral and written objections are hereby overruled.

Section 2. The Agency hereby finds and determines that the foregoing recitals are true and correct.

Section 3. Based on the evidence in the record, the Agency hereby finds and determines, with respect to the Projects that are publicly owned and are located in or contiguous to the Project Area as identified in Exhibit 1 attached to the Staff Report, that:

(a) Said Projects and the programs and activities associated therewith are of benefit to the Project Area by helping to eliminate blight within the Project Area or providing housing for low- or moderate income persons; and

(b) No other reasonable means of financing said Projects and the programs and activities associated therewith are available to the community; and

(c) The payment of funds by the Agency for the costs related to said Projects and the programs and activities associated therewith is consistent with the respective Implementation Plan adopted pursuant to Section 33490 of the CRL.

Section 4. The Agency Executive Director, or designee, is hereby authorized to draft and execute the Agreement on behalf of the Agency, subject to approval as to form by the Agency's General and Special Counsel.

Section 5. The Agency Executive Director, or designee, is hereby authorized, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the Agreement, including, without limitation, any security instruments to be recorded against Agency assets to secure the Agency's obligations under the Cooperation Agreement, and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement.

Section 6. In the event the Agency desires to issue bonds, notes, or other instruments of indebtedness of the Agency to carry out redevelopment projects, then any indebtedness of the Agency to the City, including any interest accrued thereon, shall be deemed not to be a first pledge of tax increment allocations received by the Agency pursuant to Section 33670 of the CRL; and any indebtedness of the Agency to the City, including any interest accrued thereon, shall be subordinate to any pledge of tax increments to bondholders or the holders of other such instruments of indebtedness.

Section 7. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** by the Redevelopment Agency Board of the City of Imperial Beach at its meeting held on the 9th day of February, 2011, by the following vote:

AYES: BOARDMEMBERS:  
NOES: BOARDMEMBERS:  
ABSENT: BOARDMEMBERS:

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JAMES C. JANNEY, CHAIRPERSON

ATTEST:

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JACQUELINE M. HALD  
AGENCY SECRETARY

**COOPERATION AGREEMENT  
FOR PAYMENT OF COSTS ASSOCIATED WITH CERTAIN REDEVELOPMENT  
AGENCY FUNDED PROJECTS**

**THIS COOPERATION AGREEMENT** (this “**Agreement**”) is entered into this \_\_\_\_\_ day of February, 2011, by and between the CITY OF IMPERIAL BEACH (the “**City**”) and the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH (the “**Agency**”), with reference to the following facts:

A. The City Council of the City of Imperial Beach (the “**City Council**”) adopted the redevelopment plan (the “**Redevelopment Plan**”) for the Palm Avenue/Commercial Redevelopment Project Area on February 6, 1996 (the “**Project Area**”) by Ordinance No.96-901. The Redevelopment Plan was subsequently amended on July 18, 2001 by Ordinance No. 2001-70 (the “**First Amendment**”) to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the “**Second Amendment**”) to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the “**Third Amendment**”) to extend the Agency’s eminent domain authority. The Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment shall be referred to herein as the “**Redevelopment Plan**”.

B. The intent of the Redevelopment Plan is, in part, to provide for the construction and installation of necessary public infrastructure and facilities and to facilitate the repair, restoration and/or replacement of existing public facilities and to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; and to increase, improve and preserve the community’s supply of low and moderate income housing; and to take all other necessary actions to implement the Redevelopment Plan and to expend tax increment to accomplish the goals and objectives of the Redevelopment Plan.

C. The Agency has adopted its Five-Year Implementation Plan for the Project Area, as amended from time to time (collectively, the “**Implementation Plan**”) with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization. To implement the programs and activities associated with each goal, the Agency has made redevelopment fund commitments and budget allocations based on estimated available tax increment revenue and debt financing structures.

D. Pursuant to Section 33220 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (the “**CRL**”), certain public bodies, including the City may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Collectively, the projects associated with this Agreement are listed in the attached Exhibit 1, which are incorporated herein by this reference (the “**Projects**”). The programs and activities associated with the Projects include but are not limited to acquisition and disposition of property, development of design criteria, design, planning, preparation of construction bid documents, financial analysis, financing and new construction or rehabilitation. To carry out the Projects in accordance with the objectives and purposes of the Redevelopment Plan for the Project Area and the Implementation Plan, the Agency desires assistance and cooperation in the implementation and completion of the Projects. The City agrees to aid the Agency and cooperate

with the Agency to expeditiously implement the Projects in accordance with the Redevelopment Plan and the Implementation Plan and undertake and complete all actions necessary or appropriate to ensure that the objectives of the Redevelopment Plan and the Implementation Plan are fulfilled within the time effectiveness of the Project Area.

E. In considering the Agency's desire to ensure timely implementation and completion of the Projects, the Agency wishes to enter into this Agreement with the City for the pledge of net available tax increment and/or bond proceeds secured by a pledge of net available tax increment ("**Bond Proceeds**") to finance the Projects. The purpose of this Agreement is to facilitate the implementation of the Projects and to provide funding necessary to effectuate the completion of the Projects with net available tax increment in this current fiscal year and forthcoming fiscal years.

F. Net available tax increment is defined as any tax increment, is defined as any tax increment generated from the Project Area, net of any amount required by the CRL to be set aside for purposes of increasing, improving or preserving the City's supply of low and moderate housing, any amounts paid to affected taxing agencies whether by statute or agreement and any amounts paid to the State of California or the County of San Diego as required by statute or agreement, existing debt service payments, and existing contractual obligations received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. The pledge of net available tax increment will constitute obligations to make payments authorized and incurred pursuant to Section 33445 and other applicable statutes. The obligations set forth in this Agreement will be contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

G. The City Council and the Agency by resolution have each found that the use of Agency redevelopment funding for the publicly owned improvements included in the Projects is in accordance with Section 33445 of the CRL and other applicable law. The said City Council and Agency resolutions are each based on the authority of the Agency, with the consent of the City Council, to pay all or part of the cost of the installation and construction of any building, facility, structure, or other improvements which is publicly owned either within or outside a Project Area, if the City Council makes certain determinations.

H. By approving and entering into this Agreement, the Agency has approved the pledge of net available tax increment and/or Bond Proceeds from the Project Area to pay for the Projects.

I. The obligations of the Agency under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the Redevelopment Plan for the Project Area.

J. Pursuant to State CEQA Guidelines Section 15378(b)(4), approval of the Agreement is not a project subject to the California Environmental Quality Act ("CEQA"), because this Agreement consists of the creation of a governmental funding mechanism for various public improvements, and environmental review required by CEQA shall be completed prior to the commencement of any Projects contained in Exhibit No. 1.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

## I. INTRODUCTORY PROVISIONS

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

## II. AGENCY'S OBLIGATIONS

1. The Projects are those projects which are listed on the attached Exhibit 1. The Agency agrees to pay to the City an amount equal to the cost to the City to carry out the Projects ("**Payment Obligation**"), including without limitation all costs incurred by the City for the planning, acquisition and disposition, financing, development, permitting, design, site testing, bidding, construction and construction management of the Projects. The Agency's Payment Obligation shall be evidenced by a Promissory Note substantially in form attached hereto as Exhibit 4, and secured by a Deed of Trust, substantially in form attached hereto as Exhibit 5 and, a Pledge Agreement, substantially in form attached hereto as Exhibit 6, and UCC-1 Financing Statement, substantially in form attached hereto as Exhibit 7. Concurrently herewith, Agency and City shall execute an Option Agreement (including Memorandum of Option Agreement) substantially in form attached hereto as Exhibit 8. The Deed of Trust and Memorandum of Option Agreement shall be recorded against those certain real properties owned by the Agency and identified in the list attached hereto as Exhibit 9 (collectively, the "**Agency Properties**"), within thirty (30) days of execution of this Agreement. The Option Agreement shall give City an option to purchase the Agency Properties ("**Option**"). In the event that City exercises said Option, Agency shall receive a credit against any amounts owed to City the Payment Obligation in the amount of the Purchase Price, as set forth in the Option Agreement. The Agency's obligations under this Agreement, including without limitation the Agency's obligation to make the payments to the City required by this Agreement, shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment of the Project Area and are obligations to make payments authorized and incurred pursuant to Section 33445 of the CRL and other applicable statutes. The obligations of the Agency set forth in this Agreement are contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

2. The obligations of Agency under this Agreement shall be payable out of net available tax increment, as defined in the above recitals and/or as defined or provided for in any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, levied by or for the benefit of taxing agencies in the Project Area, and allocated to the Agency and/or any lawful successor entity of the Agency and/or any entity established by law to carry out any of the redevelopment Plan for the Project Area and/or expend tax increment or pay indebtedness of the Agency to be repaid with tax increment, pursuant to Section 33670 of the CRL or any applicable constitutional provision, statute or other provision of law now existing or adopted in the future, in amounts not less than those set forth in the Payment Schedule attached hereto as Exhibit 2 and incorporated herein by this reference. In the event that additional funds are required in order to make the Agency payments to the City required by this Agreement, the Agency shall make such payments from income received by the Agency from its projects and programs or any other additional funds available to it.

3. The indebtedness of Agency under this Agreement shall be subordinate to the rights of the holder or holders of any existing bonds, notes or other instruments of indebtedness (all referred to herein as “indebtedness”) of the Agency incurred or issued to finance the Project Area, including without limitation any pledge of tax increment revenues from the Project Area to pay any portion of the principal (and otherwise comply with the obligations and covenants) of any bond or bonds issued or sold by Agency with respect to the Project Area. In the event that City exercises the Option, the Agency Properties may be used, leased or sold by the City for any municipal purposes, including affordable housing and public improvements, in conformance with the Redevelopment Plan.

4. All payments due to be made by the Agency to the City under this Agreement shall be made by the Agency in accordance with the schedule set forth in Exhibit 2 and as otherwise necessary to reimburse the City for the cost to the City of performing its obligations hereunder. City shall provide Agency with a quarterly report accompanied by evidence reasonably satisfactory to the Agency’s Executive Director that the City has progressed in the development and construction of the Project for which payment is made by the Agency commensurate with such payments and has incurred costs or obligations to make payments equal to or greater than such amount.

### **III. CITY’S OBLIGATIONS**

1. The City shall accept any funds offered by the Agency pursuant to this Agreement and shall devote those funds to completion of the Projects by (i) reimbursing the City or using such funds to make City expenditures to perform the work required to carry out and complete the Projects; (ii) utilizing such funds to pay debt service on bonds or other indebtedness or obligations that the City has or will incur for such purposes; and/or paying such funds into a special fund of the City to be held and expended only for the purpose of satisfying the obligations of the City hereunder.

2. It is the responsibility of City to pay all development and construction costs in connection with the Projects from funds paid to the City by the Agency under this Agreement. This Agreement does not obligate the City to commit any General Fund monies towards the Projects.

3. The City shall perform its obligations hereunder in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA before undertaking each Project, and shall timely complete the work required for each Project in accordance with the Schedule of Performance attached hereto as Exhibit 3 and incorporated herein by this reference. The City is not required to commence an individual project unless the Agency has paid the City the total amount required to complete the project or at least a severable phase thereof.

### **IV. LIABILITY AND INDEMNIFICATION**

In contemplation of the provisions of California Government Code section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code section 895.2.

## **V. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS**

1. This Agreement shall be executed in triplicate originals, each of which is deemed to be an original. This Agreement consists of six (6) pages and three (3) Exhibits, which constitute the entire understanding and agreement of the parties.

2. 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 the subject matter of this Agreement.

3. This Agreement is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

4. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

## **VI. SEVERABILITY**

If any term, provisions, 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.

## **VII. DEFAULT**

If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be

available to the non-defaulting party against the defaulting party. All notices of defaults shall clearly indicate a notice of default under this Agreement.

### **VIII. BINDING ON SUCCESSORS**

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

### **IX. CONSULTATION; MODIFICATION OF PROJECTS**

The Agency and the City shall confer periodically to establish priorities and timing for funding and completion of the various Projects, to review the scope and design of each Project, and to determine any mutually acceptable modifications in the cost estimates and budgets for the various Projects. The City and Agency may modify Exhibit No. 1 from time to time: to provide for the use of additional federal, state and local funds; to account for unexpected revenues, whether greater or lesser; to modify, add, or delete a Project; to modify the cost estimate for individual Projects; to maintain consistency with the City's General Plan or the Redevelopment Plans; or to take into consideration unforeseen circumstances, including without limitation circumstances that may come to light as a result of subsequent environmental review required by CEQA. Exhibit No. 1 may be modified by the City Manager on behalf of the City and the Executive Director on behalf of the Agency; provided, however, in no event shall the total funds to be paid by the Agency to the City exceed the amounts as listed on Exhibit No. 2 without a formal amendment of this Agreement approved by the City Council and the Agency Board; and, provided further, however, that any addition of a project shall be conditioned upon the making of all required CRL findings and CEQA findings by the City Council and the Agency Board in their policy discretion.

*[Signatures on the following pages]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Gary Brown  
City Manager

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
City Attorney

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James C. Janney  
Agency Chair

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
Secretary of the Redevelopment Agency  
Of the City of Imperial Beach

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
Agency General Counsel

KANE, BALLMER & BERKMAN

By: \_\_\_\_\_  
Susan Y. Cola  
Agency Special Counsel

**EXHIBIT 1  
SCHEDULE OF PROJECTS**

**EXHIBIT 1  
SCHEDULE OF PROJECTS  
(\$ in Millions)**

		<u>Total</u>
Priority Projects:		
Streets Phase 3	Improvements to primarily Seacoast Drive from Daisy to I.B. Blvd.	\$2.0
Street Improvements	Provides funding for street improvements, curbs and gutters, intersections, sidewalks, and other traffic calming measures	\$4.0
Highway 75 Improvements	Improvements to allow access to approximately 60,000 square feet of retail/commercial space.	\$2.0
Property Acquisition	Potential acquisition of property such as the airport property	\$2.0
Storm Drain Intercept	Install a storm drainage interceptor at 8th and Calla to catch debris.	\$0.2
Elm Ave. Undergrounding	New lighting for project undergrounding of utility lines at Elm Ave west of 7th Street and 7th Street from Encina to Palm Ave.	\$0.2
Sand Replenishment	Funds for new sand to offset beach erosion	\$0.2
Bikeway Village Environmental	Environmental documents for potential future bikeway amenities	\$0.1
Bayshore Bikeway Access	City portion of grant to improve Bayshore bikeway public access	\$0.3
Skatepark Fence	Perimeter fence around new Skatepark in Sports Park	\$0.1
Total Priority Projects		<u>\$11.1</u>
Other Projects:		
Dirt Alley Improvements		\$2.6
Asphalt Alley Improvements		\$1.5
Marina Vista Master Plan	Various Improvements suggested in the Master Plan	\$0.1

Ecotourism Signage	Improvements to increase visitors to Imperial Beach.	\$0.1
Sports Park Master Plan		\$0.2
Bayside Master Plan	Design of neighborhood master plan in the Bayside Neighborhood	\$0.2
Tennis Courts	Recreation Improvements	\$0.2
Palm Avenue Corridor	Improvements as suggested in master plan to create a viable commercial corridor	\$5.0

## EXHIBIT 2

### PAYMENT SCHEDULE

	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>
Payment Schedule	\$0.0	\$0.1	\$4.4	\$4.0	\$2.9
<u>(\$ in Millions)</u>	<u>Yr 1</u>	<u>Yr 2</u>	<u>Yr 3</u>	<u>Yr 4</u>	<u>Yr 5</u>
<u>Payment Schedule</u>	<u>\$6.0</u>	<u>\$3.5</u>	<u>\$0.6</u>	<u>\$0.5</u>	<u>\$0.5</u>

The total amount of payments shall be modified in Year 5 to reflect full payment of all accrued interest during the term of the Note.

**EXHIBIT 3  
SCHEDULE OF PERFORMANCE**

**EXHIBIT 3  
SCHEDULE OF PERFORMANCE**

	<u>Years to Complete</u>
Priority Projects:	
Streets Phase 3	3
Street Improvements	4
Highway 75 Improvements	5
Property Acquisition	3
Storm Drain Intercept	3
Elm Ave. Undergrounding	3
Sand Replenishment	5
Bikeway Village Environmental	5
Bayshore Bikeway Access	5
Skatepark Fence	2
Other Projects:	
Dirt Alley Improvements	5
Asphalt Alley Improvements	5
Marina Vista Master Plan	5
Ecotourism Signage	5
Sports Park Master Plan	5
Bayside Master Plan	5
Tennis Courts	5
Palm Avenue Corridor	5

**EXHIBIT 4**

**PROMISSORY NOTE**  
**[behind this page]**

**EXHIBIT 4**  
**PROMISSORY NOTE**

**TO THE CITY OF IMPERIAL BEACH**

**SECURED BY A DEED OF TRUST AND ASSIGNMENT OF RENTS**

7.00% Interest  
\$ \_\_\_\_\_

Imperial Beach, California  
Date: February \_\_, 2011

FOR VALUE RECEIVED, the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL CITY, a public body, corporate and politic (the "Agency" or "Borrower") hereby promises to pay to the CITY OF IMPERIAL BEACH, a California municipal corporation (the "City" or "Lender") the principal amount of ELEVEN MILLION ONE HUNDRED THOUSAND DOLLARS and No/100 Cents (\$11,100,000.00) (the "City Loan") together with interest on the unpaid principal balance from time to time outstanding at an annual rate of seven percent (7%).

The Agency, acting to carry out its public purposes of executing and implementing the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area (the "Project Area") under the Community Redevelopment Law, borrowed from the City the City Loan on a long-term basis. This promissory note (the "Note") evidences the City Loan to the Agency, and is given by the Agency pursuant to the Community Redevelopment Law and that certain Cooperation Agreement, dated \_\_\_\_ 2011, by and between the City and Agency (referred to herein as the "Cooperation Agreement"). The Cooperation Agreement is a public record on file in the offices of the Agency and the City, and the provisions of said document are incorporated herein by this reference..

1. Definitions. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Cooperation Agreement. In addition, the following terms shall have the following meanings:

"Affiliate" shall mean (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, of any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, shall mean 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.

“City Loan” shall mean the long-term loan made by the City to the Agency pursuant to the Community Redevelopment Law and the Cooperation Agreement in the principal amount of ELEVEN MILLION ONE HUNDRED THOUSAND DOLLARS and No/100 Cents (\$11,100,000.00) , which is evidenced by this Note.

“Community Redevelopment Law” shall mean the Community Redevelopment Law of the State of California set forth at California Health and Safety Code Section 33000 et seq.

“Net Available Tax Increment Revenue” shall mean any tax increment (defined as any tax increment generated from the Project Area), net of any amount required by the CRL to be set aside for purposes of increasing, improving or preserving the City’s supply of low and moderate housing, any amounts paid to affected taxing agencies whether by statute or agreement and any amounts paid to the State of California or the County of San Diego as required by statute or agreement, existing debt service payments, and existing contractual obligations received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. The pledge of net available tax increment will constitute obligations to make payments authorized and incurred pursuant to Section 33445 and other applicable statutes. The obligations set forth in this Agreement will be contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies.

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

“Tax Increment Revenue” means the portion of property tax revenues from the increase in assessed value of real property within the Project Area that has occurred after adoption of the Redevelopment Plan for the Project Area received by the Agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the Agency to finance or refinance, in whole or in part, its activities in the Project Area.

“Term” of this Note shall mean the period of time five (5) years following the execution of this Note by the Agency which execution date shall constitute the “Effective Date” of this Note.

“Transfer” shall have the meaning set forth in Section 9 of this Note.

2. This Note evidences the obligation of the Agency to the City for the repayment of the City Loan.

3. This Note is payable at the principal office of the City, 825 Imperial Beach Boulevard, Imperial Beach, California, 91932, or at such other place as the holder hereof may inform the Agency, in writing, in lawful money of the United States.

4. This Note shall be secured by the Agency's pledge of Net Available Tax Increment Revenue as provided in the Cooperation Agreement, the Agency Deed of Trust (Exhibit 5 to the Cooperation Agreement), Pledge Agreement (Exhibit 6 to the Cooperation Agreement), and UCC-1 Financing Statement (Exhibit 7 to the Cooperation Agreement).

5. This Note shall bear interest at the rate of seven percent (7.00 %) per annum, simple interest, which shall begin to accrue upon disbursement of the City Loan.

6. The indebtedness of the Agency under this Note shall be subordinate to the rights of the holder or holders of any existing bonds, notes and other instruments of indebtedness, and existing contractual indebtedness (all referred to herein as "indebtedness") of the Agency incurred or issued to finance its activities in the Project Area, including without limitation any pledge of tax increment revenues from the Project Area to pay any portion of the principal (and otherwise comply with the obligations and covenants) of any existing bond or bonds issued or sold by the Agency with respect to the Project Area.

7. Prior to the expiration of the fifth (5<sup>th</sup>) anniversary following the Effective Date of this Note, the Agency shall be obligated to repay the City Loan from the Agency's Net Available Tax Increment Revenue, by making annual installment payments based on the Payment Schedule (Exhibit 2 to the Cooperation Agreement). In the event that additional funds are required in order to make the Agency payments to the City required by this Note, the Agency shall make such payments from income received by the Agency from its projects and programs or any other additional funds available to it. All payments to the City shall be applied first to interest, then to reduce the principal amount owed.

8. The entire unpaid principal balance of this Note and any accrued but unpaid interest shall be due and payable immediately in the event that, prior to the fifth anniversary of the Effective Date, there is a default by the Agency under the terms of this Note or the Cooperation Agreement which is not cured within the respective time period provided herein and therein.

9. (a) Prior to the repayment in full of the City Loan, the Agency shall not assign or attempt to assign any right or interest in the Cooperation Agreement (referred to hereinafter as a "Transfer"), without prior written approval of the City. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. The City shall not unreasonably withhold or delay its consent. If consent should be given, any such Transfer shall be subject to this Section 9, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein.

(b) Any such proposed transferee shall have the qualifications and financial responsibility necessary and adequate as may be reasonably determined by the City, to fulfill the obligations undertaken by the Agency in the Cooperation Agreement and this Note. Any such proposed transferee, by instrument in writing satisfactory to the City, for itself and its successors and assigns, and for the benefit of the City shall expressly assume all of the obligations of the Agency under the Cooperation Agreement and agree to be subject to all conditions and restrictions applicable to the Agency in this Note. There shall be submitted to the City for

review all instruments and other legal documents proposed to effect any such Transfer; and if approved by the City its approval shall be indicated to the Agency in writing.

(c) In the absence of specific written agreement by the City, no unauthorized Transfer, or approval thereof by the City, shall be deemed to relieve the Agency or any other party from any obligations under the Cooperation Agreement.

(d) In the event of a Transfer prior to the time the City Loan is paid in full, without the prior written consent of the City, the remaining principal balance of the City Loan and all accrued but unpaid interest shall be immediately due and payable.

(e) As used herein, "Transfer" includes the transfer, assignment, hypothecation or conveyance of legal or beneficial ownership of any interest in the Agency, or any conversion of the Agency to an entity form other than that of the Agency at the time of execution of this Note.

(f) The City shall not unreasonably withhold, condition or delay its approval of any matter for which its approval is required hereunder. Any disapproval shall be in writing and contain the City's reasons for disapproval.

10. Subject to the provisions and limitations of this Section 10, the obligation to repay the City Loan is a nonrecourse obligation of the Agency. Agency officials, employees, agents and attorneys shall not have any personal liability for repayment of the City Loan. The sole recourse of City for repayment of the City Loan shall be the exercise of its rights against the security for the City Loan. Provided, however, that the foregoing shall not (a) constitute a waiver of any obligation evidenced by this Note; (b) limit the right of the City to name the Agency as a party defendant in any action or proceeding hereunder so long as no judgment in the nature of a deficiency judgment shall be asked for or taken against the Agency; (c) release or impair this Note; (d) prevent or in any way hinder the City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, any other remedy or any other instrument securing the Note or as prescribed by law or in equity in case of default; (e) prevent or in any way hinder the City from exercising, or constitute a defense, an affirmative defense, a counterclaim, or other basis for relief in respect of the exercise of, its remedies in respect of any deposits, insurance proceeds, condemnation awards or other monies or other collateral or letters of credit securing the Note; (f) relieve the Agency of any of its obligations under any indemnity delivered by the Agency to the City; or (g) affect in any way the validity of any guarantee or indemnity from any Person of all or any of the obligations evidenced and secured by this Note. Notwithstanding the first sentence of this paragraph, City may recover directly from the Agency or from any other party:

(a) Any damages, costs and expenses incurred by the City as a result of fraud or any criminal act or acts of the Agency or any member, officer, director or employee of the Agency;

(b) Any damages, costs and expenses incurred by the City as a result of any misappropriation of funds;

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

11. The Agency waives presentment for payment, demand, protest, and notices of dishonor and of protest; the benefits of all waivable exemptions; and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. The Agency hereby agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the holder hereof, in the enforcement of this Note, the Cooperation Agreement or any term or provision thereof.

12. Upon the failure of Agency to perform or observe any other term or provision of this Note, upon any event of acceleration described in Section 8, or upon the occurrence of any other event of default under the terms of the Cooperation Agreement, the holder may exercise its rights or remedies hereunder or thereunder.

13. (a) Subject to the extensions of time set forth in Section 14, and subject to the further provisions of this Section 13, failure or delay by the Agency to perform any material term or provision of this Note or the Cooperation Agreement constitutes a default under this Note.

(b) The City shall give written notice of default to the Agency, specifying the default complained of by the City. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failures or delays by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(d) If a monetary event of default occurs under the terms of this Note or the Cooperation Agreement, prior to exercising any remedies hereunder or thereunder, the City shall give to the Agency written notice of such default. The Agency shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of any remedies by the City under this Note and/or the Cooperation Agreement. In no event shall the City be precluded from exercising any 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 this Note or the Cooperation Agreement, prior to exercising any remedies hereunder or thereunder, the City shall give to the Agency written notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the Agency shall have such period to effect a cure prior to exercise of any remedies by the City under this Note and/or the Cooperation Agreement. If the default is such that it is not reasonably

capable of being cured within thirty (30) calendar days, and the Agency(i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then the Agency shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the City. In no event shall the City be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) calendar days after the notice of default is received or deemed received.

(f) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a “hard” copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Borrower; 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.

14. Notwithstanding specific provisions of this Note, the Agency shall not be deemed to be in default for failure to perform any non-monetary performance hereunder 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 City or any other public or governmental Agency or entity, or any causes beyond the control or without the fault of the Agency (“Force Majeure Event”). An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause of the Force Majeure Event, if notice by the Agency is sent to the City within thirty (30) calendar days of knowledge of the commencement of such cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until the Agency delivers to the City written notice describing the event, its cause, when and how the Agency obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. The Agency shall deliver such written notice within thirty (30) calendar days after it obtains actual knowledge of the Force Majeure Event. Times of performance under this Note may also be extended in writing by the City and the Agency.

15. If the rights created by this Note shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described herein, the remaining obligations shall be completely performed and paid.

16. The Agency shall have the right to prepay the obligation evidenced by this Note, or any part thereof, without penalty.

IN WITNESS WHEREOF, the Agency has executed this Note as of the day and year set forth above.

BORROWER

Attest:

REDEVELOPMENT AGENCY OF THE  
CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Jacqueline M. Hald,  
Agency Secretary

By: \_\_\_\_\_  
James C. Janney  
Agency Chair

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jennifer Lyon, Agency Counsel

APPROVED AS TO FORM:  
Kane Ballmer & Berkman

By: \_\_\_\_\_  
Agency Special Counsel

**EXHIBIT 5**

**DEED OF TRUST**  
**[behind this page]**

OFFICIAL BUSINESS.  
Document entitled to free  
recording per Government  
Code Section 6103.

Recording Requested by and  
When Recorded Mail to:

OFFICE OF CITY MANAGER  
CITY OF IMPERIAL BEACH  
825 Imperial Beach Boulevard  
Imperial Beach, California 91932

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

[LIST OF APNS FOR PROPERTIES]

**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)(the "Deed of Trust") is given as of the date signed by the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, a public body corporate and politic (hereinafter referred to as "Trustor") whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932, to First American Title Company, a California corporation (hereinafter called "Trustee"), for the benefit of the CITY OF IMPERIAL BEACH, a municipality (hereinafter called "Beneficiary"), whose address is 825 Imperial Beach Boulevard, Imperial Beach, California 91932.

**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 the following properties (the "Trust Estate"):

(a) That certain real property in the City of Imperial Beach, County of San Diego, State of California more particularly described and enumerated in Exhibit "A" attached hereto and by this reference made a part hereof (such interest in real property is hereafter referred to as the "Subject Property");

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Subject Property (the "Improvements");

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property or the Improvements, including easements, rights-of-way and development rights (the

“Appurtenances”). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the “Real Property”);

(d) subject to the assignment to Beneficiary set forth in Paragraph 4 below, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Trust Estate or the ownership, use, management, operation leasing or occupancy of the Trust Estate, including those past due and unpaid (the “Rents”);

(e) all present and future right, title and interest of Trustor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Division 9 of the California Uniform Commercial Code (the “UCC”), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, theater equipment, seating, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property, but not including personal property that is donated to Trustor (the “Goods,” and together with the Real Property, the “Property”); and

(f) all present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written material (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Trust Estate or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the property or any other part of the Trust Estate, including (to the extent applicable to the Property or any other portion of the Trust Estate) (i) permits, approvals and other governmental authorizations, (ii) improvement plans and specifications and architectural drawings, (iii) agreements with contractors, subcontractors, suppliers, project managers, supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements, and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Trustor under any such agreements, (viii) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types on intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (collectively 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 herein, 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 Sections 9313, 9502 and 14109 of the UCC.

**FOR THE PURPOSE OF SECURING** due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in that certain promissory note (the "Note"), dated on or about the date hereof, executed by Trustor. The obligations and restrictions set forth in the Note (the "Secured Obligations") and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any instrument reciting that it is secured hereby.

**AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:**

1. That Trustor shall perform the obligations of the Agency as set forth in the Secured Obligations at the time and in the manner respectively provided therein;
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 exercise its remedies hereunder.
4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income.
5. That upon default hereunder or under the aforementioned Secured Obligations, or any of them, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom;
6. That Trustor will keep the improvements now existing or hereafter erected on the property insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance shall

be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies shall be deposited with the Beneficiary;

7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said 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 the legality thereof 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 said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary;

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear;

10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said 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 his 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 hereby in the Secured Obligations, or any other instrument drawn and agreed upon between the parties;

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 rate of ten percent (10%) pursuant to Section 3289 of the California Civil Code;

13. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as authorized by Beneficiary and further that they 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 the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of San Diego County, a surety bond in an amount one-and-one-half (1½) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary;

14. 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; and

15. Trustor herein 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:**

16. Should the property or any part thereof 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 or junior in priority to this Deed of Trust ("Lender"), Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor 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. Unless Beneficiary approves of the rights of any Lender to the contrary, in addition to their rights herein, all such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary.

17. If Trustor shall fail to perform any covenant or agreement in this Deed of Trust or the Secured Obligations within thirty (30) days after written demand therefor by Beneficiary (or, in the event that more than 30 days is reasonably required to cure such default, should Trustor fail to promptly commence such cure, and diligently prosecute same to completion), after the giving of notice and the expiration of any applicable cure period, Beneficiary may deliver to Trustee a 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, the Secured Obligations and all documents evidencing expenditures secured hereby;

18. 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 said 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 said 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 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 therein 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 consideration paid by Beneficiary as referred to in a Secured Obligation, with accrued interest at the highest rate of interest permitted by law; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto;

19. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder 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 herein named or acting hereunder. 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;

20. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;

21. Upon written request of Beneficiary stating that all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and

upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. 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”;

22. The trust created hereby is irrevocable by Trustor;

23. 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 hereunder but also any successors or assignees. 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 hereunder are joint and several;

24. 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;

25. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth in the first paragraph of this Deed of Trust.

26. 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.

27. Trustor agrees that the indebtedness secured by this Deed of Trust is made expressly for the purpose, and in furtherance, of the responsibilities of Trustor as a redevelopment agency under the provisions of California’s Community Redevelopment Law.

28. Notwithstanding specific provisions of this Deed of Trust, non-monetary performance 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, materials or tools; delays of any contractor or supplier; acts of the other party; acts or failure to act of the City of San Diego or any other public or governmental agency or entity (except that any act or failure to act of Beneficiary shall not excuse performance by Beneficiary); 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) days after the commencement of the cause, the period shall commence to run only thirty (30) 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, and the estimated delay resulting therefrom. Trustor shall deliver such written notice within fifteen (15) days after it obtains actual knowledge of the event.

29. (a) Subject to the extensions of time set forth in Section 28, and subject to the further provisions of this Section 29, failure or delay by Trustor to perform any term or provision respectively required to be performed under a Secured Obligation 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, prior to exercising any remedies, Beneficiary shall give Trustor 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 Secured Obligations 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, prior to exercising any remedies, Beneficiary shall give Trustor 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. If the default is such that it is not reasonably capable of being cured within thirty (30) 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 ninety (90) days after the notice of default is received or deemed received.

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

30. This Deed of Trust shall be subordinate and junior to only those trust deeds Beneficiary expressly agrees to subordinate to in a written instrument approved by the Executive Director of the Trustor and City Manager of the Beneficiary, or their respective assignees. The Executive Director of the Trustor or City Manager of Beneficiary or their designee shall execute such instruments as may be necessary to subordinate the lien of this Deed of Trust and the Secured Obligation to the deed of trust described in this Section 30, above. In the event of a default or breach by Trustor of any security instrument securing a senior obligation described in this Section 30, Beneficiary shall have the right to cure the default prior to completion of any foreclosure. In such event, Beneficiary shall be entitled to reimbursement by Trustor of all costs and expenses incurred by Beneficiary in curing the default. The amount of any such disbursements shall be a lien against the Subject Property and added to the obligation secured by this Deed of Trust until repaid, with interest at the highest rate permitted by law.

IN WITNESS WHEREOF Trustor has executed this Deed of Trust as of the day and year set forth above.

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Dated: \_\_\_\_\_

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

Gary Brown  
Executive Director

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
Secretary of the Imperial Beach  
Redevelopment Agency

State of California            )  
  ) ss  
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)

LEGAL DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT "A"  
TO  
DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING  
(WITH ASSIGNMENT OF RENTS)

**EXHIBIT 6**

**PLEDGE AGREEMENT  
[behind this page]**

## EXHIBIT 6

### THIRD PARTY PLEDGE AGREEMENT

**TO: CITY OF IMPERIAL BEACH (“City”)**

- 1. GRANT OF SECURITY INTEREST.** In consideration for City’s assistance and cooperation in the implementation and completion of those certain Projects (defined below) set forth in that certain Cooperation Agreement dated February \_\_\_\_, 2011 entered into by City and **the Redevelopment Agency of the City of Imperial Beach** (“Pledgor” or “Agency”) (“Cooperation Agreement”) and as security for the payment of all Indebtedness (defined below) of Pledgor to City, Pledgor hereby assigns, transfers to and pledges with City the following money and property: that certain bank account established at \_\_\_\_\_ (\_\_\_\_\_ Branch, Account No. \_\_\_\_\_), and all proceeds on deposit or to be deposited therein and rights to payment with respect to the foregoing, of Pledgor, together with all other money or property heretofore delivered or which shall hereafter be delivered to or come into the possession, custody or control of City in any manner or for any purpose whatsoever during the existence of this Agreement (collectively called “Collateral”), and whether held in a general or special account or deposit for safekeeping or otherwise, together with whatever is receivable or received when any Collateral or proceeds are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, (a) all rights to payment, including returned premiums, with respect to any insurance relating to any of the foregoing, (b) all rights to payment of any Net Available Tax Increment (defined below), and (c) all rights to payment with respect to any cause of action affecting or relating to any of the foregoing, (hereinafter called “Proceeds”), and in the event that Pledgor receives any such Proceeds, Pledgor will hold the same in trust on behalf of and for the benefit of City and will immediately deliver all such Proceeds to City in the exact form received, to be held by City as part of the Collateral, subject to all terms hereof. The word “Indebtedness” is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Pledgor heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable, including, without limitation, all amounts due under that certain Cooperation Agreement, including, without limitation, amounts equal to the cost to the City to carry out the Projects (defined below), including without limitation all costs incurred by the City for planning, acquisition and disposition, financing, development, permitting, design, site testing, bidding, construction and management of the Projects and Pledgor’s obligation to make the payments set forth in the Payment Schedule attached to the Cooperation Agreement as Exhibit 2.

The term Net available tax increment is defined as any tax increment generated from the Project Area, net of any amount required by the CRL to be set aside for purposes of increasing, improving or preserving the City’s supply of low and moderate housing, any amounts paid to affected taxing agencies whether by statute or agreement and any amounts

paid to the State of California or the County of San Diego as required by statute or agreement, existing debt service payments, and existing contractual obligations received by the Agency or any lawful successor of the Agency and/or to any of the powers and rights of the Agency pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future. The pledge of net available tax increment will constitute obligations to make payments authorized and incurred pursuant to Section 33445 and other applicable statutes. The obligations set forth in this Agreement will be contractual obligations that, if breached, will subject the Agency to damages and other liabilities or remedies. The term "Projects" as used herein shall collectively mean the projects associated with the Cooperation Agreement listed in the Schedule of Projects set forth in Exhibit 1 of the Cooperation Agreement.

2. **CONTINUING AGREEMENT; REVOCATION; OBLIGATION UNDER OTHER AGREEMENTS.** This is a continuing agreement and all rights, powers and remedies hereunder shall apply to all past, present and future Indebtedness of Pledgor to the City, including that arising under successive transactions which shall either continue the Indebtedness, increase or decrease it, or from time to time create new Indebtedness after all or any prior Indebtedness has been satisfied, and notwithstanding the death, incapacity, dissolution, liquidation or bankruptcy of Pledgor or any other event or proceeding affecting Pledgor. This Agreement shall not apply to any new Indebtedness created after actual receipt by City of written notice of its revocation as to such new Indebtedness; provided however, that contractual agreements made by the City to Pledgor to aid and cooperate with Pledgor in the implementation and completion of the Projects after revocation under commitments existing prior to receipt by City of such revocation, and extensions, renewals or modifications, of any kind, of Indebtedness incurred by the Pledgor prior to receipt by City of such revocation shall not be considered new Indebtedness. Any such notice must be sent to City by registered U.S. mail, postage prepaid, addressed to its office at:

825 Imperial Beach Boulevard  
Imperial Beach, California 91932

or at such other address as City shall from time to time designate. The obligations of Pledgor hereunder shall be in addition to any obligations of Pledgor under any other grants or pledges of security for any liabilities or obligations of Pledgor or any other person heretofore or hereafter given to City unless said other grants or pledges of security are modified or revoked in writing; and this Agreement shall not, unless herein provided, affect or invalidate any such other grants or pledges of security.

3. **WAIVER OF STATUTE OF LIMITATIONS; REINSTATEMENT OF LIABILITY.** Pledgor acknowledges that there is no condition precedent to the effectiveness of this Agreement and that this Agreement is in full force and effect and is binding on Pledgor as of the date written below, regardless of whether City obtains additional collateral or any guaranties from others or takes any other action contemplated by Pledgor. Pledgor waives the benefit of any statute of limitations affecting Pledgor's liability hereunder or the

enforcement thereof, and Pledgor agrees that any payment of any Indebtedness or other act which shall toll any statute of limitations applicable thereto shall similarly operate to toll such statute of limitations applicable to Pledgor's liability hereunder. The liability of Pledgor hereunder shall be reinstated and revived and the rights of City shall continue if and to the extent for any reason any amount at any time paid on account of any Indebtedness secured hereby is rescinded or must be otherwise restored by City, whether as a result of any proceedings in bankruptcy, insolvency, reorganization or otherwise, all as though such amount had not been paid. The determination as to whether any amount so paid must be rescinded or restored shall be made by City in its sole discretion; provided however, that if City chooses to contest any such matter at the request of Pledgor, Pledgor agrees to indemnify and hold City harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by City in connection therewith, including without limitation, in any litigation with respect thereto.

#### **4. REPRESENTATIONS AND WARRANTIES.**

4.1 Pledgor represents and warrants to City that: (i) Pledgor is the owner and has possession or control, or will have possession or control, of the Collateral and Proceeds; (ii) Pledgor has the right to pledge the Collateral and Proceeds; (iii) all Collateral and Proceeds are genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except as heretofore disclosed to City in writing; (iv) specifically with respect to Collateral and Proceeds consisting of investment securities, instruments, chattel paper, documents, contracts, insurance policies or any like property, all persons appearing to be obligated thereon have authority and capacity to contract and are bound as they appear to be, and the same comply with applicable laws concerning form, content and manner of preparation and execution; (v) all statements contained herein and, where applicable, in the Collateral are true and complete; and (vi) no financing statement covering any of the Collateral or Proceeds, and naming any secured party other than City, is on file in any public office.

4.2 Pledgor further represents and warrants to City that the Collateral pledged hereunder is so pledged at Pledgor's request. Pledgor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Pledgor's risks hereunder.

#### **5. COVENANTS OF PLEDGOR.**

5.1 Pledgor agrees: (i) to indemnify City against all losses, claims, demands, liabilities and expenses of every kind caused by property subject hereto by reason of Government Code Section 895.2; (ii) to pay all costs and expenses, including reasonable attorneys' fees, incurred by City in the perfection, preservation, realization, enforcement and exercise of its rights, powers, and remedies hereunder; (iii) to permit City to exercise its powers; (iv) to execute and deliver such documents as City deems necessary to create, perfect and continue the security interests

contemplated hereby; and (v) not to change its chief place of business or the place where Pledgor keeps any of the Collateral or Pledgor's records concerning the Collateral and Proceeds without first giving City written notice of the address to which Pledgor is moving same.

- 5.2 Pledgor agrees with regard to Collateral and Proceeds: (i) not to permit any lien on the Collateral or Proceeds, except in favor of City; (ii) after an Event of Default, defined below, not to withdraw any funds from any deposit account pledged to City hereunder without City's prior written consent; (iii) not to sell, hypothecate or otherwise dispose of any of the Collateral or Proceeds, or any interest therein, without the prior written consent of City; (iv) to keep, in accordance with generally accepted accounting principles, complete and accurate records regarding all Collateral and Proceeds, and to permit City to inspect the same at any reasonable time; (v) not to commingle Collateral or Proceeds with other property, (vi) in the event City elects to receive payments of Collateral or Proceeds hereunder after an Event of Default that is continuing, to pay all expenses incurred by City in connection therewith, including expenses of accounting, correspondence, collection efforts, filing, recording, record keeping and expenses incidental thereto; (vii) to provide any service and do any other acts or things necessary to keep the Collateral and Proceeds free and clear of all defenses, rights of offset and counterclaims; and (viii) if the Collateral or Proceeds consists of securities and so long as no Event of Default exists, to vote said securities and to give consents, waivers and ratifications with respect thereto, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would impair City's interest in the Collateral and Proceeds or be inconsistent with or violate any provisions of this Agreement.
6. **POWERS OF CITY.** Pledgor appoints City its true attorney in fact to perform any of the following powers, which are coupled with an interest, are irrevocable until termination of this Agreement and may be exercised from time to time by City 's officers, council members, agents and employees, or any of them, whether or not Pledgor is in default: (a) to perform any obligation of Pledgor hereunder in Pledgor's name or otherwise; (b) to notify any person obligated on any security, instrument or other document subject to this Agreement of City 's rights hereunder; (c) to collect by legal proceedings or otherwise all dividends, interest, principal or other sums now or hereafter payable upon or on account of the Collateral or Proceeds; (d) to enter into any extension, reorganization, deposit, merger or consolidation agreement, or any other agreement relating to or affecting the Collateral or Proceeds, and in connection therewith to deposit or surrender control of the Collateral and Proceeds, to accept other property in exchange for the Collateral and Proceeds, and to do and perform such acts and things as City may deem proper, with any money or property received in exchange for the Collateral or Proceeds, at City 's option, to be applied to the Indebtedness or held by City under this Agreement; (e) to make any compromise or settlement City deems desirable or proper in respect of the Collateral and Proceeds; (f) to insure, process and preserve the Collateral and Proceeds; (g) to exercise all rights, powers and remedies which Pledgor would have, but for this Agreement, under all the Collateral and Proceeds subject to this Agreement; and (h) to do all acts and things and execute all

documents in the name of Pledgor or otherwise, deemed by City as necessary, proper or convenient in connection with the preservation, perfection or enforcement of its rights hereunder. To effect the purposes of this Agreement or otherwise upon instructions of Pledgor, City may cause any Collateral and/or Proceeds to be transferred to City's name or the name of City's nominee. If an Event of Default has occurred and is continuing, any or all Collateral and/or Proceeds consisting of securities may be registered, with notice to Pledgor, in the name of City or its nominee, and thereafter City or its nominee may exercise, without notice, all voting and corporate rights at any meeting of the shareholders of the issuer thereof, any and all rights of conversion, exchange or subscription, or any other rights, privileges or options pertaining to any Collateral and/or Proceeds, all as if it were the absolute owner thereof. The foregoing shall include, without limitation, the right of City or its nominee to exchange, at its discretion, any and all Collateral and/or Proceeds upon the merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof, or upon the exercise by the issuer thereof or City of any right, privilege or option pertaining to any shares of the Collateral and/or Proceeds, and in connection therewith, the right to deposit and deliver any and all of the Collateral and/or Proceeds with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as City may determine. All of the foregoing rights, privileges or options may be exercised without liability except to account for property actually received by City. City shall have no duty to exercise any of the foregoing, or any other rights, privileges or options with respect to the Collateral or Proceeds and shall not be responsible for any failure to do so or delay in so doing.

7. **CASH COLLATERAL ACCOUNT; NO DISBURSEMENT.** Any money received by City in respect of the Collateral may, at City's option, be retained in a non-interest bearing cash collateral account and the same shall, for all purposes, be deemed Collateral hereunder. No disbursement of all of the Collateral may be made without City's prior written consent, which may be given or withheld in City's sole and absolute discretion.
  
8. **CITY'S CARE AND DELIVERY OF COLLATERIAL.** City's obligation with respect to Collateral and/or Proceeds in its possession shall be strictly limited to the duty to exercise reasonable care in the custody and preservation of such Collateral and Proceeds, and such duty shall not include any obligation to ascertain or to initiate any action with respect to or to inform Pledgor of maturity dates, conversion, call or exchange rights, or offers to purchase the Collateral or Proceeds, or any similar matters, notwithstanding City's knowledge of the same. City shall have no duty to take any steps necessary to preserve the rights of Pledgor against prior parties, or to initiate any action to protect against the possibility of a decline in the market value of the Collateral or Proceeds. City shall not be obligated to take any actions with respect to the Collateral or Proceeds requested by Pledgor unless such request is made in writing and City determines, in its sole discretion, that the requested action would not unreasonably jeopardize the value of the Collateral and Proceeds as security for the Indebtedness. City may at any time deliver the Collateral and Proceeds, or any part thereof, to Pledgor, and the receipt thereof by Pledgor shall be a complete and full acquittance for the Collateral and Proceeds so delivered, and City shall thereafter be discharged from any liability or responsibility therefor.

9. **PLEDGOR'S WAIVERS.**

9.1 Pledgor waives any right to require City to make any presentments or demands for performance, or give any notices of nonperformance, protests, notices of protest or notices of dishonor in connection with any obligations or evidences of indebtedness held by City as security or which constitute in whole or in part the Indebtedness secured hereunder, or in connection with the creation of new or additional Indebtedness.

9.2 Pledgor waives any defense arising by reason of: (i) the cessation or limitation from any cause whatsoever, other than payment in full, of the Indebtedness by Pledgor; (ii) any lack of authority of any officer, board member, director, partner, agent or any other person acting or purporting to act on behalf of Pledgor which is a corporation, partnership or other type of entity, or any defect in the formation of Pledgor; (iii) any act or omission by City which directly or indirectly results in or aids the discharge of Pledgor or any Indebtedness by operation of law or otherwise; or (iv) any modification of the Indebtedness, in any form whatsoever, including any modification made after revocation hereof to any Indebtedness incurred prior to such revocation, and including without limitation, the renewal, extension, acceleration or other change in the terms of the Indebtedness, or any part thereof, including increase or decrease of the rate of interest thereon. Until all Indebtedness shall have been paid in full Pledgor waives all rights and defenses arising out of an election of remedies by City. Until all Indebtedness of the Pledgor to City shall have been paid in full, Pledgor further waives any right to enforce any remedy which City now has or may hereafter have against any other person or entity, and waives any benefit of, or any right to participate in, any security whatsoever now or hereafter held by City.

10. **AUTHORIZATIONS TO CITY.** Pledgor authorizes City either before or after revocation hereof, without notice or demand and without affecting Pledgor's liability hereunder, from time to time to: (a) alter, compromise, renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Indebtedness or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security, other than the Collateral and Proceeds, for the payment of the Indebtedness or any part thereof and exchange, enforce, waive and release the Collateral and Proceeds, or any part thereof, or any such other security; (c) after an Event of Default that is continuing, apply the Collateral and Proceeds or any other security and direct the order or manner of sale thereof, including without limitation, a non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as City in its discretion may determine; (d) release or substitute any one or more of the endorsers or guarantors of the Indebtedness, or any part thereof, or any other parties thereto; and (e) apply payments received by City from Pledgor to any Indebtedness of Pledgor to City, in such order as City shall determine in its sole discretion, whether or not any such Indebtedness is covered by this Agreement, and Pledgor hereby waives any provision of

law regarding application of payments which specifies otherwise. City may assign this Agreement in whole or in part after providing written notice to Pledgor.

11. **PAYMENT OF TAXES, CHARGES, LIENS AND ASSESSMENTS.** Pledgor agrees to pay, prior to delinquency, all taxes, charges, liens and assessments against the Collateral and Proceeds, and upon the failure of Pledgor to do so, City at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Any such payments made by City shall be obligations of Pledgor to City, due and payable immediately upon demand, together with interest at a rate determined in accordance with the provisions of Section 15 herein, and shall be secured by the Collateral and Proceeds, subject to all terms and conditions of this Agreement.
12. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default" under this Agreement: (a) any default in the payment or performance of any obligation, or any defined event of default, under (i) any contract or instrument evidencing any Indebtedness, or (ii) any other agreement between Pledgor and City, including without limitation, the Cooperation Agreement and other related agreements any other obligation of Pledgor relating to or executed in connection with any Indebtedness; (b) any representation or warranty made by Pledgor herein shall prove to be incorrect in any material respect when made; (c) Pledgor shall fail to observe or perform any obligation or agreement contained herein; (d) any attachment or like levy on any property of Pledgor; and (e) City, in good faith, believes any or all of the Collateral and/or Proceeds to be in danger of misuse, dissipation, commingling, loss, theft, damage, or destruction, or otherwise in jeopardy or unsatisfactory in character or value.
13. **REMEDIES.** Upon the occurrence of any Event of Default, City shall have and may exercise without demand any and all rights, powers, privileges and remedies granted to a secured party upon default at law or in equity. All rights, powers, privileges and remedies of City shall be cumulative. City may exercise its lien or right of setoff with respect to the Indebtedness in the same manner as if the Indebtedness were unsecured. No delay, failure or discontinuance of City in exercising any right, power, privilege or remedy hereunder shall affect or operate as a waiver of such right, power, privilege or remedy; nor shall any single or partial exercise of any such right, power, privilege or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Any waiver, permit, consent or approval of any kind by City of any default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing. While an Event of Default exists: (a) City may, at any time and at City's sole option, liquidate any time deposits pledged to City hereunder, whether or not said time deposits have matured and notwithstanding the fact that such liquidation may give rise to penalties for early withdrawal of funds; (b) City may appropriate the Collateral and apply all Proceeds toward repayment of the Indebtedness in such order as City may from time to time elect or, at City's sole option, place any Proceeds in the cash collateral account; and (c) at City's request, Pledgor will assemble and deliver all Collateral and Proceeds, and books and records pertaining thereto, to City at a reasonably convenient place designated by City. It is agreed

that public or private sales, for cash or on credit, to a wholesaler or retailer or investor, or user of property of the types subject to this Agreement, or public auction, are all commercially reasonable since differences in the sales prices generally realized in the different kinds of sales are ordinarily offset by the differences in the costs and credit risks of such sales. For any Collateral or Proceeds consisting of securities, City shall be under no obligation to delay a sale of any portion thereof for the period of time necessary to permit the issuer thereof to register such securities for public sale under any applicable state or federal law, even if the issuer thereof would agree to do so.

14. **DISPOSITION OF COLLATERAL AND PROCEEDS.** Upon the transfer of all or any part of the Indebtedness, City may transfer all or any part of the Collateral or Proceeds and shall be fully discharged thereafter from all liability and responsibility with respect to any of the foregoing so transferred, and the transferee shall be vested with all rights and powers of City hereunder with respect to any of the foregoing so transferred; but with respect to any Collateral or Proceeds not so transferred, City shall retain all rights, powers, privileges and remedies herein given. Any proceeds of any disposition of any of the Collateral or Proceeds, or any part thereof, may be applied by City to the payment of expenses incurred by City in connection with the foregoing, including reasonable attorneys' fees, and the balance of such proceeds may be applied by City toward the payment of the Indebtedness in such order of application as City may from time to time elect.
15. **COSTS, EXPENSES AND ATTORNEYS' FEES.** Pledgor shall pay to City immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of City 's legal counsel) (all such items collectively referred to as "Pledgor Reimbursement Obligations"), incurred by City in exercising any right, power, privilege or remedy conferred by this Agreement or in the enforcement thereof, including any of the foregoing incurred in connection with any bankruptcy proceeding relating to Pledgor or the valuation of the Collateral and/or Proceeds, including without limitation, the seeking of relief from or modification of the automatic stay or the negotiation and drafting of a cash collateral order. All of the foregoing shall be paid to City by Pledgor with interest at a rate per annum equal to the greater of ten percent (10%) or Prime Rate in effect from time to time from the date the Pledgor Reimbursement Obligations are incurred by the City. The "Prime Rate" is a base rate that J.P. Morgan Chase Bank from time to time establishes and which serves as the basis upon which effective rates of interest are calculated for its most creditworthy customers.
16. **DISCLOSURE OF INFORMATION.** Pledgor acknowledges that City has the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, any Indebtedness of Pledgor to City and any obligations with respect thereto, including this Agreement. In connection therewith, City may disclose all documents and information which City now has or hereafter acquires relating to Pledgor and this Agreement, whether furnished by Pledgor or otherwise. In the event of any such sale, assignment, transfer or participation, City and the parties to such transaction shall share in the rights and obligations of City as set forth in this Agreement only as and to the extent they agree

among themselves. In connection with any such sale, assignment, transfer or participation, Pledgor further agrees that this Agreement shall be sufficient evidence of the obligations of Pledgor to each purchaser, assignee, transferee or participant, and upon written request by City, Pledgor shall enter into such amendment or modification to this Agreement as may be reasonably required in order to evidence any such sale, assignment, transfer or participation. The indemnity obligations of Pledgor under this Agreement shall also apply with respect to any purchaser, assignee, transferee or participant.

17. **GOVERNING LAW; SUCCESSORS, ASSIGNS.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, and shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties.
18. **SEVERABILITY OF PROVISIONS.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

**IN WITNESS WHEREOF**, this Agreement has been duly executed as of February \_\_, 2011.

PLEDGOR

REDEVELOPMENT AGENCY OF THE  
CITY OF IMPERIAL BEACH

Dated: \_\_\_\_\_

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

Gary Brown  
Executive Director

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
Secretary of the Redevelopment Agency  
of the City of Imperial Beach

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
Agency General Counsel

KANE, BALLMER & BERKMAN

By: \_\_\_\_\_  
Susan Y. Cola  
Agency Special Counsel

**EXHIBIT 7**

**UCC FINANCING STATEMENT**  
**[behind this page]**

**EXHIBIT 7**

**ATTACHMENT  
UCC-1 Financing Statement**

Debtor: The Redevelopment Agency of the City of Imperial Beach.

Secured Party: The City of Imperial Beach.

Item 4: Collateral Description.

This Financing Statement covers all of the following items and/or types of property, whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; and all proceeds relating to any of the foregoing (including insurance, general intangibles and account proceeds):

- (1) Any and all general intangibles, instruments, documents, chattel paper, accounts, accounts receivable, cash, deposit accounts, contract rights and rights to payment pursuant to, or in any way now or hereinafter arising out of, in connection with or otherwise relating to (a) that certain Cooperation Agreement dated as of February \_\_\_, 2011, between the City of Imperial Beach and the Debtor, as now existing or as it may hereinafter be amended, modified, supplemented, or superseded; (b) any and all related documents, instruments, and agreements, as now existing or as may be modified, supplemented, or amended from time to time; and (c) any and all present and future collateral, of whatever kind or nature, now or hereafter granted to secure payment and performance of any and all of the foregoing (collectively and severally referred to as the "Collateral"); and
- (2) Together with whatever is receivable or received when any of the Collateral or proceeds thereof are sold, assigned, transferred, collected, exchanged, or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation (a) all accounts, contract rights, chattel paper, instruments, general intangibles, money and rights to payment of any kind now or hereafter arising from any such sale, assignment, transfer, collection, exchange, or other disposition of any of the foregoing; and (b) all rights to payment, including without limitation, rights to payment with respect to any cause of action affecting or relating to any of the foregoing (referred to as the "Proceeds").



**DEBRA BOWEN** | SECRETARY OF STATE | STATE OF CALIFORNIA  
BUSINESS PROGRAMS | UNIFORM COMMERCIAL CODE

1500 11th Street | Sacramento, CA 95814 | P.O. Box 942835 | Sacramento, CA 94235-0001 | (916) 653-3516 | [www.sos.ca.gov](http://www.sos.ca.gov)

January 4, 2010

## REDACTION OF SOCIAL SECURITY NUMBERS

In order to protect personal privacy and in compliance with California Uniform Commercial Code (UCC) section 9526.5, the Secretary of State's office (SOS) has removed ("redacted") social security numbers, if provided, from all UCC records filed prior to December 31, 2007. In addition, the SOS commenced redacting any social security number provided on a record filed on paper after January 1, 2008.

For each UCC record that is redacted, the SOS maintains the original un-redacted official filing image and creates a redacted public filing image, which is available for UCC information requests. The un-redacted official filing image only is available to the public pursuant to a subpoena or an order from a court of competent jurisdiction.

In the event that the SOS misses redacting a social security number from a UCC record, any person may notify the SOS and specify the file or document number of the record and the location of the social security number within the record, and the SOS will create a redacted public filing image of the record within 10 business days from the date of notification.

In addition, the SOS has made a filing form available pursuant to UCC section 9521 that removes the space identified for the disclosure of the social security number of an individual. These UCC filing forms can be obtained by visiting the California Business Portal at [www.sos.ca.gov](http://www.sos.ca.gov) and clicking on the Forms & Fees link.

**UCC filings are public records. Please do not put people at risk of identity theft by including social security numbers on any documents for filing with the Secretary of State.**

For more information on identity theft, you may want to visit the California Office of Privacy Protection's website at [www.privacy.ca.gov/](http://www.privacy.ca.gov/) or review its consumer information on social security number privacy available at <http://www.privacy.ca.gov/ssn.htm>.

## Instructions for National UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all Instructions, especially Instruction 1; correct Debtor name is crucial. Follow Instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. If you want to make a search request, complete item 7 (after reading Instruction 7 below) and send Search Report Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, use 8-1/2 X 11 inch sheets and put at the top of each sheet the name of the first Debtor, formatted exactly as it appears in item 1 of this form; you are encouraged to use Addendum (Form UCC1Ad).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor name:** Enter only one Debtor name in item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
    - 1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name, organization type, and jurisdiction of organization.
    - 1b. **Individual Debtor.** "Individual" means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.  
For both organization and individual Debtors: Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. in place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).
    - 1c. An address is always required for the Debtor named in 1a or 1b.
    - 1d. **This field has been removed pursuant to California Uniform Commercial Code, Section 9526.5.**
  - 1e,f,g. "Additional information re organization Debtor" is always required. Type of organization and jurisdiction of organization as well as Debtor's exact legal name can be determined from Debtor's current filed charter document. Organizational ID #, if any, is assigned by the agency where the charter document was filed; this is different from tax ID #; this should be entered preceded by the 2-character U.S. Postal identification of state of organization if one of the United States (e.g., CA12345, for a California corporation whose organizational ID # is 12345); if agency does not assign organizational ID #, check box in item 1g indicating "none."
- Note:* If Debtor is a trust or a trustee acting with respect to property held in trust, enter Debtor's name in item 1 and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a decedent's estate, enter name of deceased individual in item 1b and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a transmitting utility or this Financing Statement is filed in connection with a Manufactured-Home Transaction or a Public-Finance Transaction as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check appropriate box in item 18.
2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, or one or more additional Secured Parties, attach either Addendum (Form UCC1Ad) or other additional page(s), using correct name format. Follow Instruction 1 for determining and formatting additional names.
  3. Enter information for Secured Party or Total Assignee, determined and formatted per Instruction 1. If there is more than one Secured Party, see Instruction 2. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attaching Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 12.
  4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).
  5. If filer desires (at filer's option) to use titles of lessee and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor and Secured Party, check the appropriate box in item 5. If this is an agricultural lien (as defined in applicable Commercial Code) filing or is otherwise not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 5, complete items 1-7 as applicable and attach any other items required under other law.
  6. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-5, check the box in item 6, and complete the required information (items 13, 14 and/or 15) on Addendum (Form UCC1Ad).
  7. This item is optional. Check appropriate box in item 7 to request Search Report(s) on all or some of the Debtors named in this Financing Statement. The Report will list all Financing Statements on file against the designated Debtor on the date of the Report, including this Financing Statement. There is an additional fee for each Report. If you have checked a box in item 7, file Search Report Copy together with Filing Officer Copy (and Acknowledgment Copy). Note: Not all states do searches and not all states will honor a search request made via this form; some states require a separate request form.
  8. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.

## Instructions for National UCC Financing Statement Addendum (Form UCC1Ad)

9. Insert name of first Debtor shown on Financing Statement to which this Addendum is related, exactly as shown in item 1 of Financing Statement.
10. Miscellaneous: Under certain circumstances, additional information not provided on Financing Statement may be required. Also, some states have non-uniform requirements. Use this space to provide such additional information or to comply with such requirements; otherwise, leave blank.
11. If this Addendum adds an additional Debtor, complete item 11 in accordance with Instruction 1 on Financing Statement. To add more than one additional Debtor, either use an additional Addendum form for each additional Debtor or replicate for each additional Debtor the formatting of Financing Statement item 1 on an 8-1/2 X 11 inch sheet (showing at the top of the sheet the name of the first Debtor shown on the Financing Statement), and in either case give complete information for each additional Debtor in accordance with Instruction 1 on Financing Statement. All additional Debtor information, especially the name, must be presented in proper format exactly identical to the format of item 1 of Financing Statement.
12. If this Addendum adds an additional Secured Party, complete item 12 in accordance with Instruction 3 on Financing Statement. In the case of a total assignment of the Secured Party's interest before the filing of this Financing Statement, if filer has given the name and address of the Total Assignee in item 3 of the Financing Statement, filer may give the Assignor S/P's name and address in item 12.
- 13-15. If collateral is timber to be cut or as-extracted collateral, or if this Financing Statement is filed as a fixture filing, check appropriate box in item 13; provide description of real estate in item 14; and, if Debtor is not a record owner of the described real estate, also provide, in item 15, the name and address of a record owner. Also provide collateral description in item 4 of Financing Statement. Also check box 6 on Financing Statement. Description of real estate must be sufficient under the applicable law of the jurisdiction where the real estate is located.
16. Use this space to provide continued description of collateral, if you cannot complete description in item 4 of Financing Statement.
17. If Debtor is a trust or a trustee acting with respect to property held in trust or is a decedent's estate, check the appropriate box.
18. If Debtor is a transmitting utility or if the Financing Statement relates to a Manufactured-Home Transaction or a Public-Finance Transaction as defined in the applicable Commercial Code, check the appropriate box.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

CITY OF IMPERIAL BEACH  
 C/O KANE, BALLMER & BERKMAN  
 515 S. FIGUEROA STREET, SUITE 1850  
 LOS ANGELES, CA 90071

ATTN: SUSAN Y. COLA

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names**

1a. ORGANIZATION'S NAME  
 REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 825 IMPERIAL BEACH BOULEVARD IMPERIAL BEACH CA 91932 USA

ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID#, if any  
 PUBLIC BODY CALIFORNIA  NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (2a or 2b) – do not abbreviate or combine names**

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID#, if any  
 NONE

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME  
 CITY OF IMPERIAL BEACH

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 825 IMPERIAL BEACH BOULEVARD IMPERIAL BEACH CA 91932 USA

4. This FINANCING STATEMENT covers the following collateral:  
**SEE ATTACHMENT FOR COLLATERAL DESCRIPTION**

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)  All Debtors  Debtor 1  Debtor 2 [ADDITIONAL FEE] [optional]

8. OPTIONAL FILER REFERENCE DATA

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT		
9a. ORGANIZATION NAME		
CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one name (11a or 11b) – do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY
ADD'L INFO RE ORGANIZATION DEBTOR		11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID#, if any
				<input type="checkbox"/> NONE

12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME – insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.  
 Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction – effective 30 years  
 Filed in connection with a Public-Finance Transaction – effective 30 years

**EXHIBIT 8**

**OPTION AGREEMENT WITH MEMORANDUM OF OPTION  
[behind this page]**

## EXHIBIT 8

### OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is entered into this \_\_\_\_\_ day of February, 2011, by and between the CITY OF IMPERIAL BEACH (the "City" and "Optionee") and the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH (the "Agency" and "Optionor"), with reference to the following facts:

A. The Agency owns, or within the term of this Agreement, will own, all of the real property more particularly described and enumerated on Exhibit "A" (all parcels so enumerated referred to herein jointly as the "Property").

B. The Agency desires to grant the City an option to purchase the Property from the Agency and the City wishes to reserve the right to purchase the Property from the Agency under the terms contained herein.

C. The parties hereto wish to enter into a memorandum of option agreement and record such an instrument on any or all of the Property using the Memorandum of Option attached hereto as Exhibit "B".

D. The City Council of the City of Imperial Beach (the "City Council") adopted the redevelopment plan (the "**Redevelopment Plan**") for the Palm Avenue/Commercial Redevelopment Project Area on February 6, 1996 (the "Project Area") by Ordinance No.96-901.

The Redevelopment Plan was subsequently amended on July 18, 2001 by Ordinance No. 2001-70 (the "**First Amendment**") to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the "**Second Amendment**") to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the "**Third Amendment**") to extend the Agency's eminent domain authority. The Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment shall be referred to herein as the "Redevelopment Plan".

This Agreement is subject to the provisions of the Redevelopment Plan. The Redevelopment Plan is incorporated herein by reference and made a part hereof as though fully set forth herein. The expiration of the Redevelopment Plan is March 9, 2017 as to the original area and August 17, 2022 as to the amended area ( as to each area the "Redevelopment Plan Effectiveness Date").

E. The address for the Agency is of public record and listed for convenience beside signature of the authorized signatory of the Agency.

**NOW, THEREFORE**, for good and valuable consideration paid by the City, receipt and sufficiency of which is acknowledged by the Agency, the parties hereto do mutually agree as follows:

1. Grant of Option. Agency hereby grants City, or its nominee, the option to purchase the Property, or any part thereof, on or before the latter of (a) the thirtieth (30<sup>th</sup>) anniversary of this Agreement or the Redevelopment Plan Effectiveness Date. This option shall be exercisable only by written notice delivered by City to Agency as provided below. Upon the exercise of such option to purchase the Property and receipt by the Agency of the notice of said exercise, City shall purchase the Property pursuant to the terms below. At the election of the City, the option granted herein may be exercised on a parcel by parcel basis.

2. Exercise of Option. The option contained herein shall be exercised by City, if at all, in the following manner: (i) City shall deliver written notice (the "Exercise Notice") to Agency not less than ten (10) days prior to the date of the proposed purchase of the Property by the City; the last date of written notice shall be the latter of (a) the thirtieth (30<sup>th</sup>) anniversary of this Agreement or (b) the Redevelopment Plan Effectiveness Date; (ii) Agency, after receipt of City's notice, shall deliver notice (the "Responsive Purchase Notice") to City prior to the proposed purchase date of the Property by the City, setting forth the proposed purchase price and such other terms necessary and appropriate to accomplish the purchase of the Property by City under the timeframes proposed by the City; and (iii) if City wishes to exercise such option to purchase the Property, City shall, after City's receipt of the Responsive Purchase Notice, exercise the option by delivering the City's form of purchase and sale agreement and grant deed, modified for any particular parcel of Property, along with the consideration for the Property in the amount of the purchase price and identification of the day the grant deed is to be recorded in the office of the County Recorder (the "Closing Date"). The proposed grant deed for the Property or any part thereof shall include, among other things, express covenants requiring the Property to be devoted to the purposes set forth below.

The purchase price for the Property shall be the fair market value of the Property. City and Agency shall meet to determine the fair market value of the Property. In the event the Agency and City are unable to agree on the fair market value, within forty-five (45) days of the Responsive Purchase Notice (the "Negotiation Period"), the fair market value shall be determined in accordance with the appraisal procedures set forth in the paragraph directly, below ("Fair Market Value Appraisal Process").

In the event the Agency and City are unable to agree upon the fair market value of the Property within the Negotiation Period, the Agency and City shall each appoint and pay for a Qualified Appraiser (as defined below) to determine the fair market value of the Property in accordance with the standards and procedures set forth below. Each Qualified Appraiser shall complete and submit an appraisal to the City and Agency on or prior to 5:00 p.m. Pacific time on the date that is sixty (60) days following the expiration of the Negotiation Period ("Notice of the Fair Market Value Appraisal"). If the appraisals differ, then the Fair Market Value shall be the average of the two (2) appraisals. Each of the Qualified Appraisers shall be instructed to appraise the Property (taking into consideration any improvements and infrastructure located thereon) for uses allowed under then applicable laws. As used herein, the term "Qualified Appraiser" shall mean an MAI appraiser with at least ten (10) consecutive years experience with similar properties in Southern California, with whom neither the Commission nor City is affiliated with.

3. Purpose. Any and all property purchased by the City pursuant to this Agreement may be used by the City for municipal purposes, including, but not limited to, affordable housing and public improvements, in conformance with the Redevelopment Plan.

4. Condition of Property. The Property is sold in its "as-is" condition on the Closing Date subject to the Redevelopment Plan and all encumbrances of record.

5. Memorandum. Concurrently with the execution hereof, Agency and City shall execute, acknowledge and cause to be recorded in the Official Records of San Diego County, California, the Memorandum of Option Agreement in the form attached hereto as Exhibit "B." Upon the termination of this Agreement as provided herein or at the time of and concurrently with the closing of a sale of the Property, the parties agree to execute a quitclaim deed or other termination instrument in order to cause the memorandum to be terminated and removed of record.

6. Transferability of Right. The right of the City under this Agreement is fully transferable and assignable by the City without the consent of the Agency.

7. Expiration Date and Termination of Agreement. The City reserves the right to reduce or extend the time period in paragraph 1 which permits the City to purchase the Property on or before the latter of (a) the thirtieth (30th) anniversary of the Agreement or (b) the Redevelopment Plan Effectiveness Date.

8. Prorations. Title Insurance. Title and Escrow. The parties shall equally share all costs of escrow and prorations affecting the Property. Agency shall not voluntarily create and record any liens or encumbrances or other matters against the Property after receipt of the Exercise Notice. The Agency will pay for a CLTA Owner's Policy of Title Insurance in favor of the City. Unless otherwise agreed upon by the parties in writing, the title insurer and escrow shall be First American Title Company, National Commercial Services, 777 South Figueroa Street, Suite 400, Los Angeles, California 90017. Said escrow agent shall instruct title insurer to deliver a title commitment to the City upon receipt of the Exercise Notice.

9. This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law. This Agreement may be signed in any number of counterparts and delivered by facsimile.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

OPTIONEE

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Gary Brown  
City Manager

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
City Clerk  
City of Imperial Beach

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
City Attorney

OPTIONOR

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James C. Janney  
Agency Chair

825 Imperial Beach Boulevard  
Imperial Beach, California 91932

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
Secretary of the Redevelopment Agency  
of the City of Imperial Beach

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
Agency General Counsel

KANE, BALLMER & BERKMAN

By: \_\_\_\_\_  
Susan Y. Cola  
Agency Special Counsel

EXHIBIT "A"

The "Property"

(Attach any number of legal descriptions)

If the Agency plans to acquire property after the date of this Agreement,  
then Agency-Owned Property shall be identified in Exhibit A-1, and  
after-acquired property shall be identified in Exhibit A-2)

EXHIBIT "B"

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

The Redevelopment Agency  
of the City of Imperial Beach  
c/o Agency Special Counsel  
Kane, Ballmer & Berkman  
515 South Figueroa Street, Suite 1850  
Los Angeles, California 90071  
Attn:

---

APN: \_\_\_\_\_

MEMORANDUM OF OPTION AGREEMENT

1. Parties; Property; and Redevelopment Plan. This memorandum of option agreement is entered into by the REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, a public entity, corporate and politic ("Agency") and CITY OF IMPERIAL BEACH, a municipality ("City") concerning real property located in the City of Imperial Beach and County of San Diego, State of California, as more fully described in the attached Exhibit "1" (the "Property").

This memorandum is subject to the provisions of the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area which was adopted on February 6, 1996 (the "Project Area") by the City Council of the City of Imperial Beach (the "City Council") (the "Redevelopment Plan") by Ordinance No.96-901.

The Redevelopment Plan was subsequently amended by the City Council on July 18, 2001 by Ordinance No. 2001-70 (the "**First Amendment**") to add territory to the Project Area, and on December 20, 2006 by Ordinance No. 2006-1050 (the "**Second Amendment**") to make certain clarifications, and on March 5, 2008 by Ordinance No. 2008-1066 (the "**Third Amendment**") to extend the Agency's eminent domain authority. The Redevelopment Plan, as amended by the First Amendment, the Second Amendment and the Third Amendment shall be referred to herein as the "Redevelopment Plan". The Redevelopment Plan is incorporated herein by reference and made a part hereof as though fully set forth herein. The expiration of the Redevelopment Plan is [SUSAN SEE QUESTION ABOVE IN OPTION RE TWO DATES FOR DURATION OF REDEVELOPMENT PLAN] (the "Redevelopment Plan Effectiveness Date")

2. Memorandum. For good and valuable consideration from the City, the receipt and sufficiency of which are acknowledged by the Agency, the Agency, as current fee owner of the Property, acknowledges that Agency and City have entered into an option agreement (the "Option Agreement") permitting the City to purchase the Property from the Agency under the

terms and conditions thereof on or before the latter of sixty (60) days prior to (a) the thirtieth (30th) anniversary of the Option Agreement or (b) the Redevelopment Plan Effectiveness Date, unless otherwise changed or modified by the terms of the Option Agreement.

3. Not Complete Summary. This instrument is not a complete summary of the Option Agreement. Provisions herein shall not be used in interpreting the Option Agreement.

4. Prohibition against Discrimination and Segregation. City covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall City, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- 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 preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor 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 preceding 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 preceding paragraph, the provisions relating to discrimination on the basis of familial status shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor 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 preceding paragraph.

- 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.”

5. Purpose. This instrument is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants of the Option Agreement. In the event of any inconsistency between the terms, conditions, provisions and covenants of this instrument and the Option Agreement, the terms, conditions and covenants of the Option Agreement shall prevail.

[CONTINUED ON NEXT PAGE]

The parties hereto have executed this instrument on the dates specified immediately beside their respective signatures. This document may be executed and acknowledged before a notary public with counterpart signature and acknowledgment pages, each of which shall be deemed an original and which, when taken together, shall constitute the fully-executed instrument.

OPTIONEE

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Gary Brown  
City Manager

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
City Clerk  
City of Imperial Beach

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
City Attorney

[SIGNATURES CONTINUED ON NEXT PAGE]

OPTIONOR

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Dated: \_\_\_\_\_

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

James C. Janney  
Agency Chair

825 Imperial Beach Boulevard  
Imperial Beach, California 91932

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
Secretary of the Redevelopment Agency  
Of the City of Imperial Beach

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
Agency General Counsel

KANE, BALLMER & BERKMAN

By: \_\_\_\_\_  
Susan Y. Cola  
Agency Special Counsel

Exhibit "1" to Memorandum of Option Agreement

Legal Description of Property

The land is situated in the State of California, County of San Diego and is described as follows;

[to be inserted]

APN \_\_\_\_\_

ACKNOWLEDGMENT PAGE  
TO MEMORANDUM OF OPTION AGREEMENT

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 9**

**AGENCY PROPERTIES SUBJECT OF OPTION AGREEMENT**

**[PROVIDE LEGAL DESCRIPTION AND/OR APNS OF PROPERTIES]**

## LEGAL DESCRIPTIONS

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND DESCRIBED AS FOLLOWS:

**APN# 626-250-04, 05 & 06**

THAT PORTION OF THE NORTHWEST QUARTER OR THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED FEBRUARY 25, 1870, LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTH CORONADO MANOR IS SHOWN ON MAP THEREOF NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 20, 1948, AND LYING EAST OF THE CENTER LINE OF DELAWARE STREET, FORMERLY 13TH STREET, AND WEST OF THE CENTER LINE OF 8TH STREET, FORMERLY 12TH STREET, AND THAT PORTION LYING WEST OF THE WEST LINE OF 9TH STREET, FORMERLY 11TH STREET AND EAST OF THE EAST LINE OF 8TH STREET, FORMERLY 12TH STREET, AS SAID STREETS ARE SHOWN ON MAP OF R. MERIDEATH JONES' ADDITION TO SAOUTH SAN DIEGO, BEING MAP NO. 1145, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 29, 1908.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE NORTH 50.00 FEET OF THE EAST

550.50 FEET OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29 AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 24, 1943 IN BOOK 1526, PAGE 405 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED JUNE 20, 1955 AS FTLE 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 FEBRU~RY 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.

**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, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THERE OF LYING NORTHERLY OF THE NORTHERLY LINE OF SOUTH CORONADO MANOR, ACCORDING TO MAP THEREOF NO. 2450, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY JANUARY 20, 1948 AND LYING WEST OF THE CENTER LINE OF DELAWARE STREET, FORMERLY 13<sup>TH</sup> 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.

**APN# 626-282-12**

LOTS 21 AND 22 AND THE SOUTH 12.50 FEET OF LOT 23, ALL BEING IN BLOCK 108 OF SOUTH SAN DIEGO COMPANY'S ADDITION TO SOUTH SAN DIEGO, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 497, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 4, 1887, TOGETHER WITH THAT PORTION OF THE NORTHERLY 10.00 FEET OF DONAX AVENUE LYING SOUTHERLY AND ADJACENT TO THE SOUTHERLY LINE OF SAID LOT 21 AS VACATED ON APRIL 2, 1979, BY RESOLUTION NO. 2543 OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH RECORDED APRIL 30, 1979, AS FILE NO. 79-177416 OF OFFICIAL RECORDS.



*Imperial Beach  
Redevelopment Agency*

AGENDA ITEM NO. 3

**STAFF REPORT  
CITY COUNCIL/IMPERIAL BEACH REDEVELOPMENT AGENCY**

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL/HONORABLE CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

**FROM:** GARY BROWN, CITY MANAGER/  
EXECUTIVE DIRECTOR

**MEETING DATE:** FEBRUARY 9, 2011

**ORIGINATING DEPT.:** COMMUNITY DEVELOPMENT DEPARTMENT  
GREG WADE, DIRECTOR *GW*  
GERARD E. SELBY, REDEVELOPMENT  
COORDINATOR

**SUBJECT:** ADOPTION OF RESOLUTION NOS. 2011-7003 AND R-11-247 AUTHORIZING THE CITY MANAGER/EXECUTIVE DIRECTOR TO EXECUTE A LEASE AGREEMENT FOR 495 10<sup>th</sup> STREET ("PUBLIC WORKS YARD"); APN 626-060-05

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**BACKGROUND**

The City currently owns the property located at 495 10<sup>th</sup> Street in the City of Imperial Beach ("Public Works Yard" or "Property"). On January 14, 2011, the City Council and Redevelopment Agency approved a purchase and sale agreement for the Property. In that transaction, the Agency will use any legally permissible funds to purchase the Property from the City. Once the land transfer documents have been finalized, the Agency will own the Property. The acquisition of this Property provides the Agency with the opportunity to achieve the Goals and Objectives of the Imperial Beach General Plan, the Palm Avenue/Commercial Avenue Redevelopment Plan and the Five-Year Implementation Plan, and the strategies and mission of the Economic Development Plan.

## **DISCUSSION**

The Property is approximately 1.79 acres with an existing single story administrative office and a one and one-half story garage. The City intends to continue its use of the Property as a public works storage yard until an alternative location can be found. The proposed lease has a term on ninety-nine (99) years with a lease/rent rate of one dollar (\$1.00) per year and will reflect the provisions under which the City can continue to use this facility until the Agency is ready to redevelop the Property.

## **ENVIRONMENTAL IMPACT**

The lease of real property is not a "project" as defined by the California Environmental Quality Act (CEQA) because the lease agreement will continue the existing use of the Property. Prior to any redevelopment of the Property, the appropriate level of CEQA review will be completed.

## **FISCAL IMPACT**

The total fiscal impact will be \$99.00 (i.e., \$1.00 per year).

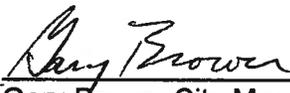
## **DEPARTMENT RECOMMENDATIONS**

Staff recommends that the City Council/Redevelopment Agency adopt Resolution Numbers 2011-7003 and R-11-247 authorizing:

1. The City Manager/Executive Director to finalize and execute a lease for real property located at 495 10<sup>th</sup> Street; and
2. The City Manager/Executive Director to take any implementing actions to carry out the intent and purposes of the lease agreement.

## **CITY MANAGER'S/EXECUTIVE DIRECTOR'S RECOMMENDATION**

Approve Department recommendation.



\_\_\_\_\_  
Gary Brown, City Manager/Executive Director

## **ATTACHMENTS**

1. City Council Resolution No. 2011-7003
2. Redevelopment Agency Resolution No. R-11-247
3. Proposed Lease Agreement

**RESOLUTION NO 2011-7003**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY AND THE AGENCY FOR 495 10<sup>TH</sup> STREET.**

**WHEREAS**, the City of Imperial Beach [City] is a municipal corporation duly created and existing pursuant to the constitutional laws of the State of California; and

**WHEREAS**, the Imperial Beach Redevelopment Agency [Agency] is a public body, corporate and politic of the State of California, organized and existing pursuant to California Health and Safety Code sections 33000, et seq.; and

**WHEREAS**, the City is authorized, pursuant to Health and Safety Code section 33220(g) [Section 33220(g)], to lease property from the Agency; and

**WHEREAS**, in accordance with Section 33220(g), the Agency desires to lease that certain real property located at 495 10th Street, in the City of Imperial Beach [Property], which is located within the Palm Avenue/Commercial Redevelopment Project Area to the City; and

**WHEREAS**, the City has considered the terms of the Lease Agreement with the Agency for the Property.

**NOW, THEREFORE, BE IT RESOLVED,**

Section 1: The foregoing recitals are true and correct.

Section 2: The City Council of the City of Imperial Beach hereby approves the Lease Agreement [Agreement] for the lease of the Property in substantially the form attached to the staff report for this item and authorizes the City Manager to (1) finalize and execute the Agreement and (2) take any necessary actions to implement the Agreement.

Section 3: This Resolution shall be effective on the date of approval.

Section 4: The lease of real property is not a "project" as defined by the California Environmental Quality Act (CEQA) because the lease agreement will continue the existing use of

the Property. Prior to any redevelopment of the Property, the appropriate level of CEQA review will be completed.

Section 5: If any section, sentence, clause or phrase of this Resolution is determined to be invalid, illegal, void or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Resolution. The City Council declares that it would have passed and adopted the Resolution, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Imperial Beach at its special meeting held on the 9th day of February, 2011, by the following roll call vote:

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

\_\_\_\_\_  
JAMES C. JANNEY, MAYOR

ATTEST:

\_\_\_\_\_  
JACQUELINE M. HALD  
CITY CLERK

**RESOLUTION NO R-11-247**

**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY AND THE AGENCY FOR 495 10<sup>TH</sup> STREET.**

**WHEREAS**, the City of Imperial Beach [City] is a municipal corporation duly created and existing pursuant to the constitutional laws of the State of California; and

**WHEREAS**, the Imperial Beach Redevelopment Agency [Agency] is a public body, corporate and politic of the State of California, organized and existing pursuant to California Health and Safety Code sections 33000, et seq.; and

**WHEREAS**, the City is authorized, pursuant to Health and Safety Code section 33220(g) [Section 33220(g)], to lease property from the Agency; and

**WHEREAS**, in accordance with Section 33220(g), the Agency desires to lease that certain real property located at 495 10th Street, in the City of Imperial Beach [Property], which is located within the Palm Avenue/Commercial Redevelopment Project Area to the City; and

**WHEREAS**, the Agency has considered the terms of the Lease Agreement with the City for the Property.

**NOW, THEREFORE, BE IT RESOLVED,**

Section 1: The foregoing recitals are true and correct.

Section 2: The Redevelopment Agency Board of the City of Imperial Beach hereby approves the Lease Agreement [Agreement] for the lease of the Property in substantially the form attached to the staff report for this item and authorizes the Executive Director to (1) finalize and execute the Agreement and (2) take any necessary actions to implement the Agreement.

Section 3: This Resolution shall be effective on the date of approval.

Section 4: The lease of real property is not a "project" as defined by the California Environmental Quality Act (CEQA) because the lease agreement will continue the existing use of

the Property. Prior to any redevelopment of the Property, the appropriate level of CEQA review will be completed.

Section 5: If any section, sentence, clause or phrase of this Resolution is determined to be invalid, illegal, void or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Resolution. The Agency Board declares that it would have passed and adopted the Resolution, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**PASSED, APPROVED AND ADOPTED** by the Redevelopment Agency Board of the City of Imperial Beach at its special meeting held on the 9th day of February, 2011, by the following roll call vote:

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

---

JAMES C. JANNEY, MAYOR

ATTEST:

---

JACQUELINE M. HALD  
CITY CLERK

**Attachment 3**

LEASE AGREEMENT

by and between

REDEVELOPMENT AGENCY OF

CITY OF IMPERIAL BEACH

AGENCY AND LESSOR,

and

CITY OF IMPERIAL BEACH,

CITY AND LESSEE.

## LEASE

This Lease Agreement (“Lease”) is made by and between the Redevelopment Agency of the City of Imperial Beach, a public body, corporate and politic (“Agency” or “Lessor”) and the City of Imperial Beach, a municipal corporation (“City” or “Lessee”). Lessor and Lessee are sometimes referred to as “Party” or “Parties.”

### SUBJECT OF LEASE

#### 1.1 Purpose of the Lease

The purpose of this Lease is to effectuate the Redevelopment Plan for the Palm/Commercial Redevelopment Project Area by providing for the leasing of the Premises to Lessee. The Lease of the Premises and the maintenance and operation of the Improvements pursuant to this Lease, and the fulfillment generally of this Lease, are in conformance with Agency’s Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area and are in the vital and best interests of the City and the health, safety, morals, and welfare of the City’s residents and businesses, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

#### 1.2 The Premises

The real property (the “Property”) and the improvements thereon located at 495 10th Street, Imperial Beach, California generally known or referred to as the City’s Public Works Storage Yard and more specifically identified as APN 626-060-05 (the “Property” together with the improvements is referred to as the “Premises”) are the subject of the Lease. The legal description of the Property is attached to this Agreement as Exhibit “A” and is incorporated in full herein by this reference.

The Premises consist of approximately 1.79 acres improved with an existing single story administrative office of approximately \_\_\_\_ square feet and a one and one-half story garage all of which are more specifically identified in Exhibit “B” attached hereto and incorporated in full herein by this reference.

### LEASE OF THE PREMISES

#### 2.1 Lease

For and in consideration of the conditions, covenants and agreements set forth herein, Agency hereby leases and demises the Premises to City as Lessee and Lessee does hereby take and Lease the Premises from Agency. Lessee accepts the Premises in an “as is” condition given its occupancy of the Premises as owner prior to the Effective Date of this Lease.

#### 2.2 Term of the Lease

### **Attachment 3**

Unless extended or sooner terminated as provided herein, the term of this Lease (the "Term") shall begin on the Effective Date (as defined below) and expire on the ninety ninth (99th) annual anniversary of the Effective Date. For purposes of this Lease, the term "Effective Date" shall mean the date set forth in Section 8.12, below.

At the expiration of this Lease, Lessee shall execute, acknowledge and deliver to Agency, within thirty (30) days after written demand by Agency, a valid and recordable quitclaim deed covering the Premises and the Improvements, free and clear of all liens and encumbrances.

#### **RENT AND DEPOSIT**

##### **3.1 Amount and Commencement of Rent**

On the Effective Date, and on the first day of each calendar month thereafter, for the entire Term, Lessee shall pay to Agency a sum of ONE DOLLAR AND NO CENTS (\$1.00), per year (the "Rent"); provided that, during the Term, on each annual anniversary date of the Effective Date.

##### **3.2 Security Deposit.**

Agency hereby acknowledges that in connection with this Lease, Lessee has deposited with Agency a security deposit in the amount of \$ 0 .00. ("Deposit") as security for the full and faithful performance of Lessee's obligations under this Lease. In the event of an event of default, then Lessor may use the Deposit, or any portion of it, to the extent necessary to cure or remedy the Event of Default. Lessee shall pay to Lessor, on thirty-days' (30-days') written notice, the amount so applied in order to restore the Deposit to its original amount, and Lessee's failure to do so shall constitute an event of default. If Lessee is not in default with respect to the obligations set forth in this Lease at the expiration or termination of this Lease, then Agency shall return the Deposit to Lessee within thirty (30) days after expiration or termination of this Lease, whichever is applicable.

#### **USE OF THE PREMISES AND IMPROVEMENTS**

##### **4.1 Use of the Premises and Improvements**

Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Premises and Improvements or any portion thereof, that through the Term of this Lease, Lessee, such successors and such assignees may use the Premises for any municipal purposes, including, but not limited to, affordable housing and public improvements, in conformance with the Redevelopment Plan. Any use meeting such criteria shall be defined as "Lessee's Use."

Without limiting the foregoing paragraph, in the event that Lessee Transfers the Premises to any third party for development pursuant to the Redevelopment Plan, such Transfer shall first

### **Attachment 3**

be approved by the City Council after public hearing, in conformance with Health and Safety Code section 33433(a).

#### **4.2 Obligation to Refrain from Discrimination**

Pursuant to the applicable provisions of the California Community Redevelopment Law, 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:

There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin, disability, age or ancestry 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..

#### **4.3 Assignment of Lease**

Lessee may make any Transfer, hereinafter defined, to any person or entity (a "Transferee"), without the prior written consent of Agency so long as the Premises continue to be dedicated to Lessee's Use by the Transferee. "Transfer," as used herein, shall mean any assignment or attempt to assign this Lease or any right herein, any total or partial transfer, sale, assignment, lease, sublease, license, franchise, gift, hypothecation, mortgage, pledge, encumbrance or the like. In the event of such a Transfer, the Transferee shall be provided a non-disturbance agreement in a form satisfactory to Transferee, Lessor and Lessee so long as an attornment agreement in form satisfactory to all parties is executed by Transferee recognizing all rights of Lessor under the Lease and the absence of any events of default on the part of Lessor at the time of the Transfer.

#### **4.4 Quiet Enjoyment**

The parties hereto mutually covenant and agree Lessee, by keeping and performing the covenants herein contained, shall at all times during the Term of this Lease, peaceably and quietly have, hold and enjoy the Premises and Improvements.

### **OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS**

#### **5.1 Ownership During Term and at Termination**

All the Improvements, whether or not constructed or installed by Lessee as permitted or required by this Lease shall, during the Term become part of the Premises and Lessee's leasehold

### **Attachment 3**

interests under this Lease shall apply to the Improvements. All the Improvements, whether existing thereon on the Effective Date, or constructed or installed thereon by Lessee as permitted or required by this Lease shall, at the expiration or sooner termination of the Term be and remain the property of Agency. Subject to Lessee's rights and obligations set forth in this Lease relating to alterations and additions, Lessee shall have no right at any time to waste, destroy, demolish or remove any of the Improvements. Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease. Agency and Lessee covenant for themselves and all persons claiming under or through them that the Improvements are real property.

#### **5.2 Maintenance and Repair of Improvements**

Lessee agrees to assume full responsibility for the operation and maintenance of the Premises and the Improvements and all fixtures and furnishings, thereon or therein, throughout the Term without expense to Agency unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve the Premises and the Improvements and fixtures and furnishings and walkways and landscaping in a decent, safe and sanitary condition in a manner reasonably satisfactory to Agency and in compliance with all applicable laws. Lessee agrees Agency shall not be required to perform any maintenance, repairs, or services or to assume any expense not specifically assumed herein in connection with the Premises and the Improvements, fixtures and furnishings, and sidewalks and landscaping.

#### **5.3 Waste**

Lessee shall not commit or suffer to be committed any waste or impairment of the Premises or the Improvements, or any part thereof. Lessee agrees to keep the Premises and the Improvements clean and clear of refuse and obstructions, and to lawfully dispose of all garbage, trash and rubbish.

### **NO SUBORDINATION OF AGENCY'S INTERESTS**

#### **6.1 Landlord's Reversionary Interest**

Agency's interest in the Premises under this Lease is a vested landlord's reversionary interest and not just a contractual obligation of Lessee. Notwithstanding anything which is or appears to be to the contrary in this Lease, Lessee shall not encumber Agency's interest under this Lease or Agency's fee interest in the Premises by any mortgage, deed of trust, lien, security instrument or financing conveyance of any kind whatsoever.

### **DEFAULTS, REMEDIES AND TERMINATION**

#### **7.1 Defaults - General**

### **Attachment 3**

Subject to the extensions of time set forth in Section 8.15 of this Lease, failure or delay by either Party to perform any term or provision of this Lease constitutes a default under this Lease. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and, in any event, for monetary defaults within thirty (30) days of such failure or delay, and for non-monetary defaults within the time reasonably required for cure with reasonable diligence, not to exceed one hundred and eighty (180) days plus any period or periods of enforced delay required by Section 8.15 of this Lease (the "Cure Period").

#### **GENERAL PROVISIONS**

##### **8.1 Notices, Demands and Communications between the Parties**

Formal notices, demands and communications between Agency and Lessee shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency, to the attention of Agency's Assistant Executive Director, and of Lessee to the attention of the City Manager at the following address:

825 Imperial Beach Boulevard  
Imperial Beach, California 91932

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 as provided in this Section. Sufficient notice may also be given by personal delivery or reputable overnight delivery service in lieu of mail if reasonably adequate records are maintained of such service in the ordinary course of business by the person or entity effecting such service.

##### **8.2 Time of Essence**

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

##### **8.3 Conflict of Interests**

No board member, official or employee of Agency or City council member, official or employee shall have any personal interest, direct or indirect, in this Lease, nor shall any such individual(s) participate in any decision relating to the Lease which affects his/her personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Lessee warrants it has not paid or given, and will not pay or give, any officer or employee of Agency any money or other consideration for obtaining this Lease.

##### **8.4 Non-liability of City and/or Agency Officials and Employees**

### **Attachment 3**

No official or employee of the Parties shall be personally liable , in the event of any default or breach by a Party, for any amount which may become due to the non-defaulting or non-breaching Party or successor on any obligation(s) arising from said default or breach under the terms of this Lease.

#### **8.5 Applicable Law**

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

#### **8.6 No Partnership**

Neither anything in this Lease contained, nor any acts of Agency or City shall be deemed or construed by any person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Agency and City.

#### **8.7 Compliance with Law**

The Parties agree, at their respective cost and expense, to comply and secure compliance, as applicable to each Party, with all the applicable and valid requirements now in force, or which may hereafter be in force, of all municipal, county, State and federal authorities, pertaining to the Premises and Improvements, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Premises and Improvements, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including all laws prohibiting discrimination or segregation in the use, sale, Lease or occupancy of the property.

#### **8.8 Surrender of Property**

Except as otherwise expressly provided in this Lease, upon the expiration or termination of this Lease pursuant to the terms hereof, it shall be lawful for Agency to reenter and repossess the Premises and Improvements without process of law, and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Premises and Improvements peaceably to Agency immediately upon such expiration or termination in good order, condition and repair, except for reasonable wear and tear.

#### **8.9 Severability**

If any provision of this Lease shall be adjudged invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

### **Attachment 3**

#### **8.10 Lease Construed as a Whole.**

The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee. The parties acknowledge that each party and its counsel have reviewed this Lease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed nor applied in the interpretation of this Lease.

#### **8.11 Binding Effect**

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

#### **8.12 Captions**

The captions contained in this Lease are merely a reference and are not to be used to construe or limit the text.

#### **8.13 Entire Agreement, Waivers and Amendments**

This Lease, together with the exhibits hereto, all of which are incorporated herein by reference, constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Lessor and Lessee. This Lease is executed in two (2) duplicate originals, each of which is deemed to be an original. This Lease includes \_\_\_\_\_ ( ) pages and \_\_\_\_\_ ( ) exhibits. This Lease shall become effective on the date it is executed on behalf of both Parties ("Effective Date"). If the Lease execution does not take place contemporaneously, the Effective Date shall be the date on which the second Party executes the Lease.

All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Agency or Lessee and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and City.

#### **8.14 Approvals**

Except as expressly provided otherwise in this Lease, approvals required of Agency or City shall not be unreasonably withheld, conditioned or delayed. Amendments to this Lease may be signed on behalf of Agency by Agency's Executive Director or Assistant Executive Director and for the City by the Mayor or City Manager as may be designated by the City Council.

#### **8.15 Force Majeure**

### **Attachment 3**

Lessee shall not be deemed to be in default for failure to perform any obligations under the Lease, including monetary performance, when 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 any public or governmental agency or entity (other than the City), or any causes beyond the control or without the fault of the City ("Force Majeure Event"). An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause of the Force Majeure Event, if notice by the City is sent to the Agency within thirty (30) calendar days of knowledge of the commencement of such cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Event unless and until the City delivers to the Agency written notice describing the event, its cause, when and how the City obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. The City shall deliver such written notice within thirty (30) calendar days after it obtains actual knowledge of the Force Majeure Event. Times of performance under this Lease may also be extended in writing by the City and the Agency.

#### **8.16 Indemnity**

In contemplation of the provisions of California Government Code section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code section 895, the Parties, as between themselves, pursuant to the authorization contained in Government Code sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code section 895.2. To achieve the above-stated purpose, each Party indemnifies, defends and holds harmless the other Party for any liability, losses, cost or expenses that may be incurred by such other Party solely by reason of Government Code section 895.2.

**SIGNATURES FOLLOW IN NEXT PAGE**

**Attachment 3**

LESSEE

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_  
Gary Brown  
City Manager

ATTEST:

CITY CLERK  
CITY OF IMPERIAL BEACH

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
City Attorney

LESSOR

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Brown  
Executive Director

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald  
Secretary of the Imperial Beach  
Redevelopment Agency

**Attachment 3**

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jennifer Lyon  
Agency General Counsel

KANE, BALLMER & BERKMAN

By: \_\_\_\_\_  
Susan Y. Cola  
Agency Special Counsel

EXHIBIT A  
PROPERTY LEGAL DESCRIPTION

**EXHIBIT B**

**SITE MAP**