AGENCY REIMBURSEMENT AGREEMENT

This AGENCY REIMBURSEMENT AGREEMENT (this “Reimbursement 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 (“Developer”).

RECITALS

The following recitals are a substantive part of this Reimbursement Agreement; all capitalized terms set forth in the recitals shall have the meanings ascribed as provided in Section 1.1 hereof unless otherwise provided herein.

A. The Agency and Developer entered into that certain Disposition and Development Agreement (Olive Street Single Family Residential Development) dated as of February 1, 2006 (the “DDA”) for the purpose of providing for the development of the Project on the Site (as such terms are defined in the DDA).

B. This Reimbursement Agreement is entered into to reimburse Developer for reasonable and customary costs and expenses incurred in the planning, entitling, and construction of certain Agency Improvements.

C. The Agency Improvements are of benefit to the Agency, and the Agency and Developer will benefit from a coordinated plan of financing, design, engineering and construction of the Agency Improvements and the development of the Site.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01 Definitions

The following terms shall have the meanings ascribed to them in this Section 1.1 for purposes of this Reimbursement Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the DDA.

“Acceptance Date” means the date the Executive Director approves the Payment Request.

“Actual Cost” means the cost of the Agency Improvements, which cost may include: (i) the actual hard costs for the construction of such Agency Improvements, including labor, materials and equipment costs; (ii) the consultant and other costs incurred in preparing the Plans for such Agency Improvements and the related costs of environmental evaluations of the Agency
Improvements; (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Agency Improvements; (iv) professional costs associated with such Agency Improvements, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; (v) costs directly related to the construction and/or acquisition of the Agency Improvements, such as costs of payment, performance and/or maintenance bonds, and insurance costs; (vi) other on-site costs directly related to the construction and/or acquisition of the Agency Improvements including, without limitation, on-site supervision, on-site equipment and trailer rentals, and on-site portable sanitation facilities; (vii) the value of any real property or interests therein (“Real Estate”) that (1) are required for the development of any Agency Improvements such as temporary construction easements, haul roads, etc., and (2) are required to be conveyed with the Agency Improvements, in an amount equal to the actual cost of the Real Estate purchased from such independent third party, (viii) a management fee equal to four percent (4%) of all other Actual Cost. The Agency shall not purchase such Real Estate from Developer. Actual Cost shall not include any internal or overhead costs of Developer.

“Agency Improvements” are the improvements set forth in Exhibit B to this Reimbursement Agreement.

“County” means the County of Orange, California.

“Payment Request” means a document, substantially in the form of Exhibit A hereto, to be used in requesting a payment of a Reimbursement Amount.

“Plans” means the plans, specifications, schedules and related construction contracts for the Agency Improvements approved pursuant to applicable standards of the City.

“Reimbursement Agreement” means this Agency Reimbursement Agreement.

ARTICLE II.

CONSTRUCTION OF AGENCY IMPROVEMENTS

Section 2.01 Reimbursement of Improvements

The Agency shall reimburse Developer for reasonable and customary costs and expenses incurred in connection with the construction of the Agency Improvements.

Section 2.02 Plans

Developer shall cause Plans to be prepared for the Agency Improvements. Developer shall obtain written approval of the Plans in accordance with applicable ordinances and regulations of the City.

Section 2.03 Agency Approval

The Executive Director shall review and approve the following, such approval not to be unreasonably withheld: (i) the Plans; (ii) Developer’s proposed bidding procedures for
selection of the contractor to build the Agency Improvements which such bidding procedures shall be in conformity with City competitive bid requirements for public works projects; and (iii) the selection of the contractor and the form of any agreement between Developer and the contractor relating to the Agency Improvements.

Section 2.04  Construction

This Reimbursement Agreement shall not expand, limit or otherwise affect any obligation of Developer under the DDA. All Agency Improvements shall be constructed substantially in accordance with the approved Plans and Developer shall coordinate the construction of the Agency Improvements with the City Public Works Department and the City Public Utilities Department.

Section 2.05  Relationship to Public Works

This Reimbursement Agreement is for the payment of the Agency Improvements by the Agency and is not intended to be a public works contract. The Agency and Developer agree that Developer shall award all contracts for the construction of the Agency Improvements to be constructed by Developer, and that this Reimbursement Agreement is necessary to assure the timely and satisfactory completion of such Agency Improvements.

The parties shall establish a regular monthly meeting to discuss construction status, budget reconciliation and draw request. From time to time at the request of the Executive Director or Developer, Developer and the Executive Director shall meet and confer regarding matters arising hereunder with respect to the Agency Improvements and the progress in constructing the same, and as to any other matter related to the Agency Improvements or this Reimbursement Agreement.

Section 2.06  Contractor

In performing this Reimbursement Agreement, Developer is an independent contractor and not an agent or employee of the Agency. The Agency shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of Developer.

Section 2.07  Contracts and Change Orders

Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as “change orders”) required for the construction of the Agency Improvements to be constructed by Developer, and all such contracts and supplemental agreements shall be submitted to the Executive Director.
ARTICLE III.

ACQUISITION AND PAYMENT

Section 3.01 Inspection

No payment hereunder shall be made by the Agency to Developer for the Agency Improvements until such improvements have been inspected by the Agency solely to verify that such improvements have been constructed substantially in accordance with the Plans. The Agency shall make or cause to be made regular on-going site inspections of the Agency Improvements.

Section 3.02 Acceptance by City of Agency Improvements within the Public Right-of-Way

Developer acknowledges that the Agency Improvements within the public right-of-way shall be accepted by the City as a condition precedent to payment of the Retention for such Agency Improvements.

Section 3.03 Submittal of Payment Request

Progress Payment Requests shall be submitted to the Executive Director on a monthly basis following the Date of Agreement. Such Progress Payment Request shall not exceed ninety percent (90%) of the costs of the actual work completed. An amount equal to ten percent (10%) of the actual work completed shall be retained by the Agency (the “Retention”).

Upon completion of the Agency Improvements and satisfaction of Section 3.02 (if applicable), Developer shall deliver to the Executive Director a final Payment Request relating to such improvements and any Retentions related thereto, along with an assignment of the warranties and guaranties for such Agency Improvements, to the extent assignable, as described in Section 4.1 hereof.

Section 3.04 Review of Payment Request

Upon receipt of a Payment Request (and all accompanying documentation as specified in the Payment Request), the Executive Director shall conduct a review in order to confirm that such request is complete, that the Agency Improvements that are the subject of such Payment Request were constructed substantially in accordance with the Plans therefor, and to verify and approve the Actual Cost of the Agency Improvements. The Executive Director shall conduct the review in an expeditious manner and Developer agrees to reasonably cooperate with the Executive Director in conducting the review and to provide the Executive Director with such additional information and documentation as is reasonably necessary for the Executive Director to conclude the review. Within ten (10) days of receipt of such Payment Request, the Executive Director shall notify Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided (the “Review Period”). If the Executive Director disapproves the Payment Request, the Executive Director shall provide written notice of
disapproval to Developer within the Review Period stating in reasonable detail the reasons for such disapproval and the changes to such Payment Request necessary to obtain the Executive Director’s approval. If the Executive Director reasonably disputes any Actual Cost of the Agency Improvements set forth in such Payment Request, the Executive Director shall approve for payment an amount equal to the Actual Cost thereof as the Executive Director determines is reasonable and appropriate and shall deliver written notice of disapproval of the remaining amount and the reasons for such disapproval. Upon the Executive Director’s approval of any Actual Cost, the Agency shall issue payment to Developer as provided in Section 3.05.

The Executive Director shall be entitled to withhold approval for payment of the Agency Improvements that are the subject of such Payment Request only if: (i) a certificate of acceptance (or other similar approval) has not been issued by the City as provided in Section 3.02 (if applicable) for purposes of releasing a Retention; (ii) the Agency Improvements have not been constructed substantially in accordance with the Plans; (iii) the Executive Director disputes the Actual Cost of any Agency Improvements stated in such Payment Request; or (iv) final conditional lien releases for labor and materials provided in connection with such Agency Improvements have not been submitted to the City (provided that this requirement shall not apply if waived by the City because Developer has provided to the City a payment bond or provides a bond protecting the City from mechanics’ liens made by parties that have not provided such lien releases in a form acceptable to the City).

Nothing in this Reimbursement Agreement shall be deemed to prohibit Developer from contesting in good faith the validity or amount of any mechanics’ or materialman’s lien nor limit the remedies available to Developer with respect thereto so long as such delay in performance shall not subject the Agency Improvements thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, Developer shall be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Executive Director.

Section 3.05 Payment

Upon approval of a Payment Request by the Executive Director, the Executive Director shall sign such Payment Request and cause payment to be made no later than ten (10) days following approval of such Payment Request.

Section 3.06 Restrictions on Payments

Nothing herein shall require the Agency in any event to pay more than the Actual Cost of the Agency Improvements, as applicable.

Section 3.07 Defective or Nonconforming Work

If any of the work done or materials furnished for the Agency Improvements are found by the Executive Director to be defective or not in substantial accordance with the applicable Plans, and: (i) if such finding is made prior to payment of the Payment Request of such Agency Improvements, the Executive Director may withhold payment therefor up to an amount equal to the estimated cost to correct such defective work or materials until such defect
or nonconformance is corrected, or (ii) if such finding is made after payment of the Payment Request, Developer shall correct such defect or nonconformance.

ARTICLE IV.

MAINTENANCE OF AGENCY IMPROVEMENTS

Section 4.01 Maintenance and Warranties

Except for routine street sweeping and any other routine City maintenance services, Developer shall maintain the Agency Improvements constructed by Developer in good and safe condition until the Acceptance Date, provided that the Agency proceeds with its approval of each Payment Request as provided in Section 3. Subject to the foregoing sentence, prior to the Acceptance Date, Developer shall be responsible for performing any required maintenance on the Agency Improvements constructed by Developer. On or before the Acceptance Date, Developer shall assign to the City, to the extent assignable, all of Developer’s rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to such Agency Improvements. Any warranties, guarantees or other evidences of contingent obligations of third parties with respect to the Agency Improvements shall be delivered to the Executive Director as part of the Payment Request.

ARTICLE V.

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.01 Covenants and Warranties of Developer

Developer represents and warrants for the benefit of the Agency as follows:

(a) **Organization.** Developer is a Delaware limited liability company and is in compliance with the laws of the State of California, and has the power and authority to own its property and assets and to carry on its business as now being conducted and as now contemplated.

(b) **Authority.** Developer has the power and authority to enter into this Reimbursement Agreement, and has taken all action necessary to cause this Reimbursement Agreement to be executed and delivered, and this Reimbursement Agreement has been duly and validly executed and delivered by Developer.

(c) **Binding Obligation.** This Reimbursement Agreement is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(d) **Financial Records.** Until one year after the final acceptance of all the Agency Improvements, Developer covenants to maintain proper books of record and account for the construction of the Agency Improvements and all costs related
thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the Agency or its agent at any reasonable time during regular business hours on reasonable notice.

(e) Plans. Developer represents that it will obtain approval of the Plans for the Agency Improvements constructed by Developer from all appropriate departments of the City and from any other public entity or public utility agencies from which such approval must be obtained. Developer further agrees that the Agency Improvements constructed by Developer will be constructed in compliance with such approved plans and specifications and any supplemental agreements (change orders) thereto, as approved in the same manner.

Section 5.02 Insurance

Without limiting Agency’s right to indemnification, Developer shall secure and maintain insurance coverage as set forth in this Section 5.02.

(a) Prior to commencing any activities under this Reimbursement Agreement and until the completion of the Agency Improvements, Developer shall secure and maintain the following insurance coverage:

(i) Workers’ Compensation Insurance as required by California statutes;

(ii) 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

(iii) 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.

(b) To the extent that Developer contracts with a general contractor for the performance of any work pursuant to this Reimbursement Agreement, Developer shall also furnish (or cause to be furnished) to the Agency evidence satisfactory to the Executive Director that such contractor meets the insurance requirements as set forth herein and that any subcontractor with whom the general contractor or Developer contracts for the performance of work carry worker’s compensation insurance as required by law.

(c) 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.
(d) Each insurance policy required by this Reimbursement 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 property insurance policy required by Sections 5.02 of this Reimbursement 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 Agreement.”

(e) Prior to commencing any activity under this Reimbursement Agreement, Developer shall deliver to Agency insurance certificates confirming the existence of the insurance required by this Reimbursement Agreement, and including the applicable clauses referenced above, and either (i) endorsements to the above-required policies, which add to these policies the applicable clauses and provisions referenced above, or (ii) in lieu of said endorsements, documentation acceptable to Agency evidencing that the coverage, terms, and conditions set forth in the above-referenced clauses are otherwise provided for in said insurance policies. 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 Reimbursement 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. In the event that a claim or other legal action is filed against Agency, and if Agency, in its good faith opinion,
believes it may have coverage under any of the insurance required herein, then Agency has the right to demand, and to receive within a reasonable time period, copies of the insurance policies related to such required insurance; provided, however, that this provision shall not apply if the parties agree that Developer shall fully defend, hold harmless, and indemnify Agency against any such claim or other legal action.

(f) 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:

(i) 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;

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

(iii) Declare Developer in Default;

(iv) Terminate this Reimbursement 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 Reimbursement Agreement.

Section 5.03 Indemnity

Developer shall defend, indemnify, assume all responsibility for, and hold Agency and City, their 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 Reimbursement 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 Reimbursement 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 Reimbursement Agreement. Developer shall not be liable for property damage or bodily injury occasioned by the sole negligence or willful misconduct of Agency, City, or their designated agents or employees.
Section 5.04  Prevailing Wages

With respect to the construction of the Agency Improvements set forth in the Scope of Development, Developer and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, et seq., and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Such requirements are set forth in greater detail in Exhibit C attached hereto and incorporated herein by reference. Upon the request of the Agency, the Developer shall certify to the Agency that it is in compliance with the requirements of this Section 5.04.

Developer shall indemnify, protect, defend and hold harmless the Agency and its officers, employees, contractors and agents, with counsel reasonably acceptable to the Agency, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Agency Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (a) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (b) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the construction of the Agency Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. “Increased costs,” as used in Section 310 of the DDA, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Lease and shall continue after completion of the construction of the Agency Improvements by the Developer.

ARTICLE VI.

DEFAULT AND REMEDIES

Section 6.01  Default Remedies

Failure by either Party to perform any action or covenant required by this Reimbursement Agreement within the time periods provided herein following Notice and failure to cure as described hereafter, constitutes a “Default” under this Reimbursement 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 Reimbursement 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.

Section 6.02 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.

Section 6.03 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.

Section 6.04 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Reimbursement Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

Section 6.05 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.

Section 6.06 Applicable Law

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

Section 6.07 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 Reimbursement 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.
ARTICLE VII.

GENERAL

Section 7.01  Mutual Consent

This Reimbursement Agreement may be terminated by the mutual written consent of the Agency and Developer.

Section 7.02  Audit

The Agency shall have the right, during normal business hours and upon the giving of five (5) business days’ prior written notice to Developer, to review all books and records of Developer pertaining to costs and expenses incurred by Developer in relation to any of the Agency Improvements, and any bids taken or received for the construction thereof or materials therefor.

Section 7.03  Notices, Demands and Communications Between the Parties

Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Reimbursement 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:  
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

With a copy to:  Songstad & Randall LLP  
2201 Dupont Drive, Suite 100  
Irvine, California 92612  
Attention: Timothy Randall  
FAX No. (949) 757-1613

Section 7.04  Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Reimbursement Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Reimbursement 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 (including those access issues identified in the Agency Reimbursement Agreement). Notwithstanding anything to the contrary in this Reimbursement 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 Reimbursement Agreement may also be extended in writing by the mutual agreement of Agency and Developer. Notwithstanding any provision of this Reimbursement Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section. A delay under this section shall not be grounds for the Executive Director to deny a payment of a otherwise adequate Payment Request.

Section 7.05  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.

Section 7.06  No Third Party Rights

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

Section 7.07  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.

Section 7.08  Counterparts

This Reimbursement Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement. This Reimbursement Agreement is executed in five (5) originals, each of which is deemed to be an original.

Section 7.09  Integration

This Reimbursement Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Reimbursement Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Reimbursement Agreement and shall be of no further force or effect. Each Party is entering this Reimbursement 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 18 and Exhibits A through C, 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 Reimbursement Agreement.

Section 7.10  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.

Section 7.11  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 Reimbursement Agreement or of any of its terms. Reference to section numbers are to sections in this Reimbursement Agreement, unless expressly stated otherwise.
Section 7.12 Interpretation

As used in this Reimbursement 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 Reimbursement Agreement shall be interpreted as though prepared jointly by both Parties.

Section 7.13 No Waiver

A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Reimbursement 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 Reimbursement Agreement.

Section 7.14 Modifications

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

Section 7.15 Severability

If any term, provision, condition or covenant of this Reimbursement Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Reimbursement 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.

Section 7.16 Computation of Time

The time in which any act is to be done under this Reimbursement 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.

Section 7.17 Legal Advice.

Each Party represents and warrants to the other the following: they have carefully read this Reimbursement Agreement, and in signing this Reimbursement 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 Reimbursement Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Reimbursement Agreement; and, they have freely signed this Reimbursement 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 Reimbursement Agreement, and without duress or coercion, whether economic or otherwise.

Section 7.18 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 Reimbursement Agreement.

Section 7.19 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 Reimbursement Agreement including, but not limited to, releases or additional agreements.

Section 7.20 Conflicts of Interest

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

Section 7.21 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 Reimbursement 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 Reimbursement 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.”

Section 7.22 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 forty-five (45) days after signing and delivery of this Reimbursement Agreement by Developer or this Reimbursement 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 Reimbursement Agreement.

[signatures on next page]
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: _________________________

Its: _________________________
EXHIBIT A

PAYMENT REQUEST

The undersigned, Brookfield Olive Street LLC, a Delaware limited liability company ("Developer") hereby requests payment in the total amount of $__________ (for all or a portion of the Agency Improvements, all as more fully described in the Attachment 1 hereto. (All terms as used herein are defined that certain Agency Reimbursement Agreement by and between the Agency and Developer and the DDA.) In connection with this Payment Request, the undersigned hereby represents and warrants to the Agency as follows:

1. The undersigned is a duly authorized officer of Developer, qualified to execute this Payment Request for payment on behalf of Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Agency Improvement, Developer has submitted or submits herewith to the City, if applicable, as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such Agency Improvements, and such drawings or plans and specifications, as applicable, are true, correct and complete.

3. All costs of the Agency Improvements for which payment is requested hereby are Actual Costs (as defined in the Reimbursement Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the Agency.

4. Supporting documentation (such as third party invoices, lien releases and cancelled checks) is attached with respect to each cost for which payment is requested.

5. The Agency Improvements for which payment is requested hereby was constructed in accordance with the requirements of the Plans.

6. Developer is in compliance with the terms and provisions of the Reimbursement Agreement and no portion of the amount being requested to be paid was previously paid.

7. The Reimbursement Amount for the Agency Improvements has been calculated in conformance with the terms of Section 3.03 of the Reimbursement Agreement.

8. The City has accepted the Agency Improvements described herein and Developer has attached all warranties, guarantees or other evidences of contingent obligations of third parties with respect to the Agency Improvements.
I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

DEVELOPER:

BROOKFIELD OLIVE STREET LLC, a Delaware limited liability company

By: __________________________
Name: __________________________
Date: __________________________

AGENCY:

Payment Request Approved for Submission

By: __________________________
Date: __________________________
ATTACHMENT 1

SUMMARY OF AGENCY IMPROVEMENTS
TO BE REIMBURSED AS PART OF PAYMENT REQUEST

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Discrete Component</th>
<th>Actual Cost</th>
<th>Disbursement Requested</th>
</tr>
</thead>
</table>

[List here all components for which payment is requested, and attach supporting documentation]
AGENCY IMPROVEMENTS

Agency Improvements are subject to Agency review and approval. Developer is to obtain all necessary permits and approvals prior to commencement of any construction. The general scope of the Agency Improvements is described below. Detailed scopes of work shall be described in Agency work orders for each specific improvement.

Grading of Kwikset Site:
Perform rough grading of the Kwikset Site, including design and approval of all required plans. The Kwikset Site is approximately 16 acres and is adjacent to the Olive Street project, as described in the Disposition and Development Agreement (Olive Street Single Family Residential Development).

Tree Relocation:
Unearth, box, and relocate mature trees from the Olive Street (North Parcel) to an Agency owned property on Santa Ana Street, between Kroeger and Melrose Streets.

Street Improvements:
Design and construction of street improvements within and adjacent to the Colony Park development, including: Olive, South, Water, Melrose and Kroeger Streets. Specific street improvements are to be determined by the Agency, but shall generally include: curb, gutter, asphalt, signage, striping, parkways, sidewalks, sanitary sewer, storm and water systems.
EXHIBIT C

PREVAILING WAGE REQUIREMENTS

I. Participant’s Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a pre-acceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers’ compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

Exception: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 176(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;
(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.