

STAFF REPORT*CITY OF OCEANSIDE*

DATE: August 15, 2012
TO: Honorable Mayor and City Councilmembers
FROM: Neighborhood Services Department

SUBJECT: **APPROVAL OF A DISPOSITION AND DEVELOPMENT AGREEMENT WITH NATIONAL COMMUNITY RENAISSANCE AND COMMUNITY HOUSINGWORKS FOR THE MISSION COVE AFFORDABLE HOUSING PROJECT**

SYNOPSIS

Staff recommends that the City Council approve a Disposition and Development Agreement (DDA) with National Community Renaissance and Community Housingworks for the Mission Cove Affordable Housing Project located along the 3200 block of Mission Avenue, and authorize the City Manager to execute the Agreement.

BACKGROUND

In December 2010, the City Council approved National Community Renaissance (National CORE) and Community Housingworks (CHW) as the Development Team for the Mission Cove Affordable Housing Project (Project). Direction was given to negotiate development agreements for the 14.5-acre Mission Avenue parcel which incorporate the elements of the approved Vision and Strategic Plan for the site. National CORE will be the master developer for the overall site work, retail commercial space, and the design, construction, and ownership of the 150 units of family affordable housing. CHW will be the developer for the design, construction and ownership of the 138 units of affordable senior/special needs housing component of the Project.

In April 2011, the Council approved a Reimbursement Agreement loaning up to \$1,527,170 in HOME funds with the Development Team to commence predevelopment due diligence, refinement of costs, design, and entitlements. Through this process, the conceptual site design has been updated to reflect environmental, storm water, and soils constraints on the property. An application for development entitlements was submitted in January 2012. This process is expected to be completed in late 2012.

An Exclusive Negotiating Agreement (ENA) between the City and the Development Team to establish the terms of a Disposition and Development Agreement (DDA) for the Project was also approved by the Council in July 2011. The ENA Negotiating Period was extended by the Council to March 2013 due to the uncertainty of the disposition of Redevelopment Housing Set-Aside funds which were initially identified as the primary funding resource for the Project.

ANALYSIS

Over the past year, Housing staff and the Development Team have negotiated the general terms of the DDA. As drafted, the Project will be developed in the following four phases:

Phase A – Infrastructure (onsite/offsite improvements)

Phase B – Multifamily (80 units)

Phase C – Senior/Special Needs (138 units)

Phase D – Multifamily (70 units)

It is anticipated that Phases A and B will be started initially; however the remaining two phases could be developed concurrently contingent upon available funding. The parcel will be also subdivided to facilitate each phase. The City will retain ownership of the land with each parcel being leased to the affordable housing entity established for each phase.

As structuring and obtaining the financing for a project of this size is somewhat complex, the time period for the DDA is set at 5 years upon date of approval with a 3-year extension option. It should also be noted that the Development Team will have committed considerable staff and resources to the Project without compensation up until such time as each phase is completed.

Staff is recommending approval of the DDA at this time to assist the Development Team in applying for potential affordable housing funding which may become available over the next few years. In addition, most applications for this type of specialized funding require an approved Development Agreement with the local housing agency prior to submittal.

FISCAL IMPACT

The total development costs for the Project are estimated to be approximately \$81.3 million. Construction of all Project phases will require a local housing fund subsidy of approximately \$17.4 million. Approval of the DDA does not appropriate available housing funds at this time; however, the document establishes a not-to-exceed funding threshold contingent upon identifying and obtaining affordable housing resources. The potential sources of local housing funds are HOME funds, Inclusionary Housing Trust funds, and Redevelopment Set-Aside Loan and SERAF payments owed to the Low- and Moderate-Income Housing Fund. The approximate balances of these funds, or receivables, as of June 30, 2012, are \$1.5 million, \$4.6 million, and \$4.3 million, respectively. The previously appropriated \$1.5 million in HOME funds for Project entitlements will be included in any local housing subsidy loan amount. The subsequent appropriation of available funds will occur once a final financing plan for the Project is completed. The DDA also requires that, at a minimum, total funding for Phases A and B are available before any construction can commence.

COMMISSION OR COMMITTEE REPORT

At its meeting on July 24, 2012, the Housing Commission recommended approval of the Mission Cove Project DDA.

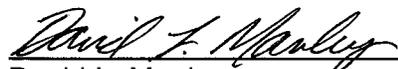
CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

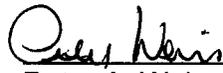
Staff recommends that the City Council approve a Disposition and Development Agreement (DDA) with National Community Renaissance and Community Housingworks for the Mission Cove Affordable Housing Project located along the 3200 block of Mission Avenue, and authorize the City Manager to execute the Agreement.

PREPARED BY:



David L. Manley
Neighborhood Services Division Manager

SUBMITTED BY:

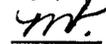


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
Margery M. Pierce, Neighborhood Services Director





- Attachments:
1. Disposition and Development Agreement (Mission Cove)
 2. Housing Commission Report

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND AMONG

**THE CITY OF OCEANSIDE
("CITY"),**

**NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA
("NCRC"),**

AND

**COMMUNITY HOUSINGWORKS
("CHW")**

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ATTACHMENTS

Exhibit A	Defined Terms
Attachment No. 1	Legal Description of Site
Attachment No. 2	Site Map
Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Development
Attachment No. 5	Regulatory Agreement
Attachment No. 6	Ground Lease
Attachment No. 7	Certificate of Completion
Attachment No. 8	Memorandum of Agreement
Attachment No. 9	Project Budget
Attachment No. 10	Description of Infrastructure Improvements
Attachment No. 11	Form of Phase A Loan Agreement
Attachment No. 12	Form of Phase A Note
Attachment No. 13	Form of Loan Agreement
Attachment No. 14	Form of Note
Attachment No. 15	Form of Deed of Trust

DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (this "Agreement") dated, solely for identification, as of _____, 2012, is made and entered into by and among the City of Oceanside, a chartered California municipal corporation (the "City"), **National Community Renaissance of California**, a California nonprofit public benefit corporation ("NCRC"), and **Community HousingWorks**, a California nonprofit public benefit corporation ("CHW") (NCRC and CHW are referred to collectively as the "Developer"). The effective date of this Agreement shall be set forth in the Memorandum of Agreement (attached hereto as Attachment No. 8 and incorporated herein by reference (the "Effective Date")). Exhibit A attached hereto is a list of the defined terms used in this Agreement.

1.0 SUBJECT OF AGREEMENT

1.1 Effective Date. Notwithstanding anything to the contrary in this Agreement, the Effective Date shall not occur, the Memorandum of Agreement shall not be recorded, and no party shall have any rights or obligations hereunder, unless and until the City has determined that there are no legally binding restrictions on the City's ability to perform its obligations hereunder. The foregoing sentence shall not preclude the parties from executing this Agreement pending the Effective Date.

1.2 Purpose of Agreement. The purpose of this Agreement is to further the City's Low-Income Housing goals by providing for multiple ground leases of portions of the "Site" (as hereinafter defined) to the Developer or affiliated entities (as described below) for development as a multi-phased mixed-use residential and commercial/retail development (the "Project"). The Developer's development of the Site (the "Activity") consists of the construction of certain improvements on the Site that are generally described in the "Scope of Development" (attached hereto as Attachment No. 4 and incorporated herein by reference), and Developer's subsequent on-going management and operation of the Site to provide affordable housing and employment opportunities. The disposition of the Site and its development pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interest of the City and the health, safety, morals and welfare of the City's residents, and in accord with the public purposes of the City and provisions of applicable federal, state and local laws and requirements.

1.3 Term of Agreement.

1.3.1 Subject to Section 1.3.2, the initial term of this Agreement ("Initial Term") shall commence on the latest date indicated on the signature page and shall expire at 5:00 p.m. on the fifth (5th) anniversary of such date; provided that this Agreement shall automatically terminate as to a Phase upon the full execution of a Subsequent DDA for such Phase.

1.3.2 In the event the parties determine, at least sixty (60) days prior to expiration of the Initial Term, that sufficient commitments of funds exist to finance the development of Phase A and Phase B, then at the written request of the Developer or the City, delivered at least thirty (30) days prior to expiration of the Initial Term, the Initial Term of this DDA shall automatically be extended for an additional three (3) years, or

such shorter period as requested by the requesting party. The Initial Term, as it may be extended under this Section, is defined as the "Term."

1.4 Comprehensive Affordable Housing Plan. This Agreement is consistent with the provisions of the City's "Comprehensive Affordable Housing Strategy", which was approved by the City Council on March 3, 2004. The Comprehensive Affordable Housing Strategy, as in effect or may have been amended through the Effective Date hereof, is incorporated herein by reference and made a part hereof as though fully set forth herein.

1.5 The Site. The "Site" is that certain unimproved real property within the City of Oceanside, County of San Diego, State of California, located in the 3200 block of Mission Avenue (APN 160-270-12) and the residential property at 3206 Carolyn Circle (APN 146-061-03) and more particularly described in the legal description set forth in the "Legal Description of the Site" (which is attached hereto as Attachment No. 1 and incorporated herein by reference) and illustrated and designated as such on the "Site Map" (which is attached hereto as Attachment No. 2 and incorporated herein by reference). The Site is approximately 14.47 acres in size.

1.6 Parties to the Agreement.

1.6.1 The City. The City is a chartered California municipal corporation, and is authorized to enter into this Agreement and perform the actions and duties of the City as set forth in this Agreement. The principal office of the City is located at the Oceanside Civic Center, 300 North Coast Highway, Oceanside, California 92054, Attn: Margery Pierce, Neighborhood Services Director; Email: mpierce@ci.oceanside.ca.us.

"City" as used in this Agreement, includes any assignee of or successor to its rights, powers and responsibilities. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City, its successors and assigns.

1.6.2 NCRC. NCRC is a California nonprofit public benefit corporation authorized under the laws of the State of California to enter into this Agreement and perform the actions and duties as set forth in this Agreement. The principal office and mailing address for NCRC for the purposes of the Agreement is located at 9065 Haven Avenue, Suite 100, Rancho Cucamonga, California 91730, Attn: Richard J. Whittingham, CFO; Email: RWittingham@nationalcore.org.

NCRC will act as the lead developer for the predevelopment phase of the Project, including acting as the general contractor for the construction of Infrastructure Improvements for the Project and taking the lead in obtaining Entitlements for the Project, each as described in Section 2.3.

NCRC intends to form one or more limited partnership(s) of which the general partner will be Southern California Housing Development Corporation of Orange, or another entity reasonably acceptable to the City, and the ultimate limited partner(s) shall be one or more entities providing tax credit syndication proceeds to such partnership (each an "NCRC Partnership").

1.6.3 CHW. CHW is a California nonprofit public benefit corporation authorized under the laws of the State of California to enter into this Agreement and perform the

actions and duties as set forth in this Agreement. The principal office and mailing address of CHW for the purposes of the Agreement is located at 4305 University Avenue, Suite 550, San Diego, California 92105, Attn: Anne B Wilson, Senior Vice President; Email: Awilson@chworks.org.

CHW intends to form a limited partnership of which the general partner will be CHW or an affiliated nonprofit public benefit corporation or limited liability company, and ultimately the limited partner(s) shall be one or more entities providing tax credit syndication proceeds to such partnership (a "CHW Partnership").

All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of NCRC and CHW and their permitted successors and assigns as herein provided.

1.7 Restrictions on Transfers of Interest in the Site or the Agreement.

1.7.1 Prohibition. The qualifications of the Developer are of particular concern to the City. It is because of those qualifications and identity that the City has entered into this Agreement with the Developer. Therefore, except as expressly set forth in this Section 1.7, for the period commencing upon the Effective Date of this Agreement and ending, with respect to each Phase, upon the execution of a "Subsequent DDA" for such Phase, as further described in Article 2, no voluntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer transfer any of its interest in the Site without the prior written approval of the City.

1.7.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Site or the Improvements (or any part thereof) shall not be required in connection with any of the following:

- i. The transfer of any portion of Developer's interest in the Site to an NCRC Partnership, a CHW Partnership, the Housing Authority of the City of Oceanside ("Authority") or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements, except that the City shall be entitled to approve the REA, as described in Section 2.15.
- ii. Any letting of any residential dwelling and/or commercial/retail unit to the occupants of such units.

Any assignment for financing purposes related to this Agreement, including (without limitation) the grant of a deed of trust to secure the funds necessary for construction and/or permanent financing of the Improvements, shall be subject to the prior written approval of the City pursuant to Section 1.7.3 herein.

In the event of an assignment by the Developer under subparagraphs (i) or (ii), the Developer nevertheless agrees to give at least thirty (30) days' prior written notice to the City of such assignment and satisfactory evidence that the assignee has assumed the Developer's obligations under this Agreement.

1.7.3 City Consideration of Requested Transfer. The City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 1.7, provided (i) the Developer delivers timely written notice to the City requesting such approval and (ii) such transfer of the Developer's rights and/or powers under this Agreement is deemed by the City to be in the best interests of the City to carry out the purposes of the Comprehensive Affordable Housing Plan and this Agreement. However, no such request under this Section 1.7 or approval by City shall be necessary for transfers permitted pursuant to Section 1.7.2. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's development qualifications and experience in operating the applicable type and respective portion of the Improvements, and its financial resources in sufficient detail to enable the City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 1.7.3 and as reasonably determined by the City. The City shall evaluate each proposed transferee or assignee on the basis of its development and/or operational qualifications and experience and its financial commitments and resources, and may disapprove any proposed transferee or assignee, during the period for which this Section 1.7 applies, which the City determines does not possess qualifications that enable the proposed transferee or assignee to meet the obligations of the Developer under this Agreement. An assignment and assumption agreement in a form satisfactory to City legal counsel shall also be required for all proposed assignments.

Within thirty (30) days after the receipt of a written notice requesting City approval of an assignment or transfer pursuant to this Section 1.7, the City shall either approve or disapprove such proposed assignment, or shall respond in writing by stating what further information, if any, the City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such response, the requesting party shall promptly furnish to the City such further information as may be requested.

Notwithstanding anything to the contrary contained in this Agreement, the City reserves the right to determine the qualifications of the Developer (or any assignee(s)) in its sole and absolute discretion as deemed in the best interests of the public and the public purposes of the City.

1.7.4 Limitation and Termination of Restrictions. The restrictions of this Section 1.7 shall not in any event be deemed to prevent construction and/or permanent loans for the Improvements, or any part thereof.

1.7.5 Subsequent DDAs and Transfers. The City acknowledges and agrees that (a) each Subsequent DDA and Ground Lease with respect to Phase B and Phase D may be executed by NCRC or by an NCRC Partnership, and (b) each Subsequent DDA and Ground Lease with respect to Phase C may be executed by CHW or by a CHW Partnership.

1.8 City's Representations and Warranties. The City hereby represents and warrants to the Developer, as of the Effective Date of this Agreement, as follows:

1. The City is a duly organized and existing governmental agency/entity under the laws of the State of California;

2. By proper action of the City's governing body, the City has been authorized to execute and deliver this Agreement, acting by and through its authorized officer(s);

3. By entering into this Agreement, the City does not violate any provision of any other agreement to which it is a party;

4. The City is, and as of the effective date of each Ground Lease, will be, the fee owner of the portion of the Site to be developed in the applicable Phase and/or has full right, power and authority to transfer a leasehold interest in said portion of the Site for the applicable Phase as provided herein and to perform all of the City's obligations hereunder;

5. There are no stop notices and/or unsatisfied mechanic's or materialman's lien rights concerning the Site;

6. No actions, suits, or proceedings are pending or, to the best of the City's knowledge, threatened before any governmental department, commission, board, bureau, agency or instrumentality that would adversely affect the Site or the Developer's right to occupy, develop or utilize it; and

7. The City has disclosed to the Developer all information concerning the Site of which the City is aware, and the City's representations and warranties set forth in Section 2.11 of this Agreement are incorporated in this Section 1.8 by reference. If the City becomes aware of any fact or circumstance that would change or render incorrect, in whole or in part, any representation or warranty by the City under this Agreement, whether as of the date hereof or any time thereafter through the date of the City's transfer of leasehold interests in the Site hereunder, and whether or not such representation or warranty was based on the City's knowledge and/or belief as of a certain date, the City will give immediate notice of such changed facts or circumstances to the Developer.

The City shall advise the Developer in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items 1 to 7, inclusive.

1.9 Developer Representations and Warranties. NCRC and CHW each hereby represents and warrants to the City on its respective behalf as follows:

1. It is duly established and in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by it in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement.

2. It does not have any material contingent obligations or any material contractual agreements that could materially adversely affect its ability to carry out its obligations hereunder.

3. It has not made any payment or contribution to any elected official, City official's campaign fund, or City employee, agent, or representative, to influence City

decisions associated with this Agreement, any Subsequent DDA, Ground Lease, or any related document or instrument.

4. No actions, suits, or proceedings are pending or, to its best knowledge, threatened before any governmental department, commission, board, bureau, agency or instrumentality to which it is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed in the material submitted to the City, which could materially adversely affect its ability to carry out its obligations hereunder.

5. There is no action or proceeding pending or, to its best knowledge, threatened, looking toward its dissolution or liquidation, and there is no action, suit or proceeding pending or, to its best knowledge, threatened by or against it which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect its ability to carry out its obligations hereunder. It further warrants that there has been no bankruptcy of it or any entity controlled by it or any project on which it has served as general partner, managing general partner, sole or co-developer in the last five (5) years preceding the Effective Date of this Agreement, and that no bankruptcy action or other arrangement, reorganization or insolvency action of it or any of its affiliates is pending.

The Developer shall advise the City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items 1 to 5, inclusive.

2.0 DISPOSITION OF THE SITE

2.1 Phases of Development.

2.1.1 NCRC, an NCRC Partnership, and a CHW Partnership will develop the Project in four phases (each a “Phase”), as more fully described in the “Scope of Development (Attachment No. 4):

i. “Phase A” is the installation of Infrastructure Improvements (defined in Section 4.1) for Phases B, C and D (defined below) by NCRC, acting as a general contractor for Phase A;

ii. “Phase B” is Affordable Family Housing/Retail, to be owned and developed by an NCRC Partnership, including Improvements consisting of approximately 80 residential units, a separate legal parcel to be developed and utilized as common area containing amenities serving each of Phases B, C and D (the “Common Area”), and a separate legal parcel to be utilized for retail space consisting of approx. 10,000 square feet (the term “Phase B” includes the three legal parcels on which Phase B will be developed);

iii. “Phase C” is Affordable Senior/Special Needs Housing, to be owned and developed by a CHW Partnership, including Improvements consisting of approximately 138 residential units and a tenant garden (the term “Phase C” includes the single legal parcel on which Phase C will be developed); and

iv. “Phase D” is Affordable Family Housing, to be owned and developed by an NCRC Partnership, including Improvements consisting of

approximately 70 residential units (the term "Phase D" includes the single legal parcel on which Phase D will be developed);.

2.1.2 The completion of Phase A for the entire Site is not a condition precedent to the commencement of construction of Phase B, Phase C, or Phase D; however, the completion of that portion of Phase A underlying each of Phases B, C and D will be a condition precedent to the commencement of construction of the Improvements for such Phase.

2.1.3 The parties intend that each of Phases B, C and D of the Project will be developed as an independent development. To that end, a default under this Agreement, any Subsequent DDA, or any other document with respect to a Phase shall not necessarily be deemed a default with respect to any other Phase.

2.2 **Subsequent DDAs** The parties intend that this Agreement provide the general parameters for the disposition and development of the Site. However, subsequent to the approval of a final parcel map for the Site and within the time indicated in the Schedule of Performance, the parties shall enter into the following agreements (each a "Subsequent DDA"), each of which will supersede this DDA as to the applicable Phase:

2.2.1 A disposition and development agreement between the City and an NCRC Partnership for Phase B;

2.2.2 A disposition and development agreement between the City and a CHW Partnership for Phase C; and

2.2.3 A disposition and development agreement between the City and an NCRC Partnership for Phase D.

2.3 **Pre-Closing Obligations of NCRC**. NCRC will be solely responsible for performing each of the following activities prior to the date of the Closing of any Phase under this Agreement and within the times indicated in the Schedule of Performance, with such activities to be funded with funds provided under the Reimbursement Agreement (defined in Section 3.1) and the Phase A Loans:

2.3.1 For each applicable Phase B, C or D, NCRC will complete the Infrastructure Improvements to the applicable Phase pursuant to (a) construction contracts to be entered into between NCRC and each entity which is to be the ground lessee for Phase B, C or D (each, a "Tenant" as defined in Section 2.5 below), as further described in Section 4.1.1, and (b) rights of entry from the City as described in Section 4.1.3.

2.3.2 NCRC will obtain a final parcel map for the Site which creates five (5) separate legal parcels within the Site: three parcels for Phase B (one for housing, one for retail/commercial use, and one for the Common Area), a single parcel for Phase C, and a single parcel for Phase D. The final parcel map is subject to the prior approval of CHW and the City.

2.3.3 NCRC will obtain all Entitlements required for development of the Site in accordance with this Agreement, subject to the following:

- (i) For purposes of this Agreement, "Entitlements" means all planning-related approvals required in order to develop, use, operate and/or maintain the Infrastructure Improvements and the Improvements in accordance with the Scope of Development (Attachment No. 4), including (but not limited to) any necessary zone changes, variances, conditional use permits, parcel maps, or other required land use or building entitlements. For the purposes hereof, "Entitlements" shall not include any permits required for construction of the Improvements, which shall be the responsibility of each Tenant to obtain. The work required to prepare for, file and obtain such permits for Improvements shall be the responsibility of each respective owner of each Phase.
- (ii) CHW agrees to provide such supporting documentation to NCRC, such as site plans for Phase C, at no additional cost to CHW, as required for NCRC to obtain the Entitlements applicable to Phase C.
- (iii) CHW shall have the right to approve all applications and supporting documentation for the Entitlements affecting Phase C prior to submission by NCRC to the applicable governmental entit(y)(ies). No modifications may be made to the approved Entitlement application documents for Phase C without the prior written approval of CHW.
- (iv) CHW shall have the right to approve any conditions of approval proposed by the City in connection with any Entitlements affecting Phase C before any such conditions of approval can become binding on CHW as conditions for the development of Phase C.

2.4 Transfers of Each Phase Within thirty (30) days following the approval of a final parcel map for the Site (but no later than the date indicated in the Schedule of Performance), and subject to the satisfaction or waiver of all Conditions Precedent to Closing (as defined in Section 2.10) applicable to each Phase, the City shall transfer a leasehold interest in each Phase of the Site as follows:

2.4.1 A transfer of the three legal parcels constituting Phase B to an NCRC Partnership, provided that the foregoing may be accomplished by multiple Ground Leases, each covering one or more parcels in Phase B, in order to accommodate the proposed financing of Phase B;

2.4.2 A transfer of the legal parcel constituting Phase C to a CHW Partnership;
and

2.4.3 A transfer of the legal parcel constituting Phase D to an NCRC Partnership.

2.5 Ground Lease Documents. The transfers described in this Article 2 will take place under the terms and conditions set forth in the "Regulatory Agreement" (in substantially the form attached hereto as Attachment No. 5) and the "Ground Lease" (in substantially the form attached hereto as Attachment No. 6), such that there will be three (3) or more Ground Leases and three (3) or more Regulatory Agreements. Each ground lessee under a Ground

Lease is defined as the "Tenant" thereunder. The Tenant for Phase B and Phase D shall be an NCRC Partnership, and the Tenant for Phase C shall be a CHW Partnership.

2.6 Close of Escrow and Delivery of Possession. Each respective Tenant's right to possession and occupancy of each Phase in accordance with the provisions of this Agreement, each "Ground Lease," and each "Regulatory Agreement" shall commence upon the close of escrow of the conveyance to the Tenant of a leasehold interest in the applicable Phase (each a "Closing"), which shall occur concurrently with the close of construction financing for such Phase, on or before the date specified therefor in the Schedule of Performance (Attachment No. 3), or such date as mutually agreed to in writing by the authorized representatives of City and the Tenant. The City and the Tenant agree to perform all acts necessary for the Closing to occur in accordance with the foregoing provisions. Early access and entry to the entire Site shall be granted by the City to NCRC as described in Sections 2.3, 2.11, and 2.13 of this Agreement.

2.7 Form of Ground Lease and Regulatory Agreement. The final terms and conditions of the "Ground Lease" and each "Regulatory Agreement" for each Phase may be altered, amended, and/or revised from those contained in said Attachment No. 6 and Attachment No. 5 as may be mutually agreed to by the City and the applicable Tenant or as required as a condition to the receipt of financing or equity contributions for a Phase, subject to any conditions imposed upon the development and occupation of the applicable Phase under applicable City ordinances, regulations, and/or development and land use approvals. Without limiting the foregoing, the annual rent under the Ground Lease for each of Phase B, Phase C and Phase D shall be One Dollar (\$1.00).

2.8 Condition of Title. Leasehold title to the real property to be developed in each Phase shall be conveyed by City to each Tenant subject only to (i) those exceptions to title for such real property as may be set out in a preliminary title report for the Phase property dated no more than thirty (30) days prior to the Closing which are acceptable to the applicable Tenant, (ii) the "Regulatory Agreement," and (iii) those exceptions otherwise consistent with this Agreement and which are acceptable to the applicable Tenant; provided, however, that no covenants, conditions, restrictions or equitable servitudes shall prohibit or limit the development permitted by the Scope of Development (Attachment No. 4). Such title shall be evidenced by a leasehold owner's policy of title insurance in form acceptable to Tenant and issued by Fidelity National Title Insurance Company or another title company acceptable to Tenant, showing leasehold title to the Phase property to be vested in the Tenant, subject only to those exceptions to title described in this section.

The Tenant's approval of the condition of title to a Phase property is a "Tenant Condition to Closing" as set forth in Section 2.10.2 of this Agreement.

2.9 Execution of Regulatory Agreement. Concurrently with the Closing of a Phase, the City and the Tenant shall execute and acknowledge the "Regulatory Agreement" placing certain covenants, conditions, and restrictions on the use and occupation of the Phase by Tenant, which instrument shall be recorded against the Tenant's interest in such Phase in the office of the County Recorder of San Diego County. Each Regulatory Agreement for a Phase shall, among other matters, limit permissible annual rent increases for each residential unit in that Phase to five percent (5%) for each 12-month lease year applicable to that unit, regardless of any greater increases permitted by any other funding source for that Phase, unless a Tenant can demonstrate that such limitation jeopardizes the financial feasibility of the Phase; provided that if a Tenant increases rents for any unit by less than 5% in any 12-month

lease year applicable to the unit, it may increase rents for that unit for the subsequent 12-month lease year by a maximum of 5%, which cap includes any permissible percentage increase for that unit which was not applied during the immediately preceding lease year. In any event, this Section does not permit a Tenant to increase rents in excess of the amount permitted by any other funding source for that Phase. Each Regulatory Agreement shall have a term of fifty-five (55) years from the close of permanent financing for the applicable Phase.

2.10 Conditions Precedent to Closing. Prior to and as conditions to the Closing for a Phase, the City and the Tenant (as applicable) shall, by the time established therefor in the "Schedule of Performance" (Attachment No. 3), complete each of the following "City Conditions to Closing" and "Tenant Conditions to Closing," described below, which together collectively constitute the "Conditions Precedent to the Closing":

2.10.1 City Conditions to Closing. The City's obligation to ground lease a Phase to the Tenant shall be expressly conditioned upon the satisfaction of, or the written waiver by the City of, each of the following with respect to such Phase ("City Conditions to Closing"):

- i. The Subsequent DDA applicable to such Phase has not been terminated and is in full force and effect;
- ii. The Tenant shall have complied with all the requirements of this Agreement applicable to such Tenant and such Phase;
- iii. The Tenant shall have submitted to the City, a Financing Plan (the "Financing Plan") for the applicable Phase which contains: (a) a development budget for the Activities and Improvements for such Phase; (b) an analysis of likely/potential sources and uses of funds for the period of construction, including an analysis of the subsidized financing which is necessary from the City and/or other public entities for such Phase; (c) a sources and uses analysis from the date of the issuance of the "Certificate of Completion" (attached hereto as Attachment No. 7 and incorporated herein by reference) for such Phase, including an analysis of the additional subsidized financing which is necessary from the City or other public entities; (d) a fifteen (15) year cash flow analysis of the Phase from the date of the issuance of the "Certificate of Completion" (Attachment No. 7); (e) an operating budget for the Phase, including without limitation an operating reserve fund and capital replacement reserve fund; (f) a projection of operating reserve and capital replacement reserve balances over a fifteen (15) year period; and (g) all underlying assumptions for each of the above. The Tenant shall also submit to the City for its approval any proposed revisions to the approved Financing Plan, which approval shall not be unreasonably withheld.
- iv. The Tenant shall have provided to the City satisfactory proof of insurance (certificates) conforming to Section 4.10 of this Agreement.
- v. The Tenant shall have submitted the Conceptual/Schematic Drawings to the City in accordance with Sections 4.2 and 4.3 of this Agreement.

- vi. NCRC shall have completed Phase A, as certified by the City.
- vii. Each Tenant shall have obtained all approvals by the City and any other applicable regulatory agency of any and all permits and approvals for the Improvements to be constructed in its Phase such that, once the fees required therefor have been paid, the City is prepared to issue such grading, excavation, and/or shoring permit(s) as may be required in order for the Tenant to begin construction of the Improvements for that Phase.

The City may, in its sole discretion at any time prior to termination of this Agreement, by written notice to the Tenant, waive any City Conditions to Closing.

2.10.2 Tenant Conditions to Closing. Each Tenant's obligation to enter into a Ground Lease for a Phase shall be expressly conditioned upon the satisfaction of each of the following with respect to such Phase, together with any other conditions specified in Article 2 ("Tenant Conditions to Closing"):

- i. The Subsequent DDA applicable to that Phase has not been terminated and is in full force and effect;
- ii. The City shall have complied with all requirements of this Agreement applicable to the City, including, but not limited to, approval of the Financing Plan applicable to that Phase;
- iii. The City shall have approved the Conceptual/Schematic Drawings for the Phase in accordance with Article 4;
- iv. The Tenant shall have approved the condition of the Phase property pursuant to Sections 2.8 (title), 2.11 (hazardous materials), 2.12 (zoning) and 2.13 (due diligence investigations) of this Agreement;
- v. The City shall not be in material default of this Agreement;

The Tenant may, at any time prior to the termination of this Agreement, by written notice to the City, waive any Tenant Conditions to Closing for a particular Phase.

2.11 Condition of the Site; Remediation. The City represents that, during the time City has owned the Site and, to the best of its knowledge prior to its acquisition of the Site, the Site has not been used to generate, manufacture, process, refine, treat, transfer, store or dispose of any flammable, explosive, radioactive materials, hazardous waste, toxic substances or related materials, including (but not limited to) substances defined as "hazardous substances," "Hazardous materials," or "toxic substances" (collectively referred to herein as "Hazardous Substances") in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, U.S.C. Section 1251, et seq., and those substances defined as "hazardous wastes" in Section 25117 of the California Health and Safety Code, and in regulations adopted and publications promulgated pursuant to any of the foregoing laws (such statutes collectively referred to herein as "Environmental Laws"), nor in violation of any Environmental Laws.

The City shall, to the greatest extent legally allowable, assign to the Developer all rights, claims, actions and/or causes of action relating to or in connection with the environmental or structural condition of the Site it may have against prior owners of the Site and tenants and/or anyone who has occupied the Site. The City agrees to cooperate with the Developer in pursuing such claims and/or actions to the extent legally allowable.

Within the time period set forth in the Schedule of Performance (Attachment No. 3), the Developer shall have the right, at its sole cost and expense, to conduct such environmental surveys and tests as it deems necessary to evaluate the environmental condition of the Site, including invasive testing. In the event the Developer's surveys and tests reveal the presence of Hazardous Materials or Hazardous Materials contamination required by any Environmental Laws to be remediated and/or removed from the Site, then as part of the work conducted under the Activity the Developer shall cause the required remediation and/or removal to be timely performed, with the cost thereof to be borne solely by the Developer as part of the works conducted under the Activity.

Each Tenant shall reasonably approve or disapprove of the environmental condition of its Phase property within the time set forth in the Schedule of Performance (Attachment No. 3); such approval of the environmental condition of the property being a "Tenant Condition to Closing" as set forth in Section 2.10.2 of this Agreement.

Without limiting its obligations under this Agreement, after the Closing for a Phase, the Tenant shall be solely responsible for responding to and complying with any administrative notice, order, request or demand, or to any third party claim or demand relating to potential or actual contamination of such Phase property arising from and after the Closing for that Phase. The Tenant's responsibility conferred under this paragraph includes (but is not limited to) responding to such orders on behalf of the City and defending against any assertion of the City's financial responsibility or individual duty to perform under such orders.

2.12 Zoning. As a Tenant Condition to Closing of a Phase, the Tenant shall determine that the zoning of such Phase shall be such as to permit development of the Improvements contemplated for such Phase in accordance with the provisions of this Agreement, including (but not limited to) the Scope of Development (Attachment No. 4), and the use, operation, and maintenance of the Improvements.

2.13 Due Diligence Investigations. In addition to the pre-Closing work described in Section 2.3 and the Hazardous Materials investigations done under Section 2.11, prior to the Closing for any Phase, representatives of the Developer shall have the right of access to the Site for the purpose of obtaining data and making surveys and tests necessary to determine if the Site is suitable for the Developer's intended use and that development of each Phase of the Site is economically feasible and can be completed substantially in accordance with the Financing Plan for such Phase. Such work is more specifically described in the Reimbursement Agreement, defined in Section 3.1, and the "Property Use Permit" dated May 6, 2011, granted by the City to NCRC and CHW, the terms each of which are incorporated herein by reference and which shall each survive the execution of this Agreement. NCRC shall promptly provide CHW with copies of all materials generated or received by NCRC in connection with such investigations, and will ensure that CHW and its lenders and investors shall have the right to rely upon such materials.

NCRC shall save, protect and hold CHW harmless against any claims resulting from all preliminary work, access or use of the Site undertaken pursuant to this Section 2.13. Any

activities undertaken by NCRC shall be undertaken only after securing any and all necessary permits from the appropriate governmental agencies.

Each Tenant shall reasonably approve or disapprove of the condition of its Phase within the time set forth in the Schedule of Performance (Attachment No. 3); such approval of the condition of the Phase being a "Tenant Condition to Closing" as set forth in Section 2.10.2 of this Agreement.

2.14 Occupants of the Site. Possession of each Phase shall be delivered to the Tenant and the leasehold interest therein shall be conveyed to the Tenant free and clear from possessory rights, claims or possession by third parties.

2.15 Reciprocal Easement and Use Agreements. As and when required by the Tenants, the Tenants shall enter into and record against the Tenant's interest in each Phase any reciprocal easement and/or use agreements (collectively, the "REA") as necessary or desirable for the use and enjoyment of each Phase of the Project, including rights of use of and access to and from the Common Area, the community garden and any other areas in the Project intended for the shared use by more than one Phase, and, as applicable, an allocation of maintenance obligations and costs for such shared areas. The City shall have the right to approve the REA as necessary to determine compliance with applicable City building, planning and fire codes.

3.0 FINANCIAL ASSISTANCE

3.1 Reimbursement Agreement. The City, NCRC and CHW have entered into a "Reimbursement Agreement" dated as of April 6, 2011, pursuant to which the City has agreed to provide funds to reimburse NCRC and CHW for the costs of performing those predevelopment activities described in the Reimbursement Agreement. Each Subsequent DDA shall include an allocation of the predevelopment funds provided under the Reimbursement Agreement to Phases B, C and D, based upon the relative number of bedrooms in each such Phase.

3.2 City Commitment. By entering into this Agreement, the City is committing to provide the following financial assistance for the Project on the terms described in this section, subject only to any legal prohibitions on providing such financing and/or on the City's ability to issue bonds to generate the proceeds of such financing. The parties shall negotiate in good faith to finalize documents evidencing such financing and permit the disbursement of funds by the times provided in the Schedule of Performance.

3.2.1 Committed Funds. As of the date of this Agreement, the City has received all necessary approvals required to commit to the Project approximately One Million Five Hundred Twenty-Seven Thousand, One Hundred Seventy Dollars (\$1,527,170.00), of HOME funds (the "Committed Funds"), and the City agrees to use the Committed Funds to provide financial assistance to the Project as described in this Article 3.

3.2.2 Future Funds. The Project Budget shows a shortfall of approximately Seventeen Million Three Hundred Seventy-Eight Thousand, Eight Hundred Forty-Six Dollars (\$17,378,846) of funds necessary to fully finance total Project development costs. The parties acknowledge that the Developer's ability to develop the Project is contingent on the receipt from City of financial assistance in excess of the Committed Funds in order to fund that shortfall. To that end, to the extent legally permissible and

without limiting the discretion of the City's governing body, the City agrees that it shall consult in good faith with the Developer prior to committing Future Funds to any other affordable residential project proposed in the City (regardless of whether any other proposed project is rental or ownership housing or to be owned by a nonprofit or for-profit entity) prior to making any commitments for the use of Future Funds for uses other than the Project. "Future Funds" are defined as funds received by or made available to the City during the Term which are eligible and legally permissible to use to provide financial assistance to the Project. The term "Future Funds" is intended to be interpreted as broadly as possible, and may include, but shall not be limited to, inclusionary housing fees, repayments of existing City financing (whether local, state, or federal funds) provided to other borrowers for the development of affordable housing, any Low and Moderate Income Funds that the State of California has permitted the City, as the "Successor Agency" under State law or otherwise, to retain, funds that the City has previously borrowed from the former Oceanside redevelopment agency and which the City is not legally obligated to repay, and any housing funds that have been remitted to the City from the former Oceanside redevelopment agency.

3.2.3 Conditions Precedent to Loans. Notwithstanding anything to the contrary in this Section 3.2, the City shall not be obligated to make any loan described in Section 3.3 unless and until the City determines that the Committed Funds, together with any other funds committed by other funding sources, are sufficient to fully fund the Phase A Loan and the Phase B Loan. The City agrees to reserve the Committed Funds for the Phase A Loan and the Phase B Loan until such time as the total aggregate amount of the Committed Funds and such other funds are sufficient to fully fund the Phase A Loan and the Phase B Loan.

3.3 Project Loans. Subject to the availability of funds under Section 3.2, the City agrees to make the following loans:

3.3.1 Phase A Loans (Infrastructure Improvements). No later than the date indicated in the Schedule of Performance, the City shall make a loan to each Tenant (each a "Phase A Loan"), the approximate aggregate principal amount of which shall not exceed Thirteen Million, Five Hundred Eighty-Nine Thousand, Two Hundred Seventy-Seven Dollars (\$13,689,277). Each Phase A Loan will be on the following terms:

- i. Each Phase A Loan will be used by a Tenant only to pay for all costs related to the installation of the Infrastructure Improvements on Phase B, Phase C and Phase D, as applicable.
- ii. The amount of each Phase A Loan shall be determined based on the relative number of bedrooms in Phase B, Phase C, and Phase D, or based upon such other method of allocation as is equitable depending on the specific Infrastructure Improvements to be constructed in each Phase.
- iii. Each Phase A Loan will be a non-recourse obligation of the applicable Tenant.
- iv. Each Phase A Loan will be unsecured and evidenced by a loan agreement in the form attached hereto as Attachment No. 11 (the "Phase A Loan Agreement") and a promissory note in the form attached

- hereto as Attachment No. 12 (the “Phase A Note”), each executed by the applicable Tenant. Each note shall not bear any interest, shall be payable out of residual receipts generated by the Phase, and shall be payable in full on the fifty-fifth (55th) anniversary of the completion of construction of the Improvements in the Phase, as evidenced by the issuance of a certificate of occupancy or similar approval for such Phase.
- v. Each Tenant will contract with NCRC, as a “general contractor,” for the performance of the Phase A work on the Phase to be ground leased by the City to such Tenant.
 - vi. Each Phase A Loan will include an amount to be used to create a capitalized reserve account to fund the costs for NCRC to perform erosion control and maintenance of Phases B, C and D from the completion of the Infrastructure Improvements on such Phase until such time as that Phase has been transferred by Ground Lease to the applicable Tenant. Following the Closing of a Phase, the Tenant of such Phase will assume all maintenance obligations related to that Phase. Any funds then remaining in the reserve account for such Phase will be used first to repay that Tenant’s Phase A Loan, and thereafter to fund that Tenant’s Phase B Loan, Phase C Loan, or Phase D Loan, as applicable.
 - vii. Upon the Closing of a Phase, that portion of the Phase A Loan applicable to such later Phase shall become a portion of the outstanding principal balance of the Phase B, C or D Loan, as applicable.
 - viii. So long as NCRC is performing its obligations as to Phase A in accordance with this Agreement and the requirements of the Phase A Loan, the City agrees to disburse the proceeds of each Phase A Loan into one funds control account established with a depository acceptable to the City and the applicable Tenant, or by such other mutually acceptable means as will permit NCRC, subject to the Tenant’s prior written approval, to draw on such funds for the direct payment of the costs of Phase A and other eligible costs, rather than accessing the proceeds of the Phase A Loan on a cost-reimbursement basis.

3.3.2 Phase B Loan. Concurrently with the Closing of Phase B, the City shall make a loan to the Phase B Tenant in the approximate principal amount not to exceed Four Million, Seven Hundred Fourteen Thousand, Four Hundred Ninety-Nine Dollars (\$4,714.499) (the “Phase B Loan”) to finance the predevelopment, construction and permanent financing costs of Phase B. The Phase B Loan will include that portion of funds provided under the Reimbursement Agreement and the outstanding principal balance of the Phase A Loan which are each attributable to Phase B. If NCRC or the Phase B Tenant receives a Federal Home Loan Bank Affordable Housing Program (“AHP”) loan for Phase B, and such AHP Loan is not required to construct Phase B in accordance with the Financing Plan, then the Phase B Loan shall be reduced by the amount of such AHP loan, but only to the extent that any such AHP funds are not

required to pay either cost overruns evidenced by change orders approved by the construction lender and the City, as applicable, or any deferred developer fee payable in connection with Phase B, as provided in the pro forma budget for Phase B approved by the City. The Phase B Loan shall be a non-recourse obligation of the Tenant secured by a deed of trust encumbering the Tenant's interest in Phase, to be recorded in the office of the County Recorder of San Diego County. The Phase B Loan shall have a term of 55 years from close of permanent financing of Phase B, shall be payable out of residual receipts generated by Phase B, and shall accrue simple interest at a rate not to exceed three percent (3%) per annum, commencing on the date of the close of permanent financing of Phase B.

The City's obligation to make the Phase B Loan is subject to the Developer's satisfaction of each of the following conditions with respect to Phase B:

- i. NCRC shall have completed Phase A relating thereto;
- ii. The Tenant shall have succeeded in obtaining commitments for financing of Phase B in accordance with the Financing Plan approved by the City as provided in Section 2.10.1(iii), as the same may have been amended/modified with approval by the City; provided, however, in order to facilitate Tenant's application for AHP funds for Phase B (and only to the extent necessary for such purpose), the City shall, at the Tenant's request, provide the Phase B Loan before the Tenant has obtained a commitment for AHP financing for Phase B; and
- iii. The City shall have approved the Working Drawings for Phase B, as provided in Article 4.

3.3.3 Phase C Loan. Concurrently with the Closing of Phase C, The City will make a loan to the Phase C Tenant in the approximate principal amount not to exceed Eight Million, Three Hundred Eighty-Eight Thousand, Six Hundred Twenty-One Dollars (\$8,388,621) (the "Phase C Loan") to finance the predevelopment, construction and permanent financing costs of Phase C. The Phase C Loan will include that portion of funds provided under the Reimbursement Agreement and the outstanding principal balance of the Phase A Loan which are each attributable to Phase C. If CHW or the Phase C Tenant receives a loan of AHP funds for Phase C, then the affordability levels specified in Section 2.9 for Phase C will be increased. The Phase C Loan shall be a non-recourse obligation of the Tenant secured by a deed of trust to be recorded against the Tenant's interest in Phase C in the office of the County Recorder of San Diego County. The Phase C Loan shall have a term of 55 years from the close of permanent financing of Phase C, shall be payable out of residual receipts generated by Phase C, and shall accrue simple interest at a rate not to exceed three percent (3%) per annum, commencing on the date of the close of permanent financing of Phase C.

The City's obligation to make the Phase C Loan is subject to the Developer's satisfaction of each of the conditions in Sections 3.3.2 i. through iii. with respect to Phase C.

3.3.4 Phase D Loan. Subject to the provisions of Section 3.3.5, concurrently with the Closing of Phase D, the City shall make a loan to the Phase D Tenant in the

approximate principal amount not to exceed Four Million, Two Hundred Seventy-Five Thousand, Seven Hundred Twenty-Six Dollars (\$4,275,726) (the "Phase D Loan") to finance the predevelopment, construction and permanent financing costs of Phase D. The Phase D Loan will include that portion of funds provided under the Reimbursement Agreement and the outstanding principal balance of the Phase A Loan which are each attributable to Phase D. If NCRC or the Phase D Tenant receives an AHP loan for Phase D, and such AHP Loan is not required to construct Phase D in accordance with the Financing Plan, then the Phase D Loan shall be reduced by the amount of such AHP loan, but only to the extent that any such AHP funds are not required to pay either cost overruns per change orders approved by the construction lender and by City, as applicable, or any deferred developer fee payable in connection with Phase D, per the pro forma budget approved by the City. The Phase D Loan shall be a non-recourse obligation of the Tenant secured by a deed of trust to be recorded against the Tenant's interest in Phase D in the office of the County Recorder of San Diego County. The Phase D Loan shall have a term of 55 years from close of permanent financing of Phase D, shall be payable out of residual receipts generated by Phase D, and shall accrue simple interest at a rate not to exceed three percent (3%) per annum, beginning on the date of the close of permanent financing of Phase D.

The City's obligation to make the Phase D Loan is subject to the Tenant's satisfaction of each of the conditions in Sections 3.3.2 i. through iii. with respect to Phase D.

3.3.5 Availability of City Financing for Phase D Loan. The financing to be provided by the City under Section 3.3, when combined with such other financing and equity sources as each Tenant is able to identify for its Phase, is intended to fund all of the predevelopment, construction and permanent costs for Phases A, B and C. In the event that the City cannot commit to provide funds which, together with other funds identified by the Phase D Tenant, are sufficient for the Phase D Loan, then the City agrees to reserve in a segregated account any amounts in excess of the aggregate of the Phase A, B, and C Loans to fund the Phase D Loan until such time as the City has identified sufficient funds for the balance of the Phase D Loan.

3.3.6 Form of Documents for Phase B, C and D Loans. The forms of loan agreement, promissory note and deed of trust evidencing the Phase B, C and D loans are attached hereto as Attachment No. 13 ("Loan Agreement"), Attachment No. 14 ("Note"), and Attachment No. 15 ("Deed of Trust").

3.4 Subordination. As is more specifically provided in Section 7.15 below, the City agrees to subordinate the documents evidencing its financing and the Tenants' obligations thereunder and the Regulatory Agreement to the extent required by any prospective construction and/or permanent lender for a Phase.

4.0 DEVELOPMENT OF THE SITE

4.1 Infrastructure Improvements.

4.1.1 Within the time indicated in the Schedule of Performance, NCRC will install, at its cost (subject to receipt of the Phase A Loan) for the benefit of each Tenant all onsite and offsite infrastructure improvements (collectively, the "Infrastructure Improvements") on each of Phase B, Phase C, and Phase D, which are required as a

condition to the development of each such Phase in accordance with this Agreement and the final parcel map. Each Tenant will enter into a construction contract with NCRC for the installation of the Infrastructure Improvements on such Tenant's Phase. The Infrastructure Improvements are described on Attachment No. 10 (attached hereto and incorporated herein by reference).

4.1.2 NCRC shall install the Infrastructure Improvements in accordance with plans and pursuant to budgets which have each been approved by CHW prior to the commencement of any work. No modifications may be made to the approved Infrastructure Improvement plans or budgets which either (a) materially increase the total cost of the Infrastructure Improvements, or (b) affect Phase C, without the prior written approval of CHW.

4.1.3 The City shall grant a license and right of entry onto the Site as necessary to enable NCRC to install the Infrastructure Improvements on the Site.

4.1.4 With respect to Phase C, NCRC and its engineer and consultants shall coordinate with CHW and CHW's civil engineer and consultant team regarding grading design of Phase C in order for NCRC to ensure that the Infrastructure Improvements for Phase C completed by NCRC in a "blue-topped" condition with a finished pad, backbone drainage and wet and dry utility stub outs consistent with the Site Plan and specifications for Phase C; offsite streets and sidewalks required as a condition of the development of Phase C; and assurances that wet and dry utilities are available and stubbed to the property line(s) of Phase C to allow the Tenant to immediately begin precise grading and construction of onsite utilities. Further, NCRC and the City shall work with CHW to coordinate grading and utility stub outs that reflect the site plan and curb cuts consistent with approved site plan for Phase C.

4.2 Scope of Development. Within the time set forth therefor in the Schedule of Performance (Attachment No. 3), each Tenant shall develop upon its Phase those Improvements described in the development concept set out in the Scope of Development (Attachment No. 4) and the Conceptual/Schematic Drawings (as defined in Section 4.3) , and the Working Drawings (as defined in Section 4.4) (the "Improvements") for such Phase. The term "Improvements" includes all improvements made to each Phase, other than and subsequent to completion of the Infrastructure Improvements, required in order to construct Phase B, Phase C, and Phase D, including but not limited to finish grading, excavation, building foundations, vertical improvements and landscaping. The Schedule of Performance (Attachment No. 3) applicable to each Phase is subject to revision from time-to-time as mutually agreed upon in writing between the Director of the City (or designee(s)) and the applicable Tenant. To the extent of any inconsistencies between the Working Drawings approved by the City for the construction of the Improvements and development of the Site and the Scope of Development (Attachment No. 4) and/or the Conceptual/Schematic Drawings), the Working Drawings shall supersede the Scope of Development (Attachment No. 4) and/or the Conceptual/Schematic Drawings and control as to the development of the Site and the Improvements.

4.3 Conceptual/Schematic Drawings. The Developer has previously submitted to the City a preliminary development concept for the Site (the "Conceptual/Schematic Drawings") setting out the Activity in conceptual form and depicting the overall plan for the Site and the Improvements to be developed thereon.

4.4 Working Drawings. Within the time set forth therefor in the Schedule of Performance (Attachment No. 3), each Tenant shall prepare and submit to the City for review, comment and approval of all construction drawings, grading, landscaping and lighting plans, and related documents for the development Improvements for the applicable Phase (the "Working Drawings") as are required to satisfy all applicable federal, state and local laws, rules, regulations and policies. During the preparation of all drawings and plans, staff of the City and the Tenant shall hold regular progress meetings to coordinate the preparation of, submittal to, and review of the Working Drawings.

4.5 Review of Plans and Submissions. All of the Working Drawings shall be submitted to the staff of the City by the times provided therefor in the Schedule of Performance (Attachment No. 3).

4.5.1 CEQA Requirements. The Developer shall comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.: "CEQA"), related to the development of the Site and the Infrastructure Improvements, including (but not limited to) preparation of a development environmental impact report ("EIR") for the Activity which analyzes potential significant environmental impacts that might result as a consequence of developing the Site.

4.5.2 Building Standards. The design of the Improvements shall incorporate elements necessary for each Phase to qualify for LEED Silver certification from the U.S. Green Building Council, or a similar certification.

4.5.3 City Review. City review of all working drawings, plans and submissions, including any changes therein, shall occur through its normal plan review process. In addition to its regulatory powers, the City shall have the right to disapprove in its reasonable discretion any of the plans and submissions if they (i) do not materially conform to the Conceptual/Schematic Drawings or any logical progression thereof, (ii) are incomplete, or (iii) do not conform to the purpose and intent of this Agreement.

4.6 Reservations. The City cannot legally pre-commit its discretion in acting upon required applications for development of the Site, including but not limited to any grading permits, use permits and necessary environmental review. The approval of this Agreement by the City shall not bind the City Council, any other commission, committee, board or decision-maker of the City or the City regarding any of the discretionary permits for the development of the Site. No action by the City with reference to this Agreement or any related documents shall be deemed to constitute issuance or waiver of any required City approval regarding the Site. The parties acknowledge and agree that this Agreement is not a statutory development agreement pursuant to Government Code Sections 65864, et seq. The parties further acknowledge and agree that any actions taken by the City in its regulatory capacity in processing applications for development of the Site shall not be the basis for any claim that the City has breached this Agreement.

4.7 Costs of Construction. Except as provided otherwise herein, each Tenant shall bear all of the costs of planning, designing, developing and constructing the Improvements on its Phase. Neither the City nor the City shall have any responsibility for the payment of any development impact, utility, plan check, and grading/building permit fees associated with the

development of the Improvements and levied by, on behalf of, the City or the payment of any fees and charges imposed by any other governmental body.

4.7.1 Project Budget. NCRC and CHW have each submitted to the City a Financing Plan for the construction of Improvements on the Phase(s) which they are developing, as set forth in the “Project Budget” for each Phase (which is attached hereto as Attachment No. 9 and incorporated herein by reference). The Project Budget summarizes the current estimates of the sources and uses of funds for the completion of each Phase of the Project. By its execution hereof, the City has given its approval to the “Project Budget” (Attachment No. 9). While the Project Budget (Attachment No. 9) has been prepared based on the best, good faith estimate of the Developer of the costs which are likely to be incurred for the construction of the Infrastructure Improvements and the Improvements, the parties recognize that events and circumstances not currently contemplated, some of which are outside of the control of the parties, could result in changes in the costs of developing one or more Phases of the Site, necessitating changes in the Project Budget. Changes in the scope of the Project could also be made during any public hearing or approval process which results in increased costs for the Project not contemplated in the Project Budget (Attachment No. 9). Changes in costs could be occasioned by conditions found in the field which were not anticipated as of the date of execution of this Agreement, including changes (and delays which result from changes) as a result of onsite inspections. Due to the impact of other, competing demands for staff time, inspections themselves might be delayed.

Because of the specialized nature of the funding for the Activity, unanticipated material changes could constitute a challenge to the Project completion and may cause cost to the Project unanticipated in the Project Budget (Attachment No. 9). Should the Developer become aware of any such material fact or circumstance which will result in a material increase in the proposed construction of the any Phase of the Project (a cost or costs will constitute a “material increase” if (i) alone or cumulatively, such costs result in increased expenses for a Phase in excess of \$100,000, but which expenses might be absorbed out of contingency funds; or (ii) alone or cumulatively, such costs result in an increase for a Phase in excess of \$250,000 which cannot be paid from sources of funds identified in the Project Budget (Attachment No. 9)), the Developer shall give written notice to the City, which notice shall identify the material change or changes, shall itemize the costs which the Developer anticipates will result therefrom and shall request that the City take one or more of the following actions:

- i. Transfer sums among line items within each Project Budget for a Phase (Attachment No. 9). At the request of any Tenant, and subject to the approval of the City, which will not be unreasonably withheld, funds reflected in one line item of a Project Budget for a Phase (Attachment No. 9) which are unexpended at the substantial completion of the work delineated therein may be transferred to the account and line item for contingencies, or, with the consent of the City, not to be unreasonably withheld, transferred directly to another account of another line item in the Project Budget for that Phase (Attachment No. 9). At the direction of Developer, funds unexpended at the completion of Phase A may be transferred to a Project Budget for any of Phases B, C or D, as more specifically provided in Section 4.7.2 below.

- ii. Request approval of modifications reasonably necessary or required to deal with such changed circumstances and material increases. Such modifications might include phasing or deferral of Project amenities until additional funding is available or secured, downsizing or eliminating Project design items or amenities, etc. The City Manager (or designee(s)) is hereby authorized to act on behalf of the City to approve any revisions to the Financing Plan and/or improvement plans for a Phase which do not materially increase the City's financial obligations hereunder. The City's consent to any such modifications shall not be unreasonably withheld.
- iii. Identify additional funding sources sufficient to pay such material increases. Such funding sources might, upon approval by the City, include an increase in the City loan for a Phase or City support for applications for additional and/or new funding from additional or new governmental or private funding programs established for low and moderate income housing. In the event the City provides additional funding for any such material increase in the costs for a Phase such funds shall be secured by a loan agreement and/or promissory note under terms and conditions reasonably established by the City, which terms and conditions may be different from those contained in the City's initial funding commitment for the construction of the Improvements.
- iv. In the event that, despite the best efforts of the Parties, an alternative resolution to such material increases and/or materially altered facts and circumstances is not mutually approved by the Parties or does not become available within a reasonable time prior to the start of construction, NCRC, CHW, or the applicable Tenant shall be reimbursed for reasonable and necessary out-of-pocket, third-party costs incurred by such entity that result in plans, studies or reports associated with development of the Project that become the property of the City, but without any representation as to the accuracy of such information or the City's right to rely thereon. Such plans, studies and reports may include, but are not limited to, architectural and engineering plans and drawings, soils engineering reports, and environmental studies need to entitle the Site and/or the Project. Neither NCRC, CHW, nor any Tenant shall be reimbursed for costs borne by it for financial consulting, attorneys' fees or its overhead costs. Prior to reimbursement, NCRC, CHW, or the applicable Tenant, shall submit to the City invoices, supported by receipts, for approval by the City, which shall not be unreasonably withheld.

4.7.2 Cost Savings – Phase A. In the event the actual costs of Phase A are less than the total aggregate amount of the Phase A Loans, then any excess shall be deposited into a reserve account to fund cost overruns for the installation of Infrastructure Improvements on Phases B, C and/or D, as necessary, in a manner to be agreed upon by the City and all Tenants. Any portion of the Phase A Loans which are not required to fund the costs of the Infrastructure Improvements shall be reserved by the City and applied towards the Phase B, Phase C and Phase D loans, in that order of priority.

4.7.3 Cost Savings – Phases B, C, or D. In the event the actual costs of developing Phase B, C, or D and constructing Improvements thereon and paying all costs relating thereto (including establishing reserve accounts) detailed in the approved Project Budget for such Phase are less than the total amount of financing obtained by the Tenant for such Phase, then (a) as to Phase B and Phase D, any excess shall be used to pay any deferred developer fee, and thereafter to repay the City financing for such Phase, and (b) as to Phase C, any excess shall be used to pay any deferred developer fee, thereafter to support increased affordability levels as determined by the Tenant, and thereafter to repay the City financing for such Phase.

The terms, conditions and covenants contained in this Section 4.7 shall survive the expiration of the Term of this Agreement.

4.8 City and Other Governmental Agency Permits. Before commencement of construction, grading or development of any buildings, structures or other works of improvement upon a Phase, the Tenant shall secure (or cause to be secured) any and all permits which may be required by the City or any other governmental agency affected by such construction, grading or development. It is understood that the Tenant's obligation is to timely submit to the City final Working Drawings with final corrections to obtain grading/building permits and that the City will, to the best of its ability, expedite issuance of grading/building permits for construction that meets the requirements of the City's Municipal Code, related ordinances and regulations, and any other applicable laws or regulations in accordance with Section 4.5 of this Agreement as well as certificates of occupancy for the Improvements.

4.9 Construction Bonds. After the Working Drawings, plans and specifications have been approved and City is in a position to issue the respective permits for construction of Improvements on a Phase, and before construction is commenced on each respective Phase, Tenant shall submit to City for its approval, which approval shall not be unreasonably denied or withheld, payment and/or performance bonds as customarily provided to construction lenders in a liability amount equal to the total (100%) projected cost of the Improvements to be constructed in the applicable Phase guaranteeing the completion of the work and payment of labor and materials related to such Phase. The City, as well as the Tenant, shall be named as co-obligees of such bonds, which may also be issued in favor of the construction lender for such Phase, as it may require. Such bond(s) may be provided by the general contractor for each Phase.

4.9.1 Construction. After receiving building permits for a Phase, the Tenant shall, within forty-five (45) calendar days, commence construction of the Improvements on such Phase and diligently pursue the work. Tenant shall complete the Improvements on such Phase, and the housing units and retail space (if applicable) within the Phase shall be made available for the initial lease-up, on or before the date(s) so stated in the Schedule of Performance (Attachment No. 3). If Tenant shall neglect, fail or refuse to commence its work as aforesaid or thereafter neglects, fails or refuses to diligently proceed with and complete its work, then City, in addition to other rights or remedies it may have and, after thirty (30) days' notice to Tenant, followed by Tenant's failure to cure such default within said thirty (30) day period or, if such default is not reasonably curable within thirty (30) days, if Tenant does not commence cure of the same within said thirty (30) day period and diligently pursue such cure to completion, may complete Tenant's work on such Phase at Tenant's expense. No default as to a particular Phase shall affect the validity of or the rights and obligations of the parties with respect to any other Phase or any document related to any other Phase.

4.9.2 Plan Variances. Tenant shall not authorize any material variance from the plans or specifications approved by City for a particular Phase without prior written approval by City.

4.9.3 Completion Documents. Following the completion date of the Improvements in a Phase, the Tenant shall deliver to the Neighborhood Services Director (or designee(s)) each of the following:

- i. A certificate in a form customarily supplied by architects, executed by the architect who prepared the working drawings for the Improvements in such Phase, which shall state that all work has been completed in accordance with the approved plans and specifications; and
- ii. A properly executed general contractor's certificate and/or affidavit stating that all laborers and materialmen have been paid in full, final waivers of liens or lien releases from any general contractor and all subcontractors who have performed work on or furnished materials with respect to such Phase.

4.9.4 As-Built Plans. Within sixty (60) days of the completion of the Improvements on a Phase, Tenant shall furnish and submit to the City a reproducible set of plans showing the as-built condition of all Improvements made to, in or upon such Phase and certified by the plan's preparer that the as-built conditions are depicted accurately.

The terms, conditions and covenants contained in this Section 4.9 shall survive the expiration of the Term of this Agreement.

4.10 Indemnity and Insurance Requirements.

4.10.1 Indemnity. Following the full execution of this Agreement, NCRC and CHW and their respective successors with respect to each Phase shall defend, indemnify, assume all responsibility for, and hold the City and its officers, and employees, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including reasonable attorneys' fees and costs), which may be caused by any of such Tenant's activities under this Agreement with respect to such Tenant's Phase, whether such activities or performance thereof be by the Tenant or anyone directly or indirectly employed or contracted with by the Tenant and whether such damage shall accrue or be discovered before or after termination of this Agreement. Neither NCRC nor CHW shall be responsible for the obligations of the other or successors of the other under this Section 4.10.1. The indemnity obligations under this Section 4.10.1 shall survive expiration or earlier termination of this Agreement.

4.10.2 Insurance.

- i. From and after the Closing of a Phase, and until completion of construction and development of said Phase, the Tenant thereof shall maintain comprehensive liability policy in the amount of **One Million Dollars (\$1,000,000.00)** per occurrence/**Two Million Dollars**

(\$2,000,000.00) aggregate, including contractual liability, as shall protect the Tenant, City and its officers, agents and employees from claims for such damages with respect to the Phase. The liability policy must be provided in a manner, and by an insurance company, approved by the City.

- ii. Tenant shall furnish (or cause to be furnished) a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate (and endorsement) shall name the City and its officers, agents, and employees as additional insured under the policy. Coverage provided hereunder by the Tenant shall be primary insurance and not contributing with any insurance maintained by the City, or its officers, agents and/or employees, and shall contain such provision in the policy(ies), certificate(s) and/or endorsement(s). The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City.
- iii. The Tenant shall also furnish (or cause to be furnished) to the City evidence satisfactory to the City Attorney (or designee(s)) that the Tenant, any contractor or subcontractor with whom it has contracted for the performance of work on the Phase or otherwise pursuant to this Agreement, carries workers' compensation insurance as required by law.

4.11 Access Rights. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the right of access to all portions of the Site, without charges or fees, at normal construction hours during the period of construction (except in events of an emergency) for the purposes of this Agreement including (but not limited to) the inspection of the work being performed in constructing and developing the Improvements, so long as they comply with all safety rules and the reasonable requirements of onsite construction personnel, and do not unreasonably interfere with construction activities. Such representatives shall be those who are so identified in writing by the City Manager (or designee(s)). With the exception of City building, grading, or engineering inspections, any such entries shall be made only after reasonable notice to Developer, and the City shall indemnify and hold the Developer harmless from any liens, claims or liabilities caused by the City's negligent acts or omissions pertaining to such entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry. After the issuance by the City of the Certificate of Completion for a Phase, as provided in Section 4.17 below, access to such Phase by the City for purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on that Phase shall be subject to reasonable restrictions and rights of tenants, and will be governed by easements, right-of-entry and other applicable instruments pertaining thereto, and applicable laws and regulations. The indemnity obligations under this Section 4.11 shall survive expiration or earlier termination of this Agreement.

4.12 Local, State and Federal Laws. Each Tenant shall carry out the construction of the Improvements on a Phase in conformity with all applicable laws; provided, however, that the Tenant and its contractors, successors, assigns, transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

4.13 Nondiscrimination During Construction. Each Tenant covenants and agrees, for itself, its successors, assigns and any successors in interest to a Phase, that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, familial status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law in connection with the construction of the Improvements on a Phase or carrying out the Activity on such Phase.

4.14 Taxes, Assessments and Impact Fees.

4.14.1 Payment. Following the Closing of a Phase, the Tenant thereof shall pay prior to delinquency all ad valorem real property taxes and assessments on that Phase, subject to the Tenant's right to contest in good faith any such taxes and the Tenant's right to file exemption applications under Revenue and Taxation Code §214.

4.14.2 Effect of PILOT Payments. The Developer has based the Financing Plan for each Phase on the assumption that each Phase or applicable portion thereof will be exempt from the imposition of real property taxes and assessments due to the application of the "welfare exemption". The parties acknowledge that the City's imposition of any "payments in lieu of taxes" on any portion of the Project will increase the gap between projected development costs and projected development funding sources for the Project.

4.14.3 Impact Fees. The City and the Developer shall work together to finance and/or defer the payment of impact fees on terms mutually acceptable to the parties.

4.15 Encumbrances and Liens. No Tenant shall place or allow to be placed on a Phase (or any part thereof) any mortgage, trust deed, encumbrance or lien other than as allowed by this Agreement. Each Tenant shall remove (or have removed) any levy or attachment made on a Phase (or any portion thereof) arising from or relating to a debt, liability or obligation of such Tenant, or assure the satisfaction thereof within a reasonable period of time.

4.16 Mortgage, Deed of Trust, Sale and Lease-Back Financing; Rights of Holders.

4.16.1 No Encumbrances Except Mortgages, Deeds of Trust, etc. Mortgages, deeds of trust, sales and lease-back are permitted before the completion of the construction of the Improvements on a Phase, but only in compliance with the provisions of the approved Financing Plan for such Phase. The City agrees that a Tenant's financing for a Phase may be secured by the Tenant's leasehold interest in the Phase and/or, at the City's discretion, the City's fee interest in the Phase, which the City agrees to consider if such fee security would result in more favorable financing terms.

4.16.2 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete any Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the "Ground Lease" and/or "Regulatory Agreement" for a Phase be construed so as to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote any Phase to any uses or to construct any improvements

thereon, other than those uses or improvements provided for or authorized by this Agreement.

4.16.3 Notice of Default to Mortgagee or Deed of Trust Holders and/or Tax Credit Investors: Right to Cure. With respect to any mortgage or deed of trust granted by any Tenant as provided herein, whenever the City shall deliver any notice or demand to the Tenant with respect to any breach or default by the Tenant in completion of construction of the Improvements, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement, and to any tax credit investor which has provided a written request for notice and communication information to City, a copy of such notice or demand. Each such holder and/or tax credit investor shall (insofar as the rights of the City are concerned) have the right, at its option but not the obligation, within ninety (90) days after receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Written notice of such intention to cure a Tenant's default shall be deemed to be commencement of cure. Nothing contained in this Agreement shall be deemed to permit or authorize such holder and/or tax credit investor to undertake or continue the construction or completion of the Improvements in a Phase (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Tenant's obligations to the City by written agreement satisfactory to the City. The holder and/or tax credit investor, in that event, must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder and/or tax credit investor relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder and/or tax credit investor properly completing such Improvements shall be entitled, upon compliance with the requirements of Section 4.17 hereof, to a Certificate of Completion for such Phase as specified in Section 4.17 hereof.

4.16.4 Failure of Holder to Complete Improvements. In any case, where ninety (90) days after receipt by a holder of notice of default by a Tenant in completion of the Improvements in a Phase, the holder of any mortgage or deed of trust creating a lien or encumbrance upon such Phase (or any portion thereof) and/or tax credit investor has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, or has failed to obtain after institution of foreclosure or trustee's sale proceedings title and/or possession as may be necessary to construct, the City may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust. If the ownership of a Phase or any part thereof has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

- i. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less any appropriate credits, including those resulting from collection and application of rents and other income received during foreclosure proceedings);
- ii. All expenses with respect to foreclosure;

- iii. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part hereof;
- iv. The costs of any improvements made by such holder; and
- v. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City; less
- vi. Any income derived by the holder from operations conducted on the Phase (the receipt of principal and interest payments in the ordinary course of business shall not constitute income for the purposes of this subsection (vi)).

4.16.5 Right of City to Cure Mortgage or Deed of Trust Default. In the event of a default or breach by a Tenant under any mortgage or deed of trust prior to the completion of the construction of the Improvements on a Phase, and the holder of any mortgage or deed of trust has not exercised its option to construct, the City may cure the default, subject to any conditions imposed by the holder of such mortgage or deed of trust. In such event, the City shall be entitled to reimbursement from the Tenant of all proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Phase to the extent of such costs and disbursements. Any such lien shall be subordinate to any other mortgages or deeds of trust secured by that Phase.

4.17 Certificate of Completion. After completion of all construction and development required to be undertaken by a Tenant upon a Phase in conformity with this Agreement and all applicable federal, state and local regulatory requirements, the City shall furnish the Tenant with a Certificate of Completion for such Phase within thirty (30) days of written request therefor by the Tenant. The Certificate of Completion shall be and shall so state that it is: (i) a conclusive determination of satisfactory completion of the construction of the Improvements upon the Phase and (ii) a conclusive determination of satisfactory completion of the Tenant's development obligations under this Agreement and any Subsequent DDA, with respect to such Phase, and (iii) a conclusive determination of Tenant's full compliance with the terms of this Agreement and any Subsequent DDA relating to construction of the Improvements on such Phase. The Certificate of Completion shall be in such a form as to permit it to be recorded in the Office of the County Recorder of San Diego County and shall be in substantially the form of the Certificate of Completion (Attachment No. 7), attached hereto and incorporated herein by reference.

After the date the Tenant is entitled to the issuance of the Certificate of Completion, and notwithstanding any other provisions of this Agreement to the contrary, any party then owning or thereafter purchasing, leasing, or otherwise acquiring any interest in that Phase shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants regarding the use and maintenance of the Phase set forth below in Section 5.1 and 5.2, and the covenants regarding nondiscrimination set forth in Sections 5.3 and 5.4.

If the City refuses or fails to furnish the Certificate of Completion after written request from the Tenant, the City shall, within thirty (30) days after such written request, provide the Tenant with a written statement of the reason the City refused or failed to furnish the Certificate of Completion. The statement shall also contain the City's opinion of the action(s) the Tenant must take to obtain the Certificate of Completion. If the City shall have failed to provide such written statement within said thirty (30) day period, the Tenant shall notify the City in writing that if such written statement is not received within ten (10) days that the Tenant shall be deemed entitled to the Certificate of Completion. If the reason for such refusal is confined to such factors as the non-completion of final "punch list" items or the unavailability of specific items or materials for landscaping, then the City will issue its Certificate of Completion upon the Tenant's posting with the City of a cash deposit or other security in an amount representing the fair value of the work not yet completed in the Phase.

The Certificate of Completion shall not constitute evidence of completion with or satisfaction of any obligation of Tenant to any holder of a mortgage or any insurer of a mortgage on or with respect to the Site. The Certificate of Completion is not a notice of completion as referred to in the California Civil Code Section 3093.

5.0 USE OF THE SITE

5.1 Limitations on Site Use. The Developer understands and agrees that the use of the Site and Improvements thereon is limited to only those uses specified in the City's Municipal Code, Zoning Ordinance, and as set forth in this Agreement.

5.2 Maintenance of the Site. The Developer agrees, for itself, its successors and assigns, to maintain the Site and, following the Closing of a Phase, each Tenant, for its respective Phase, agrees to maintain the Improvements and landscaping thereon in good condition and repair consistent with community standards and in compliance with the terms of all applicable provisions of the City Municipal Code and Zoning Ordinance.

5.3 Obligation to Refrain from Discrimination. The Developer covenants and agrees, for itself, its successors and assigns, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, familial status, handicap, national origin, ancestry or any other prohibited classification established by federal or state law in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any Phase thereof, nor shall the Developer or any Tenant or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

5.4 Nondiscrimination Covenant. The Developer and each Tenant, its successors and assigns, and any other person claiming under or through them, shall refrain from restricting the rental, sale or lease of the Site or of any Phase thereof on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, sexual orientation or any other protected classification established by federal or state law. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

- i. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no

discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the real property herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the real property herein conveyed. The foregoing covenants shall run with the land."

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

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

iii. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the contractor 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 real property."

5.5 Effect of Duration of Covenants. The covenants established in Article 5 of this Agreement shall, without regard to technical classification and designation, be binding on each Tenant and any successors in interest to each Phase for the benefit and in favor of the City, its successors and assigns, and shall, with respect to the construction of the Improvements on such Phase, remain in effect as to a Phase until the recording of the Certificate of Completion (Attachment No. 7) for such Phase as provided for in Section 4.17 of this Agreement. Such covenants upon each Tenant and/or each Phase as are to survive the issuance of the Certificate of Completion (Attachment No. 7) for such Phase, shall be contained in the Regulatory Agreement (Attachment No. 5) and any other such instruments executed and/or recorded pursuant to this Agreement with respect to such Phase, and shall remain in effect for the periods specified therein.

6.0 DEFAULTS AND REMEDIES

6.1 Defaults – General. Subject to the extensions of time set forth in Section 7.3 of this Agreement, the failure or delay by any party to perform any term or provision of this Agreement with respect to a Phase constitutes a "Default" under this Agreement, but only as to such party and such Phase, it being expressly understood that no such Default shall, itself, constitute a Default (i) by the defaulting party with respect to any other Phase, or (ii) by any

other party. 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 diligence.

The injured party shall give written notice of default to the party in Default, specifying the Default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in Default unless the Default has not been cured within thirty (30) days after giving such notice or such other time as specified in this Agreement, however, if the defaulting party has commenced a cure and a cure is not reasonably possible within thirty (30) days, the injured party shall not commence a proceeding so long as the defaulting party is reasonably pursuing a cure.

6.2 Right of First Refusal.

6.2.1 Grant of ROFR. The parties agree that each of NCRC and CHW are most qualified to assume the rights and obligations of the other party under this Agreement in the event the City has the right to terminate any portion of this Agreement under Section 6.6.3. Therefore, the City is willing to grant each of NCRC and CHW a right of first refusal (the "ROFR") on the terms described in this Section 6.2.

6.2.2 Applicability. The ROFR described in this Section 6.2 may be exercised by NCRC or CHW upon a Default by the other party during the term of this Agreement. The parties agree that the rights granted to the non-defaulting party under this Section 6.2 shall be incorporated into each Subsequent DDA and each Ground Lease, so that the rights described in this Section 6.2 shall be available to each Tenant upon an event of default by any other Tenant under such Tenant's Subsequent DDA or Ground Lease. Such ROFR may be subordinated to the rights of a tax credit investor for a Phase, should such investor so require.

6.2.2 Required Notices. The City agrees that, prior to exercising its right under Section 6.6.3 to terminate all or any portion of this Agreement following a Default by either NCRC or CHW, the City shall first notify the non-defaulting party in writing of its intent to terminate this Agreement or portion thereof. The non-defaulting party shall have ninety (90) days following receipt of such notice to notify the City in writing (the "ROFR Notice") if the non-defaulting party desires to assume the rights of the defaulting party under this Agreement, including the right to lease and develop any of Phases B, C or D which are the subject of the Default. If the non-defaulting party does not provide the ROFR Notice within the 90-day period, the City may thereafter exercise its rights under Section 6.6.3.

6.2.3. Assumption by Non-Defaulting Party. If the non-defaulting party timely provides the ROFR Notice, then the City agrees that the non-defaulting party shall thereafter be given the first right, for a reasonable time and on reasonable terms, to assume all of the right, title, and interest of the defaulting party under this Agreement with respect to the Phase(s) indicated in the ROFR Notice. The parties, including the defaulting party, agree to enter into any documents necessary to effect such succession without the need for the payment of any additional consideration by the non-defaulting party. If the assumption of such rights is not completed within sixty (60) days after the date of the ROFR Notice, then the City may thereafter exercise its rights under Section 6.6.3.

6.3 Legal Actions.

6.3.1 Institution of Legal Actions. In addition to any other rights or remedies, and subject to the restrictions in Section 6.1 of this Agreement, any party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement; except that this Agreement may not be terminated other than as provided in Section 6.6.3 and Section 6.6.4. Such legal actions must be instituted in the Superior Court of San Diego County, North County Branch, State of California.

6.3.2 Acceptance of Service of Process. In the event that any legal action is commenced by NCRC or CHW against the City, service of process on the City shall be made by personal service upon either the City Clerk, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against either NCRC or CHW, service shall be made by personal service upon the individual indicated in Section 1.5.3 or 1.5.4, or in such other manner as may be provided by law.

6.4 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.

6.5 Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.6 Remedies and Rights of Termination Prior to the Closing of a Phase.

6.6.1 Damages. If prior to the Closing for a Phase NCRC, CHW, or the City defaults with regard to any of the provisions of this Agreement with respect to such Phase, any non-defaulting party shall serve written notice of such Default upon the defaulting party, with copies to all other parties and as otherwise required by the provisions of this Agreement. If the Default is not cured by the defaulting party within the time period set forth above in Section 6.1, the defaulting party shall be liable to the other party for any damages caused by such Default, and the non-defaulting party may thereafter commence an action for damages against the defaulting party with respect to such Default.

6.6.2 Action for Specific Performance. If prior to the Closing for a Phase the City defaults with regard to any of the provisions of this Agreement with respect to such Phase, the Developer shall serve written notice of such Default upon the City. If the Default is not commenced to be cured by the defaulting party within the time period set forth in Section 6.1, the Developer at its option may thereafter commence an action for specific performance of the terms of this Agreement pertaining to such Default.

6.6.3 Termination by the City. In the event that the City is not in Default under this Agreement, and if prior to the Closing for a Phase:

- i. A Tenant (or any successor in interest) assigns this Agreement or any rights therein or in the applicable Phase in violation of Section 1.6 of this Agreement; or
- ii. A Tenant is in Default hereunder with respect to such Phase and any such Default is not commenced to be cured within the time period set forth above in Section 6.1, then,

subject to the ROFR provisions of Section 6.2 above, this Agreement shall, at the option of the City, exercisable by delivery of written notice to the Developer, be terminated by the City with respect to such Phase. Except as otherwise provided herein, in the event of a termination for any such cause, no party shall have any further rights or obligations hereunder with respect to such Phase.

6.6.4 Termination by the Developer. Prior to the Closing for a Phase with respect to which the City is in Default hereunder, if such Default by the City is not cured within the time period set forth above in Section 6.1, then at the option of the Developer, exercisable by delivery of written notice to the City, this Agreement may be terminated by the Developer with respect to such Phase.

6.7 Remedies for Default After Conveyance of a Phase. The City financing documents and the Subsequent DDA and Ground Lease for each Phase shall govern the parties' respective rights and obligations for such Phase following the Closing for such Phase.

7.0 GENERAL PROVISIONS

7.1 Notices, Demands and Communications Among the Parties. Written notices, demands and communications among the parties shall be sufficiently given if delivered by hand (and a receipt thereof is obtained or is refused to be given), by electronic mail if confirmed by mailing of the hard copy thereof within two (2) business days via first class mail, postage prepaid, use of overnight commercial carriers (with receipt thereof obtained), or dispatched by certified mail, postage prepaid, return receipt requested, to the principal offices of the applicable party as designated in Sections 1.5.1 through 1.5.3 of this Agreement. 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 7.1.

Any written notice, demand or communication shall be deemed received immediately if delivered by hand or by facsimile if sent during normal working hours of the receiving party; shall be deemed delivered on the day of delivery if by overnight commercial carrier; and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by certified mail.

7.2 Conflicts of Interest. No member, official or employee of the City shall have any material personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee of the City participate in any decision relating to this Agreement which affects his material personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Conflicts under this Section 7.2 shall be defined in terms consistent with the Political Reform Act as interpreted by the Fair Political Practices Commission.

7.3 Enforced Delay; Extensions of Times of Performance. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of Nature; acts of public enemy; epidemics; quarantine restrictions; freight embargos; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary financing, labor, material or tools; delays of a contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of any other public or governmental commission, board, agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City); or any other cause(s) beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Developer and the City.

7.4 Nonliability of Officials of the Parties. No member, official or employee of the City, CHW or NCRC shall be personally liable to any other party, or any successor in interest, in the event of any Default or breach by the City, CHW or NCRC for the payment of amounts or the performance of any obligations required under the terms of this Agreement.

No member, official or employee of the Developer shall be personally liable to the City, or any successor in interest, in the event of any Default or breach by the Developer, for any amount which may become due to the City or their respective successors, or in any obligations under the terms of this Agreement.

7.5 Relationship between the City and the Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall not have any rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

7.6 City's Authority. The City represents and warrants that: (i) it is a chartered California municipal corporation; (ii) by proper action of the Oceanside City Council, the City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; (iii) all documents delivered by the City to the Developer, now or at a later date, have been or will be duly authorized, executed, and delivered by the City; and (iv) to the best of the City's knowledge, there is no claim, suit, demand, litigation or administrative proceeding threatened or pending as of the Effective Date of this Agreement with respect to or in connection with this Agreement.

7.7 Developer's Authority. NCRC and CHW each represents and warrants for itself that: (i) it is a California non-profit public benefit corporation duly organized and existing under the laws of the State of California; (ii) by proper action of its board of directors, each such entity has been duly authorized to execute and deliver this Agreement; (iii) all documents delivered by each such entity to the City, now or at a later date, have been or will be duly authorized, executed, and delivered; and (iv) to the best of its knowledge, there is no claim,

suit, demand, litigation or administrative proceeding threatened or pending against it as of the Effective Date of this Agreement with respect to or in connection with this Agreement.

7.9 Successors and Assigns. The terms of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties; provided, however, that this Section 7.9 is subject to and does not waive the provisions of Section 1.6 of this Agreement.

7.10 Applicable Law; Interpretation. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and as though both of the parties participated equally in its drafting. Captions and organizations are for convenience only and shall not be used in construing meaning.

7.11 Inspection of Books and Records; Reports. The City (or its designee) has the right at all reasonable times to inspect the books and records of the Developer and/or a Tenant pertaining to the Site and/or a Phase thereof, as applicable, as pertinent to the purposes of this Agreement. The City's inspection of said books and records shall be at the principal place of business of such party or at the Site, as determined by the Developer. The Developer and/or a Tenant also has the right at all reasonable times (during normal business hours) to inspect the books and records of the City pertaining to the Site as pertinent to the purposes of this Agreement. Such inspection of said books and records of the City shall be at the offices of the City as designated in Section 1.5.1 of this Agreement.

7.12 Approvals. Approvals required of the parties shall be given or, as applicable, deemed given within the time set forth in the Schedule of Performance (Attachment No. 3) or, if no time is given, within a reasonable time. Any such approvals by any of the parties hereto shall not be unreasonably withheld, delayed or conditioned.

7.13 Real Estate Commissions. The City and Developer each represent to the other party that it has not engaged the services of any finder or broker with respect to the transaction contemplated hereby and that it is not liable for any real estate commissions, brokers' fees, or finder's fees which may accrue by means of a Tenant leasing a Phase from the City, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

7.14 Administration. This Agreement shall be administered on behalf of the City by the City Manager (or designee(s)) following approval of this Agreement by the City. The City Manager (or designee(s)) shall have the authority to issue interpretations, waive provisions, execute estoppels, execute any further instruments in furtherance of the purposes of this Agreement, and enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs of the City as specified herein or as authorized by the City Council, and such amendments may include extensions of time specified in the Schedule of Performance (Attachment No. 3). All other waivers or amendments shall require the written consent of the City.

7.15 Mutual Cooperation; Subordination. The parties acknowledge that it is their mutual best interest that approvals for the Improvements be processed in a timely and expeditious manner. Therefore, the parties agree to use good faith efforts to expedite all actions to be undertaken pursuant to this Agreement so that actions may be completed as soon as reasonably possible. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or

appropriate to carry out the purposes and intent of this Agreement. In addition, at the request of the "holder" (as described in Section 4.16 hereof), the City agrees to execute an agreement (or agreements) subordinating this Agreement, any Subsequent DDA, any Regulatory Agreement, and any documents evidencing or securing any City financing for the Project to each of the liens or security interests in the Site or any Phase created for the purposes set forth in Section 4.16.1. NCRC or CHW, as applicable, will make every attempt to negotiate the most favorable terms on behalf of the City in regards to such subordination, and any subordination agreement shall be subject to the City's reasonable prior approval.

7.16 No Third Party Beneficiaries. The parties agree that this Agreement is made solely for the benefit of the City and the Developer, and no third person or entity shall be deemed to have any rights or remedies hereunder, except that the holder of a mortgage or deed of trust permitted by this Agreement shall have the rights and obligations specified herein for such holder.

7.17 Memorandum of Agreement. The parties agree to execute, acknowledge and cause to be recorded against the Site in the official records of San Diego County, California, a "Memorandum of Agreement" substantially in the form of Attachment No. 8, which is attached hereto and incorporated herein by reference. Upon the full execution of a Subsequent DDA for a Phase, the parties shall cause the Memorandum of Agreement to be released, terminated and/or reconveyed as a lien on such Phase.

7.18 Prevailing Wages. The Developer shall comply with all applicable laws, ordinances, and regulations regarding the payment of prevailing wages for the activities to be performed by Developer under this Agreement. The Developer shall indemnify and hold the City and its officers, and employees, harmless from, all claims or liabilities resulting from the Developer's failure to comply with its obligations under this section.

7.19 Bankruptcy. Subject to any restrictions or limitations placed on the City by applicable laws governing bankruptcy, NCRC's or CHW's (i) application for, consent to or suffering of the appointment of a receiver, trustee or liquidator for all or for a substantial portion of its assets; (ii) making a general assignment for the benefit of creditors; (iii) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (iv) becoming unable to or failing to pay its debts as they mature; (v) being adjudged a bankrupt; (vi) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (vii) convening a meeting of its creditors or any class thereof for purposes of effecting a moratorium, extension or composition of its debts; or (viii) suffering or permitting to continue unstayed and in effect for thirty (30) consecutive days any attachment, levy, execution or seizure of all or a portion of NCRC's or CHW's assets or interest in this Agreement; then such event shall constitute an event of default under this Agreement.

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

7.21 Taxes. NCRC and CHW recognize and agree that this Agreement and/or execution and delivery of a Subsequent DDA or Ground Lease may create a possessory interest in a Phase subject to property taxation, and that they may be subject to the payment of taxes levied on such interest, and that they shall pay all such possessory interest taxes, as and

when due and prior to delinquency, subject to the right to claim a welfare exemption under California Revenue and Taxation Code Section 214(g).

8.0 ENTIRE AGREEMENT; WAIVERS

8.1 Execution of Agreement. This Agreement is executed in three (3) copies, each of which is deemed to be an original. This Agreement includes pages 1 through 37, Exhibit A, and Attachment 1 through Attachment 12, which constitutes the entire understanding and agreement of the parties.

8.2 Whole Agreement. This Agreement and the Reimbursement Agreement integrate all of the terms and conditions mentioned herein or incidental hereto and supersede all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or all part of the subject matter thereof.

8.3 Waivers. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing by the appropriate authorities of the City and the Developer.

8.4 Agreement Modification. This Agreement shall not be altered, amended or modified except in writing and mutually executed between the parties.

8.5 Section Headings. The Table of Contents and the section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

8.6 Gender/Singular/Plural. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of this Agreement itself.

8.7 Signatories. Each individual signing below represents and warrants that he/she has the authority to execute this Agreement on behalf of and bind the party he/she purports to represent.

8.8 Advice of Legal Counsel. The parties have had the opportunity to seek the advice of independent legal counsel prior to executing this Agreement. The parties acknowledge that no party, agent or attorney of any party has made a promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement to induce the other party to execute this Agreement. Each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not contained herein.

Remainder of Page Left Blank Intentionally
[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have signed this Agreement on the respective dates set forth below.

"City"

_____ a chartered California municipal corporation

By: _____

Its: _____

Dated: _____

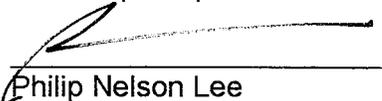
APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By:  _____ SDLA FOR
City Attorney

"Developer"

NCRC:

National Community Renaissance of California,
a California nonprofit public benefit corporation

By:  _____
Philip Nelson Lee

Its: General Counsel _____

Dated: August 6, 2012 _____

CHW:

Community HousingWorks,
a California nonprofit public benefit corporation

By: _____

Its: _____

Dated: _____

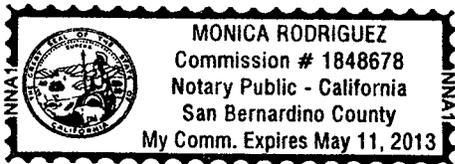
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On 8/7/12 before me, Monica Rodriguez, Notary Public

personally appeared Philip Nelson Lee



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 [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Mission Core Disposition & Development Agreement

Document Date: 8/7/12 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Philip Nelson Lee

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

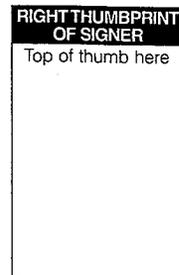


Signer Is Representing: _____

National Community Renaissance

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

IN WITNESS WHEREOF, the parties have signed this Agreement on the respective dates set forth below.

"City"

_____ a chartered California municipal corporation

By: _____

Its: _____

Dated: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Attorney

"Developer"

NCRC:

National Community Renaissance of California,
a California nonprofit public benefit corporation

By: _____

Its: _____

Dated: _____

CHW:

Community HousingWorks,
a California nonprofit public benefit corporation

By: 

Its: **Senior Vice President**

Dated: 8/6/12

ACKNOWLEDGMENT

State of California

County of San Diego

On 8/6/12 before me Kelly A. Swanson
Insert name and title of the officer

personally appeared Anne B. Wilson

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 following paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kelly A. Swanson

(Seal)

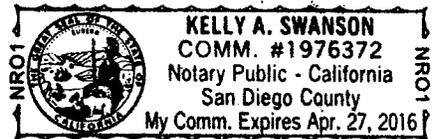


EXHIBIT A

Defined Terms

DEFINED TERM:	DEFINED IN SECTION:
Activity	1.1
Agreement	Introductory paragraph
Authority	1.6.2
CEQA	4.5.1
Certificate of Completion	2.10.1(iii), Attachment No. 7
CHW	Introductory paragraph
CHW Partnership	1.5.3
City	Introductory paragraph, 1.5.1
City Conditions to Closing	2.10.1
Closing	2.6
Committed funds	3.2.1.
Conceptual Schematic Drawings	4.3
Conditions Precedent to the Closing	2.10
Common Area	2.1.1(ii)
Default	6.1
Developer	Introductory paragraph
Effective Date	Introductory paragraph
EIR	4.5.1
Entitlements	2.3.3(i)
Financing Plan	2.10.1(iii)
Future Funds	3.2.2
Ground Lease	2.5, Attachment No. 6
Hazardous Substances	2.11
Improvements	4.2
Infrastructure Improvements	4.1.1, Attachment No. 10
Legal Description of the Site	Attachment No. 1
Memorandum of Agreement	7.17, Attachment No. 8
NCRC	Introductory paragraph

NCRC Partnership	1.5.2
Phase	2.1.1
Phase A	2.1.1(i)
Phase A Loan	3.3.1
Phase B	2.1.1(ii)
Phase B Loan	3.3.2
Phase C	2.1.1(iii)
Phase C Loan	3.3.3
Phase D	2.1.1(iv)
Phase D Loan	3.3.4
Project	1.1
Project Budget	4.7.1, Attachment No. 9
Property Use Permit	2.13
REA	2.15
Regulatory Agreement	2.5, 2.9, Attachment No. 5
Reimbursement Agreement	3.1
Reviewing Departments	4.5.3
ROFR	6.2.1
ROFR Notice	6.2.2
Scope of Development	1.1, Attachment No. 4
Schedule of Performance	2.10, Attachment No. 3
Site	1.4, Attachment No. 1
Site Map	1.4, Attachment No. 2
Subsequent DDA	1.6.1, 2.2
Tenant	2.3.1, 2.5
Tenant Condition to Closing	2.10.2
Term	1.2
Working Drawings	4.4

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MEMORANDUM

DATE: August 15, 2012
TO: Honorable Mayor and Councilmembers
FROM: Patricia Allison, City Manager's Office
SUBJECT: AVAILABILITY OF DOCUMENTS FOR REVIEW

The remaining attachments for this item are quite lengthy and are not included in the agenda packet, but are available for review in the City Manager's Office.

OCEANSIDE HOUSING COMMISSION REPORT

TO: OCEANSIDE CITY COUNCIL
FROM: HOUSING COMMISSION
RE: DDA FOR MISSION COVE
DATE: JULY 24, 2012

THE HOUSING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE A DEVELOPMENT AND DISPOSITION AGREEMENT WITH NATIONAL COMMUNITY RENAISSANCE AND COMMUNITY HOUSINGWORKS FOR MISSION COVE MIXED USE AFFORDABLE HOUSING PROJECT.

CAMP	YES
COOPER	YES
MIKULAY	YES
MOORE	ABSENT
PARKER	YES
SORENSEN	YES
WILLIAMS	YES

ALTERNATES

JAMES	YES
-------	-----