DISPOSITION AND DEVELOPMENT AGREEMENT

(Colony Park Phase II)

By and Between the

ANAHEIM REDEVELOPMENT AGENCY

and

BROOKFIELD OLIVE STREET LLC
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DISPOSITION AND DEVELOPMENT AGREEMENT

(Colony Park Phase II)

This DISPOSITION AND DEVELOPMENT AGREEMENT (Colony Park Phase II) (this “Agreement”), dated for purposes of identification only as of June 1, 2008 (the “Date of Agreement”), is entered by and between the

ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic, (the “Agency”)

A
N
D

BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company (the “Developer”).

RECITALS

The following recitals are a substantive part of this Agreement; all capitalized terms set forth in the recitals shall have the meanings ascribed to such terms in Section 100 of this Agreement.

A. The Parties desire to redevelop the Site as the Project. As of the Date of Agreement, Agency Owns the Site.

B. In this Agreement, the Parties desire to set forth the terms and conditions relating to (i) the sale of the Site to Developer, (ii) the construction of the Improvements, and (iii) the sale of the Housing Units.

C. Agency's sale of the Site and Developer’s construction of the Developer Improvements and sale of the Housing Units pursuant to the terms of this Agreement are in the vital and best interest of Agency, the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the Redevelopment Project has been undertaken.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS CONTAINED HEREIN, AGENCY AND DEVELOPER AGREE AS FOLLOWS:
100. DEFINITIONS. All capitalized terms set forth in this Agreement shall have the meanings ascribed as follows:

“Actual Gross Sales Revenues on Housing Units” means the aggregate, actual base sales prices for the Housing Units upon each Initial Sale, which prices shall include lot/view premiums but shall exclude buyer upgrades (the cost of which shall not exceed the costs set forth in the Schedule of Costs for Buyer Upgrades), title insurance, escrow and other similar costs of closing.

“Actual Construction Costs” means the aggregate, actual construction costs calculated pursuant to the terms set forth in the Actual Construction Costs Addendum.

“Actual Construction Costs Addendum” means the definition of Actual Construction Costs which is attached hereto as Attachment No. 12 and incorporated herein by this reference.

“Additional Purchase Price” means the sum of:

(i) twenty-five percent (25%) of the difference between (a) Actual Gross Sales Revenues on the Housing Units and (b) the First Gross Sales Revenue Threshold, and

(ii) fifty percent (50%) of the difference between (x) Actual Gross Sales Revenues on the Housing Units and (y) the Second Gross Sales Revenue Threshold.

“Additional Purchase Price Payment Date” means that date occurring ninety (90) days after the closing of the last Initial Sale.

“Affordable Housing Cost” shall have the meaning ascribed to such term in each of Anaheim’s Homebuyer Downpayment Assistance Programs in existence as of the Effective Date or as subsequently amended from time to time.

“Affordable Housing Restriction Period” means that period commencing upon the recordation of the Affordable Housing Restrictive Covenant and terminating upon the forty-sixth (46th) anniversary of such date.

“Affordable Housing Restrictions” means those restrictions imposed upon (i) Developer and the Site with respect to the Initial Sales, and (ii) the Affordable Housing Units during the Affordable Housing Restriction Period.

“Affordable Housing Restrictive Covenant” means generally, the covenant restricting the use and resale of each Affordable Housing Unit which will be recorded against each Affordable Housing Unit upon the respective Initial Sale in accordance with Section 504.2 (E) of this Agreement and means specifically, the restrictive covenant or covenants
for the applicable Anaheim’s Homebuyer Downpayment Assistance Program(s).

“Affordable Housing Units” means, generally, those Housing Units which shall be bound by the Affordable Housing Restrictions. Specifically, the Affordable Housing Units shall consist of any Housing Unit for which an Initial Sale:

(i) is made to a Low or Moderate Income Household,

(ii) at an Affordable Housing Cost,

(iii) to a household receiving assistance under any of Anaheim’s Homebuyer Downpayment Assistance Programs.

“Agency” means the Anaheim Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing separate and distinct from the City under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities. The Executive Director of Agency, or her designee, (hereinafter defined as the “Executive Director”) shall represent Agency in all matters pertaining to this Agreement. Whenever a reference is made therein to an action or approval to be undertaken by Agency, the Executive Director is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

“Agency Improvements” means the improvements to be constructed by Agency and all approvals and permits required for completion of the Agency Improvements, all as more particularly described in the Scope of Development. The “Agency Improvements” shall generally consist of Kroeger and Melrose on-site streets, perimeter sound walls, and the installation of parkway trees and any other improvements within the streets right-of-way. The Agency Improvements, when constructed by Developer, shall be the subject of the Agency Reimbursement Agreement.

“Agency Reimbursement Agreement” means that certain Agency Reimbursement Agreement dated as of even date herewith by and between the Parties pursuant to which Agency may elect to have Developer construct some or all of the Agency Improvements, subject to Agency’s reimbursement of Developer.

“Agency’s Conditions Precedent to Closing” is defined in Section 304.8 (A) of this Agreement.

“Agency’s Election to Remediate” is defined in Section 303.3 (C) of this Agreement.

“Agency’s Environmental Consultant” is defined in Section 303.4 of this Agreement.

“Agency’s Environmental Reports” means the following:

(a) that certain Subsurface Investigation Report completed by Pacific Edge
“Agency’s Prospective Purchaser’s List” means a list compiled by the Agency setting forth (i) persons who have been displaced by redevelopment activities of the Agency in the implementation of the Redevelopment Plan, (ii) persons who reside in the City, (iii) persons who are employed in the City, and/or (iv) other persons.

“Agency’s Remedial Work Expenditure Cap” means One Hundred Thousand Dollars ($100,000).

“Agreement” means this Disposition and Development Agreement between Agency and Developer.

“Anaheim” means collectively, the Agency, the Anaheim Housing Authority and the City.

“Anaheim’s Homebuyer Downpayment Assistance Programs” means each of Anaheim’s downpayment assistance programs which include, as of the Date of Agreement, Anaheim’s Equity Participation Assistance Loan (“EPAL”), Second Mortgage Assistance Program (“SMAP”), Building Equity and Growth in Neighborhoods (“BEGIN”), CalHome Mortgage Assistance Program (“CalHome”), American Dream Downpayment Initiative (“ADDI”) and HOME Investment Partnership (“HOME”) loan programs.

“Base Purchase Price” means Five Million Four Hundred Ninety-Five Thousand Eight Hundred Nineteen Dollars ($5,495,819); the Base Purchase Price generally consists of the Developer Deposit and:

(i) Five Hundred Four Thousand Eight Hundred Nineteen Dollars ($504,896) for Lot 1 of Tract No. 17291;

(ii) Five Hundred Forty Thousand Nine Hundred Sixty Dollars ($540,960) for Lot 2 of Tract No. 17291;

(iii) Five Hundred Forty Thousand Nine Hundred Sixty Dollars ($540,960) for Lot 3 of Tract No. 17291;

(iv) Five Hundred Four Thousand Eight Hundred Nineteen Dollars ($504,896) for Lot 4 of Tract No. 17291;

(v) One Hundred Eighty Thousand Three Hundred Twenty Dollars ($180,320) for Lot 6 of Tract No. 17291;

(vi) One Hundred Eighty Thousand Three Hundred Twenty Dollars ($180,320) for Lot 7 of Tract No. 17291;
(vii) One Hundred Forty-Four Thousand Two Hundred Fifty-Six Dollars ($144,256) for Lot 8 of Tract No. 17291;

(vii) One Hundred Forty-Four Thousand Two Hundred Fifty-Six Dollars ($144,256) for Lot 9 of Tract No. 17291;

(vii) One Hundred Forty-Four Thousand Two Hundred Fifty-Six Dollars ($144,256) for Lot 10 of Tract No. 17291;

(vii) One Hundred Forty-Four Thousand Two Hundred Fifty-Six Dollars ($144,256) for Lot 11 of Tract No. 17291;

(xi) One Hundred Eighty Thousand Three Hundred Twenty Dollars ($180,320) for Lot 12 of Tract No. 17291; and

(xii) One Hundred Eighty Thousand Three Hundred Twenty Dollars ($180,320) for Lot 13 of Tract No. 17291.

“Basic Concept Drawings” means the plans and drawings to be submitted by Developer and approved by Agency, as set forth in Section 402.1 of this Agreement.

“Building Permit Drawings” means the plans and drawings required by the City for the issuance of building permits for the construction of the Developer Improvements.

“Certificate of Occupancy” means the final certificate of occupancy issued by the City for the construction of the Developer Improvements.

“City” means the City of Anaheim, a California municipal corporation and charter city.

“Closings” is defined in Section 304.10 of this Agreement.

“Closing Dates” means those dates set forth in the Projected Closing Schedule.

“Community Redevelopment Law” is codified as California Health and Safety Code Section 33000 et seq.

“Condition of Title” is defined in Section 304.5 of this Agreement.

“Conditions Precedent to Closing” means the Agency’s Conditions Precedent to Closing and Developer’s Conditions Precedent to Closing.

“Conditions Precedent to Closing Initial Sales” means the conditions precedent set forth in Section 504.1 of this Agreement.

“Conveyances” is defined in Section 301 of this Agreement.
“Date of Agreement” is defined in the initial paragraph of this Agreement.

“Declaration of Covenants, Conditions, and Restrictions” means that certain Declaration of Covenants, Conditions, and Restrictions to be recorded against the Housing Parcels developed with Housing Units in accordance with Section 504.1 (A) of this Agreement providing for, among other things, the maintenance of the Housing Units, substantially in the form attached hereto as Attachment No. 10 and incorporated herein by this reference. In lieu of recording the Declaration of Covenants, Conditions, and Restrictions, Developer may, with the consent of Agency (which consent shall not be unreasonably withheld, conditioned or delayed), record some other form of a declaration of covenants, conditions and restriction, provided such alternative declaration contains, at a minimum, covenants, conditions and restrictions substantially similar to those set forth in the Declaration of Covenants, Conditions and Restrictions.

“Default” means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided therein following notice and opportunity to cure, as set forth in Section 701 of this Agreement.

“Design Development Drawings” means those plans and drawings to be submitted to Agency for its approval, pursuant to the Design Review Process.

“Design Review Process” means that process for Agency’s review of the design of the Project set forth in Section 402 of this Agreement.

“Developer” means Brookfield Olive Street LLC, a Delaware limited liability company, and any permitted assignees of Developer.

“Developer Deposit” means Two Million One Hundred Five Thousand Eight Hundred Twenty Dollars ($2,105,820); the Developer Deposit shall be nonrefundable but applicable toward payment of the Base Purchase Price as more fully set forth in Section 301.2 of this Agreement.

“Developer Improvements” means the improvements to be constructed by Developer upon the Site and all approvals and permits required for completion of the Developer Improvements, all as more particularly described in the Scope of Development. The “Developer Improvements” shall generally consist of the Housing Units, common area improvements, on-site utilities, front and side yard landscaping and landscaping in alleys next to garage doors.

“Developer’s Conditions Precedent to Closing” is defined in Section 304.8 (B) of this Agreement.

“Developer’s Due Diligence” means the due diligence conducted by Developer during Developer’s Due Diligence Period as more fully defined in Section 303.2 of this Agreement.
“Developer’s Due Diligence Period” means (i) that thirty (30) day period commencing upon the Effective Date.

“Developer’s Environmental Consultant” is defined in Section 303.2 (B) of this Agreement.

“Developer’s Environmental Reports” means the following:

(a) that certain __________________________ by __________________
dated as of ____________.

“Developer’s Notice to Proceed” means the Notice given by Developer to Agency, in accordance with Section 303.3 (C) of this Agreement, that Developer intends to proceed with the Closing after conducting Developer’s Due Diligence.

“Developer’s Notice to Terminate” means the Notice given by Developer to Agency, in accordance with Section 303.3 (C) of this Agreement, that Developer intends to terminate Escrow and this Agreement after conducting Developer’s Due Diligence.

“Developer’s Remedial Work Estimate” is defined in Section 303.4 of this Agreement.

“Developer’s Remediation Proposal” is defined in Section 303.4 of this Agreement.

“Developer’s Sales Period” means that period commencing upon Agency’s approval of the Marketing Plan and terminating upon the last Initial Sale.

“Developer’s Soils and Engineering Consultant” is defined in Section 303.2 (A) of this Agreement.

“Developer’s Soils and Engineering Reports” is defined in Section 303.2 (A) of this Agreement.

“Developer’s Supplemental Environmental Reports” is defined in Section 303.2 (B) of this Agreement.

“Effective Date” means the date upon which this Agreement shall have been signed by Agency.

“Entitlements” means each application and discretionary action of the City, its Planning Commission, and Agency for the Project, the Construction and this Agreement, including, as applicable, compliance with all requirements of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA), a Conditional Use Permit, Parcel Map, Tract Map, Subdivision Map, and any and all conditions of approval related thereto, and any amendments, supplements, and modifications thereto, for the development of the Site.

“Escrow” is defined in Section 304 of this Agreement.

“Escrow Agent” means the escrow agent of the Escrow Company for the Conveyance.

“Escrow Company” means First American Title Insurance Company acting out of its Santa Ana, California office.

“Escrow Costs ” is defined in Section 304.4 of this Agreement.

“Evidence of Financing” is defined in Section 408.1 of this Agreement.

“Executive Director” means the Executive Director of Agency, or her designee.

“First Gross Sales Revenue Threshold” means the sum of (i) Actual Construction Costs on the Housing Units, and (ii) Five Million Forty-Eight Thousand Eight Hundred Dollars ($5,048,800).

“Governmental Requirements” means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees, of the United States, the State of California, the County of Orange, the City and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, Developer or the Site.

“Grant Deed” means a grant deed by which Agency will convey the Site substantially in the form attached hereto as Attachment No. 6 and incorporated herein by this reference.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste”, ”acutely hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8
“Homeowners’ Association” means an association formed by Developer which includes each owner of a Housing Unit to provide for, among other things, maintenance of the Project following the Initial Sales.

“Housing Units” means the ninety-four (94) housing units more fully described in the Scope of Development; the Housing Units consist of the Affordable Housing Units and the Market Rate Housing Units.

“Housing Parcel” means each parcel upon which a Housing Unit exists, as ultimately depicted on the subdivision map for the Project.

“Improvements” means collectively, the Agency Improvements and the Developer Improvements, all as more particularly described in the Scope of Development.

“Initial Buyer” means persons acquiring Housing Units pursuant to an Initial Sale.

“Initial Sales” means each initial sale of a Housing Unit by Developer.

“Institutional Lender” means any of the following institutions having assets or deposits in the aggregate of not less than One Hundred Million Dollars ($100,000,000): a California chartered bank; a bank created and operated under and pursuant to the laws of the United States of America; an “incorporated admitted insurer” (as that term is used in Section 1100.1 of the California Insurance Code); a “foreign (other state) bank” (as that term is defined in Section 1700(1) of the California Financial Code); a federal savings and loan association (Cal. Fin. Code Section 8600); a commercial finance lender (within the meaning of Sections 2600 et seq. of the California Financial Code); a “foreign (other nation) bank” provided it is licensed to maintain an office in California, is licensed or
otherwise authorized by another state to maintain an agency or branch office in that state, or maintains a federal agency or federal branch in any state (Section 1716 of the California Financial Code); a bank holding company or a subsidiary of a bank holding company which is not a bank (Section 3707 of the California Financial Code); a trust company, savings and loan association, insurance company, investment banker; college or university; pension or retirement fund or system, either governmental or private, or any pension or retirement fund or system of which any of the foregoing shall be trustee, provided the same be organized under the laws of the United States or of any state thereof; and a Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended, provided such trust is listed on either the American Stock Exchange or the New York Stock Exchange.

“Legal Descriptions” means those certain legal descriptions of the Lots which comprise the Site which are attached hereto as Attachment No. 2 and incorporated herein by this reference.

“Lots” means the lots set forth in the Tract Map.

“Lower Income Household” means a household earning not more than eighty (80%) of Orange County median income, as determined by the United States Department of Housing and Urban Development and as set forth by regulation of the California Department of Housing and Community Development, pursuant to California Health & Safety Code Section 50079.5.

“Map” means that map depicting the Site which is attached hereto as Attachment No. 1 and incorporated herein by this reference.

“Marketing Plan” means the marketing plan produced by Developer for the Initial Sales of the Housing Units dated as of April 2007 and approved by Agency prior to the Date of Agreement.

“Market Rate Housing Units” means generally, the Housing Units which will not be bound by the Affordable Housing Restrictive Covenants and specifically all Housing Units which are not Affordable Housing Units.

“Memorandum of Agreement” means the document to be recorded against the Site which incorporates certain conditions, covenants and restrictions set forth in this Agreement, substantially in the form attached hereto as Attachment No. 3 and incorporated herein by this reference.

“Minimum Agency Assistance” means, generally, the minimum aggregate financial assistance which Agency shall make available to Initial Buyers of Affordable Housing Units on the Site in accordance with Section 504.2 of this Agreement; specifically, “Minimum Agency Assistance” means Six Hundred Thirty Thousand Dollars ($630,000).

“No Further Action Letter” is defined in Section 303.4 of this Agreement.
“Notice” shall mean a notice in the form prescribed by Section 901 of this Agreement.

“Outside Closing Dates” means those dates set forth in the Projected Closing Schedule.

“Outside Construction Commencement Date” means that date which is sixty (60) days after each Closing Date.

“Parties” means Agency and Developer.

“Preliminary Title Report” is defined in Section 304.5 of this Agreement.

“Project” means generally the construction of the Improvements and the Initial Sales of the Housing Units.

“Projected Closing Schedule” means that certain schedule of projected Closings for the Conveyances which is attached hereto as Attachment No. 4 and incorporated herein by this reference. The Projected Closing Schedule may be amended by the mutual written agreement of the Parties as follows:

(i) the Lot(s) which is/are projected to be Closed upon on a particular Closing Date may be modified; and

(ii) any projected Closing Date may be extended for up to ninety (90) days, in which event each of the succeeding Closing Dates may also be extended by such period of time;

provided, however, in no event shall any Closing Date occur later than February 1, 2010.

“Purchase Price” means the Base Purchase Price and the Additional Purchase Price, collectively.

“RAP” is defined in Section 303.4 of this Agreement.

“Redevelopment Plan” means the Redevelopment Plan for the Anaheim’s Merged Redevelopment Project, (applicable to the Site originally under the name “The Commercial/Industrial Redevelopment Project”) and adopted by Ordinance No. 5415 of the City Council of the City, as amended and as may be amended from time to time, which is incorporated herein by reference.

“Redevelopment Plan Termination Date” means December 21, 2029, the date on which the Redevelopment Plan terminates with respect to the Site.

“Redevelopment Project” means Anaheim’s Merged Redevelopment Project, adopted by the City pursuant to the Redevelopment Plan, as the same may be amended from time to time.
“Release of Construction Covenants” means the document which evidences Developer's satisfactory completion of the construction of the Developer Improvements, as set forth in Section 409 of this Agreement, substantially in the form which is attached hereto as Attachment No. 9 and incorporated herein by this reference.

“Release of Memorandum of Agreement” means that document removing the Memorandum of Agreement from recorded title which will be recorded against each Housing Unit upon the Initial Sale of such unit in accordance with Sections 504.2 (F) and 504.3 (B) of this Agreement, substantially in the form attached hereto as Attachment No 11 A and 11 B, as applicable, and incorporated herein by this reference.

“Remedial Work” is defined in Section 303.4 of this Agreement.

“Right of Entry and License Agreement (Due Diligence and Pre-Closing Site Preparation)” means the agreement providing Developer the right to enter upon the Site prior to the Closing for the purpose of (i) obtaining data, making surveys and conducting tests, including the investigation of the environmental and physical condition of the Site, (ii) conducting grading, and (iii) installing streets and utilities, substantially in the form attached hereto as Attachment No. 5 and incorporated herein by this reference.

“Schedule of Costs for Buyer Upgrades” means the schedule of costs for various upgrades to the Housing Units dated as of April 2007 and approved by Agency prior to the Date of Agreement; Developer may, from time to time, amend the Schedule of Costs for Buyer upgrades with the consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

“Schedule of Performance” means that certain Schedule of Performance which is attached hereto as Attachment No. 7 and incorporated herein by this reference, setting forth the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the Executive Director, and the Executive Director is authorized to make such revisions as she deems reasonably necessary.

“Scope of Development” means that certain Scope of Development which is attached hereto as Attachment No. 8 and incorporated herein by this reference and describes (i) the preparation of the Site for development, and (ii) the scope, amount and quality of construction of the Improvements to be constructed by Agency or Developer, as the case may be, pursuant to the terms and conditions of this Agreement.

“Second Gross Sales Revenue Threshold” means the sum of (i) Actual Construction Costs on the Housing Units, and (ii) Five Million Five Hundred Forty-Six Thousand Six Hundred Dollars ($5,546,600).

“Site” means that certain parcel of real property (i) comprising approximately three and ninety four-hundredths (3.94) acres, (ii) consisting Lots A-C, 1-4 and 6-13, inclusive of
all, of the Tract Map, and (iii) consisting of a portion of the property bearing the common address of 610 South Olive Street, Anaheim, California. The Site is depicted on the Map and described in the Legal Description.

“Title Company” means First American Title Insurance Company.

“Title Policy” is defined in Section 304.6 of this Agreement.

“Tract Map” means Tract Map No. 17291.

“Transfer” is defined in Section 801 of this Agreement.

200. ASSEMBLY OF THE SITE.

201. Site. As of the Date of Agreement, Agency owns the Site.

202. Relocation. Agency shall be responsible for complying and/or causing compliance with all applicable federal, state and local laws and regulations concerning the displacement and/or relocation of all eligible persons and/or businesses from the Site, if any, including without limitation, compliance with the California Relocation Assistance Law, California Government Code Section 7260, et seq. All costs associated with such compliance, including without limitation, the cost of utilizing a relocation consultant and the costs of providing relocation benefits to all eligible persons and business, shall be borne by Agency.

300. DISPOSITION OF THE SITE.

301. Purchase and Sale. Subject to all of the terms and conditions set forth in this Agreement, Agency agrees to sell to Developer and Developer agrees to purchase from Agency all of Agency’s right, title and interest in and to the Site, together with all rights, privileges, tenements, hereditaments, rights-of-way, easements and appurtenances thereto, if any, (the “Conveyance” or, alternatively to account for phased Closings, the “Conveyances”) for the Purchase Price. Agency has determined that, based on the conditions imposed on Developer with respect to the construction of the Developer Improvements and the sale of the Housing Units, the reuse value of the Site equals the Purchase Price; accordingly, the consideration for the Conveyance shall be Developer’s payment of the Purchase Price, plus Developer’s agreement to perform the construction of the Developer Improvements, sell the Housing Units and be bound by the covenants and restrictions set forth herein.

301.1. Phased Closing. The Parties acknowledge and agree that the Closing for the Conveyance shall occur in multiple phases. As of the Date of Agreement, the Parties anticipate that the Closings shall occur as set forth in the Projected Closing Schedule. However, the Parties acknowledge and agree that the Projected Closing
Schedule is subject to change as set forth in this Agreement and that each Lot may be conveyed as a separate Conveyance or combined with the Conveyances of multiple Lots.

301.2 Payment of Purchase Price. Developer shall pay the Purchase Price as follows:

(i) Within fifteen (15) days of the Effective Date, Developer shall deliver the Developer Deposit directly to Agency.

(ii) On each of the Closings, Developer shall pay the applicable portion of the Base Purchase Price through Escrow.

(iii) Developer shall pay the Additional Purchase Price directly to Agency on or before the Additional Purchase Price Payment Date.

The Developer Deposit shall be non-refundable unless Agency suffers a Default under this Agreement and Developer elects to cancel Escrow and terminate this Agreement, in which event Agency shall refund the Developer Deposit to Developer.

LIQUIDATED DAMAGES

IN THE EVENT THAT ANY OF THE CLOSINGS FAIL TO OCCUR FOR ANY REASON OTHER THAN AGENCY’S DEFAULT COUPLED WITH DEVELOPER’S ELECTION TO CANCEL ESCROW AND TERMINATE THIS AGREEMENT PURSUANT TO SECTION 304.9, THE FULL AMOUNT OF THE DEVELOPER DEPOSIT, TOGETHER WITH ANY INTEREST WHICH MAY HAVE ACCRUED THEREON, SHALL BE RETAINED BY AGENCY AS LIQUIDATED DAMAGES AS AGENCY’S SOLE AND EXCLUSIVE REMEDY. IN SUCH EVENT, THE PARTIES ACKNOWLEDGE AND AGREE THAT AGENCY WOULD SUSTAIN DAMAGES, THE CALCULATION OF WHICH WOULD BE UNCERTAIN. THE CALCULATION OF SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE DELAY OR FRUSTRATION OF AGENCY’S RECEIPT OF TAX REVENUES, THE DELAY OR FRUSTRATION OF AGENCY’S ABILITY TO IMPLEMENT THE REDEVELOPMENT PLAN AND AGENCY’S LOST OPPORTUNITY TO ENGAGE IN OTHER TRANSACTIONS. ALTHOUGH IT IS IMPRACTICABLE AND EXTREMELY
DIFFICULT TO ESTIMATE OR FIX THE AMOUNT OF SUCH DAMAGES TO AGENCY, THE PARTIES ARE OF THE OPINION THAT, BASED UPON ALL OF THE INFORMATION AVAILABLE TO THEM AS OF THE DATE OF THIS AGREEMENT, SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEVELOPER DEPOSIT (WITH ANY INTEREST ACCRUED THEREON), AND SUCH AMOUNT SHALL BE RETAINED BY AGENCY UPON THE TERMINATION OF THIS AGREEMENT UNDER SECTION 704 OF THIS AGREEMENT AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY, AS AGENCY’S SOLE AND EXCLUSIVE REMEDY.

THE PARTIES EACH SPECIFICALLY ACKNOWLEDGE AND ACCEPT THIS LIQUIDATED DAMAGES PROVISION BY SETTING FORTH THEIR RESPECTIVE INITIALS BELOW:

________________________  ________________________
Developer                      Agency

302. Representations and Warranties.

302.1 Agency’s Representations. Agency represents and warrants to Developer as follows:

(A) Authority. Agency is a public body, corporate and politic, existing pursuant to the Community Redevelopment Law, which has been authorized to transact business pursuant to action of the City. The execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(B) No Conflict. To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

(C) No Agency Bankruptcy. Agency is not the subject of a bankruptcy proceeding.

(D) Leases and Other Interests. To the best of Agency's knowledge, there are no tenants or other persons who have a lawful interest in the Site. To the best of Agency's knowledge, no person, firm,
partnership or corporation has the right to possess the Site or any portion of it.

(E) **Title.** As of the Date of Agreement, Agency owns the Site.

(F) **Litigation.** To the best of Agency's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(G) **Governmental Compliance.** To the best of Agency's knowledge, Agency has not received any notice from any governmental agency or authority alleging that the Site is currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation. If any such notice or notices are received by Agency following the Effective Date of this Agreement, Agency shall, within ten (10) days of receipt of such notice, notify Developer.

Until the Closing, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to Developer.

302.2. **Developer's Representations.** Developer represents and warrants to Agency as follows:

(A) **Authority.** Developer is a duly organized limited liability company formed within and in good standing under the laws of the State of Delaware. Upon request by Agency, Developer shall deliver to Agency true and complete copies of the original documents evidencing the organization of Developer, as amended to the Date of this Agreement. Developer has full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer.

(B) **No Conflict.** To the best of Developer's knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(C) **No Developer Bankruptcy.** Developer is not the subject of a bankruptcy proceeding.
Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section not to be true, immediately give written notice of such fact or condition to Agency.

303. Condition of the Site.

303.1 Disclosure. As of the Date of Agreement, Agency has delivered to Developer copies of Agency’s Environmental Reports and Owner’s Environmental Reports. Other than as may be set forth in the Agency’s Environmental Reports and Developer’s Environmental Reports, Agency hereby represents and warrants to Developer that Agency has not received any written notice or communication from any government agency having jurisdiction over the Site, notifying Agency or any third party of, and Agency has no actual knowledge of, the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof.

As of the Date of Agreement, Developer has delivered to Agency copies of Developer’s Environmental Reports. Other than as may be set forth in the Developer’s Environmental Reports and Agency’s Environmental Reports, Developer hereby represents and warrants to Agency that Developer has not received any written notice or communication from any government agency having jurisdiction over the Site, notifying Developer or any third party of, and Developer has no actual knowledge of, the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof.

303.2 Developer’s Investigation of the Site. During Developer’s Due Diligence Period, representatives of Developer shall have the right to access the Site during regular business hours and upon reasonable Notice to Agency for the purpose of obtaining data and conducting surveys and tests necessary to reasonably assess the suitability of the Site for the Project. Any surveys and tests conducted on the Site by Developer’s representatives shall be done at the sole expense of Developer and only after (i) Developer has secured any necessary permits from the appropriate governmental agencies and (ii) Developer has delivered to Agency a copy of the Right of Entry and License Agreement (Due Diligence and Pre-Closing Site Preparation) fully executed and acknowledged by Developer and satisfied the conditions precedent to Developer’s entry onto the Site set forth therein.

(A) Soils and Engineering Assessment. Developer shall have the right, at its sole cost and expense, to engage its own consultants ("Developer’s Soils and Engineering Consultants") to conduct a physical assessment and make such investigations as Developer deems necessary, including having prepared any “Soils Reports” and/or “Engineering Reports” of the Site, and Agency shall promptly be provided a copy of all reports and test results provided by Developer’s consultants ("Developer’s Soils and Engineering Consultants").
(B) Environmental Assessment. In addition to conducting a physical assessment of the Site, Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant ("Developer’s Environmental Consultant") to conduct an environmental assessment and make such investigations as Developer deems necessary, including any “Phase 1” and/or “Phase 2” investigations of the Site, and Agency shall promptly be provided a copy of all reports and test results provided by Developer’s Environmental Consultant ("Developer’s Supplemental Environmental Reports").

303.3 Developer Approval or Disapproval of Condition of Site.

(A) Physical Condition of Site. Developer shall approve or disapprove of the physical condition of the Site within Developer’s Due Diligence Period. Developer’s approval of the physical condition of the Site shall be both an Agency’s and a Developer’s Condition Precedent to the Closing. If Developer, based upon Developer’s Soils and Engineering Reports, disapproves of the physical condition of the Site, then Developer may, in Developer’s sole discretion, terminate the Escrow and this Agreement by written Notice to Agency.

(B) Environmental Condition of Site. In addition, Developer shall approve or disapprove of the environmental condition of the Site within Developer’s Due Diligence Period. Developer’s approval of the environmental condition of the Site shall be both an Agency’s and a Developer’s Condition Precedent to the Closing. If Developer disapproves of the environmental condition of the Site, then Developer may terminate the Escrow and this Agreement by written Notice to Agency.

(C) Notice to Proceed or Terminate. Prior to the termination of Developer’s Due Diligence Period, Developer shall deliver to Agency and Escrow Agent either (i) Notice of Developer’s intention to proceed with the acquisition of the Site and the construction of the Improvements ("Developer’s Notice to Proceed"), or (ii) Notice of Developer’s intention to terminate Escrow and this Agreement ("Developer’s Notice to Terminate")

In the event that Developer delivers Developer’s Notice to Terminate and such termination is based upon the physical condition of the Site, Escrow and this Agreement shall terminate.
In the event that Developer delivers Developer’s Notice to Terminate and such termination is based upon the environmental condition of the Site, Escrow and this Agreement shall terminate unless such termination is ineffective in accordance with Section 303.4 of this Agreement.

303.4 Elections Re: Remedial Work.  Upon receipt of Developer’s Notice to Terminate based upon the environmental condition of the Site, Agency may, at Agency’s option, agree to remediate the Site in accordance with the recommendations of Developer’s Environmental Consultant, Developer’s Environmental Reports, Developer’s Supplemental Environmental Reports and all Governmental Requirements (“Agency’s Election to Remediate”), provided, Agency hereby agrees to make Agency’s Election to Remediate in the event that Agency reasonably estimates that the cost to conduct the Remedial Work does not exceed the Agency’s Remedial Work Expenditure Cap. Agency shall give Notice to Developer and Escrow Agent of such election and Developer’s Notice to Terminate shall be ineffective; provided, however, that Developer has approved of the scope of the Remedial Work and the RAP prior to the commencement of such work.

If Agency makes Agency’s Election to Remediate, then within a reasonable period after giving Notice to Developer that it intends to proceed with remediation of the Site, Agency shall deliver to Developer for Developer’s approval a proposed remedial action plan (“RAP”) prepared by Agency’s environmental consultant (“Agency’s Environmental Consultant”), which RAP shall be approved by the public agency asserting jurisdiction over the remedial work to be performed pursuant to the RAP (the “Remedial Work”). The Remedial Work shall assure the suitability of the Site for the development, occupancy and operation of the Project and shall be performed in accordance with applicable Governmental Requirements and Environmental Laws, and shall be conducted in accordance with the requirements of Health and Safety Code Section 33459, et seq., in a manner which is intended to qualify for the immunity which is provided by Health and Safety Code Section 33459.3.

Upon making Agency’s Election to Remediate and receiving Developer’s approval of the RAP, Agency shall proceed continuously and diligently with the Remedial Work. Agency’s compliance with the provisions of this Section, and the issuance of a letter, certificate or other official writing (“No Further Action Letter”) by all governmental agencies which have asserted jurisdiction over the remediation of the Site, which provides that no further investigation, monitoring, remediation, response or removal is necessary considering the development, occupancy and operation of the Project, shall each be a Developer's Condition Precedent to the Closing and the Outside Closing Date shall be extended until such conditions are satisfied. Upon completion of the Remedial Work, Agency shall deliver to Developer a certificate executed by the Agency’s Environmental Consultant that the Remedial Work has been completed in accordance with all
applicable laws.

Notwithstanding the foregoing, if Developer, based upon Developer’s Environmental Reports, Developer’s Supplemental Environmental Reports, Agency’s Environmental Reports, Owner’s Environmental Reports and the RAP, reasonably estimates that the Remedial Work cannot be completed within ten (10) weeks, then Developer may terminate the Escrow and this Agreement by written Notice to Agency.

As an alternative to Agency performing the Remedial Work pursuant to this Section, Developer may propose (“Developer’s Remediation Proposal”) that Developer perform, or have performed, the Remedial Work by written Notice to Agency accompanied by an estimate of the cost of performing the Remedial Work (“Developer’s Remedial Work Estimate”). In the event that Developer’s Remedial Work Estimate is less than Agency’s Remedial Work Expenditure Cap, Agency shall elect to either (i) accept Developer’s Remediation Proposal (in which event [x] Developer shall perform the Remedial Work in accordance with this Section at Developer’s sole cost and expense and [y] the Developer’s Remedial Work Estimate shall be deducted from the Base Purchase Price) or (ii) reject Developer’s Remediation Proposal (in which event Agency shall perform the Remedial Work in accordance with this Section). In the event that Developer’s Remedial Work Estimate is greater than Agency’s Remedial Work Expenditure Cap, Agency may elect to terminate the Escrow and this Agreement, provided such termination shall be ineffective if Developer then elects to perform the Remedial Work in accordance with this Section at Developer’s sole cost and expense (in which event the Agency’s Remedial Work Expenditure Cap shall be deducted from the Base Purchase Price).

303.5 No Further Warranties As To Site; Release of Agency. Except as otherwise provided herein and upon remediation of the Site pursuant to Section 303.4 (if applicable), the physical and environmental condition, possession or title of the Site is and shall be delivered from Agency to Developer in an "as-is" condition, with no warranty expressed or implied by Agency, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder. To the extent authorized by contract or law, Agency shall assign to Developer all warranties and guaranties with respect to the environmental condition of the Site, if any, that Agency has received from prior owners of the Site.

Except to the extent that Remedial Work is conducted pursuant to Section 303.4, Developer hereby waives, releases and discharges forever Agency, and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with Agency's or Developer's use, maintenance,
ownership or operation of the Site, any Hazardous Materials on the Site, or the existence of Hazardous Materials Contamination in any state on the Site, however they came to be placed there, except those arising out of the negligence or misconduct of Agency or its employees, officers, agents or representatives.

Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

As such relates to this Section, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

303.6 Precautions After Closing. Upon the Closing, Developer shall take all feasible and commercially reasonable precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

303.7 Required Disclosures After Closing. After the Closing, Developer shall notify Agency, and provide to Agency a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Developer shall report to Agency, reasonably promptly after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site. In the event of a release of any Hazardous Materials into the environment, Developer shall, reasonably promptly after the release, furnish to Agency a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Developer shall furnish to Agency a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports.

303.8 Developer Indemnity. Upon the Closing, Developer agrees to indemnify, defend and hold Agency and its officers, employees, agents, representatives and
volunteers harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site which occurs or arises after the Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site which occurs or arises after the Closing, except those arising out of the negligence or misconduct of Agency or its employees, officers, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. At the request of Developer, Agency shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that Agency shall not be obligated to incur any expense in connection with such cooperation or assistance.

304. Escrow. Within ten (10) days after the Effective Date, the Parties shall open escrow (the “Escrow”) for the Conveyances with Escrow Company.

304.1 Escrow Instructions. This Agreement constitutes the joint escrow instructions of Developer and Agency for the Conveyances, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. Any amendment of these escrow instructions shall be in writing and signed by both Developer and Agency. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment. All communications from the Escrow Agent to Developer or Agency shall be directed to the addresses and in the manner established in Section 901 of this Agreement for notices, demands and communications between Developer and Agency. Insurance policies for fire or casualty are not to be transferred, and Agency will cancel its own policies after the Closing.

304.2 General Provisions Applicable to Escrow Agent. The following general provisions shall be applicable to the Escrow Agent.

(A) All disbursements shall be made by check of the Escrow Agent. All funds received in the Escrow shall be deposited in a separate interest-earning escrow account with any bank doing business in the State of California and approved by Developer.
The Parties to the Escrow jointly and severally agree to pay all costs, damages, judgments and expenses, including reasonable attorneys’ fees, suffered or incurred by the Escrow Agent in connection with, or arising out of the Escrow, including, but without limiting the generality of the foregoing, a suit in interpleader brought by the Escrow Agent. In the event that the Escrow Agent files a suit in interpleader, the Escrow Agent shall be fully released and discharged from all obligations imposed upon the Escrow Agent in the Escrow.

All prorations and/or adjustments called for in the Escrow shall be made on the basis of a thirty (30) day month unless the Escrow Agent is otherwise instructed in writing.

304.3 Authority of Escrow Agent. The Escrow Agent is authorized to, and shall:

(A) pay and charge Developer and Agency for any Escrow Costs payable under Section 304.4 of this Agreement and pay and, if applicable, charge Developer for the cost of drawing the deed, recording fees, notary fees and any state, county or local documentary transfer fees;

(B) pay and charge Agency any amount necessary to place title in the condition necessary to satisfy Section 304.5 of this Agreement;

(C) pay and charge Agency for the premium of the Title Policy as set forth in Section 304.6 of this Agreement and, if applicable, pay and charge Developer for any upgrade of the Title Policy or Additional Endorsements to the Title Policy which are requested by Developer pursuant to Section 304.6 of this Agreement;

(D) disburse funds and record (as applicable) and deliver to the Parties (in accordance with the instructions set forth in Section 304.11) the Grant Deed and the Memorandum of Agreement when both Developer’s Conditions Precedent to Closing and the Agency’s Conditions Precedent to the Closing are satisfied or waived in writing by the Party for whom the condition was established;

(E) insert appropriate amounts and the date of the Closing in documents deposited by the Parties in the Escrow;

(F) do such other actions as necessary to fulfill the Escrow Agent’s obligations under this Agreement, including, if applicable, obtaining the Title Policy and recording any instrument delivered through Escrow if necessary and proper in the issuance of the Title
Policy;

(G) within the discretion of the Escrow Agent, direct Developer and Agency to execute and deliver any instrument, affidavit or statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act or regulation promulgated thereunder. Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor, a Certificate of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and/or a California Franchise Tax Board Form 590 or similar form to assure Developer that there exist no withholding requirements imposed by application of law as may be required by the Escrow Agent, on forms supplied by the Escrow Agent;

(H) prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms, including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms and/or withholding are provided for or required by law; and

(I) prepare and deliver to Developer and Agency for their review and approval prior to the Closing a settlement statement.

304.4 Costs of Escrow. Developer and Agency shall each pay one half (½) of the customary and usual Escrow fees, charges and costs which arise from the Escrow (the “Escrow Costs”).

304.5 Review of Title. Within fifteen (15) days of the Effective Date, Agency shall cause Title Company or another title company mutually acceptable to the Parties to deliver to Developer a standard preliminary title report with respect to the Site, together with legible copies of the documents underlying the exceptions (the “Exceptions”) set forth in the preliminary title report (collectively, the “Preliminary Title Report”).

Developer shall have twenty-five (25) days from Developer’s receipt of the Preliminary Title Report to give Notice to Agency and the Escrow Agent of Developer’s approval or disapproval of the Preliminary Title Report, including without limitation any Exceptions. If Developer notifies Agency of Developer’s disapproval of any items, Agency shall have the right, but not the obligation, to remove any disapproved items after receiving Notice of Developer’s disapproval or provide assurances reasonably satisfactory to Developer that such items will be removed or remedied on or before the Closing. Agency shall exercise such right by Notice to Developer within ten (10) days of receipt of Notice from Developer of Developer’s disapproval. If Agency cannot or does not elect to remove any disapproved items, Developer shall have ten (10) days after the expiration of
Agency’s ten (10) day election period to either (i) give Agency Notice that Developer intends to proceed with the Conveyances subject to the disapproved items or (ii) give Owner Notice that Developer does not elect to accept the Conveyances and elects to terminate the Escrow and this Agreement, whereupon any sums deposited by Developer into Escrow and all interest earned thereon shall be returned to Developer. The Exceptions to title approved by Developer as provided herein shall hereinafter be referred to as the “Permitted Exceptions” and/or the “Condition of Title.” Developer shall have the right to approve or disapprove in the manner provided in this Section any Exception reported by the Title Company or otherwise discovered after Developer has approved the Condition of Title (which are not created by Developer).

304.6 Title Insurance. Concurrently with the recordation of the Grant Deed conveying title to the Site to Developer, the Title Company shall issue and deliver to Developer, at Agency’s cost, an CLTA owner’s policy of title insurance, together with the Additional Endorsements (the “Title Policy”), insuring that fee simple title to the Site is vested in Developer in the Condition of Title. The Title Company shall provide Agency with a copy of the Title Policy. The Title Policy shall be in the amount of the Base Purchase Price; provided, however, that the Title Company shall, if requested by Developer, provide any endorsements reasonably requested by Developer (collectively, the “Additional Endorsements”). The cost of the Additional Endorsements shall be borne by Developer. Agency shall, at no cost or expense to Agency, cooperate with and assist Developer in obtaining any Additional Endorsements, including required indemnities that are customary and reasonable, or special coverage reasonably requested by Developer.

304.7 Submittals into Escrow. The Parties shall submit documents and funds into Escrow as set forth in this Section.

(A) Submittals by Developer. At least two (2) days prior to the Closing, Developer shall submit into Escrow the following:

(i) Two (2) originals of a certificate of acceptance of the Grant Deed, duly executed by Developer and acknowledged.

(ii) Two (2) originals of the Memorandum of Agreement, duly executed by Developer and acknowledged.

(iii) Sufficient funds to cover all closing costs to be paid by Developer.

(B) Submittals by Agency. At least two (2) days prior to the Closing, Agency shall submit into Escrow the following:

(i) Two (2) originals of the Grant Deed, duly executed by
Agency and acknowledged.

(ii) Two (2) originals of the Memorandum of Agreement, duly executed by Agency and acknowledged.

(iii) A non-foreign transferor affidavit in a form acceptable to Escrow Agent.

(iv) Sufficient funds to cover all closing costs to be paid by Agency.

304.8 Conditions of Closing. The Closing is conditioned upon satisfaction of the terms and conditions designated in this Section.

(A) Agency’s Conditions. Agency’s obligation to close Escrow is conditioned upon the satisfaction or written waiver by Agency of each and every one of the conditions precedent (i) through (viii), inclusive, described below (the “Agency’s Conditions Precedent to Closing”), which are solely for the benefit of Agency, and which shall be satisfied or waived by the time periods provided for herein:

(i) Physical Condition of Agency Parcels. Prior to the expiration of the Developer’s Due Diligence Period, Developer shall not have elected to cancel Escrow and terminate this Agreement due to the physical condition of the Agency Parcels and shall have delivered Developer’s Notice to Proceed to Agency pursuant to Section 303.3 of this Agreement.

(ii) Environmental Condition of Agency Parcels. Prior to the expiration of the Developer’s Due Diligence Period, Developer shall not have elected to cancel Escrow and terminate this Agreement due to the environmental condition of the Agency Parcels and shall have delivered Developer’s Notice to Proceed to Agency pursuant to Section 303.3.

(iii) No Default. Developer is not in default of any of its material obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(iv) No Litigation. No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein.
(v) **Execution of Documents.** Developer shall have executed and delivered into Escrow all documents to which Developer is a Party.

(vi) **Deposit of Funds.** Developer shall have deposited all funds and shall have made all payments required to be deposited and made by Developer for the Closing pursuant to this Agreement.

(vii) **Evidence of Financing.** Agency shall have approved Developer’s Evidence of Financing pursuant to Section 408.1.

(viii) **Land Use Approvals.** Developer shall have obtained all Entitlements and land use approvals required to commence and complete the construction of the Developer Improvements.

(B) **Developer’s Conditions.** Developer’s obligation to close Escrow is conditioned upon the satisfaction or written waiver by Developer of each and every one of the conditions precedent (i) through (ix), inclusive, described below (the “**Developer’s Conditions Precedent to Closing**”), which are solely for the benefit of Developer, and which shall be satisfied or waived by the time periods provided for herein:

(i) **Physical Condition of Agency Parcels.** Prior to the expiration of the Developer’s Due Diligence Period, Developer shall not have elected to cancel Escrow and terminate this Agreement due to the physical condition of the Agency Parcels and shall have delivered Developer’s Notice to Proceed to Agency pursuant to Section 303.3 of this Agreement.

(ii) **Environmental Condition of Agency Parcels.** Prior to the expiration of the Developer’s Due Diligence Period, Developer shall not have elected to cancel Escrow and terminate this Agreement due to the environmental condition of the Agency Parcels and shall have delivered Developer’s Notice to Proceed to Agency pursuant to Section 303.3.

(iii) **No Default.** Agency is not in default of any of its material obligations under the terms of this Agreement and all representations and warranties of Agency contained herein
shall be true and correct in all material respects.

(iv) **No Litigation.** No litigation shall be pending or threatened by any third parties which seeks to enjoin the transactions contemplated herein.

(v) **Execution of Documents.** Agency shall have executed and delivered into Escrow all documents to which Agency is a Party.

(vi) **Deposit of Funds.** Agency shall have deposited all funds and shall have made all payments required to be deposited and made by Agency for the Closing pursuant to this Agreement.

(vii) **Review and Approval of Title.** Developer shall have reviewed and approved the condition of title, as provided in Section 304.5 of this Agreement.

(viii) **Title Policy.** The Title Company shall, upon payment of the Title Company’s regularly scheduled premium, be irrevocably committed to issue the Title Policy and all Approved Endorsements upon the Close of Escrow, in accordance with Section 304.6 of this Agreement.

(ix) **Land Use Approvals.** Developer shall have obtained all Entitlements and land use approvals required to commence and complete the construction of the Developer Improvements.

### 304.9 Termination of Escrow

Escrow may be cancelled as set forth in this Section.

(A) **Developer’s Notice to Terminate during Developer’s Due Diligence Period.** In the Event that Developer delivers to Agency Developer’s Notice to Terminate prior to the termination of Developer’s Due Diligence Period, Escrow shall be cancelled, Developer shall pay all escrow cancellation charges and this Agreement shall be terminated, unless Agency has made Agency’s Election to Remediate. In such event, Agency shall retain the Developer Deposit.

(B) **Escrow Not in Condition to Close.** If the Escrow is not in a condition to close by the Outside Closing Date, then either Party which has fully performed under this Agreement may, in writing, demand the return of money, documents or property and terminate.
the Escrow and this Agreement. If either Party makes a written demand for the return of its money, documents or property, this Agreement shall not terminate until ten (10) business days after the Escrow Agent shall have delivered copies of such demand to the other Party at the respective addresses set forth in Section 901 of this Agreement. If any objections are raised by written Notice within such ten (10) day period, the Escrow Agent is authorized to hold all money, documents or property until instructed by a court of competent jurisdiction or by mutual written instructions of the Parties. If no such objections are timely made, the Escrow Agent shall immediately return the demanded money and/or documents, and the escrow cancellation charges shall be paid by the undemanding Party. Termination of the Escrow shall be without prejudice as to whatever legal rights, if any, either Party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closings as soon as possible consistent with the terms of this Agreement. Nothing in this Section shall be construed to impair or affect the rights of Developer to specific performance.

304.10 Closing of Escrow. Provided that both Developer’s Conditions Precedent to Closing and the Agency’s Conditions Precedent to Closing have been satisfied or waived in writing, the Conveyances of the Site shall close on the Closing Dates (the “Closings”), but in no event later than the Outside Closing Dates. The Closings shall occur at the Escrow. The Closings shall mean the times and days that the Grant Deed is filed for record with the Orange County Recorder. The Closing Dates shall mean the days on which the Closings occur.

304.11 Closing Procedure. The Escrow Agent shall Close the Escrow as follows:

(A) record the Grant Deed with instruction to the Orange County Recorder to deliver the Grant Deed to Developer and a conforming copy thereof to Agency;

(B) record the Memorandum of Agreement with instruction to the Orange County Recorder to deliver the Memorandum of Agreement to Agency and a conforming copy thereof to Developer;

(C) deliver the Title Policy issued by the Title Company to Developer;

(D) file any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(E) deliver the FIRPTA Certificate, if any, to Developer; and
forward to Developer and Agency a separate accounting of all funds received and disbursed for each Party and copies of all executed, recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

400. DEVELOPMENT OF THE SITE.

401. Scope of Development. Within the time set forth in the Schedule of Performance, Developer shall prepare the Site for development and construct the Developer Improvements in accordance with the Scope of Development and the plans, drawings and documents submitted by Developer and approved by Agency as set forth herein, which approval shall not be unreasonably withheld, conditioned or delayed. Within the time set forth in the Schedule of Performance, Agency shall construct the Agency Improvements in accordance with the Scope of Development.

402. Design Review. Developer acknowledges and agrees that in reviewing and approving documents under this Section, Agency is acting as a legal entity separate and distinct from the City and that Agency’s actions in this regard are separate and distinct from the City’s conduct of its typical governmental functions and exercise of its police powers in its governmental capacity.

402.1 Basic Concept Drawings. Prior to the Date of Agreement, Agency has approved conceptual drawings, including a site plan, elevations, floor plans and preliminary landscape plans (collectively, the “Basic Concept Drawings”) for the development of the Site.

402.2 Design Development Drawings. Prior to the Date of Agreement, Agency has approved the following plans and drawings (collectively, the “Design Development Drawings”) for the development of the Site:

a. Site Plan.

b. Landscape plan, with hardscape plans, sections and elevations, including lighting, equipment, furnishings and planting schedules.

c. Floor plans.

d. Roof plans.

e. Elevations.

f. Interior and exterior colors and materials.

g. Tabulation of areas/uses.
h. Detailed schedule of interior and exterior specifications.

i. Elevations of major public spaces.

j. Graphics and signage plans, including the approximate size and location of signs, together with schedules and samples or manufacturer's literature.

k. Lighting schedules with samples or manufacturer's literature for exterior lighting and lighting on building exteriors. Lighting locations are to be shown on landscape plans and elevations.

l. Signage Plan.

402.3 Building Permit Drawings. Prior to the Date of Agreement, Agency has approved the Building Permit Drawings for the development of the Site.

402.4 Intentionally Omitted.

402.5 Intentionally Omitted.

402.6 Intentionally Omitted.

402.7 Revisions. If Developer desires to propose any material revisions to Agency-approved Basic Concept Drawings, Design Development Drawings or Building Permit Drawings, Developer shall submit such proposed changes to Agency, and shall also proceed in accordance with any and all State and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance. At the sole discretion of Agency, if any change in the basic uses of the Site is proposed in the Design Development Drawings or Building Permit Drawings from the basic uses of the Site as provided for in this Agreement, then this Agreement is subject to renegotiation of all terms and conditions, including without limitation, the economic terms of this Agreement. If the Basic Concept Drawings, Design Development Drawings or Building Permit Drawings, as modified by the proposed change, generally and substantially conform to the requirements of the Scope of Development and the basic uses of the Site as provided for in this Agreement, Agency shall review the proposed change and notify Developer in writing within thirty (30) days after submission to Agency as to whether the proposed change is approved or disapproved and the specific reasons for any disapproval, provided that such reasons shall be consistent with the Scope of Development and any items previously approved hereunder. The Executive Director is authorized to approve minor changes to Agency-approved Basic Concept Drawings, Design Development Drawings and Building Permit Drawings provided such changes (i) do not significantly reduce the cost of the proposed development and (ii) do not significantly reduce the quality of materials to be used. Any and all change orders or revisions required by
the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations generally applicable to projects similar to the Project shall be included by Developer in its Basic Concept Drawings, Design Development Drawings and Building Permit Drawings and completed during the construction of the Developer Improvements (and Agency’s period of review with respect to such changes shall be seven [7] days). Agency shall reasonably consider any revisions required by any lender.

**402.8 Defects in Plans.** Agency shall not be responsible either to Developer or to third parties in any way for any defects in the Basic Concept Drawings, the Design Development Drawings or the Building Permit Drawings, nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Design Development Drawings or Building Permit Drawings. Developer hereby waives and releases any claim it may have against Agency or its officers, employees, agents, representatives and volunteers, for any monetary damages or compensation as a result of defects in the Basic Concept Drawings, Design Development Drawings or Building Permit Drawings, including without limitation the violation of any laws, and for defects in any work done according to the approved Basic Concept Drawings, Design Development Drawings or Building Permit Drawings. Developer makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

**402.9 Use of Architectural Plans.** Agency shall not have the right to use any Basic Concept Drawings, Design Development Drawings or Building Permit Drawings which are submitted to Agency by Developer pursuant to this Section 402, nor shall Agency confer any rights to use such architectural plans to any person or entity.

**403. Permits.** Before commencement of the construction of the Developer Improvements or other works of improvement upon the Site, Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required for the construction of the Developer Improvements by the City or any other governmental agency affected by such construction or work. Developer shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith:

a. All permits and fees required by the City, County of Orange, and other governmental agencies with jurisdiction over the Developer Improvements
Agency staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals. However, the execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals required by Agency or the City.

404. **Schedule of Performance.** Developer shall submit all Basic Concept Drawings, Design Development Drawings and Building Permit Drawings, commence and substantially complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance.

405. **Cost of Construction.** Except to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, developing and constructing all of the Developer Improvements in conformance with the approved Basic Concept Drawings and Design Development Drawings, as well as all of the cost of planning and designing the Agency Improvements, shall be borne by Developer. Notwithstanding the foregoing, Developer shall not be required to pay for or reimburse Agency for costs incurred by Agency in utilizing staff and/or consultants in analyzing and administering this Agreement. All of the cost of developing and constructing the Agency Improvements shall be borne by Agency, except to the extent that Agency elects to have Developer construct the Agency Improvements, in which event Agency will reimburse Developer pursuant to the Agency Reimbursement Agreement.

406. **Rights of Access.** Prior to the issuance of the Release of Construction Covenants, for purposes of assuring compliance with this Agreement, representatives of Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purpose of ensuring compliance with this Agreement, including but not limited to, the inspection of the work being performed in the construction of the Improvements so long as Agency representatives comply with all safety rules and, at Developer’s option, are escorted by a representative of Developer. Agency (or its representatives) shall, except in emergency situations, notify Developer prior to exercising its rights pursuant to this Section.

407. **Compliance With Laws.** Developer shall carry out the design and construction of the Developer Improvements and the Initial Sales in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Anaheim Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.
407.1 **Nondiscrimination in Employment.** Developer certifies and agrees that all persons employed or applying for employment by it and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of Agency access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by Agency.

407.2 **Levies and Attachments on Site.** Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time. Nothing herein shall be deemed to prohibit Developer from contesting the validity or amount of any levy or attachment nor to limit the remedies available to Developer with respect thereto.

407.3 **Mechanics Liens and Stop Notices.** Developer shall remove or have removed any mechanics lien or stop notice made on any of the Site or any part thereof, or assure the satisfaction thereof as provided herein. If a claim of a lien or stop notice is given or recorded affecting the Developer Improvements, Developer shall within thirty (30) days of such recording or service or within five (5) days of Agency's demand whichever last occurs:

a. pay and discharge the same; or

b. affect the release thereof by recording and delivering to Agency a surety bond in sufficient form and amount, or otherwise; or

c. provide Agency with other assurance which Agency deems, in its reasonable discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.
Financing of the Developer Improvements.

408.1 Approval of Financing. As required herein and as Condition Precedent, Developer shall submit to Agency evidence that Developer has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing which together are sufficient to pay for the development of the Site and the construction of the Developer Improvements in accordance with this Agreement (collectively, “Evidence of Financing”). Agency shall approve or disapprove such Evidence of Financing within fifteen (15) days of receipt of a complete submission. Approval shall not be unreasonably withheld, delayed or conditioned. If Agency shall disapprove any such Evidence of Financing, Agency shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Agency new Evidence of Financing. Agency shall approve or disapprove such new Evidence of Financing in the same manner and within the same times established in this Section for the approval or disapproval of the Evidence of Financing as initially submitted to Agency. To the extent that the Agency-approved Evidence of Financing includes financing other than equity capital, Developer shall close the approved construction financing prior to or concurrently with the Outside Construction Commencement Date.

Such Evidence of Financing shall include the following: (a) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by Developer from one or more Institutional Lenders for the mortgage loan or loans for construction and permanent financing for the construction of the Developer Improvements, subject to such lenders’ reasonable, customary and normal conditions and terms, and (b) other documentation satisfactory to Agency as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the construction and completion of the Developer Improvements, less financing authorized by those loans set forth in subparagraph (a) above.

408.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back Development. Mortgages, deeds of trust and sales and leases-back for any reasonable method of financing through an Institutional Lender for the purpose of securing loans of funds to be used for (i) financing the acquisition or development of the Site, (ii) financing the construction of the Developer Improvements (including architecture, engineering, legal, and related direct costs as well as indirect hard and soft costs such as real property taxes, insurance premiums, closing costs, loan carrying costs and costs of financing) on or in connection with the Site, (iii) the financing or refinancing of contributed equity or other amounts, (including the granting of a security interest in Developer’s rights under this Agreement) or (iv) any other purposes necessary and appropriate in connection with development under this Agreement shall be permitted before issuance of the Release of Construction Covenants only with Agency's prior
written approval, which shall not be unreasonably withheld or conditioned and shall be given to Developer within ten (10) days. Developer shall notify Agency in advance of any mortgage, deed of trust or sale and lease-back financing, if Developer proposes to enter into the same before issuance of the Release of Construction Covenants. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back and all other means of financing which involve the granting of a security interest.

408.3 Holder Not Obligated to Construct Developer Improvements. 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 the Developer Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

408.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever Agency may deliver any notice or demand to Developer with respect to any material breach or default by Developer in completion of construction of the Developer Improvements, Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by its Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by Agency are concerned) have the right, at its option, within sixty (60) days after the expiration of all cure periods available to Developer but in no event longer than one hundred eighty (180) days after receipt of notice hereunder, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. If such default shall be a default which can only be remedied or cured by such holder upon obtaining possession of the Site or any portion thereof and such holder promptly commences and diligently prosecutes efforts to obtain possession with diligence through a receiver or otherwise, such holder shall have until sixty (60) days after obtaining possession to cure such default but in no event longer that three hundred sixty-five (365) days after receipt of notice hereunder.

Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured within sixty (60) days, such holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence but in no event longer that three hundred sixty-five (365) days after receipt of notice hereunder; provided, further, such holder shall not be required to remedy or cure any non-curable default of Developer (such as an unauthorized attempted assignment or the failure to meet a deadline). Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer
Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Agency by written agreement reasonably satisfactory to Agency. The holder in that event shall only be liable or bound by Developer’s obligations hereunder during the period that the holder is in possession of such portion of the Site in which the holder has an interest and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in such property and the improvements owned by it thereon. In addition, the holder, 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 relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 409 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the sixty (60) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such sixty (60) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default within three hundred sixty-five (365) days of receipt of notice hereunder. All rights and obligations of a lender or holder pursuant to this Agreement shall also accrue to any purchaser, assignee or successor of a lender or holder upon acquisition of title to any portion of the Site by such purchaser, assignee or successor pursuant to a judicial or nonjudicial foreclosure or a deed in lieu of foreclosure, or pursuant to a conveyance from a holder by deed in lieu of foreclosure. In the event of such conveyance to a purchaser, assignee or successor, then Agency agrees that it shall not unreasonably withhold, condition or delay its approval of further extensions of time for performance of Developer’s obligations under this Agreement as appropriate but in no event for a period of time longer than three hundred sixty-five (365) days to permit such purchaser, assignee or successor to obtain possession of such property and enter into contracts for the construction of improvements to complete the development of such property.

Breach of any of the covenants, conditions, restrictions, or reservations contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Site or any interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder and any owner of the Site or any portion thereof, whose title thereto is acquired by foreclosure, trustee’s sale, or otherwise.

No purported modification, amendment and/or termination of this Agreement affecting the rights of a holder shall be binding upon any holder holding a mortgage or deed of trust from and after the date of recordation of such mortgage or deed of trust unless and until the written consent of such holder is
obtained.

408.5 Failure of Holder to Complete Developer Improvements. In any case where, sixty (60) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from Agency of a default by Developer in completion of construction of any of theDeveloper Improvements under this Agreement, and such holder has not exercised the option to construct within the time period set forth in Section 408.4, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, Agency may, upon thirty (30) days prior written notice to holder, purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums and advances secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, Agency, if it so desires, may purchase such ownership interest from the holder upon payment to the holder of an amount equal to the sum of the following:

a. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure including reasonable attorneys' fees;

c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof (including without limitation, insurance premiums and real property taxes);

d. The costs of any improvements made by such holder;

e. 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 Agency; and

f. Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by Developer.

408.6 Right of Agency to Cure Mortgage or Deed of Trust Default. In the event of a material, uncured mortgage or deed of trust default or breach by Developer prior to the issuance of the Release of Construction Covenants (unless Developer is contesting such default in good faith), Developer shall immediately deliver to Agency a copy of such mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct within
the time periods set forth in Section 408.4, Agency shall have the right, upon ten (10) days Notice to Developer, but no obligation to cure the default. In such event, Agency shall be entitled to reimbursement from Developer of all proper direct and actual out-of-pocket costs and expenses incurred by Agency in curing such default. Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages, deeds of trust or any other security interests granted in accordance with this Section 408.

409. Release of Construction Covenants. Within three (3) days of receipt by Agency of Notice from Developer that the construction of the Developer Improvements has been completed in conformity with this Agreement, Agency shall furnish Developer with the Release of Construction Covenants. Agency shall not unreasonably withhold the Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction of the Developer Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants and restrictions as set forth in Section 500 of this Agreement.

Agency shall not unreasonably withhold the issuance of a Release of Construction Covenants. If Agency refuses or fails to furnish the Release of Construction Covenants, after written request from Developer, Agency shall, within ten (10) days of written request therefor, provide Developer with a written statement of the reasons Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain Agency's opinion of the actions Developer must take to obtain the Release of Construction Covenants. If the reason for such refusal is confined to the immediate unavailability of specific items or materials or otherwise constitutes minor unfinished work for which a cost can be specified, Agency will issue its Release of Construction Covenants upon the posting of a bond or cash security by Developer with Agency in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other evidence reasonably satisfactory to Agency assuring Agency that Developer will pay for and complete the same. If the reason for such refusal includes other uncompleted obligations of Developer under this Agreement which can otherwise be provided for to the reasonable satisfaction of Agency, Agency will issue its Release of Construction Covenants upon Agency’s approval of such measures as will reasonably satisfy Agency that such obligations will be completed. Even if Agency shall have failed to provide such written statement within such ten (10) day period, Developer shall not be deemed entitled to the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.
To the extent that portions of the Developer Improvements are constructed in distinct phases, upon Developer’s request, Agency may issue partial Releases of Construction Covenants as each phase of development is completed. Agency shall not unreasonably withhold issuance of a partial Release of Construction Covenants.

500. COVENANTS AND RESTRICTIONS.

501. Covenant Regarding Specific Uses. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to Developer’s interest in the Site or any part thereof, that Developer shall use the Site to develop the Project.

502. Covenants Regarding Maintenance. Except for any Housing Units for which an Initial Sale has occurred, Developer shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with the terms of the Redevelopment Plan and with all applicable provisions of the City of Anaheim Municipal Code. Developer shall maintain the Developer Improvements and landscaping on the Site in accordance with the Maintenance Standards (as such term is hereinafter defined). Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other Developer Improvements on the Site. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards (the “Maintenance Standards”):

a. The Site shall be maintained in conformance and in compliance with the approved Building Permit Drawings, and reasonable maintenance standards for similar, neighboring structures, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline. The Site shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable developments.

b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.
c. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

Agency agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety of the City or Agency, then Developer shall have forty-eight (48) hours to rectify the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards, Agency shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by Agency.

Developer’s obligations under this Section may be assigned to the Homeowners’ Association following the recordation of the Declaration of Covenants, Conditions and Restrictions.

503. Covenants Regarding Nondiscrimination. Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer itself or any person claiming under or through them 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 Site. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds. “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of
race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

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

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

c. **In contracts:** “There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

504. **Covenants Regarding Initial Sales and the Provision of Affordable Housing.** Developer covenants and agrees to sell the Housing Units in accordance with this Section.

504.1 **Conditions Precedent to Closing Initial Sales.** The closing of any Initial Sales is conditioned upon the satisfaction or written waiver by Agency of each of the following conditions precedent (the “Conditions Precedent to Closing Initial Sales”):
(A) **Recordation of Declaration of Covenants, Conditions and Restrictions.** Developer shall have recorded the Declaration of Covenants, Conditions and Restrictions against each of the Housing Parcels developed with Market Rate Housing Units.

(B) **Formation of Homeowners Association.** Developer shall have formed the Homeowners’ Association.

504.2 **Creation of Affordable Housing Units.** Developer covenants and agrees to conduct the Initial Sales so as to provide the Affordable Housing Units at Affordable Housing Costs to Low or Moderate Income Households as set forth in this Section.

(A) **INTENTIONALLY OMITTED.**

(B) **Sales Prices.** The Initial Sales of the Affordable Housing Units shall be made at the applicable Affordable Housing Cost.

(C) **Selection of Buyers.** Prospective Initial Buyers shall be selected by Developer in accordance with the Marketing Plan. However, prior to closing an Initial Sale of an Affordable Unit, Agency shall submit to Developer a completed income computation and certification form, together with all supportive documentation for each prospective Initial Buyer. Gross household income shall be determined in accordance with California Code of Regulations Section 6914, as amended. The income certification form shall demonstrate that the prospective Initial Buyer is a Low or Moderate Income Household and that such person satisfies the eligibility criteria established for the relevant Affordable Housing Unit.

Agency shall verify the income certification of each prospective Initial Buyer of an Affordable Housing Unit by utilizing at least one (1) of the following methods:

(i) obtain two (2) paycheck stubs from the person’s two (2) most recent pay periods;

(ii) obtain a true copy of an income tax return filed by the person for the most recent year in which a tax return was filed;

(iii) obtain an income verification certification from the person’s employer;
(iv) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the person receives assistance from such agencies;

(v) obtain an alternate form of income verification reasonably acceptable to Agency, if none of the above forms of verification is available.

(D) **Agency Assistance.** It is the intent of the Parties that Agency provide financial assistance through Anaheim’s Homebuyer Downpayment Assistance Programs, to the extent funding exists in such programs, and to the extent that such assistance is necessary to ensure that prospective Initial Buyers who otherwise qualify to purchase an Affordable Housing Unit on the Site can do so at an Affordable Housing Cost. Therefore, Agency agrees to make available to Lower Income Households, as needed, financial assistance towards the purchase of an Affordable Housing Unit on the Site of not less than the Minimum Agency Assistance.

(E) **Recordation of Affordable Housing Restrictive Covenant.** On or before the closing for the Initial Sale of each Affordable Housing Unit, Developer shall record the Affordable Housing Restrictive Covenant against the Housing Parcel on which such unit exists.

(F) **Recordation of Release of Memorandum of Agreement.** Concurrently with the closing of Initial Sale of each of the Affordable Housing Units, Developer shall record the Release of Memorandum of Agreement against the Housing Parcel on which such unit exists.

504.3 **Creation of Market Rate Housing Units.**

(A) **INTENTIONALLY OMITTED.**

(B) **Recordation of Release of Memorandum of Agreement.** Concurrently with the closing of Initial Sale of each of the Market Rate Housing Units, Developer shall record the Release of Memorandum of Agreement against the Housing Parcel on which such unit exists.

504.4 **Payment of Additional Purchase Prices.** On or before the Additional Purchase Price Payment Date, Developer shall deliver to Agency (i) funds equal to the Additional Purchase Price, and (ii) documentation reasonably acceptable to Agency depicting the method by which the Additional Purchase Price was
calculated.

505. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Site or in the Project. Agency shall have the right, if this Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect until the issuance of the Release of Construction Covenants for the completion of the construction of the Developer Improvements, except for the following:

a. The covenants pertaining to the general use and operation of the Site, as set forth in Section 501, shall remain in effect until the expiration of the Affordability Period.

b. The covenants pertaining to maintenance of the Site and all improvements thereon, as set forth in Section 502, shall remain in effect until the expiration of the Affordability Period.

c. The covenants against discrimination, as set forth in Section 503, shall remain in effect in perpetuity.

d. The covenants regarding the provision of Affordable Housing, as set forth in Section 504, shall remain in effect until the expiration of the Affordability Period.

600. INSURANCE AND INDEMNIFICATION.

601. Developer’s Insurance. Without limiting Agency’s right to indemnification, Developer shall secure and maintain insurance coverage as set forth in this Section 601.

601.1 Insurance Coverage Required Prior to Commencing Any Activities and Until the Recordation of the Release of Memorandum of Agreement. Prior to commencing any activities under this Agreement and until the recordation of the Release of Memorandum of Agreement against the last Housing Parcel comprising the Site, Developer shall secure and maintain the following insurance coverage:

(A) Workers’ Compensation Insurance as required by California
statutes and Employers’ Liability Insurance in an amount not less than One Million Dollars ($1,000,000);

(B) Commercial General Liability Insurance, including coverage for Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage and Independent Contractor's Liability, in an amount of not less than Three Million Dollars ($3,000,000.00) per occurrence, combined single limit, written on an occurrence form;

(C) Comprehensive Automobile Liability coverage, including - as applicable - owned, non-owned and hired autos, in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence, combined single limit, written on an occurrence form; and

601.2 Insurance Coverage Required Prior to Construction and Until the Issuance of the Release of Construction Covenants. Prior to commencing the Construction and until the issuance of the Release of Construction Covenants, Developer shall secure and maintain the following insurance coverage:

(A) “All risk” builder’s risk (course of construction) insurance covering one hundred percent (100%) of the replacement cost of the Housing Units in the event of fire, lightening, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by “all risk” builder’s risk policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to danger of flood).

601.3 Insurance Coverage Required After the Issuance of the Release of Construction Covenants and Until the Recordation of the Release of Memorandum of Agreement. Promptly upon the issuance of the Release of Construction Covenants and until the recordation of the Release of Memorandum of Agreement, Developer shall secure and maintain the following insurance coverage:

(A) “All risk” property insurance covering one hundred percent (100%) of the replacement cost of the Housing Units for which an Initial Sale has not occurred in the event of fire, lightening, windstorm, vandalism, earthquake (if available at commercially reasonable rates), malicious mischief and all other risks normally covered by “all risk” property policies in the area where the Site is located (including loss by flood if the Site is in an area designated as subject to danger of flood).

(B) Business interruption and extra expense insurance to protect
Developer and Agency covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the sale of the Housing Units caused by loss or damage to, or destruction of, any part of the insurable real property structures or equipment as a result of the perils insured against under all under the all risk physical damage insurance, covering a period of suspension, delay or interruption of at least twelve (12) months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during such period.

601.4 Agency’s Authority to Reduce Coverage. The Executive Director, with the consent of the City’s Risk Manager, is hereby authorized to reduce Developer’s insurance requirements set forth above in the event they determine that such reduction is consistent with reasonable commercial practices.

601.5 Required Clauses and Provisions in Policies. Each insurance policy required by this Agreement shall contain the following clauses or shall otherwise provide for the following conditions:

“This insurance shall not be canceled, limited in scope or coverage, or nonrenewed until after thirty (30) days prior written notice has been given to Anaheim Redevelopment Agency Secretary, 200 S. Anaheim Boulevard, Anaheim, CA 92805, except in the event of cancellation for non-payment of premium which shall provide for not less than ten (10) days notice.”

“It is agreed that any insurance maintained by the Anaheim Redevelopment Agency shall apply in excess of and not contribute with insurance provided by this policy.”

“It is agreed that each insurance policy shall provide for a waiver of subrogation for the benefit of the Anaheim Redevelopment Agency.”

“The Anaheim Redevelopment Agency and its officers, employees, agents, representatives and designated volunteers shall, by endorsement, be named as additional insureds with respect to the General Liability Insurance.”

In addition, each insurance policy required by Sections 601.5 and 601.5 of this Agreement shall contain the following clauses or shall otherwise provide for
the following conditions:

“The Anaheim Redevelopment Agency shall, by endorsement, be added as a loss payee with respect to the interests of the Anaheim Redevelopment Agency established in connection with the Disposition and Development Agreement.”

601.6 Required Certificates and Endorsements. As one of the Agency’s Conditions Precedent to Closing, Developer shall deliver to Agency (i) insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above and (ii) endorsements to the above-required policies, which add to these policies the applicable clauses and provisions referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator’s company affiliation and title. Insurance required under this Agreement shall be placed with insurers (x) admitted to write insurance in California, (y) possessing an A. M. Best’s rating of A VII or higher, or (z) otherwise acceptable to Agency (as evidenced by prior written approval of Agency). Also, Agency has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

601.7 Remedies for Defaults Re: Insurance. In addition to any other remedies Agency may have if Developer fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option, after five (5) business days Notice to Developer:

(A) Obtain such insurance and charge Developer the amount of the premium for such insurance, in which event Developer shall promptly remit such sum to Agency;

(B) Withhold any payment(s) which become due to Developer hereunder until Developer demonstrates compliance with the requirements hereof;

(C) Declare Developer in Default;

(D) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies Agency may have and is not the exclusive remedy for Developer’s failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which Developer may be held responsible for payment of damages to persons or property resulting from Developer’s, Developer’s contractors or any subcontractor’s performance under this Agreement.
601.8 **Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance.** In the event that any of the Housing Units are totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of such insurance proceeds, promptly and diligently commence and complete the repair or replacement of the Housing Units to substantially the same condition as the Housing Units are required to be constructed pursuant to this Agreement. In no event shall the completion of the repair, restoration or replacement of the Housing Units exceed one (1) year from the date Developer obtains the insurance proceeds unless Agency approves a longer period in Agency’s reasonable discretion. Agency shall cooperate with Developer, at no expense to Agency, in obtaining any governmental permits required for the repair restoration or replacement. If, however, the then-existing laws of any governmental entity exercising jurisdiction over the Site do not permit the repair, restoration or replacement of the Housing Units, Developer may elect not to repair, restore or replace the Housing Units by giving Notice to Agency, in which event Developer shall be entitled to all insurance proceeds, provided Developer promptly removes all debris from the portion of the Site affected and reconveys such portion of the Site to Agency.

601.9 **No Obligation to Repair and Restore Damage Due to Casualty Not Covered by Insurance.** In the event that any of the Housing Units are totally or substantially destroyed or damaged by a casualty for which Developer is not required to (and Developer has not) insured against, Developer shall not be required to repair, restore or replace such Housing Units and Developer may elect not to repair, restore or replace the Housing Units by giving Notice to Agency within ninety (90) days of such loss, provided Developer promptly removes all debris from the portion of the Site affected and reconveys such portion of the Site to Agency. For purposes of this Section, the term “substantially destroyed or damaged” means destruction or damage the repair of which is reasonably estimated to cost twenty-five percent (25%) or more of the replacement cost of the Housing Units damaged.

602. **Indemnification.** Developer shall defend, indemnify, assume all responsibility for, and hold Agency, its officers, employees and agents, harmless from, all claims, demands, damages, defense costs (including attorneys’ fees and costs) or liability of any kind or nature relating to Developer’s activities under this Agreement, including but not limited to any damages to property or injuries to persons, including accidental death, arising out of or in connection with Developer’s activities, acts, errors, omissions, performance or work under this Agreement, whether such activities or performance thereof be by Developer or by anyone directly or indirectly employed, controlled or contracted by Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. Developer shall not be liable for property damage or bodily injury occasioned by the sole negligence or willful misconduct of Agency or its designated agents or employees.
700. DEFAULTS AND REMEDIES.

701. Default Remedies. Subject to the extensions of time set forth in Section 902 of this Agreement, failure by either Party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying such Default. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

702. Institution of Legal Actions. The Parties shall be entitled to seek any remedy available at law and in equity for the other Party’s Default. All legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in Orange County, or in the United States District Court for District of California in which Orange County is located.

703. Termination by Developer Prior to Conveyances. In the event that Developer is not in Default and prior to the Closing:

(a) Agency does not (or demonstrably cannot) deliver title to any portion of the Site pursuant to the Grant Deed in the manner and condition on or before the Outside Closing Date or

(b) Agency is in Default, or

(c) one or more of Developer’s Condition Precedent to Closing is not satisfied on or before the Outside Closing Date;

then this Agreement may, at Developer’s option, be terminated by Notice to Agency. From the date of the Notice of termination of this Agreement by Developer to Agency and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties. Upon such termination by Developer, all monies or documents deposited by any Party into Escrow shall be returned to the Party making such deposit. In the event that this Agreement is terminated due to Default of Agency, Agency shall pay all escrow cancellation costs. If this Agreement is terminated for any other reason, the Parties shall each pay one-half of the escrow cancellation costs.

704. Termination by Agency Prior to Conveyances. In the event that Agency is not in Default and prior to the Closing:

(a) Developer is in Default, or
(b) one or more of Agency’s Condition Precedent to Closing is not satisfied on or before the Outside Closing Date;

then this Agreement may, at Agency’s option, be terminated by Notice to Developer. From the date of the Notice of termination of this Agreement by Agency to Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties, except as set forth in Section 301.2. Upon such termination by Agency, all monies or documents deposited by any Party into Escrow shall be returned to the Party making such deposit. In the event that this Agreement is terminated due to Default of Developer, Developer shall pay all escrow cancellation costs. If this Agreement is terminated for any other reason, the Parties shall each pay one-half of the escrow cancellation costs.

705. Reentry and Revesting of Title to Site After Closing and Prior to Issuance of Release of Construction Covenants. Agency has the right, at its election, to reenter and take possession of the Site, with all Improvements thereon, and terminate and revest in Agency the estate conveyed to Developer if after the Closing and before the issuance of the Release of Construction Covenants, Developer shall:

(a) fail to start the construction of the Developer Improvements on or before the Outside Construction Commencement Date; or

(b) abandon or substantially suspend construction of the Developer Improvements for a period of one hundred twenty (120) days after Notice thereof from the Agency; or

(c) contrary to the provisions of Section 800, Transfer or suffer any involuntary Transfer in violation of this Agreement, and such Transfer has not been approved by the Agency or rescinded within sixty (60) days of notice thereof from Agency to Developer.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust. In addition, the Agency shall have no right to retake possession of Housing Units on portions of the Site following the Initial Sale of such units.

The Memorandum of Agreement shall contain appropriate reference and provision to give effect to Agency’s right as set forth in this Section, under specified circumstances before recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in Agency the estate conveyed to Developer. Upon the revesting in Agency of title to the Site as provided in this Section, Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the
Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by Agency) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to Agency and in accordance with the uses specified for the Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(i) First, to reimburse Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, without limitation, any expenditures by Agency or City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site was not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Agency, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Agency as its property. The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Agency will have conveyed the Site to Developer for redevelopment purposes, particularly for residential development, and not for speculation in undeveloped land.

706. Acceptance of Service of Process. In the event that any legal action is
commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on Developer shall be made in such manner as may be provided by law.

707. 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 either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

708. Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either 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.

709. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

710. Attorneys’ Fees. In any action between the Parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action or other proceeding shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys’ fees.

800. TRANSFERS AND ASSIGNMENTS OF INTEREST IN PROPERTY OR AGREEMENT.

801. General Prohibition Against Developer’s Transfers and Assignments. The qualifications and identity of Developer are of particular concern to Agency. It is because of those unique qualifications and identity that Agency has entered into this Agreement with Developer. For the period commencing upon the date of this Agreement and until the expiration of the Developer’s Sales Period, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or other transfer of the whole or any part of the Site or the Improvements thereon (collectively, a “Transfer”) without prior written approval of Agency, except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or other transfer of the whole or any part of the Site or the Improvements shall entitle Agency to (i) Agency’s right to terminate this Agreement, as set forth in Section 704 of this Agreement and (ii) Agency’s right to reenter, take possession of, and revest in Agency title to, the Site, as set forth in Section 705 of this Agreement.
802. Permitted Transfers by Developer. Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment of this Agreement or conveyance of the Site, the Improvements, or any part thereof, shall not be required in connection with any of the following:

a. Any transfers to an entity or entities in which Developer or any entity controlled by or under common control with Developer, retains a minimum of fifty percent (50%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities;

b. The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements; or

c. The Initial Sales.

In the event of an assignment by Developer under subparagraph (a) above not requiring Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give Notice to Agency of such assignment and satisfactory evidence that the assignee has assumed the obligations of this Agreement.

803. Agency Consideration of Requested Transfer. Agency reserves sole and absolute discretion to approve or disapprove a request for Transfer made pursuant to this Section, upon Developer's delivery of written Notice to Agency requesting such approval. Such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section and as reasonably determined by Agency. An assignment and assumption agreement in form satisfactory to Agency's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of Developer's written notice requesting Agency approval of an assignment or Transfer pursuant to this Section, Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to Agency such further information as may be reasonably requested.

804. Assignment by Agency. Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld; provided, however, that Agency may assign or transfer any of its interests hereunder to the City or any public or private entity controlled by either Agency or the City at any time without the consent of Developer.
805. **Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon Developer, Agency and their permitted successors and assigns. Whenever the term “Developer” or “Agency” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

900. **GENERAL PROVISIONS.**

901. **Notices, Demands and Communications Between the Parties.** Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one Party to another (collectively, “Notices”) may be personally delivered, transmitted by facsimile (FAX) transmission, or deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this Section, and shall be deemed to have been given or sent at the time of personal delivery or FAX transmission or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

If to Agency: Linda N. Andal Schroeder, Agency Secretary
Anaheim Redevelopment Agency
200 S. Anaheim Boulevard, 2nd Floor
Anaheim, California 92805
FAX No. (714) 765-4105

With copies to: Elisa Stipkovich, Executive Director
Anaheim Redevelopment Agency
201 S. Anaheim Boulevard, 10th Floor
Anaheim, California 92805
FAX No. (714) 765-4360

John E. Woodhead, Assistant City Attorney
City of Anaheim
200 S. Anaheim Boulevard, 3rd Floor
Anaheim, California 92805
FAX No. (714) 765-4360

If to Developer: Brookfield Olive Street LLC
C/O Brookfield Homes
3090 Bristol Street, Suite 200
Costa Mesa, California 92626
Attention: Adrian Foley, President
FAX No. (714) 427-6870
902. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either 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 God; acts of the public enemy; epidemics; quarantine; restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other Party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency which shall not excuse performance by Agency); or any other causes 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 Agency and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Developer Improvements shall not constitute grounds of enforced delay pursuant to this Section.

903. Relationship Between Agency and Developer. It is hereby acknowledged by Developer that the relationship between Agency and Developer is not that of a partnership or joint venture and that Agency and 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, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project. Developer agrees to indemnify, hold harmless and defend Agency from any claim made against Agency arising from a claimed relationship of partnership or joint venture between Agency and Developer with respect to the development, operation, maintenance or management of the Site or the Project.

904. No Third Party Rights. The Parties intend that no rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

905. Agency Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by Agency, the Executive Director is authorized to act on behalf of Agency unless specifically provided otherwise or the context should require otherwise.
906. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement. This Agreement is executed in five (5) originals, each of which is deemed to be an original.

907. **Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 60 and Attachment Nos. 1 through 12, which constitute the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter of this Agreement.

908. **Real Estate Brokerage Commission.** Agency and Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with this transaction, and each agrees to defend and hold harmless the other from any claim to any such commission or fee resulting from any action on its part.

909. **Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

910. **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both Parties.

911. **No Waiver.** A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

912. **Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

913. **Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and
enforceable to the fullest extent permitted by law.

914. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

915. **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matter set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

916. **Time of Essence.** Time is expressly made of the essence with respect to the performance by Agency and Developer of each and every obligation and condition of this Agreement.

917. **Cooperation.** 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 including, but not limited to, releases or additional agreements.

918. **Conflicts of Interest.** No member, official or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

919. **Non-Liability of Officials and Employees of Agency.** No member, official or employee of Agency or Developer shall be personally liable to the other Party, or any successor in interest, in the event of any Default or breach by Agency or Developer or for any amount which may become due to Agency or Developer or their successors, or on any obligations under the terms of this Agreement. Agency and Developer hereby waive and release any claim they may have against the members, officials or employees of Agency or Developer with respect to any Default or breach by Agency or Developer or for any amount which may become due to Agency or Developer or their successors, or on any obligations under the terms of this Agreement. Agency and Developer make such release with full knowledge of Civil Code Section 1542 and hereby waive any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:
“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

922. **Time for Acceptance of Agreement by Agency.** This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.
IN WITNESS WHEREOF, AGENCY AND DEVELOPER HAVE EXECUTED THIS AGREEMENT AS OF THE RESPECTIVE DATES SET FORTH BELOW.

“AGENCY”

ANAHEIM REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: ________________________  By:________________________

Elisa Stipkovich,
Executive Director

ATTEST:

LINDA N. ANDAL, AGENCY SECRETARY

By: __________________________

LINDA N. ANDAL

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: __________________________

JOHN E. WOODHEAD IV,
Assistant City Attorney

“DEVELOPER”

BROOKFIELD OLIVE STREET LLC,
a Delaware limited liability company

Dated: ________________________  By:________________________

Adrian Foley,
President

68961.2
State of California 
County of 

On , before me, (name, title of officer, e.g., Jane Doe, Notary Public*)

personally appeared ____________________________________________ (name(s) of signer(s))

☐ personally known to me —OR—
☐ 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 person(s) acted, executed the instrument.

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

Witness my hand and official seal.

(Signature of Notary)

Capacity claimed by signer: (This section is OPTIONAL.)

☐ Individual
☐ Corporate Officer(s):
☐ Partner(s):
☐ General ☐ Limited
☐ Attorney-in-fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing: ____________________________________________ (name of person(s) or entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT: 

Title or Type of Document: 

Number of Pages: ______ Date of Document: ___________

Signer(s) Other than Named Above: ________________________________
ATTACHMENT NO. 1

MAP

(to be attached)
ATTACHMENT NO. 2

LEGAL DESCRIPTIONS

(to be attached)
ATTACHMENT NO. 3

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY )
AND WHEN RECORDED MAIL TO: )
Anaheim Redevelopment Agency )
Anaheim City Hall West, 10th Floor )
201 S. Anaheim Boulevard )
Anaheim, California 92805 )

This document is exempt from a recording fee pursuant to Government Code Section 6103.

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this “Memorandum”), dated for purposes of identification only as of June 1, 2008 (the “Date of Memorandum”), is entered by and between the ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic, (the “Agency”) and BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company, (the “Developer”).

Section 1. Disposition and Development Agreement. Agency and Developer have executed a Disposition and Development Agreement (Colony Park Phase II) dated for identification purposes as of even date herewith (the “Agreement”), which provides for the construction and sale of certain housing units upon that certain real property located in the City of Anaheim, County of Orange, State of California, more particularly described in Exhibit A which is attached hereto and incorporated herein by this reference (the “Site”). Copies of the Agreement are available for public inspection and copying as a public record in the office of the Agency Secretary located at Anaheim City Hall, 200 South Anaheim Boulevard, 2nd Floor, Anaheim, California, 92805. All of the terms, conditions, provisions and covenants set forth in the Agreement are incorporated in this Memorandum by reference as though fully set forth herein at length, and the Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Agreement.

Section 2. Purpose of Memorandum. This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions and covenants set forth in the Agreement. The inclusion of the following provisions shall not limit the incorporation of the Agreement, but is merely for convenience. In the event of any inconsistency between the
terms, conditions, provisions and covenants set forth in the Agreement and this Memorandum, the terms, conditions, provisions and covenants set forth in the Agreement shall prevail.

Section 3. **Reentry and Revesting of Title to Site After Closing and Prior to Issuance of Release of Construction Covenants**. Agency has the right, at its election, to reenter and take possession of the Site, with all Improvements thereon, and terminate and revest in Agency the estate conveyed to Developer if after the Closing and before the issuance of the Release of Construction Covenants, Developer shall:

(a) fail to start the construction of the Developer Improvements on or before the Outside Construction Commencement Date; or

(b) abandon or substantially suspend construction of the Developer Improvements for a period of one hundred twenty (120) days after Notice thereof from the Agency; or

(c) contrary to the provisions of Section 800, Transfer or suffer any involuntary Transfer in violation of this Agreement, and such Transfer has not been approved by the Agency or rescinded within sixty (60) days of notice thereof from Agency to Developer.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit any mortgage or deed of trust permitted by this Agreement or any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust. In addition, the Agency shall have no right to retake possession of Housing Units on portions of the Site following the Initial Sale of such units.

Upon the revesting in Agency of title to the Site as provided in this Section, Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by Agency) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to Agency and in accordance with the uses specified for the Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(i) First, to reimburse Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, without limitation, any expenditures by Agency or City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such
management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site was not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Agency, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Agency as its property. The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Agency will have conveyed the Site to Developer for redevelopment purposes, particularly for residential development, and not for speculation in undeveloped land.

Section 4. Transfers and Assignments of Interest in the Site or the Agreement.

4.1 General Prohibition Against Developer’s Transfers and Assignments. The qualifications and identity of Developer are of particular concern to Agency. It is because of those unique qualifications and identity that Agency has entered into this Agreement with Developer. For the period commencing upon the date of this Agreement and until the expiration of the Developer’s Sales Period, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or other transfer of the whole or any part of the Site or the Improvements thereon (collectively, a “Transfer”) without prior written approval of Agency, except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site, or the Improvements shall entitle Agency to (i) Agency’s right to terminate this Agreement, as
set forth in Section 704 of the Agreement and (ii) Agency’s right to reenter, take possession of, and revest in Agency title to, the Site, as set forth in Section 705 of the Agreement and Section 3 hereof.

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

a. Any transfers to an entity or entities in which Developer or any entity controlled by or under common control with Developer, retains a minimum of fifty percent (50%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities;

b. The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements; or

c. The Initial Sales.

In the event of an assignment by Developer under subparagraph (a) above not requiring Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give Notice to Agency of such assignment and satisfactory evidence that the assignee has assumed the obligations of this Agreement.

4.3 Agency Consideration of Requested Transfer. Agency reserves sole and absolute discretion to approve or disapprove a request for Transfer made pursuant to this Section, upon Developer's delivery of written Notice to Agency requesting such approval. Such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section and as reasonably determined by Agency. An assignment and assumption agreement in form satisfactory to Agency’s legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of Developer's written notice requesting Agency approval of an assignment or Transfer pursuant to this Section, Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to Agency such further information as may be reasonably requested.

4.4 Assignment by Agency. Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld; provided, however, that Agency may assign or transfer any of its interests hereunder to the City or any public or private entity controlled by either
Agency or the City at any time without the consent of Developer.

4.5 **Successors and Assigns.** All of the terms, covenants and conditions of the Agreement shall be binding upon Developer, Agency and their permitted successors and assigns. Whenever the term “Developer” or “Agency” is used in the Agreement, such term shall include any other permitted successors and assigns as herein provided.

Section 5. **Compliance With Laws.** Developer shall carry out the design and construction of the Developer Improvements and the Initial Sales in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Agency Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

5.1 **Nondiscrimination in Employment.** Developer certifies and agrees that all persons employed or applying for employment by it and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of Agency access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by Agency.

5.2 **Levies and Attachments on Site.** Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time. Nothing herein shall be deemed to prohibit Developer from contesting the validity or amount of any levy or attachment nor to limit the remedies available to Developer with respect thereto.

5.3 **Mechanics Liens and Stop Notices.** Developer shall remove or have removed any mechanics lien or stop notice made on any of the Site or any part thereof, or assure the satisfaction thereof as provided herein. If a claim of a lien or stop notice is given or recorded affecting the Developer Improvements, Developer shall within thirty (30) days of such recording or service or within five (5) days of Agency's demand whichever last
occurs:

a. pay and discharge the same; or

b. affect the release thereof by recording and delivering to Agency a surety bond in sufficient form and amount, or otherwise; or

c. provide Agency with other assurance which Agency deems, in its reasonable discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.
IN WITNESS WHEREOF, AGENCY AND DEVELOPER HAVE EXECUTED THIS MEMORANDUM AS OF THE RESPECTIVE DATES SET FORTH BELOW.

“AGENCY”

ANAHEIM REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: ____________________________  By: ____________________________

Elisa Stipkovich,
Executive Director

ATTEST:

LINDA N. ANDAL, AGENCY SECRETARY

By: ____________________________

LINDA N. ANDAL

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: ____________________________ ____________________________

JOHN E. WOODHEAD IV,
Assistant City Attorney

“DEVELOPER”

BROOKFIELD OLIVE STREET LLC,
a Delaware limited liability company

Dated: ____________________________  By: ____________________________

Adrian Foley,
President
State of California )
County of __________ ) ss.

On ______________, ______, before me, ____________________________
(name, title of officer, e.g., Jane Doe, Notary Public)

personally appeared ____________________________________________
(name(s) of signer(s))

☐ personally known to me —OR—
☐ 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 person(s) acted, executed the instrument.

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

Witness my hand and official seal.

________________________________________________________________________
(Signature of Notary)

Capacity claimed by signer: __________________________
(This section is OPTIONAL.)

☐ Individual
☐ Corporate Officer(s):
☐ Partner(s):
  ☐ General ☐ Limited
☐ Attorney-in-fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing: __________________________
(name of person(s) or entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document: __________________________
Number of Pages: ______ Date of Document: ___________
Signer(s) Other than Named Above: __________________________
EXHIBIT A

TO

ATTACHMENT NO. 3

LEGAL DESCRIPTION OF SITE

(To be attached)
## ATTACHMENT NO. 4

### PROJECTED CLOSING SCHEDULE

<table>
<thead>
<tr>
<th>Closing Date</th>
<th>Lot</th>
<th>Base Purchase Price</th>
<th>Outside Closing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 1, 2008</td>
<td>Lot 3</td>
<td>$540,960</td>
<td>February 1, 2009</td>
</tr>
<tr>
<td>January 1, 2009</td>
<td>Lot 2</td>
<td>$540,960</td>
<td>April 1, 2009</td>
</tr>
<tr>
<td>February 1, 2009</td>
<td>Lot 13</td>
<td>$180,320</td>
<td>May 1, 2009</td>
</tr>
<tr>
<td>February 1, 2009</td>
<td>Lot 8</td>
<td>$144,256</td>
<td>May 1, 2009</td>
</tr>
<tr>
<td>April 1, 2009</td>
<td>Lot 4</td>
<td>$504,896</td>
<td>July 1, 2009</td>
</tr>
<tr>
<td>April 1, 2009</td>
<td>Lot 9</td>
<td>$144,256</td>
<td>July 1, 2009</td>
</tr>
<tr>
<td>April 1, 2009</td>
<td>Lot 7</td>
<td>$180,320</td>
<td>July 1, 2009</td>
</tr>
<tr>
<td>June 1, 2009</td>
<td>Lot 1</td>
<td>$504,869</td>
<td>September 1, 2009</td>
</tr>
<tr>
<td>June 1, 2009</td>
<td>Lot 12</td>
<td>$180,320</td>
<td>September 1, 2009</td>
</tr>
<tr>
<td>June 1, 2009</td>
<td>Lot 10</td>
<td>$144,256</td>
<td>September 1, 2009</td>
</tr>
<tr>
<td>August 1, 2009</td>
<td>Lot 11</td>
<td>$144,256</td>
<td>November 1, 2009</td>
</tr>
<tr>
<td>August 1, 2009</td>
<td>Lot 6</td>
<td>$180,320</td>
<td>November 1, 2009</td>
</tr>
</tbody>
</table>

The Projected Closing Schedule may be amended by the mutual written agreement of the Parties as follows:

(i) the Lot(s) which is/are projected to be Closed upon on a particular Closing Date may be modified; and

(ii) any projected Closing Date may be extended for up to ninety (90) days, in which event each of the succeeding Closing Dates may also be extended by such period of time;

provided, however, in no event shall any Closing Date occur later than February 1, 2010.
ATTACHMENT NO. 5

RIGHT OF ENTRY AND LICENSE AGREEMENT

(Due Diligence and Pre-Closing Site Preparation)

This RIGHT OF ENTRY AND LICENSE AGREEMENT (Due Diligence and Pre-Closing Site Preparation) (this “Agreement”), dated for purposes of identification only as of June 1, 2008 (the “Date of Agreement”), is entered by and between the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic, (the “Agency”) and BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company, (“Brookfield”).

RECATALS:

A. Agency and Brookfield (each a “Party” and jointly, the “Parties”) entered into that certain Disposition and Development Agreement (Colony Park Phase II) dated as of June 1, 2008 (the “DDA”) regarding the disposition and development of certain real property generally located at the southeast corner of Santa Ana Street and Olive Street in the City of Anaheim, California (the “Site”). The Site is depicted on the “Map” which is attached hereto as Exhibit A and incorporated herein by this reference. Capitalized terms set forth in this Agreement shall have the meanings ascribed in the DDA unless otherwise defined hereinafter.

B. As of the Date of Agreement, no Closings have occurred.

C. Prior to the Closings, Brookfield desires to enter the Site for the purpose of (i) obtaining data, making surveys and conducting tests, including the investigation of the environmental and physical condition of the Site, (ii) conducting grading, and (iii) installing streets and utilities (the “Permitted Use”), and Agency desires to accommodate Brookfield’s desire to commence such actions by granting a right of entry as provided herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Right of Entry. Provided that all of the terms and conditions of Section 2 of this Agreement are fully satisfied, Agency hereby grants to Brookfield and its agents and contractors, the exclusive right to enter upon, in and below the Site for the purpose of conducting the Permitted Use (the “License”) and for no other purposes without the prior written approval of Agency. This Agreement shall automatically terminate and expire on the earlier of (i) the date on which Brookfield completes the Permitted Use, or (ii) the Date on which the DDA is terminated.

Section 2. Conditions to Entry. Prior to Brookfield initially entering the Site, the conditions set forth in Sections 2.1 and 2.2 must be satisfied (the “Conditions Precedent”).
2.1 **Insurance.** Brookfield shall secure, prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

a. Workers' Compensation Insurance as required by California statutes;

b. Comprehensive General Liability Insurance, or Commercial General Liability Insurance, including coverage for Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Broad-Form Property Damage and Independent Contractor's Liability, in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence, combined single limit, written on an occurrence form; and

c. Comprehensive Automobile Liability coverage, including - as applicable - owned, non-owned and hired autos, in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence, combined single limit, written on an occurrence form.

The Executive Director of Agency, with the consent of the Agency’s Risk Manager, is hereby authorized to reduce the requirements set forth above in the event the Executive Director determines that such reduction is in the Agency’s best interest.

Each insurance policy required by this Agreement shall contain the following clauses:

“This insurance shall not be canceled, limited in scope or coverage, or nonrenewed until after thirty (30) days' prior written notice has been given to the Agency Secretary, 200 S. Anaheim Boulevard, Anaheim, CA 92805.”

“It is agreed that any insurance maintained by the Anaheim Redevelopment Agency shall apply in excess of and not contribute with insurance provided by this policy.”

Each insurance policy required by this Agreement, excepting policies for workers' compensation, shall contain the following clause:

“The Anaheim Redevelopment Agency, its officials, agents, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the Anaheim Redevelopment Agency.”

As one of the Conditions Precedent under this Agreement, Brookfield shall deliver to Agency (i) insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above and (ii) endorsements to the above-required policies, which add to these policies the
applicable clauses referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator’s company affiliation and title. Should it be deemed necessary by Agency, it shall be Brookfield’s responsibility to see that Agency receives documentation, acceptable to Agency, which sustains that the individual signing such endorsements is indeed authorized to do so by the insurance company. Also, Agency has the right to demand, and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.

In addition to any other remedies Agency may have if Brookfield fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option, terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies Agency may have and is not the exclusive remedy for Brookfield’s failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which Brookfield may be held responsible for payment of damages to persons or property resulting from Brookfield’s or its subcontractor's performance under this Agreement.

Section 3. Intentionally Omitted.

Section 4. Liens. With regard to actions performed on the Site under this Agreement, Brookfield shall not permit to be placed against the Site, or any part thereof, any design professional's, mechanic's, materialmen's, contractor's, or subcontractor's liens (collectively, "Liens"). Brookfield shall indemnify, defend and hold harmless Agency from all liability for any and all liens, claims and demands, together with Costs of defense and reasonable attorneys' fees, arising from any Liens. Agency reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Site, or any portion thereof, or on the improvements on the Site, any notices of non-responsibility or other notice as may be desirable to protect Agency against liability. In addition to, and not as a limitation of Agency's other rights and remedies under this Agreement, should Brookfield fail, within ten (10) days of written request from Agency, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless Agency from and against any loss, damage, injury, liability or claim arising out of a Lien, then Agency, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to Agency by Brookfield upon written demand.

Section 5. Certain Definitions. For the purposes of this Agreement, the following terms shall have the meanings herein specified:

"Environmental Law" means (i) Sections 25115, 25117, 25122.7 or 25140 of the

"Hazardous Materials" means any substance, material or waste which is or becomes, prior to the Closing, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous. pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.

Section 6. Compliance With Laws/Permits. Brookfield shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees, including, but not limited to, all Environmental Laws. Without limiting the generality of the foregoing, Brookfield, at its sole cost and expense, shall obtain any and all permits which may be required by any Environmental Law or other law for any activities Brookfield desires to conduct or have conducted pursuant to this Agreement. Agency shall provide reasonable assistance to Brookfield in obtaining such permits. In the event Brookfield or its agents or employees discover any substance on the Site which they suspect might be Hazardous Materials, Brookfield shall immediately notify or cause notice to be given to Agency, and Brookfield and its agents and employees shall immediately stop all Permitted Uses upon the Site until notified by Agency that work may be resumed.
Section 7. Indemnification. Brookfield hereby agrees to indemnify, defend, assume all liability for and hold harmless Agency and its officers, employees, agents and representatives from all actions, claims, suits, penalties, obligations, liabilities, damages to property, environmental claims or injuries to persons (collectively “Claims”) arising out of or in connection with Brookfield's activities pursuant to this Agreement. Brookfield's indemnity given under this Section shall apply whether such activities are by Brookfield or anyone directly or indirectly employed or under contract with Brookfield, and whether such Claims shall accrue or be discovered before or after the termination of this Agreement. The indemnity and other rights afforded Agency by this Section shall survive after the revocation or termination of this Agreement. Notwithstanding the foregoing, Brookfield's indemnity shall not apply (i) to the extent claims are caused by, arise out of, or in connection with, conditions existing on the Site prior to Brookfield’s initial entry thereon under this Agreement, (ii) to the extent claims are caused by, arise out of, or in connection with, any breach of Agency's representations or covenants in Section 15 hereof, or (iii) to the extent Agency has indemnified Brookfield pursuant to the terms of this Agreement.

Section 8. Inspection. Agency and its representatives, employees, agents or independent contractors may enter and inspect the Site or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Brookfield's compliance with the terms and conditions of this Agreement, and to conduct environmental testing and remediation upon receipt of the notice required pursuant to Section 5 hereof.

Section 9. No Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Site to Brookfield.

Section 10. Notices. Any notices, requests or approvals given under this Agreement from one party to another shall be in writing and shall be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, by certified mail, return receipt requested, to the addresses of the other party as stated in this Section, and shall be deemed to have been received at the time of personal delivery or three (3) days after the date of deposit for mailing. Notices shall be sent to:

If to Agency: Agency Secretary
Anaheim Redevelopment Agency
200 S. Anaheim Boulevard, 2nd Floor
Anaheim, California 92805
FAX No. (714) 765-4105

With copies to: Elisa Stipkovich, Executive Director
Anaheim Redevelopment Agency
201 S. Anaheim Boulevard, 10th Floor
Anaheim, California 92805
FAX No. (714) 765-4630
Section 11. Governing Law. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

Section 12. Interpretation. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

Section 13. Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Agency and Brookfield.

Section 14. Attorneys' Fees. In the event of a dispute between the parties with respect to the terms or conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge or arbitrator presiding over such dispute.

Section 15. Agency Representations, Indemnities and Covenants. Agency agrees to indemnify, protect, defend and hold Brookfield, its officers, employees and agents harmless from any claims that arise directly or indirectly from or in connection with the presence of Hazardous Material in the air, soil, surface, water, groundwater, or soil vapor at, on, about, under, within from or with respect to the Site and existing on the Site as of the date Brookfield first enters the Site; provided, however, this indemnity shall not apply to the extent a release of such Hazardous Material is caused by the negligence or willful misconduct of Brookfield or its agents or contractors.
Section 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

Section 17. Effective Date of this Agreement. This Agreement shall take effect immediately upon the execution of this Agreement by Agency (the “Effective Date”).
IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

BROOKFIELD:

BROOKFIELD OLIVE STREET LLC,
a Delaware limited liability company

Dated: ________________  By: __________________________

    John O’Brien,
    Vice President

AGENCY:

ANAHEIM REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: ________________  By: __________________________

    Elisa Stipkovich,
    Executive Director

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: __________________________

    JOHN E. WOODHEAD IV
    Assistant City Attorney
State of California

County of __________

On ______________, _____, before me, __________________________ (name, title of officer, e.g., Jane Doe, Notary Public)

personally appeared __________________________ (name(s) of signer(s))

☐ personally known to me —OR—

☐ 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 person(s) acted, executed the instrument.

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

Witness my hand and official seal.

______________________________
(Signature of Notary)

Capacity claimed by signer:

(This section is OPTIONAL.)

☐ Individual

☐ Corporate Officer(s):  

☐ Partner(s):  

☐ General  ☐ Limited

☐ Attorney-in-fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other:

Signer is representing:

________________________________________
(name of person(s) or entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document: __________________________

Number of Pages: _______ Date of Document: ____________

Signer(s) Other than Named Above: __________________________
EXHIBIT A

MAP

(to be provided; to depict Site)
ATTACHMENT NO. 6

GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Brookfield Olive Street LLC
C/O Brookfield Homes
3090 Bristol Street, Suite 200
Costa Mesa, California 92626
Attention: Adrian Foley, President

(Space above for Recorder's use.)
Exempt from Recording Fees Per Govt Code §6103.

GRANT DEED

CONTAINING

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic, ("Agency" or "Grantor") hereby grants to BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company, (the "Grantee"), that certain real property legally described in the "Legal Description of the Property" which is attached hereto as Exhibit A and incorporated herein by this reference (the "Property").

Section 1. Grantor Exceptions re: Oil, Gas, Hydrocarbons and Minerals. Grantor excepts and reserves from the Property all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of the Property, together with the right to drill into, through, and to use and occupy all parts of the Property lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances, or minerals from the Property or other lands, but without, however, any right to penetrate or use either the surface of the Property or any portion of the Property within 500 feet of the surface for any purpose or purposes whatsoever, as and to the extent reserved by the parties named in deeds, leases and other documents of record.

Section 2. Encumbrances of Record. The Property is conveyed subject to all easements, covenants, conditions, restrictions, and other encumbrances of record and those revealed by inspection of the Property.
Section 3. Nondiscrimination. Grantee covenants and agrees for itself, its successors, assigns and any successor in interest to the Property that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

Section 4. Nondiscrimination Clauses to be Included in Deeds, Leases and Contracts. Grantee shall refrain from restricting the rental, sale, or lease of the Property on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to the following nondiscrimination or nonsegregation clauses:

(a) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or herself, 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 premises herein conveyed. The foregoing covenants shall run with the land.”

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

“That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, or use,
occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land.”

Section 5. Covenants to Run with Land. All covenants, conditions, and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit of, and in favor of, and enforceable by Grantor, its successors and assigns, against Grantee, its successors and assigns to or of the Property. The covenants contained in this Grant Deed shall not be construed as conditions subsequent which might result in forfeiture of title.

Section 6. Beneficiary of Covenants. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and such covenants shall run in favor of Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law, suits in equity, or other proper proceedings to enforce the curing of such breach of agreement or covenant.

Section 7. Effect of Violation on Security Interests Permitted Under the Agreement. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted under the Agreement; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale, or otherwise.

Section 8. Modifications. Only Grantor, its successors and assigns, and Grantee and the successors and assigns of Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, or other restrictions contained in this Grant Deed, or to subject the Property to additional covenants, conditions, or other restrictions. additional covenants, conditions, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Property.

Section 9. No Merger of Other Agreements. None of the terms, covenants, agreements, or conditions heretofore agreed upon in writing in the Agreement, or other instruments between the parties to this Grant Deed, or their predecessors in interest, with respect to obligations to be

Attachment No. 6 - Page 3
performed, kept, or observed by Grantee or Grantor with respect to the Property, or any part thereof, after this conveyance of the Property shall be deemed to be merged with this Grant Deed.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed as of the respective dates set forth below.

“GRANTOR”

ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic

Dated: ____________________________ By: ____________________________

Elisa Stipkovich,
Executive Director

ATTEST:

LINDA N. ANDAL, AGENCY SECRETARY

By: ____________________________

LINDA N. ANDAL

“GRANTEE”

BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company

Dated: ____________________________ By: ____________________________

Adrian Foley,
President
EXHIBIT A

TO

ATTACHMENT NO. 6

LEGAL DESCRIPTION OF PROPERTY

(to be attached)
ATTACHMENT NO. 7

SCHEDULE OF PERFORMANCE

(to be attached)
ATTACHMENT NO. 8

SCOPE OF DEVELOPMENT

(to be attached)
ATTACHMENT NO. 9

RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Anaheim Redevelopment Agency
Anaheim City Hall West, 10th Floor
201 S. Anaheim Boulevard
Anaheim, California 92805

This document is exempt from a recording fee pursuant to Government Code Section 6103.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (this “Release”), dated for purposes of identification only as of , (the “Date of Release”), is made by the ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic, (the “Agency”) for the benefit of BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company, (the “Developer”).

RECITALS

A. Agency and Developer entered into that certain Disposition and Development Agreement dated as of June 1, 2008 (the “DDA”) concerning the construction of certain housing units and improvements related thereto on that certain real property described in Exhibit A which is attached hereto and incorporated herein by this reference (the “Site”). Copies of the DDA are available for inspection and copying as a public record in the office of the Agency Secretary located at Anaheim City Hall, 200 South Anaheim Boulevard, 2nd. Floor, Anaheim, California, 92805.

B. In accordance with Section 903 of the DDA, Agency has caused to be recorded against the Site that certain Memorandum of Agreement (i) dated as June 1, 2008 and (ii) recorded as Instrument No. in the Official Records of the County of Orange, State of California on , (the “Memorandum of DDA”).

C. As referenced in Section 409 of the DDA, Agency is required to furnish Developer or its
successor or assigns with this Release upon completion of the construction of the Developer Improvements (as such term is defined in the DDA). This Release is required to be in recordable form and serve as conclusive determination of the satisfactory completion of the construction and development required under the DDA. Upon recordation of this Release, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA except for those continuing covenants and restrictions as set forth in Section 500 of the DDA.

D. Agency has conclusively determined that the construction of the Developer Improvements has been satisfactorily completed.

NOW, THEREFORE, AGENCY HEREBY CERTIFIES AS FOLLOWS:

Section 1. Developer Improvements Completed. The Developer Improvements to be constructed by Developer have been fully and satisfactorily completed in conformance with the DDA.

Section 2. Effect on Covenants in DDA. Those use, maintenance, nondiscrimination and affordable housing covenants contained in Section 500 of the DDA shall remain in full force and effect, enforceable according to their terms. Nothing contained in this instrument shall in any way modify any other provisions of the DDA. Notwithstanding the foregoing, upon recordation of this Release, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA except for those continuing covenants and restrictions as set forth in Section 500 of the DDA.

Section 3. Release not a Notice of Completion. This Release is not a notice of completion as referred to in California Civil Code Section 3093.
IN WITNESS WHEREOF, AGENCY HAS EXECUTED THIS RELEASE AS OF THE DATE SET FORTH BELOW.

ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic

Dated: _________________  By: __________________________

Elisa Stipkovich,
Executive Director

ATTEST:

LINDA N. ANDAL, AGENCY SECRETARY

By: ____________________________

LINDA N. ANDAL

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: ____________________________

JOHN E. WOODHEAD IV
Assistant City Attorney

Attachment No. 9 - Page 3
EXHIBIT A

TO

ATTACHMENT NO. 8

LEGAL DESCRIPTION OF THE SITE

(To be attached)
ATTACHMENT NO. 10

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

(To be attached)
ATTACHMENT NO. 11 A

RELEASE OF MEMORANDUM OF AGREEMENT

(Affordable Housing Unit with Restrictive Covenant)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Anaheim Redevelopment Agency
Anaheim City Hall West, 10th Floor
201 S. Anaheim Boulevard
Anaheim, California 92805

This document is exempt from a recording fee pursuant to Government Code Section 6103.

This RELEASE OF MEMORANDUM OF AGREEMENT (Affordable Housing Unit with Restrictive Covenant) (this “Release”), dated for purposes of identification only as of __________ , ________ (the “Date of Release”), is made by the ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic, (the “Agency”) for the benefit of BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company, (the “Developer”).

RECITALS

A. Agency and Developer entered into that certain Disposition and Development Agreement dated as of June 1, 2008 (the “DDA”) concerning the construction of certain housing units and improvements related thereto on that certain real property described in the DDA as the “Site.” The Site has been subdivided into several parcels (each, a “Housing Parcel”), one of which is that certain real property described in Exhibit A which is attached hereto and incorporated herein by this reference (the “Property”). Copies of the DDA are available for inspection and copying as a public record in the office of the Agency Secretary located at Anaheim City Hall, 200 South Anaheim Boulevard, 2nd. Floor, Anaheim, California, 92805.

B. In accordance with Section 903 of the DDA, Agency has caused to be recorded against the Site that certain Memorandum of Agreement (i) dated as of June 1, 2008 and (ii) recorded as Instrument No. ___________________ in the Official Records of the County of Orange, State of California on ___________________, ______ (the “Memorandum of DDA”).
C. In accordance with Section ________ of the DDA, Agency has caused to be recorded against the Site that certain Declaration of Covenants, Conditions, and Restrictions (i) dated as of ___________ and (ii) recorded as Instrument No. ___________ _______ in the Official Records of the County of Orange, State of California on ___________, ___________ (the “Declaration”). In addition, in accordance with Section ________ of the DDA, Agency has caused to be recorded against the Property that certain Affordable Housing Restrictive Covenant (i) dated as of ___________ and (ii) recorded as Instrument No. ___________ in the Official Records of the County of Orange, State of California on ___________, ___________.

D. As referenced in Section ________ of the DDA, Agency is required to furnish Developer or its successor or assigns with this Release to be recorded against each Housing Parcel concurrently with the closing of the “Initial Sale” for such parcel (as such term is defined in the DDA). This Release is required to be in recordable form and serve as conclusive determination of the satisfactory completion of Initial Sale of each Housing Unit required under the DDA. Upon recordation of this Memorandum, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Housing Parcel against which this Release has been recorded shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA except for those continuing covenants and restrictions which have been memorialized in the Declaration and the Affordable Housing Restrictive Covenant.

E. Agency has conclusively determined that the construction of the Developer Improvements and the conduct of the pertinent Initial Sale have been satisfactorily completed.

NOW, THEREFORE, AGENCY HEREBY CERTIFIES AS FOLLOWS:

Section 1. Initial Sale Completed. The Initial Sale of the Housing Parcel by Developer have been fully and satisfactorily completed in conformance with the DDA.

Section 2. Release of Memorandum. The Memorandum is hereby terminated and released from the Property. Upon recordation of this Release, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA except for those continuing covenants and restrictions as set forth in the Declaration and the Affordable Housing Restrictive Covenant, which shall remain in full force and effect, enforceable according to their terms.

Section 3. Release not a Notice of Completion. This Release does not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the work of construction of the improvements and development of the Site, or any part thereof. This Release is not a notice of
completion as referred to in California Civil Code Section 3093.

IN WITNESS WHEREOF, AGENCY HAS EXECUTED THIS RELEASE AS OF THE DATE SET FORTH BELOW.

ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic

Dated: ________________  By: ________________

Elisa Stipkovich,
Executive Director

ATTEST:

LINDA N. ANDAL

By: ___________________________

LINDA N. ANDAL

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: ___________________________

JOHN E. WOODHEAD IV
Assistant City Attorney
EXHIBIT A

TO

ATTACHMENT NO. 11 A

LEGAL DESCRIPTION OF THE PROPERTY

(To be attached)
ATTACHMENT NO. 11 B

RELEASE OF MEMORANDUM OF AGREEMENT

(Affordable Housing Unit without Restrictive Covenant/Market Rate Housing Unit)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Anaheim Redevelopment Agency
Anaheim City Hall West, 10th Floor
201 S. Anaheim Boulevard
Anaheim, California 92805

This document is exempt from a recording fee pursuant to Government Code Section 6103.

This RELEASE OF MEMORANDUM OF AGREEMENT (Affordable Housing Unit without Restrictive Covenant/Market Rate Housing Unit) (this “Release”), dated for purposes of identification only as of , (the “Date of Release”), is made by the ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic, (the “Agency”) for the benefit of BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company, (the “Developer”).

RECITALS

A. Agency and Developer entered into that certain Disposition and Development Agreement dated as of June 1, 2008 (the “DDA”) concerning the construction of certain housing units and improvements related thereto on that certain real property described in the DDA as the “Site.” The Site has been subdivided into several parcels (each, a “Housing Parcel”), one of which is that certain real property described in Exhibit A which is attached hereto and incorporated herein by this reference (the “Property”). Copies of the DDA are available for inspection and copying as a public record in the office of the Agency Secretary located at Anaheim City Hall, 200 South Anaheim Boulevard, 2nd. Floor, Anaheim, California, 92805.

B. In accordance with Section 903 of the DDA, Agency has caused to be recorded against the Site that certain Memorandum of Agreement (i) dated as of June 1, 2008 and (ii) recorded as Instrument No. in the Official Records of the County of Orange, State of California on , (the “Memorandum of DDA”).
C. In accordance with Section _______ of the DDA, Agency has caused to be recorded against the Site that certain Declaration of Covenants, Conditions, and Restrictions (i) dated as of _________________ and (ii) recorded as Instrument No. _________________ in the Official Records of the County of Orange, State of California on _________________, (the “Declaration”).

D. As referenced in Section _______________ of the DDA, Agency is required to furnish Developer or its successor or assigns with this Release to be recorded against each Housing Parcel concurrently with the closing of the “Initial Sale” for such parcel (as such term is defined in the DDA). This Release is required to be in recordable form and serve as conclusive determination of the satisfactory completion of Initial Sale of each Housing Unit required under the DDA. Upon recordation of this Memorandum, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Housing Parcel against which this Release has been recorded shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA except for those continuing covenants and restrictions which have been memorialized in the Declaration.

E. Agency has conclusively determined that the construction of the Developer Improvements and the conduct of the pertinent Initial Sale have been satisfactorily completed.

NOW, THEREFORE, AGENCY HEREBY CERTIFIES AS FOLLOWS:

Section 1. Initial Sale Completed. The Initial Sale of the Housing Parcel by Developer have been fully and satisfactorily completed in conformance with the DDA.

Section 2. Release of Memorandum. The Memorandum is hereby terminated and released from the Property. Upon recordation of this Release, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under the DDA except for those continuing covenants and restrictions as set forth in the Declaration, which shall remain in full force and effect, enforceable according to their terms.

Section 3. Release not a Notice of Completion. This Release does not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the work of construction of the improvements and development of the Site, or any part thereof. This Release is not a notice of completion as referred to in California Civil Code Section 3093.

IN WITNESS WHEREOF, AGENCY HAS EXECUTED THIS RELEASE AS OF THE DATE SET FORTH BELOW.
ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic

Dated: ____________________________  By: ____________________________

Elisa Stipkovich,
Executive Director

ATTEST:

LINDA N. ANDAL, AGENCY SECRETARY

By: ____________________________

LINDA N. ANDAL

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

By: ____________________________  ____________________________

JOHN E. WOODHEAD IV
Assistant City Attorney
EXHIBIT A

TO

ATTACHMENT NO. 11 B

LEGAL DESCRIPTION OF THE PROPERTY

(To be attached)
ATTACHMENT NO. 12

ACTUAL CONSTRUCTION COSTS ADDENDUM

1. Actual Construction Costs shall be the sum of the following:

   A. Commissions. The actual total of sales commissions and other similar compensation for sales of the Housing Units, including base salaries, promotional incentives and all other compensation paid to sales agents by Developer or its Affiliates for this Project ("Commissions"), provided Commissions exceeding one percent (1%) of the Total Sales Price for each Housing Unit will not be allowable as an Actual Construction Cost. The term "Affiliate" means (a) a person or entity directly or indirectly (through one or more intermediaries) controlling, controlled by or under common control with Developer; (b) an officer, director, member, partner or shareholder of Developer; (c) a member of the immediate family of an officer, director, member, partner or shareholder of Developer, or (d) a person or entity under contract with Developer pursuant to which contract Developer directly or indirectly receives revenues for the sale of goods or services provided by such person or entity to Buyers of Housing Units. For these purposes "control" means the possession, direct or indirect, of a ten percent (10%) or greater voting interest or interest in profits and/or losses. Broker co-op Commissions (to a maximum of three percent (3%) of the Total Sales Price for each Housing Unit) shall not be considered part of the one percent (1%) cap on Commissions.

   B. Financing Costs.

      (1) If Developer obtains an acquisition, development or construction loan which is secured by a mortgage or deed of trust encumbering the Site or any portion thereof (an "Institutional Loan"), then the interest, loan fees, points and other charges actually paid by Developer to outside, non-Affiliate, institutional lenders for a normal, commercially reasonable loan for the acquisition and/or development of the Site and/or construction of the Housing Units, shall be an allowable Actual Construction Cost. Except to the extent set forth in Paragraph 1.B(2), no Actual Construction Cost shall be allowed for (A) late payment fees, default interest or other financing costs due to late payment or a default by Developer under the terms of its loan or financing documents, (B) financing costs arising from loans or funds from Affiliate or noninstitutional lenders, (C) costs arising from the use of Developer's own funds, or (D) loan funds which exceed eighty-five percent (85%) of the Estimated Base Prices defined below (the "Financing Cap").

      (2) If (and ONLY IF) Developer does not obtain an Institutional Loan secured by a mortgage or deed of trust encumbering the Site, then the "Monthly Finance Costs" for Total Invested Funds (defined below), subject to the Financing Cap, shall be an allowable Actual Construction Cost.

         (i) The "Monthly Finance Cost" shall mean, for any given month, the "Assumed Financing Rate" (defined in (ii) below), multiplied by the "Monthly Invested Funds"
(defined in (iv) below), provided, however, if Monthly Invested Funds is a negative number, the Monthly finance Cost shall be zero.

(ii) "Assumed Financing Rate" shall mean, for a given calendar month or partial month, the prime interest rate being charged from time to time by Wells Fargo Bank, N.A. to corporate borrowers of the highest credit standing, divided by twelve (12). In the event Wells Fargo Bank shall cease to establish or publish a prime rate, the prime rate shall be the rate announced from time to time in the Pacific Coast Edition of The Wall Street Journal. Any adjustment in the Assumed Financing Rate during the course of any month shall be made on a thirty (30) day month.

(iii) "Invested Funds" means all funds, other than Institutional Loans, used by Developer to pay the cost of any Actual Construction Costs. Invested Funds may include, without limitation, all capital contributed by Developer to a partnership or other business entity where such capital is used to pay for Actual Construction Costs.

(iv) "Monthly Invested Funds" shall be determined, for a given calendar month or partial month, by adding the "Total Invested Funds" (defined in 1.B(2)(v) below) at the first day of the month to the Total Invested Funds at the last day of the month, and dividing such sum by two (2). The first determination of Total Invested Funds shall be from the date they are first incurred through the last day of such month, and a similar calculation shall be made at the end of each subsequent month.

(v) "Total Invested Funds" shall mean the Developer's month end cumulative cash outlays from Invested Funds for Actual Construction Costs described in this Attachment 12 (except Paragraph 1.A., Commissions, and Paragraph 1.C., Title Insurance and Closing Costs), less Developer's net sales proceeds (Total Sales Price less normal closing costs and commission) for all Housing Units which have been sold. The source of such Invested Funds may include all capital contributed by Developer to a partnership or other business entity where such capital is used to pay for Actual Construction Costs. For the purposes of Sections 1.C., I, K and any Commissions paid under 1.A., cash outlays shall be deemed to occur for each Total Sales Price upon the sale of such Total Sales Price to a Buyer. The Monthly Financial Cost is to be added to the month-end calculation of Total Invested Funds, and this figure shall be used as the beginning balance of Total Invested Funds for the calculation in the following month. No Actual Construction Cost for Monthly Financing Costs is permitted for Total Invested Funds which, in the aggregate, exceed the Financing Cap.

(3) "Base Prices" shall mean the Total Sales Price for Housing Unit but excluding all Extra and Option Prices.

(4) "Total Sales Price" means the total amount charged by Developer for the sale of a Housing Unit to a homebuyer, inclusive of the Base Price and all Extra and Option Prices, Lot Premiums and Plan Modifications charged by Buyer for a Housing Unit.

(5) "Extra and Option Prices" shall mean all prices established by Developer for special amenities for each Housing Unit or for upgrading standard features provided
by Developer with each Housing Unit including, without limitation, change orders, upgraded carpets, drapes or shutters, upgraded cabinets, upgraded appliances, flooring upgrades, landscaping, upgraded wall coverings, etc.

6. "Lot Premium" means any increase in the Base Price of the Housing Unit charged to a homebuyer by reason of the location, size, view or other physical characterization of the Housing Unit.

7. "Plan Modifications" means any increase in the Base Price of the Housing Unit charged to a homebuyer by reason of any modification made to the Housing Unit's floor plan including, without limitation, room additions or other structural modifications.

8. "Estimated Base Prices" shall mean the sum of the estimated Base Prices for all Housing Units to be built on the Site in effect upon the Close of Escrow for the Site under the Agreement, as shown on Developer's Estimated Base Prices list, which list shall be submitted to Agency in the form of Exhibit "1" on or before the Close of Escrow for the Site.

9. Notwithstanding anything to the contrary in Paragraph 1.B(1), if Developer obtains an Institutional Loan for which the interest, loan fees, points and other charges are an Actual Construction Cost in calculating Net Profits as set forth in Paragraph 1.B.(1) (the "Permitted Finance Charges"), and the amount of the Institutional Loan is less than the Financing Cap, then Permitted Finance Charges and Monthly Finance Costs (for Total Invested Funds which, together with the Institutional Loan, to not exceed the Financing Cap), are Actual Construction Costs.

10. If Developer obtains a permanent loan secured by a single Housing Unit in the Project before the sale of such Housing Unit, interest, loan fees and charges paid by Developer on such loan may be deducted if and only if (i) such loan is a normal, commercially reasonable loan and is obtained from an institutional, non-affiliate lender, (ii) such loan is obtained for a specific Buyer who has executed a purchase agreement with Developer for the Housing Unit, and (iii) the sale of the Housing Unit to the specific Buyer is consummated within one (1) month from the date such permanent loan is obtained, or if the sale is not consummated with such Buyer, a new Buyer is obtained and the sale of the same Housing Unit to such new Buyer is consummated within six (6) months from the date such permanent loan is obtained, and (iv) such fees and charges are not reimbursed to Developer by such Buyer.

C. Title Insurance and Closing Costs. Except as specified otherwise herein, the cost of policies of title insurance in connection with financing and selling the Housing Units, as well as customary Agency's and borrower's escrow and closing charges paid by Developer.

D. Builder Costs. All "Direct" and "Indirect" construction costs and expenses incurred by Developer in performing all its obligations hereunder (including those incurred by Developer prior to the Close of Escrow) in the field, on the job site, and otherwise directly in conjunction with the development of the Project, including but not limited to, Closing Date Extension Payments, subcontract payments for construction of Housing Units or subdivision improvements, direct costs for the purchase and installation of Extras and Options for which Extra
and Option Prices are charged (but only to the extent the Extra and Option Prices for such Extras and Options are included in the Total Sales Price for such Housing Units), field labor, field supervision, bonuses paid to field superintendents (provided such bonuses are normal in the residential construction industry and are fairly allocated among the various projects on which the superintendent has worked), automobile and payroll additives related to field labor or supervision, field office expenses such as rental, depreciation, furnishings or utilities, insurance for work in process of completed products (course of construction), temporary power, tool or equipment rentals, property taxes and current assessments for the Project, guard services, trash disposal or community maintenance expenses or assessments, and legal expenses directly related to the entitlement, development, and construction of the Project and specifically excluding utility hook up fees and other charges and fees, and deposits which Developer expects to have and are actually refunded or reimbursed, all as more particularly described in Exhibit "2". Exhibit "2" lists examples of Direct and Indirect Costs and is not intended to be all inclusive. The cost of work on the Project and on land other than the Project shall be fairly allocated for purposes of calculating Actual Construction Costs among the Site served by such improvements.

E. Overhead. Three and one-half percent (31/2%) of the Base Price per Housing Unit in the Project for all overhead in connection with the development of the Project as contemplated herein and in the Agreement, which shall include all costs other than those set forth elsewhere in this Section including, but not limited to: salaries and payroll additives of Developer's home and branch office executives, officers, department heads and staff in directing, administering and supervising such development; the services of the purchasing department, sales manager and marketing support staff in the home and branch offices; all employee bonuses (excluding bonuses paid to field superintendents as described in Paragraph 1.D above); general legal and accounting fees; and the operating expenses of Developer's home and branch office such as rent, utilities, insurance, stationery, office machines and other office related expenses, and all costs set forth in Paragraph 1.N below.

F. Warranty. For each Housing Unit within the Project, the Warranty Actual Construction Cost shall be one percent (1%) of the Base Price for each Housing Unit (the "Warranty Actual Construction Cost").

G. Land Acquisition. The Base Purchase Price paid by Developer for the Site pursuant to the Agreement including, without limitation, all interest paid thereon to the Agency with respect to the Site.

H. Accounting. The fee or charge of a certified public accountant who prepares Developer's Additional Purchase Price report (defined below) to determine Additional Purchase Price due Agency pursuant to the Agreement to a maximum of Ten Thousand Dollars ($10,000.00) for the Project.

I. Buyer Upgrade Costs. Developer's costs for the purchase and installation of Buyer upgrades, including an amount equal to ten percent (10%) of revenue received for the sale of Buyer upgrades as an overhead cost for Developer's design center and other options administration, shall be an allowable Actual Construction Cost.
J. Special Assessments. Any prepayments by Developer of assessments, special taxes or other charges levied by any assessment district, community facilities district or landscape maintenance district having jurisdiction over the Project or any part thereof, less any costs reimbursed by Buyer to Developer at close of escrow, shall be an allowable Actual Construction Cost.

K. Insurance Liability. For each Housing Unit within the Project, the Insurance Liability Actual Construction Cost shall be one percent (1%) of the Base Price for each Housing Unit (the "Insurance Liability Actual Construction Cost"), and shall not be considered overhead as described in Subsection 1.E.

L. Trade Rebates. The Actual Construction Costs shall be reduced by the amount of any trade rebates or reimbursements paid to Developer by contractors or materials suppliers for goods or services furnished to the Project exclusively, or furnished to the Project and other development projects of Developer. Where such rebates or reimbursements are allocable to more development projects than the Project, the Project shall be allocated a fair and reasonable portion of such rebates or reimbursements.

M. Marketing/Models. All direct costs incurred for sales and merchandising, advertising, and model expenses (exclusive of the building and site improvements) for the Project.

N. If Developer is a partnership or limited liability company, amounts paid to any partner or member, whether as a fee for performing services as a general contractor or managing partner or member, as interest or a return on invested funds, loans or capital contributions, or otherwise, shall not be an allowable Actual Construction Cost except to the extent set forth in Paragraph B for Invested Funds, or to the extent, such payment is reimbursement for expenditures by such partner or member which would otherwise qualify as an allowable Actual Construction Cost if such partner was the "Developer" hereunder or unless specifically approved in writing by Agency as an allowable Actual Construction Cost (which approval may be withheld in Agency's sole and absolute discretion). Notwithstanding the foregoing terms of this Paragraph N, any management or general contracting fees paid to Developer by the partnership or limited liability company, or any investment fees paid by Developer to its partners or members for capital invested in the Project are included as Actual Construction Cost in Paragraph E as allowable Actual Construction Costs subject to the aggregate limitation of three and one-half percent (31/2%) of the Total Sales Price per Housing Unit for all costs included within Paragraph E.

2. Financial Records and Statements of Developer. Developer shall keep and maintain, or cause to be kept and maintained, accurate financial books and records with respect to the development of the Project, in accordance with generally accepted accounting principles except as modified by the provisions of the Agreement and this Attachment 12; provided those financial books and records shall include all supporting documentation relative to sales and cost of sales, and shall be maintained until Agency has informed Developer that either the Audit (defined below) has been completed pursuant to Paragraph 3 hereof, or informs Developer that no Audit will be performed.
3. Agency may one (1) time within six (6) months after receipt of the Additional Purchase Price Report from Developer under Paragraph 4, (the "Audit"), at Agency's expense, audit Developer's books and records related to the Project for the purpose of verification of the Additional Purchase Price received by Agency for the Project, including an audit of all Actual Construction Costs. Developer shall be notified of the Audit at least twenty-five (25) days prior to its commencement. Any deficiency in Additional Purchase Price - Market Rate Housing Unit amounts due Agency determined by the Audit, shall be immediately due and payable by Developer upon written notice from Agency. If the sum of the aforementioned deficiency amounts exceeds five percent (5%) of the Additional Purchase Price that Developer should have paid Agency, but failed to, then Developer shall also: (i) pay to Agency interest on the total deficiency amounts at the lesser of ten (10%) per annum or the maximum allowable rate under then existing law (the "Default Rate") accruing from the Payment Date immediately preceding the Audit, as applicable; and (ii) pay Agency any and all costs it incurred relating to the Audit.

4. Additional Purchase Price Report. Developer shall provide Agency with a report in the form of Exhibit "2" attached hereto (the "Additional Purchase Price Report") on or before the Additional Purchase Price Payment Date. The Report shall include computations of (x) the Actual Gross Sales Revenues on Housing Units, and (y) all Actual Construction Costs.
## EXHIBIT 1
TO
ATTACHMENT NO. 12

TO ACTUAL CONSTRUCTION COSTS ADDENDUM
ESTIMATED BASE PRICES SCHEDULE

<table>
<thead>
<tr>
<th>Plan</th>
<th>Units</th>
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EXHIBIT 2
TO
ATTACHMENT NO. 12

TO ACTUAL CONSTRUCTION COSTS ADDENDUM
DIRECT/INDIRECT CONSTRUCTION COST SCHEDULE

A. Direct Construction Costs (Including, with limitation):

Engineering - Precise Grading
Engineering - Plot Plan
Engineering – Monumentation
Engineering - As built, record drawings
Engineering - Final Map/Intract Improvement Plans
Architectural Plans and Working Drawings
Building Permit
Plan Check Fees
Inspection Fees
Rough Grading
Pre-water
Clear/Grub
Precise Grading
Lot Spoils
Staking
Sewer
Storm Drain
Water System
Curb/Gutter
Sidewalk
Paving
Street Lights
Street Trees
Street Signs, Striping
Traffic Signals
Dry Utilities
Perimeter Landscape
Perimeter Walls
Side yard Fencing/Walls
Retaining Walls
Park Impact Fees
School Impact Fees
Other DIF Fees
Geotechnical pad certification
and pad recertification
Erosion Control/SWPPP
installation cost only (sandbags, catch basin covering, etc.)
Common Area Amenities, (excluding model/marketing upgrades) gazebos, pocket parks, etc.
Costs of Installing Options
Front/Rear Landscaping (excluding model upgrades)
Mailboxes
Slab Testing
Slab
Site Concrete
Framing
Rough & Finish Carpentry
Interior/Exterior Lighting & Fixtures
Masonry
Roofing & Roofing Tile
Cabinets
Countertops
Stairs
Insulation
Fireproofing/Waterproofing
Flashings/Sheet Metal
Gutters
Skylights
Weather striping, sealing, caulking
Doors & Frames
Windows & Frames
Glass & Glazing
Lath & Plaster
Stucco
Drywall
Tile
Carpet and Flooring
Painting
Wall Covering
Toilets and Accessories
Showers, doors, tubs and accessories
Bath accessories
Shelving
Screens
Signage (excluding marketing/model signage)
Plumbing Fixtures
Sprinklers
Mirrors
Appliances
Window coverings & Shutters
Fireplace
Security System
B. **Indirect Construction Costs (Including, without limitation):**

- Field Supervision
- Field Personnel Bonuses
- Payroll Additives
- Auto Allowance
- Field Office Including Temporary Utilities
- Course of Construction Insurance
- Property Taxes
- Assessments
- Security
- Trash Disposal
- Legal – Directly Related to Construction Expenses