OWNER PARTICIPATION AGREEMENT

by and between

THE ANAHEIM REDEVELOPMENT AGENCY

and

WESTGATE INVESTMENT GROUP, LLC
OWNER PARTICIPATION AGREEMENT

This OWNER PARTICIPATION AGREEMENT (this “Agreement”) is entered into as of _____________, 2008 (the “Date of Agreement”), by and between the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”), and WESTGATE INVESTMENT GROUP, LLC, a California limited liability company (the “Participant”). The Agency and the Participant may be referred to herein individually as a “Party”, collectively as the “Parties”.

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City Council of the City of Anaheim (the “City Council”) approved and adopted the Redevelopment Plan for the West Anaheim Commercial Corridors Redevelopment Project by Ordinance No. 5637, dated June 23, 1998, as amended from time to time, and as amended by Ordinance Nos. 5913, 5914, 5915, 5916, 5917 and 5918 of the City Council adopted on May 25, 2004, which merged the West Anaheim Commercial Corridors Redevelopment Project with other redevelopment projects within the City into the “Merged Redevelopment Project”.

B. The Agency is authorized and empowered by the Community Redevelopment Law, California Health and Safety Code Sections 33000, et seq. (the “CRL”), to enter into agreements for the acquisition, disposition and development of real property and otherwise to assist in the redevelopment of real property within the Redevelopment Project Area in conformity with the Redevelopment Plan, to acquire real and personal property in redevelopment project areas, to receive consideration for the provision by the Agency of redevelopment assistance, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to incur indebtedness to finance or refinance redevelopment projects.

C. Participant is the owner of approximately ten (10) acres of property seven (7) acres of which is comprised of the “Rains Landfill” and is hereinafter referred to as the “Participant Property” and three (3) of which is developed with a multi-family housing complex (“Adjacent Property”) and which is not the subject of this Agreement. The Participant Property is shown as the “Participant Property” on the map (“Site Map”) attached hereto at Attachment No. “1” and legally described (“Legal Description”) on Attachment No. 2 attached hereto.

D. The Agency has entered into a Disposition and Development Agreement dated June 5, 2007 (the “Zelman DDA”) with ZELMAN ANAHEIM, LLC, a Delaware limited liability company (“Zelman”) pursuant to which the Agency has agreed to convey certain real property located within the Redevelopment Project Area containing approximately 26 acres which property is shown on the Site Map as the “Westgate Center Site” and upon which Zelman proposes to construct a commercial retail shopping center (“Zelman Center”). The Participant Property is located adjacent to and to the northeast of the Westgate Center Site as shown on the Site Map.
E. The Westgate Center Site is comprised of, among other areas, the Anderson Landfill, Davis Mud Pit and Sparks Landfill. The Anderson Landfill, Sparks Landfill and Rains Landfill are sometimes collectively referred to as the “Landfills.”

F. Agency, Zelman and Participant are negotiating a settlement agreement (the “Settlement Agreement”) with the County of Orange (“County”) which provides, among other matters, for the County to make certain payments to the Agency, for the Agency to perform certain of the “Remedial Improvements,” for certain insurance to be procured, for certain releases and indemnities to be provided and for the landowners to undertake certain ongoing obligations with respect to the Sparks Landfill and Rains Landfill after the completion of the Remedial Improvements.

G. The Parties desire to provide for: (i) the Agency to cause the implementation of the RAP with respect to the Participant Property and to cause the surcharging and rough grading of the Participant Property so as to accommodate sheet flow drainage of the Participant Property in its rough graded state (collectively, the “Agency Improvements”), (ii) the ongoing operation, maintenance and monitoring of the Remedial Improvements with respect to the Participant Property by the Participant pursuant to the Operations, Maintenance, and Monitoring Plan (“Ongoing Participant Obligations”), (iii) the subsequent granting by the Agency to Participant of an access easement (the “Access Easement”) from Beach Boulevard to the Participant Property through the Westgate Center Site and the provision of a sign easement (the “Sign Easement”) for the installation and placement by Participant of a sign on the Westgate Center Site at Beach Boulevard located in the vicinity of the Access Easement as approximately shown on the Site Map and, if construction of the Westgate Center is commenced pursuant to the Zelman DDA, then the paving and other surface improvements necessary for the effective utilization of the Access Easement and accommodation of construction by Participant of the monument sign on the Sign Easement.

H. A CUP was granted with respect to the Participant Property which CUP permits a self storage facility on the Participant Property.

I. The Agency Improvements and Participant Improvements are further described in the body of this Agreement and in the Scope of Development attached hereto as Attachment No. 3 and the schedule for the development of the plans for such work and its completion is further described in the body of this Agreement and in the Schedule of Performance attached hereto as Attachment No. 4.

J. Although the Parties anticipate that the Westgate Center Site will be developed as a retail shopping center and that the Participant Property will be developed as a self storage facility and parking lot to be benefited by the Access Easement and Sign Easement, the Parties have agreed to proceed with the Settlement Agreement, if and when finally approved by the parties thereto, the Agency Improvements and the Ongoing Participant Obligations, whether or not either or both of the contemplated developments occur.

K. This Agreement is in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements under which the
redevelopment of the Merged Redevelopment Project has been undertaken, in that, among other goals and objectives to be achieved by the development of the Participant Improvements, the problems associated with the Landfills containing refuse materials will be mitigated.

NOW, THEREFORE, the Agency and the Participant hereby agree as follows:

100.  DEFINITIONS

“Access Easement” means a non-exclusive easement across the Westgate Center Site providing access from Beach Boulevard to the Participant Property, as shown on the Site Map, including a methodology for the allocation of costs with respect to the operation and maintenance of the Access Easement, in substantially the form of the access easement attached hereto as Attachment No. 5A and incorporated herein by reference.

“Actual Knowledge” means the facts known by David Gottlieb without a duty of further investigation.

“Additional Environmental Covenants” means such additional and/or different environmental covenants as may be required by RWQCB and recorded by Participant in accordance with Section 309 hereof.

“Adjacent Property” means the approximately three (3) acres adjacent to the Participant Property improved with multi-family residential units and shown on the Site Map as the Adjacent Property.

“Agency” means the Anaheim Redevelopment Agency, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, Health and Safety Code, Section 33000, et seq., and any assignee of or successor to its rights, powers and responsibilities.

“Agency Executive Director” means the Executive Director of the Agency or her designee who shall represent the Agency in all matters pertaining to this Agreement. Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Agency Executive Director is authorized to act unless this Agreement specifically provides otherwise or the context should otherwise require.

“Agency Improvements” are identified in Recital G, and described, in more detail, in the Scope of Development.

“Agency Plans” is defined in Section 206.

“Agency Title Policy” is defined in Section 304.2.

“Agency's Conveyance Conditions” means the conditions precedent to the Conveyance Closing to the benefit of the Agency, as set forth in Section 305.1 hereof.

“Agreement” means this Owner Participation Agreement between the Agency and the Participant.
“Anderson Landfill” means that portion of the Westgate Center Site consisting of approximately 3.4 acres.

“Basic Concept Drawings” are described in the Design Requirements.

“Breach” is defined in Section 601.

“CEQA” is defined in Recital E.

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

“City Council” refers to the City Council of the City of Anaheim as referenced in Recital A.

“Close of Conveyance Escrow” is defined in Section 302.4 hereof.

“Completion of Construction” means the date on which the Participant is entitled to a Release of Construction Covenants for the Participant Improvements.

“Completion Report” means the report prepared by Agency (or its designee) documenting the implementation of the RAP and completion of the Remedial Improvements and submitted to the RWQCB by the Agency.

“Contractor’s Pollution Liability Insurance” means insurance regarding the Environmental Condition of the Participant Property during the course of construction of the Participant Improvements.

“Construction Drawings” is defined in Section 402.3 hereof.

“Construction Financing” is defined in Section 411.1 hereof.

“Construction Period” means the period commencing upon the Date of Agreement and terminating upon Completion of Construction.

“Conveyance” means the conveyance of the Access Easement and Sign Easement by the Agency to the Participant on the Closing Date.

“Conveyance Closing” or “Closing Date” or “Close of Escrow” or “Close of Conveyance Escrow” means the date upon which the Conveyance is recorded through Escrow.

“Conveyance Conditions” means the Participant’s Conveyance Conditions and the Agency’s Conveyance Conditions.

“County” means the County of Orange, California.

“County Dispute” is defined in Section 306.1(d) hereof.

“CRL” is defined in Recital B.

“Date of Agreement” is defined in the first paragraph hereof.

“Davis Mud Pit” means the area consisting of approximately 2.3 acres, located in the northwest quadrant of the Westgate Center Site.

“Default” means the failure of a Party hereto to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 601 hereof.

“Design Requirements” are described in Attachment No. 6.

“Easement Condition” is defined in Recital G.

“Effective Date” means the date on which the Parties execute this Agreement.

“Eligible Persons” means any individual, partnership, corporation or association which qualifies as a “displaced person” pursuant to the definition provided in Government Code Section 7260(c) of the California Relocation Assistance Act of 1970, as amended, and any other applicable federal, state, or local regulations or laws.

“Environmental Condition” is defined in Section 307.2(a) hereof.

“Environmental Covenants” means the environmental covenants contained in substantially the form as Attachment No. 7 attached hereto and incorporated herein by reference as may be modified in the future with Additional Environmental Covenants to comply with RWQCB directives.

“Environmental Insurance” is defined in Section 202.

“Environmental Insurance Parameters” means those certain items listed in Attachment No. 8.

“Environmental Liabilities” is defined in Section 308.2.

“Escrow” is defined in Section 302 hereof.

“Escrow Agent” is defined in Section 302 hereof.

“Exceptions” is defined in Section 303.2 hereof.

“Governmental Requirements” is defined in Section 501(d) hereof.

“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,” “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 material,” “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 and breakdown and derivative products thereof, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) 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, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) 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 (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

“Immunity Letter” means the issuance by the RWQCB of a letter(s), certificate(s) or other official writing(s) which provides (i) that all remedial work has been completed in accordance with the Remedial Action Plan, (ii) that the immunity available under Health and Safety Code Section 33459.3 applies, and (iii) that the Rains Landfill has been closed in accordance with California Code of Regulations, Title 27, as applicable.

“Increased Costs” is defined in Section 414.

“Indemnity” or “Indemnify” is defined in Section 308.2.

“Interim Immunity Letter” means the letter to the Agency from the RWQCB dated April 27, 2007.

“Landfills” means collectively the Sparks Landfill, Rains Landfill and the Anderson Landfill.

“Landfill Gas” means gaseous emissions produced as a by-product of organic waste during decomposition which may contain various chemical components in widely fluctuating quantities including without limitation, methane, carbon dioxide, hydrogen sulfide, carbon monoxide, benzene, ethyl-benzene, toluene, vinyl chloride, dichloromethane, trichloroethylene, 1,2, dichloroethylene, tetrachloroethylene and ammonia.

“Legal Description” means the legal description of the Participant Property attached hereto as Attachment No. 2 and incorporated herein by reference.

“Liabilities” is defined in Section 307.4 hereof.

“Liability Immunity” is defined in Section 307.4 hereof.
“**List of Environmental Condition Documents**” means the List of Environmental Condition Documents attached hereto as Attachment No. 9 and incorporated herein by reference.

“**Maintenance Standards**” is defined in Section 501(c) hereof.

“**Memorandum of Agreement**” means the memorandum of this Agreement attached hereto as Attachment No. 14 and incorporated herein by reference which will be recorded by the Agency in offices of the County Recorder of the County of Orange immediately following the Effective Date.

“**Merged Redevelopment Project**” is defined in Recital A.

“**Mortgage**” is defined in Section 411.2 hereof.

“**Non-Participant Entitlement Conditions**” means commencement of construction on the Westgate Center Site and/or any other conditions precedent, as may be required by the City or the Regulatory Agencies, if any, to the development of the Participant Improvements on the Participant Property in accordance with existing zoning, other than development conditions to be complied with by the Participant.

“**Notice**” shall mean a notice in the form prescribed by Section 701 hereof.

“**Ongoing Participant Obligations**” means the obligation of Participant to perform the ongoing operation, maintenance and monitoring with respect to the Participant Property pursuant to the Operations, Maintenance and Monitoring Plan and to record the Additional Environmental Covenants, if any. The requirement for Participant to perform the Ongoing Participant Obligations shall be included in the Memorandum of Agreement.

“**Operations, Maintenance and Monitoring Plan**” means the plan which describes, among other things, the obligation of Participant and the owner of the Westgate Center, respectively, to conduct ongoing monitoring of the landfill gas extraction systems, groundwater and the landfill caps on their respective properties. Such plan shall be prepared by the Agency and approved by RWQCB.

“**Outside Date**” means the five (5) years from the Effective Date.

“**Owned or Controlled by Participant**” means any entity in which Participant owns a majority interest in profits and losses and has primary operational and management control.

“**Participant**” means Westgate Investment Group, LLC, a California limited liability company, and its successors and assigns.

“**Participant Improvements**” are the improvements for the self storage facility and the approximately one (1) acre parking lot serving the adjacent residential uses as shown on the Site Plan both as more particularly described in the Scope of Development.

“**Participant Notice**” is defined in Section 410 hereof.
“Participant Property” means that certain real property located within the Redevelopment Project Area.

“Participant Property Permitted Exceptions” is defined in Section 303.2.

“Participant Property Title Report” is defined in Section 303.2.

“Participant Title Policy” is defined in Section 304.1 hereof.

“Participant’s Conveyance Conditions” is defined in Section 305.2.

“Party” and/or “Parties” collectively refers to Agency and the Participant.

“Permanent Financing” means debt and/or equity financing secured by Participant to repay the obligations under the Construction Loan.

“Permitted Exceptions” are defined in Section 303.1 hereof.

“Permitted Transfer” is defined in Section 703.2.

“Polanco Redevelopment Act” means the provisions of California Health and Safety Code Sections 33459 – 33459.8, as same may be amended from time to time.

“PP Trust Deed” is defined in Section 301.3 below.

“Preliminary Evidence of Financing” means a preliminary commitment letter from a financial institution which has adequate financial resources, in the reasonable determination of the Agency Executive Director, and is in the business of providing construction financing for the improvements, and which includes: (i) a term sheet or letter of interest, and (ii) the statement by the prospective lender that such lender has reviewed the Participant's preliminary loan information and has issued a preliminary letter of interest or term sheet to provide Construction Financing for the Participant Improvements.

“Prevailing Wage Laws” is defined in Section 414.

“Purchase Price” is defined in Section 301.2 hereof.

“Purchase Price Note” is defined in Section 301.3 below.

“Rains Landfill” is located on the Participant Property.

“Redevelopment Plan” means the Redevelopment Plan for the Merged Redevelopment Project which is incorporated herein by reference.

“Redevelopment Project Area” means the geographical boundaries of the Merged Redevelopment Project.
“Regulatory Agencies” collectively mean the RWQCB, the Orange County Health Care Agency, the California Integrated Waste Management Board, the South Coast Air Quality Management District, and the City.

“Regulatory Agency” means any one of the Regulatory Agencies, as applicable.

“Related Entity” means an entity in which a majority ownership interest is held by the Participant.

“Release of Construction Covenants” means the document which evidences the Participant's satisfactory completion of the Participant Improvements, as set forth in Section 410 hereof, in the form of Attachment No. 13 attached hereto and incorporated herein by reference.

“Remedial Action Plan” means that certain plan for the assessment, evaluation, investigation, removal, correction, cleanup, abatement and/or mitigation of Hazardous Materials and Landfill Gas including methane in, on, under (including in the groundwater), adjacent to or migrating from the Landfills initially prepared by Shaw Environmental, Inc., dated December 30, 2004, and any additional design and implementation plans, drawings, or workplans requested by the RWQCB.

“Remedial Improvements” means all improvements to be designed and constructed on the Westgate Center Site and Participant Property in implementation of the Remedial Action Plan.

“Report” means the preliminary title report, as described in Section 303 hereof.

“Residential Parking Area” is the area shown on the Site Map designated for parking use by the Adjacent Property.

“Right of Entry Agreement” means that certain right of entry agreement attached hereto as Attachment No. 15 and incorporated herein by reference which describes the terms under which the Agency, or its designee, may enter the Participant Property for purposes of installing the Remedial Improvements and/or Agency Improvements.

“RWQCB” means the California Regional Water Quality Control Board, Santa Ana Region.

“Schedule of Performance” means the Schedule of Performance attached hereto as Attachment No. 4 and incorporated herein by reference, setting out 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 Section 702 and revision from time to time as mutually agreed upon in writing between the Participant and the Agency’s Executive Director, and the Agency’s Executive Director is authorized to make such revisions as he or she deems reasonably necessary.

“Scope of Development” means the Scope of Development attached hereto as Attachment No. 3 and incorporated herein by reference, which describes the scope, amount and quality of development of the Agency Improvements and the Participant Improvements.
“Settlement Agreement” means the agreement currently being negotiated by and among the County of Orange, City of Anaheim, Anaheim Redevelopment Agency, Zelman and Participant resolving the County Dispute.

“Sign Easement” means that certain sign easement to be located in the vicinity of the Access Easement on the Westgate Center Site at Beach Boulevard approximately as shown on the Site Map, the location, size, and quality of which shall be approved in conjunction with the sign program for the Westgate Center and which sign is to be constructed and maintained by Participant. The Sign Easement will be in substantially the form attached hereto as Attachment No. 5B and incorporated herein by reference.

“Site” means the Westgate Center Site and Participant Property.

“Site Map” means the map attached hereto as Attachment No. 1, and incorporated herein by reference, showing the Westgate Center Site, Access Easement, and Participant Property.

“Sparks Landfill” shall mean that certain real property consisting of approximately 10.68 acres, located within the Westgate Center Site.

“Title Company” is defined in Section 303.1 hereof.

“Title 27” means Title 27 of the California Code of Regulations, Division 2.

“Transfer” is defined in Section 703.1 hereof.

“Westgate Center” means the retail center to be constructed on the Westgate Center Site pursuant to the Zelman DDA.

“Westgate Center Site” is shown on the Site Map as the “Westgate Center Site” and described in Recital D.


“Zelman” means Zelman Anaheim, LLC, a Delaware limited liability company.

“Zelman DDA” means the disposition and development agreement between the Agency and Zelman with respect to the Westgate Center Site, dated June 7, 2007.

200. SETTLEMENT AGREEMENT; REMEDIAL ACTION PLAN; AGENCY IMPROVEMENTS

201. Settlement Agreement. Within thirty (30) days of the execution hereof, the Agency, Participant and the other parties thereto shall execute and deliver the Settlement Agreement.
202. **Environmental Insurance.** Agency shall cause the “Environmental Insurance” to be issued in accordance with the Environmental Insurance Parameters.

203. **Conditions to Effectiveness.** If, (a) within thirty (30) days of the mutual execution hereof, (a) the Settlement Agreement is not duly executed and delivered by all of the parties thereto and/or (b) the Environmental Insurance is not issued in accordance with the Environmental Insurance Parameters, either Agency or Participant may terminate this Agreement and neither Party shall thereafter have any further obligations or liability under the Settlement Agreement or this Agreement.

204. **Recordation of Environmental Covenants.** Concurrently with the execution of this Agreement, Participant shall execute and duly acknowledge the Environmental Covenants which shall be deposited with the Escrow Agent forthwith with instructions to record same upon receipt by Escrow Agent of an instruction from Agency affirming that the Settlement Agreement has been duly executed by all Parties thereto and that the Environmental Insurance has been issued in accordance with the Environmental Insurance Parameters.

205. **Remedial Action Plan; Immunity Letter.** Agency shall diligently proceed to accomplish all further actions, including, without limitation, additional engineering work and submissions to the Regulatory Agencies, as shall be required to complete the Remedial Action Plan, and to obtain the Immunity Letter.

206. **Design of Agency Improvements.** Within the time set forth in the Schedule of Performance, the Agency shall prepare the plans and specifications for the Agency Improvements (“Agency Plans”) and shall obtain all necessary permits for the construction of the Agency Improvements, including, without limitation, any permits or approvals from the Regulatory Agencies. The Agency Plans, as such plans relate to rough grading, shall be subject to the reasonable approval of Participant. The Agency Plans shall conform to the load bearing and other standards contemplated by Attachment No. 9.

207. **Agency Obligation to Construct Agency Improvements.** Within the time set forth in the Schedule of Performance, the Agency shall construct Agency Improvements in accordance with the Remedial Action Plan, the Agency Plans and all applicable laws including, without limitation the requirements of the Regulatory Agencies and the standards under Schedule No. 8 attached hereto.

208. **Contracting for Agency Improvements.** The Agency shall cause the contracts for the design and construction of the Agency Improvements to provide that all warranties and rights of action thereunder for any deficiencies in the design or construction of the Agency Improvements shall be for the express benefit of, among others, Participant and the Participant Property. All construction contracts for the Agency Improvements shall provide an express warranty for defects in materials and workmanship of not less than ten (10) years. [Need Zelman approval.]

209. **Coordination of Design.** Participant’s design professionals shall be responsible to provide, at Participant’s expense, the construction drawings for Participant’s Improvements after Agency’s design professionals have completed the Agency Plans.
210. **Right of Entry.** At the request of Agency, the Participant shall permit entry onto the Participant Property pursuant to the Right of Entry Agreement.

300. **CONVEYANCE OF THE ACCESS EASEMENT AND SIGN EASEMENT**

301. **Conveyance.**

**301.1 Disposition of the Access Easement and Sign Easement.** The Agency agrees to convey the Access Easement and Sign Easement and the Participant agrees to purchase the Access Easement and Sign Easement from the Agency, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, including the Agency’s Conveyance Conditions and the Participant’s Conveyance Conditions as set forth in Sections 305.1 and 305.2 hereof. The Conveyance of the Access Easement and Sign Easement from the Agency to the Participant (the “Conveyance”) shall be accomplished through the execution, delivery and recordation in the official records of Orange County of the Access Easement and Sign Easement.

**301.2 Purchase Price.** The “Purchase Price” shall be Five Hundred and Fifty Thousand dollars ($550,000) payable in accordance with the terms of the Purchase Price Note.

**301.3 Purchase Price Note; PP Trust Deed.** The Purchase Price Note shall bear interest at the rate of five percent (5%) per annum and shall provide for level monthly payments amortized over a period of fifteen (15) years payable commencing on the first day of the first calendar month following the month in which the Conveyance Closing occurs and shall provide that any remaining balance thereunder shall be due and payable upon the earlier to occur of the issuance of grading and/or building permit for the Participant Improvements or the sale or lease of the Participant Property to any person or entity which is not Owned or Controlled by Participant. The form of the Purchase Price Note is attached hereto as Attachment No. 10. The Purchase Price Note shall be secured by a deed of trust in the form of Attachment No. 11 (the “PP Trust Deed”) encumbering the Participant Property for the benefit of Agency which is senior to the lien of any financing or other monetary lien on the Participant Property. For the avoidance of doubt, the PP Trust Deed shall not encumber the apartment complex property which is adjacent to the Participant Property.

302. **Escrow.** The Agency shall open escrow (“Escrow”) with First American Title Insurance Company or another escrow holder mutually satisfactory to both Parties (the “Escrow Agent”) by depositing one (1) fully executed copy of this Agreement and one (1) fully executed and duly acknowledged original each of the Memorandum of Agreement and the Environmental Covenants with Escrow Agent.

**302.1 Costs of Escrow.** Agency and Participant shall pay their respective portions of the premium for the Participant Title Policy and Agency Title Policy as set forth in Section 304 hereof, the Agency shall pay for the documentary transfer taxes, if any, due with respect to the recordation of the Memorandum of Agreement, Environmental Covenants and the Conveyance, and Participant and Agency each agree to pay one-half of all other usual fees, charges, and costs which arise from Escrow.

**302.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of the Participant and Agency, and the Escrow Agent to whom these instructions are
delivered is hereby empowered to act under this Agreement. All funds received in the Escrow shall be deposited in a federally insured interest bearing general escrow account(s) and may be transferred to any other such federally insured interest bearing escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

The Parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both the Agency’s Conveyance Conditions and the Participant’s Conveyance Conditions as set forth in Section 305 have been satisfied. Escrow Agent is instructed to release Agency's escrow closing statement and Participant's escrow closing statements to the respective Parties for their respective prior written approval.

302.3 Authority of Escrow Agent Re Memorandum of Agreement and Environmental Covenants. The Memorandum of Agreement and Environmental Covenants shall be recorded against the Participant Property by Escrow Agent upon written instruction by the Agency that the Settlement Agreement has been executed by all parties thereto and the Environmental Insurance has been issued in accordance with the Environmental Insurance Parameters.

302.4 Authority of Escrow Agent Re Conveyance. Escrow Agent is authorized to, and shall, when both the Agency’s Conveyance Conditions and the Participant's Conveyance Conditions have been fulfilled or waived by the Party for whose benefit such conditions are imposed:

(a) Pay and charge Participant and Agency for their respective shares of the premium of the Title Policy and any endorsements thereto as set forth in Section 304 and charge Agency for any amount necessary to place title in the condition necessary to satisfy Section 303 of this Agreement.

(b) Pay and charge Participant and Agency for their respective shares of any escrow fees, charges, and costs payable under Section 302.1 of this Agreement.

(c) Disburse funds and deliver and record the Access Easement and Sign Easement with instructions for the Recorder of Orange County, California to deliver conforming copies to the Parties.

(d) Do such other actions as necessary to fulfill its obligations under this Agreement.

(e) Direct Agency to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary, to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and comparable forms respecting the State of California as may be required by Escrow Agent, on forms to be supplied by Escrow Agent.
(f) 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 are provided for or required by law.

(g) Record the applicable documents pursuant to this Section 302.

302.5 Conveyance Closing. The Conveyance transaction shall close ("Conveyance Closing" or "Close of Conveyance Escrow") within thirty (30) days after the satisfaction or waiver of all of Agency’s Conveyance Conditions and Participant’s Conveyance Conditions to Closing as set forth in Section 305 hereof, subject to extension under Section 702, or such later date as may be mutually agreed to by the Agency and the Participant in writing, each acting in their sole and absolute discretion. The “Conveyance Closing” shall mean the time and day the Access Easement, Sign Easement and PP Trust Deed are recorded in the official records of the Orange County Recorder. The “Conveyance Closing Date” shall mean the day on which the Conveyance Closing occurs.

302.6 Closing Procedure. Escrow Agent shall close the Conveyance Escrow for the Access Easement and Sign Easement as follows:

(a) Record in the following order the Access Easement and Sign Easement against the Westgate Center Site and the PP Trust Deed as a lien against the Participant Property, with instructions for the Recorder of Orange County, California to deliver conforming copies to the Parties;

(b) Instruct the Title Company to forthwith deliver the Participant Title Policy to Participant with a copy to the Agency and Agency Title Policy to Agency with a copy to Participant;

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

(d) Deliver the FIRPTA certificate and other certificate(s) and statement(s) described in Section 302.3(e), if any, to the Participant;

(e) Deliver the original Purchase Price Note to Agency and deliver such other documents as may be held in Escrow following the Conveyance Closing to the Party entitled thereto; and

(f) Deliver to both Participant and Agency a separate accounting of all funds received and disbursed for each Party and conformed copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

303. Permitted Exceptions to Title.

303.1 Permitted Exceptions Re Access Easement. Prior to the Date of Agreement, the Agency has caused First American Title Insurance Company (the “Title
Company”), to deliver to Participant a standard preliminary title report (the “Report”) with respect to the Access Easement and Sign Easement dated no more than ten (10) days prior to the Date of Agreement, together with legible copies of the documents underlying the exceptions (“Exceptions”) set forth in the Report. As used herein, the term “Permitted Exceptions” means the Redevelopment Plan, the Grant Deed in substantially the form attached as an attachment to the Zelman DDA, those Exceptions included in the schedule of “Permitted Exceptions” attached as Attachment No. 12 hereto and any additional exceptions approved by Participant pursuant to the next sentence. Participant shall have the right to approve or disapprove any additional and previously unreported Exceptions reported by the Title Company after the date of the Report. Agency shall not voluntarily create or suffer any new exceptions to title following the Date of Agreement.

303.2 Permitted Exceptions Re PP Deed of Trust. Prior to the Date of Agreement, the Participant has caused the Title Company to deliver to Agency a standard form of preliminary title report with respect to the Participant Property (the “Participant Property Report”) dated no more than ten (10) days prior to the Date of Agreement, together with legible copies of the documents underlying the exceptions (“Exceptions”) set forth in the Participant Property Report. As used herein the term “Participant Property Permitted Exceptions” means: those exceptions listed on First American Title Insurance Report, Order Number OSA-3076170(09) except items 9 through 15. Agency shall have the right to approve or disapprove any additional previously unreported Exceptions with respect to a Participant Property reported by Title Company after the date of the Report. Participant shall not voluntarily create or suffer any new Exceptions to Title following the Date of Agreement.

304. Title Insurance.

304.1 Participant Title Policy. Concurrently with recordation of the Access Easement and Sign Easement, there shall be issued by the Title Company to Participant, CLTA title insurance policies for the Access Easement and Sign Easement (the “Participant Title Policy”), in the amount of $550,000, together with such endorsements as are requested by the Participant, insuring that as of the date and time of recordation of such Access Easement and Sign Easement, such access easement and sign easement are vested in Participant subject only to the Permitted Exceptions. The Agency shall pay the premium for the Participant Title Policy. Any additional costs for endorsements or extended coverage requested by the Participant shall be borne by the Participant.

304.2 Agency Title Policy. Concurrently with recordation of the Access Easement and Sign Easement there shall be issued by the Title Company to Agency an ALTA lender’s policy of title insurance insuring the priority of lien of the PP Trust Deed (the “Agency Title Policy”). The Participant shall pay the premium for Agency Title Policy. Any additional costs for endorsements or extended coverage requested by the Agency shall be born by the Agency.

305. Conditions of Conveyance Closing. The Conveyance Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below. Except for a breach of one of the Party’s obligations under this Agreement, the failure of any condition set forth in this Section 305 to be either satisfied or waived prior to the date specified
below shall not constitute a Default pursuant to Section 601. The remedies for the failure of the conditions under this Section 305 to be satisfied by the Outside Date are specified in Section 603 below.

305.1 Agency's Conditions of Closing. Agency's obligation to proceed with the Conveyance Closing is subject to the fulfillment, or waiver by Agency, of each and all of the conditions precedent (a) through (h), inclusive, described below (“Agency’s Conveyance Conditions”), which are solely for the benefit of Agency, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time frame is provided, prior to Conveyance Closing, but not later than the Outside Date.

(a) Non-Participant Entitlement Conditions. The Non-Participant Entitlement Conditions shall have been fulfilled.

(b) No Default. Prior to the Conveyance Closing, there shall be no remaining uncured Default by Participant. Participant shall not be in Default.

(c) Execution and Delivery of Documents. Participant shall have executed and, as necessary for recordation, shall have acknowledged any documents required hereunder and shall have delivered such documents into Escrow.

(d) Purchase Price Note, PP Trust Deed and Closing Costs. Prior to the Conveyance Closing, the Participant shall have delivered the Purchase Price Note, PP Trust Deed and all of Participant's required costs of closing into Escrow in accordance with Section 302.1 hereof.

(e) Basic Concept Drawings and Design Development Drawings. Prior to the Conveyance Closing, the Participant shall have obtained approval by the Agency, City and applicable Regulatory Agencies of the Basic Concept Drawings and Design Development Drawings as set forth in Section 402 hereof.

(f) Participant Representations. All representations and warranties made by the Participant in this Agreement shall be materially true and correct as of the date of this Agreement and the Close of Escrow subject to the Participant's right to modify its representations as set forth in Section 306 below.

(g) Agency Title Policy. The Title Company shall, upon payment of Title Company’s regularly scheduled premium, irrevocably agree to issue to the Agency the Lender’s Title Policy upon the Close of Escrow and in accordance with Section 304.2 hereof.

(h) Completion of Agency Improvements. The Agency shall have completed the Agency Improvements as evidenced by the Completion Report.

Any waiver by the Agency of any of the preceding conditions must be expressly made in writing.

305.2 Participant's Conditions of Closing. Participant's obligation to proceed with the Conveyance Closing is subject to the fulfillment or waiver by Participant of each and all
of the conditions precedent (a) through (s), inclusive, described below (“Participant’s Conveyance Conditions”), which are solely for the benefit of Participant, and which shall be fulfilled, or waived in its sole discretion, within the time periods provided for herein, or if no time is set forth, by the Conveyance Closing, but not later than the Outside Date.

(a) **Completion of Agency Improvements.** The Agency shall have completed the Agency Improvements as evidenced by the Completion Report.

(b) **Fulfillment of Non-Participant Entitlement Conditions.** The Non-Participant Entitlement Conditions shall have been fulfilled.

(c) **No Default.** Prior to the Conveyance Closing, there shall be no remaining uncured Default of Agency.

(d) **Execution and Delivery of Documents.** Prior to the Conveyance Closing, Agency shall have executed and, as necessary for recordation, shall have acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(e) **Participant Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, have irrevocably agreed to issue to the Participant the Participant Title Policy for the Access Easement and Sign Easement upon the Close of Escrow, in accordance with Section 304.1 hereof.

(f) **Basic Concept Drawings and Design Development Drawing Approvals.** The Participant shall have obtained approval by the Agency, City and applicable Regulatory Agencies of the Basic Concept Drawings and Design Development Drawings as set forth in Section 402.2 hereof.

(g) **Adverse Conditions.** No lawsuit, moratoria or similar judicial or administrative proceeding or government action shall exist or have been threatened which would delay or significantly increase the cost of constructing the Participant Improvements.

(h) **Agency Representations.** All representations and warranties made by the Agency in this Agreement shall be materially true and correct as of the date of the Agreement and Close of Escrow, subject to the Agency's right to modify its representations as set forth in Section 306 below.

Any waiver by the Participant of any of the preceding conditions must be expressly made in writing; provided that upon the Close of Escrow with Participant's consent, the Participant’s Conveyance Conditions shall be deemed satisfied or waived.

306. **Representations and Warranties.**

306.1 **Agency Representations.** Agency represents and warrants to Participant as follows:

(a) **Authority.** Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and
Safety Code Section 33000), which has been authorized to transact business pursuant to action of the City and the execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(b) **FIRPTA.** Agency is not a “foreign person” within the parameters of FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute.

(c) **No Conflict.** 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.

(d) **Litigation.** Except as to the dispute with the County of Orange (the “County Dispute”), the scope of which has been disclosed to Participant, Agency has no Actual Knowledge of, nor has Agency received any notice of or know of any basis for, any actual, threatened or pending litigation or proceeding by any organization, person, individual or governmental agency against Agency with respect to the transactions contemplated by this Agreement. In the event Agency receives notice of any such actual, threatened or pending litigation or proceeding prior to the Conveyance Closing, Agency shall promptly notify Participant thereof.

(e) **Notices of Violation.** Except as set forth in Section 307, including without limitation, the items included in the List of Environmental Condition Documents, Agency has no Actual Knowledge of, nor has Agency received any notice of any basis for, any violations of laws, statutes, regulations, ordinances, other legal requirements with respect to the Site (or any part thereof), or with respect to the use, occupancy or construction thereof, or any investigations by any governmental or quasi-governmental authority into potential violations thereof. In the event Agency receives notice of any such violations or investigations affecting the Access Easement and/or Sign Easement prior to the Closing, Agency promptly shall notify Participant thereof.

(f) **Environmental Condition.** Agency has provided Participant with access to, and Participant has made copies of, the reports, investigations, studies, lab results, and documents, pertaining to the existing or past Environmental Condition of the Westgate Center Site, which are within the possession of the Agency’s staff as shown in the List of Environmental Conditions Documents.

306.2 **Participant's Representations.** Participant represents and warrants to Agency as follows:

(a) **Authority.** Participant is a duly organized limited liability company established within and in good standing under the laws of the State of California, and is authorized to do business in the State of California. The copies of the documents evidencing the organization of the Participant which have been delivered to the Agency are true and complete copies of the originals, as amended to the Date of this Agreement. The execution, performance and delivery of this Agreement by Participant has been fully authorized by all requisite actions on the part of the Participant.

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(b) **No Conflict.** Participant'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 the Participant is a party or by which it is bound.

(c) **No Participant Bankruptcy.** Participant is not the subject of a bankruptcy proceeding.

(d) **Environmental Condition.** Participant has provided Agency with access to, and Agency has made copies of, reports, investigations, studies, lab results and documents pertaining to the existing or past Environmental Condition of the Participant Property which are within the possession of the Participant.

307. **Condition of the Property Underlying the Access Easement.**

307.1 **Investigation of Soils and Geotechnical Condition of the Property Underlying the Access Easement and Sign Easement.** Participant has heretofore investigated the soils and geotechnical condition of the property underlying the Access Easement and Sign Easement and approved the same, subject to the completion of the Agency Improvements.

307.2 **Environmental Condition and Mitigation/Remediation.**

(a) **Environmental Disclosure.** California Health & Safety Code Section 25359.7 requires owners of nonresidential real property who know, or have reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the real property to provide written notice of same to the buyer of real property. The Agency hereby discloses that the property underlying the Access Easement and Sign Easement, or portions of the property underlying the Access Easement and Sign Easement were used as Landfills containing municipal solid waste, construction debris, oil well drilling, mud and fluid and other liquid wastes and Landfill Gases which Landfills and the Landfill Gases may contain Hazardous Materials (the “Environmental Condition”). To the extent the Agency has copies of investigation reports, it will provide copies to Participant upon request; but the Parties acknowledge that the Agency will not be conducting a public records search of the RWQCB’s (or any other Regulatory Agency) files – although the Agency urges Participant to do so to satisfy itself regarding the Environmental Condition of the property underlying the Access Easement and Sign Easement. By execution of this Agreement, Participant (i) acknowledges its receipt of the foregoing notice given pursuant to California Health & Safety Code Section 25359.7; (ii) acknowledges that it has conducted its own independent review and investigation of the Property underlying the Access Easement and Sign Easement prior to the Conveyance Closing; (iii) agrees to rely solely on its own experts in accessing the Environmental Condition of the property underlying the Access Easement and Sign Easement and its sufficiency for its intended use; and (iv) waives any and all rights Participant may have to assert that the Agency has not complied with the requirements of Health & Safety Code Section 25359.7.

(b) **Known Environmental Condition of the Property Underlying the Access Easement and Sign Easement.** Based on the disclosure of the Agency as described in (a) above, and the Participant’s heretofore investigation of the property underlying the Access Easement and Sign Easement, it is acknowledged by the Parties that the List of Environmental
Condition Documents disclose that: (i) the Anders on Landfill was formerly used for disposal of primarily construction debris and demolition wastes, (ii) the Sparks Landfill was formerly used for the disposal of primarily solid waste, (iii) the Davis Mud Pit was formerly used for the disposal of oil well drilling fluid and other liquid wastes, and (iv) Landfill Gases, including methane, associated with the Anders Landfill and the Sparks Landfill are presently being mitigated using two Landfill Gas collection systems, which systems currently contain several maintenance deficiencies.

(c) **Preparation, Submittal and Processing of the Plans.** The Agency and Participant are aware that the environmental impacts to the air, soil and groundwater arising from the Landfills and the remediation of Hazardous Materials and Landfill Gases is required on the Site. The Agency has commenced proceedings pursuant to the Polanco Redevelopment Act and in connection therewith has submitted and RWQCB has conditionally approved the Remedial Action Plan pursuant to the Interim Immunity Letter, which includes remediation of the Westgate Center Site (including the location of the Access Easement and Sign Easement) and the Participant Property. The Parties intend to seek further direction and approvals regarding the implementation of the Remedial Action Plan. In addition, the RWQCB will require the preparation of an Operations, Maintenance and Monitoring Plan which plan will be considered by the RWQCB, on behalf of the Regulatory Agencies, and, if and when acceptable, will be approved. Agency shall prepare or cause the preparation of the Operations, Maintenance and Monitoring Plan. In connection with obtaining the RWQCB approval for the Operations, Maintenance and Monitoring Plan and further direction and approvals regarding the implementation of the Remedial Action Plan, Agency shall communicate with the Regulatory Agencies on a regular basis, as necessary, while the review process is under way and Participant shall participate in such communications as reasonably requested by Agency.

307.3 **Approval of Environmental Condition.** Subject to Agency’s completion of the Remedial Improvements on the Westgate Center Site, the Participant shall be deemed to have approved the Environmental Condition of the property underlying the Access Easement and Sign Easement.

307.4 **Polanco Redevelopment Act.** The Agency has heretofore submitted its application to RWQCB for approval under the Polanco Redevelopment Act with the intention that the Remedial Action Plan be undertaken in accordance with the Polanco Redevelopment Act so as to effectuate reuse of the Landfills in accordance with the Merged Redevelopment Plan and to provide the Agency and subsequent purchasers of any portion of the Participant Property with the immunity from any release or releases of Hazardous Substances identified in the Remedial Action Plan pursuant to Section 33459.3 of the Polanco Redevelopment Act (“Liability Immunity”). Provided neither party has elected to terminate this Agreement as permitted herein, the parties agree to implement the Remedial Action Plan in compliance with the Remedial Action Plan. The Participant acknowledges that the final construction drawings for the Remedial Improvements and the contents of the Remedial Action Plan are intended to provide the basis for RWQCB to acknowledge in writing that, following completion of the Remedial Action Plan, the Liability Immunity will apply under Section 33459.3(b) of the Polanco Redevelopment Act. The Parties acknowledge that completion of the Remedial Action Plan will be the basis for the issuance of the Immunity Letter at which time the Liability Immunity will attach to the Agency and subsequent purchasers of the Participant Property. The Parties further agree that the
Participant and/or any subsequent purchasers will not have a cause of action against the Agency if the Immunity Letter is issued, but the Liability Immunity under the Polanco Redevelopment Act is limited or denied in any way by any decision or opinion of any court, administrative body or any action of the Responsible Agencies.

307.5 No Warranties As to Property Underlying the Access Easement and Sign Easement; Release of Agency. Upon completion of the Remedial Improvements with respect to the Westgate Center Site, the physical condition of the property underlying the Access Easement and Sign Easement is and shall be accepted by Participant in the then “as-is” condition, with no warranty expressed or implied by Agency, including without limitation, the presence of Hazardous Materials, Landfill Gases or methane gas, the existence of refuse, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the property underlying the Access Easement and Sign Easement for the purposes intended hereunder.

307.6 Participant Release, Defense and Indemnity with Respect to the Participant Property. Upon completion of the Agency Improvements and the issuance of the Immunity Letter, Participant agrees to release, defend, indemnify and hold the Agency and City harmless from and against any Environmental Liabilities with respect to the Participant Property. At the request of the Participant, the Agency shall cooperate with and assist the Participant in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the Agency shall not be obligated to incur any expense in connection with such cooperation or assistance. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement and, without limiting the foregoing, shall survive the Closing.

The Participant 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 307.6, effective as of the Conveyance Closing, the Participant waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

307.7 Relocation; Obligations. The Participant shall be responsible for causing all occupants of the Participant Property to vacate prior to the Closing, and 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 state and local regulations implementing such laws, and all other applicable federal, state, and local laws and regulations relating to
308. **Participant Obligations After Completion of the Agency Improvements.**

308.1 **Participant Precautions After Closing.** After completion of the Agency Improvements by Agency, Participant shall implement the Operations, Maintenance and Monitoring Plan as applicable to the Participant Property to mitigate the effects of the Environmental Condition as provided in the Remedial Action Plan and Operations, Maintenance and Monitoring Plan. After the completion of the Agency Improvements by the Agency, the Participant agrees to exercise all reasonable precautions in an effort to minimize or prevent the release into the environment of any Hazardous Materials, Landfill Gases in violation of applicable environmental Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements and the operations, maintenance and monitoring requirements set forth in the Operations, Maintenance and Monitoring Plan that will be recorded against the Participant’s Property. Participant further agrees to comply with all Governmental Requirements in connection with the disclosure, storage, treatment, use, removal and disposal of any Hazardous Materials or Landfill Gases. It is the intent of the Parties that the obligations in this Section shall survive termination of this Agreement for any reason except in the case of termination pursuant to Section 203.

308.2 **Participant Indemnities.** After the completion of the Agency Improvements by the Agency, Participant agrees to indemnify, defend and hold Agency and the City of Anaheim harmless from and against (“Indemnity” or “Indemnify”) any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, or expense (including, without limitation, reasonable attorneys' fees) by third parties, for bodily injury or property damage, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials and Landfill Gases including methane on, under, in or about, or the transportation of any such Hazardous Materials and Landfill Gases including methane to or from, the Participant Property, and (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 and Landfill Gases including methane on, under, in or about, or from the Participant Property (“Environmental Liabilities”), except the Environmental Liabilities arising out of the sole negligence or willful misconduct of the Agency or the City occurring after the completion of the Agency Improvements. The Participant shall establish with substantial evidence the date that the Environmental Liability occurred. This Indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity 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 by any third party. At the request of the Participant, the Agency shall cooperate with and assist the Participant in its defense of any such
Environmental Liability; provided that the Agency shall not be obligated to incur any expense in connection with such cooperation or assistance. The foregoing Indemnities shall survive the termination, expiration, invalidation, or performance in full or in part of this Agreement (except in the case of termination of this Agreement pursuant to Section 203 hereof), and, without limiting the foregoing, shall survive the Conveyance Closing.

309. Additional Environmental Covenants. Participant shall record Additional Environmental Covenants within three (3) business days following delivery by Agency to Participant of a written notification that RWQCB is requiring Additional Environmental Covenants together with a document, in recordable form, which includes such Additional Environmental Covenants.

400. DEVELOPMENT OF THE SITE

401. Development of the Site.

401.1 Participant's Obligation to Construct Participant Improvements. Following the Closing, the Participant shall develop or cause the development of the Participant Improvements in accordance with the Scope of Development, the City Municipal Code, and the plans, drawings and documents submitted by the Participant and approved by the Agency as set forth herein.

401.2 Contractor's Pollution Liability Insurance. Prior to commencing construction, Participant shall provide, at its cost and expense Contractor's Pollution Liability Insurance with respect to the construction of the Participant Improvements in an amount reasonably acceptable to the Agency of not less than ____________________ Dollars ($_______) and naming the Agency, City and County as “named insureds.”

402. Design Review.

402.1 Basic Concept Drawings and Design Development Drawings. Within the time set forth in the Schedule of Performance, the Participant shall submit to the Agency, City, and RWQCB the Basic Concept Drawings, and the Design Requirements. The Agency shall approve or disapprove the Basic Concept Drawings and the Design Development Drawings, in accordance with the Design Requirements.

402.2 Construction Drawings and Related Documents. After the Agency's and City's approval of the Basic Concept Drawings and the Design Development Drawings, and within the time set forth therefore in the Schedule of Performance, the Participant shall prepare or cause to be prepared and submit to the Agency, City, and RWQCB detailed construction plans consistent with the Design Development Drawings and the requirements of the Municipal Code and other Governmental Requirements sufficient for the issuance of building permits for the Participant Improvements which shall have been prepared by a registered civil engineer (the “Construction Drawings”). The Agency shall approve or disapprove the Construction Drawings within the time set forth therefore in the Schedule of Performance.

402.3 Standards for Disapproval. The Participant acknowledges and agrees that the Agency is entitled to approve or disapprove the Basic Concept Drawings and Design
Review Submittals in order to satisfy the Redevelopment Agency's obligation to promote the sound development and redevelopment of land within the Project Area, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and the Project. Without limiting the foregoing, the Agency or the City may disapprove the Basic Concept Drawings, the Design Development Drawings and/or the Construction Drawings and Related Documents if inconsistent with any previously approved plans or if the proposed construction interferes with the Remedial Improvements in any way.

402.4 Consultation and Coordination. During the design review process, staff of the Agency and the Participant shall hold joint progress meetings with City staff to coordinate the preparation of, submission to, and review of the design review submittals by the Agency Executive Director, the City and Regulatory Agencies. The staff of the Agency and the Participant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the Agency, City and Regulatory Agencies can receive prompt and thorough consideration. The Agency shall designate an Agency employee to serve as the Agency's project manager who will be responsible for the coordination of the Agency's activities under this Agreement and for coordinating the land use approval and permitting process with the Participant's representatives and consultants.

402.5 Defects in Plans. The Agency shall not be responsible either to the Participant or to third parties in any way for any defects in the Basic Concept Drawings, the Design Review Submittals, or the Construction Drawings nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Design Review Submittals, or Construction Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 402. Subject to the other limitations of this Agreement, the Participant shall hold harmless, indemnify and defend the Agency, the City and their officers, employees, agents and representatives from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Basic Concept Drawings, the Design Review Submittals, and the Construction Drawings, including without limitation the violation of any laws, or arising out of or in any way relating to any defects in any work done according to the approved Basic Concept Drawings, Design Review Submittals or Construction Drawings.

403. Land Use Approvals. Before commencement of construction of the Participant Improvements or other works of improvement upon the Participant Property, the Participant shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Participant Improvements by the City or any other governmental agency affected by such construction or work. The Participant shall, without limitation, apply for and secure all permits, and pay all applicable costs, charges and fees associated therewith (except to the extent such fees are imposed as a condition of the Agency Improvements), required by the City, County of Orange, and other governmental agencies and Regulatory Agencies with jurisdiction over the Participant Improvements. The Agency staff shall use reasonable efforts to assist the Participant in obtaining all such entitlements, permits and approvals; provided that the Agency staff shall not incur any expenses or costs in connection therewith. The Agency staff shall have no responsibility concerning any conditional use permit(s) required in connection with the activities
or uses of the Participant Property, except to provide reasonable efforts to assist the Participant as provided herein. Nothing herein shall be construed to limit the City's exercise of its police power.

404. Schedule of Performance. Each Party shall satisfy all of their respective obligations and conditions of this Agreement, within the times established therefore in the Schedule of Performance. It is contemplated that the Participant Improvements will be completed within five (5) years of the Completion of the Agency Improvements. In the event either Party fails to satisfy any of its obligations or conditions of this Agreement within the times established therefore in the Schedule of Performance, the deadlines set forth in the Schedule of Performance for the innocent Party’s performance of its obligations under this Agreement shall be extended to the extent the tardiness of other Party delayed performance by the innocent Party.

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 (a) all of the Participant Improvements shall be borne solely by the Participant, and (b) all of the Agency Improvements shall be borne solely by the Agency.

406. Insurance Requirements.

406.1 Participant Insurance Requirements. The Participant shall secure from a company or companies licensed to conduct insurance business in the State of California, pay for, and maintain in full force and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, a policy of commercial general liability insurance issued by an “A:VI” or better rated insurance carrier as rated by A.M. Best Company as of the date that Participant obtains or renews its insurance policies, on an occurrence basis, in which the Agency, the City and their respective officers, employees, agents and representatives are named as additional insureds with the Participant. Participant shall furnish a certificate of insurance to the Agency prior to the commencement of construction of the Participant Improvements, and shall furnish complete copies of such policy or policies upon request by the Agency. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection offered by the policy shall:

(a) Include an endorsement naming the Agency and the City, their officers, employees, agents, representatives and attorneys as additional insureds;

(b) Provide a combined single limit policy for both personal injury and property damage in the amount of $2,000,000, which will be considered equivalent to the required minimum limits;

(c) Bear an endorsement or shall have attached a rider providing that the Agency shall be notified not less than thirty (30) days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium.
The Participant shall also file with the Agency the following signed certification:

I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers’ Compensation or to undertake self-insurance before commencing any of the work.

The Participant shall comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Agency before the commencement of construction. The Agency, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of Participant to comply with this section. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, the Agency shall be notified, giving the Participant a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium.

406.2 Agency Insurance Requirements. [To be added by David Gottlieb]

407. Indemnities.

407.1 Participant’s Indemnity. The Participant shall defend, indemnify, assume all responsibility for, and hold the Agency and the City, and their representatives, volunteers, officers, employees and agents, harmless from all claims, demands, damages, defense costs or liability for any damages to property or injuries to persons, including accidental death (including reasonable attorneys fees and costs), which may be caused by any acts or omissions of the Participant under this Agreement and/or with respect to the development, ownership and/or operation of the Participant Improvements by the Participant, whether such activities or performance thereof be by the Participant or by anyone directly or indirectly employed or contracted with by the Participant and whether such damage shall accrue or be discovered before or after termination or expiration of this Agreement. This indemnity shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing. The Agency and Participant acknowledge and agree that the indemnity obligations set forth in this Section 407.1 shall not apply to any Environmental Liabilities and that such Environmental Liabilities shall be governed by the other provisions of this Agreement.

408. Rights of Access. Following the Effective Date and at any time prior to the issuance of a Release of Construction Covenants (as specified in Section 410 of this Agreement), for purposes of assuring compliance with this Agreement, and without limitation as to the City and its employees engaged in planning and building functions, representatives of the Agency, upon at least 24 hours notice to Participant or its onsite construction manager, or in case of an emergency, without notice, shall have the right of access to the Participant Property, without
charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, installation of the Agency Improvements by the Agency, the inspection of the work being performed in constructing the Participant Improvements, so long as Agency representatives comply with all safety rules and do not in any way interfere with the work or attempt to give instructions or directions to any contractors or workers.

409. Compliance With Laws. Each Party shall carry out the design, construction and operation of its respective improvements in conformity with all Governmental Requirements, including without limitation, all laws, regulations, rules and guidance documents relating to air quality.

409.1 Liens and Stop Notices. Prior to the issuance of Release of Construction Covenants for the Participant Improvements, the Participant shall not allow to be placed on the Participant Property or any part thereof any lien or stop notice except for liens to secure financing approved pursuant to Section 411 hereof. If a claim of a lien or stop notice is given or recorded affecting the Site or the Participant Improvements, except as set forth above, the Participant shall within thirty (30) days of such recording or service or within five (5) days of the Agency's demand, whichever first occurs:

(a) pay and discharge the same; or

(b) affect the release thereof by recording and delivering to the Agency a statutory surety bond in sufficient form and amount; or

(c) cause the Title Company to issue an updated Title Policy, dated as of the date of the Release of Construction Covenants, which Title Policy does not include such claim as an exception to title to the Participant Property or the Participant Improvements; or

(d) provide the Agency with other assurance which the Agency deems, in its sole and absolute discretion, to be satisfactory for the payment or discharge 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.

410. Release of Construction Covenants. Promptly after completion of the Participant Improvements or any portion thereof in conformity with this Agreement, other than the Participant's on-going operations, maintenance and monitoring requirements as set forth in the Operations, Maintenance and Monitoring Plan, which shall be recorded as a covenant against the Site, the Agency shall deliver to the Participant and/or its permitted successors or assigns a “Release of Construction Covenants,” substantially in the form of Attachment No. 13 hereto which is incorporated herein by reference, with respect to the Participant Improvements, executed and acknowledged by Agency. The Agency shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Participant Improvements or such portion thereof, and the Release of Construction Covenants shall so state. Following the issuance of a Release of Construction Covenants as to the Participant Improvements, any party then or thereafter owning, purchasing, leasing or otherwise acquiring any interest in the
Participant Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants described in Section 503 of this Agreement.

If the Agency refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Participant, the Agency shall, within fifteen (15) days after receipt of such written request therefore, provide the Participant with a written statement of the reasons the Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Agency's opinion of the actions the Participant must take to obtain the Release of Construction Covenants. Even if the Agency shall have failed to provide such written statement within such fifteen (15) day period, the Participant shall not be deemed entitled to the Release of Construction Covenants unless the Participant, upon expiration of such fifteen (15) day period, provides Agency with a written demand that the Agency furnish such Release of Construction Covenants as to the Participant Improvements or provide a written statement as to the basis for denial thereof (a “Participant Notice”), which Participant Notice sets forth the terms of this Section 410 in full, and the Agency fails to either furnish such Release of Construction Covenants or provide a written explanation of the denial thereof, within fifteen (15) days following Agency's receipt of the Participant Notice, in which case the Participant shall be entitled to a Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Participant 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.

411. Financing of the Participant Improvements.

411.1 Approval of Construction Financing. Prior to the commencement or construction of the Participant Improvements, Participant shall submit to Agency Preliminary Evidence of Financing that Participant has obtained sufficient equity capital or has arranged for financing necessary to undertake the development of the Participant Property and the construction of the Participant Improvements in accordance with this Agreement (“Construction Financing”).

The Agency Executive Director shall reasonably approve or disapprove Preliminary Evidence of Financing within fifteen (15) days of receipt thereof. If Agency shall disapprove any such Preliminary Evidence of Financing, Agency shall do so by Notice to Participant stating the reasons for such disapproval and Participant shall endeavor to promptly obtain and submit to Agency new Preliminary Evidence of Financing. Any material and adverse changes to the terms of the Construction Financing from the approved Preliminary Evidence of Financing shall be subject to the Agency written approval, which shall not be unreasonably withheld. Participant shall close the approved Construction Financing prior to or concurrently with the Closing.

411.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development. Mortgages, deeds of trust and sales and lease-backs shall be permitted before the completion of the Participant Improvements only with the Agency
Executive Director's prior written approval, which shall not be unreasonably withheld, conditioned or delayed in accordance with Section 411.1 above, and only for the purpose of securing loans of funds to be used for financing the Purchase Price and the construction and operation of the Participant Improvements (including architecture, engineering, legal, construction period carrying costs such as property taxes, insurance and interest, and related direct costs as well as indirect costs), permanent financing, and refinancing and any other purposes necessary and appropriate in connection with development under this Agreement and operation of the Participant Improvements. No such approval shall be required for mortgages, deeds of trust, or sales and lease-backs encumbering any portion of the Participant Property for which a Release of Construction Covenants has been issued or for which Agency has approved the Preliminary Evidence of Financing so long as such mortgages, deeds of trust, or sales and lease-backs do not materially and adversely differ from the approved Preliminary Evidence of Financing. In no event, however, shall the amount or amounts of indebtedness secured by mortgages or deeds of trust on the Participant Property prior to completion of the Participant Improvements exceed the projected cost of developing the Participant Improvements, as evidenced by a pro forma and a construction contract which have been delivered to the Agency Executive Director prior to the Agency Executive Director's approval of such financing, setting forth such costs, unless the written approval of the Agency Executive Director is first obtained. The Participant shall notify the Agency Executive Director in advance of any mortgage, deed of trust or sale and lease-back financing, if the Participant proposes to enter into the same before completion of the construction of the Participant Improvements. The words “mortgage” and “trust deed” as used hereinafter shall include sale and lease-back. Notwithstanding the foregoing, Participant shall have the right to record or cause to be recorded a memorandum of lease for any lease approved by the Agency or otherwise permitted under this Agreement.

411.3 Holder Not Obligated to Construct Participant 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, complete, or operate the Participant Improvements or any portion thereof, or to guarantee such construction, completion or operation; 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 permit or authorize any such holder to devote the Participant Property to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

411.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. Whenever the Agency may deliver any notice or demand to Participant with respect to any breach or default by the Participant under this Agreement, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement and approved by the Agency a copy of such notice or demand; provided that the failure to notify any holder of record shall not vitiate or affect the effectiveness of notice to the Participant. Each such holder shall (insofar as the rights granted by the Agency are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy such default or to the extent such default cannot be cured or remedied within such thirty (30) day period, to 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 or deed of trust. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Participant Improvements, or any
portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Participant's obligations to the Agency by written agreement satisfactory to the Agency. 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 410 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Participant default which requires title and/or possession of the Participant Property (or portion thereof) if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and thereafter cures or remedies the default.

411.5 Failure of Holder to Complete Participant Improvements. In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Participant Property or any part thereof receives a notice from Agency of a Default by the Participant in completion of construction of any of the Participant Improvements under this Agreement, and such holder is not vested with ownership of the Participant Property and has not exercised the option to construct as set forth in Section 411, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the Agency may (but shall not be obligated to) 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 secured by the mortgage or deed of trust. If the ownership of the Participant Property or any part thereof has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency of so much of the Participant Property as has vested in such 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 expense, if any, incurred by the holder as a direct result of the subsequent management of the Participant Property or part thereof;

(d) The costs of any improvements made by such holder;

(e) An amount equivalent to the interest that would have accrued at the rate(s) specified in the holder's loan documents on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency;

(f) Any prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Participant; and
(g) Any or all other amounts, costs and/or expenses payable to the holder under the holder's loan documents approved pursuant to Section 411.1 above.

The Agency's right to such conveyance shall expire if: (i) Agency fails to notify the holder in writing within thirty (30) days after Agency receives written notice from the holder that such holder has obtained ownership of the Site, or (ii) within sixty (60) days after the Agency receives written notice from the holder that such holder has obtained ownership of the Site (or portion thereof), the Agency nevertheless fails to tender full payment for the Site. All of the foregoing rights and protections of the holder as set forth in this Section 411.5 shall also apply and be available to any Participant (other than an entity in which any interest is held by the Participant, or a Related Entity) pursuant to foreclosure or deed in lieu of foreclosure of the mortgage or deed of trust.

411.6 Right of the Agency to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Participant prior to the completion of the construction of the Participant Improvements, Participant shall immediately deliver to Agency a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the Agency shall have the right but no obligation to cure the default within ten (10) days following the expiration of the Participant's cure period under this Agreement (or, if the nature of the Participant's obligation is such that it reasonably requires more than ten (10) days to cure, commence to cure with such ten (10) day period and diligently prosecute such cure to completion). In such event, the Agency shall be entitled to reimbursement from the Participant of all reasonable and proper costs and expenses incurred by the Agency in curing such default. The 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 or deeds of trust permitted pursuant to this Section 411.

412. Nondiscrimination in Employment. Participant certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, 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 Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

413. Taxes and Assessments. Following installation of the Agency Improvements by the Agency, the Participant shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Participant Property which accrue subsequent to Closing. The Participant shall remove or have removed any levy or attachment made on any of the Participant Property or any part thereof, or assure the satisfaction thereof within a reasonable time.
414. **Prevailing Wages.** The Participant shall carry out the construction of the Participant Improvements in conformity with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages referred to herein as the “Prevailing Wage Laws”). Participant hereby expressly acknowledges and agrees that the Agency has previously affirmatively represented to the Participant that the work to be covered by this Agreement is a “public work,” as defined in Section 1720 of the Labor Code. Participant hereby agrees that Participant shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. Participant shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development or construction (as defined by applicable law) of the Participant 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: (1) the noncompliance by Participant of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Senate Bill 966 of 2003; (3) 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 (4) failure by Participant to provide any required disclosure or identification as required by Labor Code Section 781, 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 development and construction (as defined by applicable law) of the Participant Improvements, including, without limitation, any and all public works (as defined by applicable law), Participant shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Senate Bill 966 and/or 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 this Section 409.3, 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 Agreement and shall continue after completion of the construction and development of the Participant Improvements until the statute of limitations has run with respect to the issues addressed hereinabove.

500. **COVENANTS, RESTRICTIONS AND OTHER OBLIGATIONS**

501. **Construction, Use, Operating, Maintenance and Restrictive Covenants.**

501.1 **Construction Covenant.** Subject to extensions of the time periods for Participant's performance set forth in Section 702 below, Participant shall cause the completion of the Participant Improvements by the dates set forth therein in the Schedule of Performance.

501.2 **Use Covenant.** The Participant covenants and agrees for itself, its successors, assigns, and every successor in interest to the Participant Property or any part thereof, that upon the Closing and until expiration of the Redevelopment Plan, the Participant Property shall be devoted to the uses specified in the Redevelopment Plan. All uses conducted on the Participant Property shall conform to the Redevelopment Plan and all applicable provisions of the City Municipal Code.
501.3 Maintenance Covenants. Commencing on the completion of the Agency Improvements by the Agency and terminating 30 years thereafter, the Participant shall maintain the Participant Property and all improvements thereon, in full compliance with the terms of all applicable provisions of the City Municipal Code, and, if the Participant Improvements are constructed, construction and operation shall be in compliance with industry standards for a first class self storage facilities. Without limiting the forgoing, the Participant shall specifically maintain the Participant Property and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the “Maintenance Standards” hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Participant Property and any and all other improvements on the Participant Property. To accomplish the maintenance, Participant shall either staff or contract with and hire 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. In addition, Participant shall comply with the Operations, Maintenance and Monitoring Plan.

The following maintenance standards (the “Maintenance Standards”) shall be complied with by Participant and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the Regulatory Agencies:

(a) All improvements to the Participant Property shall be maintained in conformance and in compliance with the reasonable commercial development maintenance standards for similar first quality self storage facility in California, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements.

(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.

(d) Upon notification of any maintenance deficiency, Participant 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 the Agency, then Participant shall have forty-eight (48) hours to rectify the problem.
501.4 Restrictive Covenant Regarding Design, Construction and Operation of the Participant Property. Participant shall carry out the design, construction and operation of the Participant Improvements in substantial conformity with all applicable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Orange, the City or any other political subdivision in which the Participant Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Participant, or the Participant Property, including all applicable federal, state and local occupation, safety and health laws, rules, regulations and standards, applicable state and labor standards, applicable prevailing wage requirements, the City Zoning and Development Standards (as they apply to the Participant Property and the Participant Improvements), building, plumbing, mechanical and electrical codes, as they apply to the Participant Property and the Participant Improvements, and all other provisions of the City of Anaheim and its Municipal Code, (as they apply to the Participant Property and the Participant Improvements), and all applicable disabled and handicapped access requirements, including, without the limitation, the Americans With Disability Act, 42 U.S.C. §12101 et seq., Government Code §4450 et seq., and the Unruh Civil Rights Act, Civil Code §51 et seq. (“Governmental Requirements”).

501.5 Environmental Covenants. Commencing on the completion of the Agency Improvements by the Agency or earlier if directed by any of the Regulatory Agencies, the Participant will cause the implementation of the Operations, Maintenance and Monitoring Plan with respect to the Participant Property.

502. Nondiscrimination Covenants. The Participant covenants by and for itself and any successors in interest to all or any portion of the Participant 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 Participant Property, nor shall the Participant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases or vendees of the Participant Property. The foregoing covenants shall run with the land.

The Participant shall refrain from restricting the rental, sale or lease of the Participant Property any portion thereof 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.”
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:

“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.”

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.”

503. Effect of Violation of the Terms and Provisions of this Agreement. Subject to the limitations provided elsewhere in this Agreement, Agency and City are deemed the beneficiaries of the terms and provisions of this Agreement and of the covenants running with the land, for and in their 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 the Agency or City have been, remain or are owners of any land or interest therein in the Site or in the Participant Improvements. The Agency or City shall have the right, if the 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 and to avail themselves of the rights granted herein to which they or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described herein, including the following:

(a) The releases, indemnities and covenants set forth in Sections 307.6, 308.2, and 407.1 shall remain in effect in perpetuity.

(b) The covenants in Section 409 with respect to compliance with laws shall remain in effect for the term of the Redevelopment Plan.

(c) The covenants for the benefit of lenders as set forth in Sections 411.2, 411.3, 411.4, 411.5 and 411.6 shall remain in effect as to any lender so long as such
lender holds a mortgage or deed of trust creating a lien or encumbrance on the Site or any portion thereof.

(d) The Covenants which are set forth in Section 501 shall remain in effect in accordance with the terms set forth therein.

(e) The covenants against discrimination, as set forth in Section 502, shall remain in effect in perpetuity.

(f) Provisions of documents recorded pursuant to this Agreement shall remain in effect according to their terms.

(g) Provisions of this Agreement which affirmatively set forth times as to which they are to remain effective shall remain effective according to the terms of those provisions.

600. DEFAULTS AND REMEDIES

601. Default Remedies. Subject to the extensions of time set forth in Section 702 of this Agreement, failure by either Party to perform any action or covenant required by this Agreement within the time periods provided herein constitutes a “Breach” and following notice and failure to cure as described hereafter, the Breach of any other promise and/or covenant contained constitutes a “Default” under this Agreement. In addition the following shall specifically constitute a Breach: (i) breach or falsity of any representation or warranty by a party as set forth in this Agreement and/or (ii) refusal or failure of either Party to close the Conveyance Escrow following satisfaction of the Conveyance Conditions, and/or (iii) failure of either Party to use its best efforts to fulfill the Conveyance Conditions. The Party claiming a Breach shall give written notice of Breach to the other Party specifying the Breach complained of. 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 as to non-monetary Breaches other than transfers not permitted under this Agreement (as to which no right to notice or cure shall apply) if such Party within thirty (30) days from receipt of such notice promptly, with due diligence, commences to cure, correct or remedy such failure or delay and thereafter completes such cure, correction or remedy with due diligence. As to monetary Breaches, a cure period of ten (10) days upon written notice shall apply.

602. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purposes of this Agreement. Specific performance shall be available as a remedy to the greatest extent legally allowable. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the District of the United States District Court in which such county is located.
603. **Termination.**

603.1 **Termination Prior to Conveyance.** In the event that prior to the Conveyance one Party is not in Default of this Agreement but (i) the other Party is in Default in the performance of its obligations, or (ii) one or more of the Conveyance Conditions has not been satisfied in spite of best efforts by the Party responsible for causing the fulfillment of such condition, then this Agreement may, at the option of the Party for whose benefit the Conveyance Condition was imposed, be terminated with respect to the Conveyance by written notice thereof to the Agency following such Default or, in the case of lack of satisfaction of a Conveyance Condition, given at any time after the Outside Date. In the event of termination pursuant to (i) above, then the Parties shall retain all the rights and remedies described in Section 602 above. In the event of termination pursuant to (ii) above, neither the Agency nor the Participant shall have any further rights or obligations with respect to the Conveyance or the payment of the Purchase Price.

603.2 **Termination Upon Failure of Conditions of Effectiveness.** If the Conditions of Effectiveness described in Section 203 fail, then this Agreement may be terminated in accordance with Section 203. Once the Conditions of Effectiveness have been fulfilled, this Agreement may not be terminated by either party as to Agency Improvements and/or the Ongoing Participant Obligation.

604. **Specific Performance.** The delineation of the Parties' rights to terminate this Agreement prior to the Conveyance Closing is not intended to limit either Party from exercising any other remedy for such default provided under law or equity. Without limiting the generality of the foregoing statement, in the event of a Default by either Party, the non-Defaulting Party may exercise any right or remedy available in law or equity, including, without limitation, the right to initiate an action for specific performance and to recover all damages proximately caused by such Default.

605. **Acceptance of Service of Process.** In the event that any legal action is commenced by the Participant against the Agency, service of process on the Agency shall be made by personal service upon the Agency Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Participant, service of process on the Participant shall be made by personal service upon the manager of Participant, whether made within or outside the State of California, or in such other manner as may be provided by law.

606. **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.

607. **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.

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

700. GENERAL PROVISIONS

701. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either Party may desire to give to the other Party under this Agreement must be in writing and may be given by any commercially acceptable means to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by Notice. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if delivered personally or sent by first class U.S. mail, postage prepaid, except that notice of a Default may be sent by certified mail, postage prepaid, return receipt requested, or by overnight express mail or by commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the addresses set forth below. For purposes of notice, the addresses of the Parties shall be:

To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: City Manager
Copy to: City Attorney

To Participant: Westgate Investment Group, LLC
c/o Brian Ton
17330 Brookhurst Street, #265
Fountain Valley, CA 92708
Attention: Tina Tran

With copy to: Greenberg, Glusker, Fields, Claman & Machtinger, LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90064
Attention: Henry D. Finkelstein, Esq.

To Agency: Anaheim Redevelopment Agency
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
Attention: Agency Executive Director

with a copy to: John E. Woodhead IV, Assistant City Attorney
201 South Anaheim Boulevard, 10th Floor
Anaheim, California 92805
Any Party may change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other Party in the manner set forth hereinabove. The Participant shall forward to the Agency, without delay, any notices, letters or other communications delivered to the Site or to the Participant which could reasonably affect the ability of the Participant to perform its obligations to the Agency under this Agreement.

702. 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; acts of terrorism; 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; adverse weather conditions; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other Party; or acts or failures to act of the Agency, City, Regulatory Agency or any other public or governmental agency or entity (except that the acts or failures to act or delay of the Agency or City shall not excuse performance by the Agency). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Agency Executive Director and Participant. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Participant Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

703. Transfers of Interest in Participant Property or Agreement.

703.1 Prohibition. The qualifications and identity of the Participant are of particular concern to the Agency. Furthermore, the Parties acknowledge that the Agency has negotiated the terms of this Agreement in contemplation of the development and operation of the Participant Improvement and the property tax increment to be generated by the Participant Improvement and the operation of the Participant Improvement on the Participant Property. Accordingly, for the period commencing upon the date of this Agreement and until the issuance by Agency of a Release or Releases of Construction Covenants for the Participant Improvement, no voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the whole or any part of the Participant Property or the Participant Improvement thereon, nor shall any uses other than the Participant Improvement be operated thereon, either in addition to or in replacement of the Participant Improvement on the Participant Property, nor shall the Participant
make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Participant Improvement being operated upon the Participant Property (collectively referred to herein as a “Transfer”), without the prior written approval of the Agency, except as expressly set forth herein. As used herein, the term “Transfer” shall not include the sale or leasing of storage or parking spaces to tenants or occupants or the leasing of parking space to the owner or the adjacent apartment complex within the Residential Parking Area.

703.2 Permitted Transfers or other Conveyances. Notwithstanding any other provision of this Agreement to the contrary, Agency approval of a Transfer or other conveyance shall not be required in connection with any of the following (“Permitted Transfers”):

(a) Any Transfer to an entity or entities in which Participant, and/or Tina Tran directly retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities, and the Participant Improvement is operating on a continuous basis on the Participant Property.

(b) The conveyance or dedication of any portion of the Participant Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Participant Improvement.

(c) Any requested assignment for financing purposes permitted pursuant to this Agreement for which approval by the Agency has been obtained, including the grant of a mortgage or deed of trust or sale-leaseback to secure the funds necessary for construction and permanent financing of the Participant Improvement and, excepting therefrom any transfer to any entity to which any interest is held by the Participant, a Related Entity, or the principals of Participant, the following in connection with such financing as shall have theretofore been approved by the Agency: (i) any Transfer to any person or entity pursuant to foreclosure or deed-in-lieu of foreclosure of any such mortgage or deed of trust; (ii) any Transfer of the reversionary interest and estate of the lessor in any sale-leaseback; and (iii) any lease termination by the lessor under the lease in a sale-leaseback due to default of the lessee thereunder.

(d) Transfers of the Participant Property after the Agency has issued a Release of Construction Covenants for the Participant Improvement thereon.

In the event of a Transfer or Conveyance by Participant not requiring the Agency's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such Transfer or Conveyance it shall give written notice to Agency of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, Participant agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed or upon the effective date of transfer will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the Agency all of the obligations of the Participant under this Agreement which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

703.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Participant and its
successors and assigns, including those acquiring such interest pursuant to a permitted Transfer or Conveyance. Whenever the term “Participant” is used in this Agreement, such term shall include any other permitted successors and assigns, including those acquiring such interest pursuant to a permitted Transfer or Conveyance, as herein provided.

704. Non-Liability of Officials and Employees of the Agency to the Participant. No member, official, director, officer, agent, or employee of the Agency or the City shall be personally liable to the Participant, or any successor in interest, in the event of any Default or breach by the Agency (or the City) or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this Agreement.

705. Non-Liability of Members of Employees. No member, officer, partner, director, agent or employee of Participant shall have any personal liability for the performance of Participant's obligations hereunder.

706. Relationship Between Agency and Participant. It is hereby acknowledged that the relationship between the Agency and the Participant is not that of a partnership or joint venture and that the Agency and the Participant shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operations, maintenance or management of the Participant Improvement. The Participant agrees to indemnify, hold harmless and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and the Participant with respect to the development, operation, maintenance or management of the Participant Property or the Participant Improvement.

The City shall be deemed to be a third party beneficiary of this Agreement. Except for the City, there shall be no third party beneficiaries of this Agreement.

707. Agency Approvals and Actions. The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Agency Executive Director (or his duly authorized representative). The Agency Executive Director shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses or development permitted on the Participant Property, or add to the costs incurred or to be incurred by the Agency as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance and, to the extent allowable and consistent with the goals and objectives of the Agency pursuant to this Agreement, to reasonably accommodate requests of lenders. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

708. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

709. Integration. This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement, 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 hereof. 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 Attachment Nos. 1 through 15, each of which are incorporated herein.

710. Real Estate Brokerage Commission. The Agency and the Participant 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 Agreement. The Parties agree to defend and hold harmless the other Party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such Party.

711. Attorneys' Fees. In any action between the Parties to interpret, enforce, reform, modify, or rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing Party in the action 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 and reasonable attorneys' fees and expert fees and court costs.

712. 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.

713. 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.

714. 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.

715. 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.

716. 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.
717. **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.

718. **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 matters 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.

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

720. **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.

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

722. **Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by the Participant or this Agreement shall be void, except to the extent that the Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

723. **Guaranty.** Tina Tran shall guaranty the performance of certain obligations of Participant hereunder in accordance with the Guaranty attached hereto as Attachment No. 11.

724. **Estoppel Certificate.** Agency agrees that it will issue within thirty (30) days after receipt of request from Participant, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the Agency’s knowledge as of such date:

   (a) Whether it knows of any default under this Agreement by the Participant, and if there are known defaults, specifying the nature thereof in reasonable detail;
(b) Whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail;

(c) Whether this Agreement is in full force and effect; and

(d) Such other information as reasonably requested by Participant or its prospective mortgagee or successor.

Participant shall reimburse Agency for all actual and direct third party costs incurred by Agency in connection with the above.

[Signature block begins on page 45.]
IN WITNESS WHEREOF, the Parties hereto have signed this Owner Participation Agreement as of the respective date set forth below.

ANAHEIM REDEVELOPMENT AGENCY
a public body, corporate and politic

Dated: __________________________  By: ______________________________
  Chairman

ATTEST:

______________________________
Linda N. Andal, Agency Secretary

APPROVED AS TO FORM:

______________________________
Stradling Yocca Carlson & Rauth
Agency Special Counsel

APPROVED AS TO FORM:
JACK L. WHITE, CITY ATTORNEY

______________________________
John E. Woodhead IV
Assistant City Attorney

[Signature block continues on page 46.]
PARTICIPANT:

WESTGATE INVESTMENT GROUP, LLC,
a California limited liability company

Dated: ____________________________  By: ____________________________________

APPROVED AS TO FORM:
[WIG COUNSEL]
ATTACHMENT NO. 1

Site Map

[David Gottlieb to provide]
ATTACHMENT NO. 2

Legal Description of the Participant Property

THE NORTH 876 FEET OF THE PARCEL DESCRIBED AS: THE EAST 165 FEET OF THE WEST 495 FEET OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS COYOTES, IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 PAGE 11 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY; SAID EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12 BEING DESCRIBED AS COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION NORTH 89° 41’ EAST 662.75 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 0° 13’ WEST 1328.09 FEET TO A POINT; THENCE NORTH 89° 41’ 10” EAST 663.44 FEET TO A POINT; THENCE SOUTH 0°14’ 45” EAST 1328.05 FEET TO A POINT; THENCE SOUTH 89° 41’ WEST 662.75 FEET TO THE PLACE OF BEGINNING.

TOGETHER WITH: THE NORTH 876 FEET OF THAT PORTION OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS COYOTES, IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 PAGE 11 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY; DESCRIBED AS COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION NORTH 89° 41’ EAST 662.75 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 0° 13’ WEST 1328.09 FEET TO A POINT; THENCE NORTH 89° 41’ 10” EAST 663.44 FEET TO A POINT; THENCE SOUTH 0°14’ 45” EAST 1328.05 FEET TO A POINT; THENCE SOUTH 89° 41’ WEST 662.75 FEET TO THE PLACE OF BEGINNING. EXCEPTING THEREFROM THE WEST 495 FEET.
I. INTRODUCTION

This Scope of Development sets forth the general criteria for the design and development of the Agency Improvements and Participant Improvement. Time frames for carrying out the Scope of Development are set forth in the Schedule of Performance.

As provided for in the Agreement, the Participant Improvements are subject to the environmental condition of the Participant Property, design and land use approvals, and approval of plans and permits by the Agency, the City and all other appropriate Regulatory Agencies. The Participant Improvements shall conform to the Scope of Development, previously certified Final Environmental Impact Report for the West Anaheim Commercial Corridors Redevelopment Participant Improvement and Addendum and Mitigation Monitoring Plan No. 119, and Remedial Action Plan including the Title 27 post-closure maintenance requirements of the Regulatory Agencies, including without limitation, the Environmental Covenants, the Additional Environmental Covenants and the OM&M Plan.

II. AGENCY IMPROVEMENTS

The Agency shall be responsible for: (i) surcharging of the Participant Property (in accordance with the report prepared Lawson Geotechnical Consulting, Inc. dated December 15, 2003, as updated by any subsequent reports), and certain Remedial Improvements (the “Agency Improvements”) as more specifically described as: (ii) preparation of the following workplans described in the Interim Immunity Letter: Schedule of Activities, Health and Safety Plan, the Cover Material Source Testing and Modeling, the Construction Quality Assurance Plan and Requirements, Groundwater Monitoring Program, and Landfill Gas Control System. (iii) rough grading of the Participant Property after completion of the surcharge program by moving all previously imported fill and cover material and placing it over appropriate areas of Participant Property in a manner agreed upon by Agency, Participant and their consultants and approved by Regulatory Agencies to act as landfill cover and base for site development, (iv) installation of a gas collection and venting system for areas of the Participant Property generally under parking areas and around the perimeter of the Site, and (v) perform any other work required under the Remedial Action Plan.

The Agency Improvements shall also include the preparation of the Operations, Maintenance and Monitoring Plan but it shall be the responsibility of the Participant to implement the Operations, Maintenance and Monitoring Plan on the Participants Property and be responsible for costs associated therewith.

The Agency may cause others to perform any of the Agency Improvements.
III PARTICIPANT IMPROVEMENTS

Participant shall develop an outdoor self storage facility with storage containers and parking for recreational vehicles and boats. Participant shall also develop surface parking within the Residential Parking Area that will serve the Adjacent Property. Participant Improvements shall include: the construction of a paved surface (including all base and surface layers, curb and gutter and pavement striping) for the placement of the storage units, vehicles and boats; design and construction of all lighting and electric systems; design and construction of sewer systems including any subsurface pipes and connection to City sewer system; design and construction of storm drain system including any drainage flow lines, subsurface pipes and connection to City storm drain systems, design and construction of potable and irrigation water system including any subsurface pipes and connection to City water system; screening (which may include fencing and landscaping); security fencing; and design and construction of a managers/care-taker office. The Participant will be required to operate and pay for all landfill monitoring systems and provide maintenance of them and the Participant Property.

The design, architecture, construction design details, fencing, signage and landscape treatment of the Participant Improvements will be comparable to other new, first rate, outdoor self storage centers in Orange County, California.
Schedule of Performance
ATTACHMENT NO. 5A

Access Easement

A non-exclusive access easement 50 feet in width, commencing at the northwest corner of Parcel A as shown on a map filed in Book 42, Page 29, of Parcel Maps, in the office of the County Recorder of Orange County, California; thence proceeding east along the northern most property line of said Parcel A until crossing the east boundary line of Parcel A and proceeding into Parcel 1 of City of Anaheim Lot Line Adjustment No. 499 recorded August 15, 2002 as instrument no 2002 0683037 in the Official Records of Orange County California, immediately whereafter the easement turns 90 degrees to the north and proceeds northerly along the west boundary of said Parcel 1 for approximately 97.25 feet to the northwest corner of said Parcel 1, immediately whereafter the easement turns 90 degrees to the east and proceeds easterly across the northerly Boundary of Parcel 1 of for approximately 662 feet terminating at the northeast corner of Parcel 1.

The Grantee’s use of the access easement is limited to ingress and egress specifically for a storage facility development on the Grantee’s adjacent property. No use of the access easement is granted or allowed for any alternate developments or uses of the Grantee’s adjacent property.

Grantee shall be responsible for its pro rata share of the maintenance of the Access Easement as reasonably determined by the owner of the burdened property based on the gross square footage of the benefited property as numerator and the gross square footage of the burdened property and benefited property as the denominator.
ATTACHMENT NO. 5B

Sign Easement

A non-exclusive easement 15 feet by 15 feet square located on the western property line of Parcel A as shown on a map filed in Book 42, Page 29, of Parcel Maps, in the office of the County Recorder of Orange County, California, for location of a monument sign at a precise location to be determined, but in the vicinity of the Access Easement. Grantee shall be responsible for the installation and maintenance of such sign and the maintenance of the area that comprises the non-exclusive easement.
ATTACHMENT NO. 6

Design Requirements

Review of the Participant Improvements will be performed by the Agency, City and other Regulatory Agencies. Review of Participant Improvements will occur at several points in the design process. Design review submissions are to be made to the Agency first and then to the City and Regulatory Agencies upon approval by the Agency. Design review focuses attention upon site design, engineering, and compliance the Regulatory Agencies and City codes.

PHASE I: BASIC CONCEPT DRAWINGS

The Agency will review the proposed Basic Concept Drawings submitted by the Participant. The Agency will review the Basic Concept Drawings to insure conformance between it and the surcharge and rough grading proposed for the Participant Property. The Participant will also submit the proposed Basic Concept Drawings to the City’s pre-file process to identify site design issues so as to achieve code compliance through site design.

PHASE II: DESIGN DEVELOPMENT DRAWINGS REVIEW

Upon completion of Phase I the Participant shall prepare plans that show:

• Dimensions of site and improvements, location of and number of parking/storage spaces, location and number of container storage areas, dimensions and locations of all buildings, call-out all required setbacks, call-out locations of all wet and dry utilities and any other site improvements.

• Material and color selections for buildings, location and type all exterior walls/fencing, required screening landscaping, required interior hardscape, location and design of signage, and any other improvements.

• Plant selections and placement required for landscape design.

Participant shall revise development drawings as appropriate to move to next phase of Design Review process.

PHASE III: DEVELOPMENT DRAWINGS CHECK

Upon completion of Phase II, the Development Drawings Check is to be performed by the City Building Department’s and City Planning Department plan check processes, and will be used as the basis for issuing a building permit. Construction documents for the Participant Improvement are to be completed by the Participant’s architect and engineer and checked by the City for conformance with the Design Development Drawings Review and City codes. Participant shall make any plan revisions and submit into City plan check process until plans are approved.
Concurrently with submission of plans to the City, the participant shall submit the plans to the California Regional Quality Control Board, Santa Ana Region ("Regional Board") and all other appropriate Regulatory Agencies for review and approval for consistency with the Closure Report/Remedial Action Plan and requirements of the Regulatory Agencies. Participant shall make any plan revisions and submit into Regulatory Agency plan check process until plans are approved.

STAGE V: CONSTRUCTION DRAWINGS AND RELATED DOCUMENTS

After the Agency's and City's approval of the Basic Concept Drawings and the Design Development Drawings, and within the time set forth therefore in the Schedule of Performance, the Participant shall prepare or cause to be prepared and submit to the Agency, City, and RWQCB detailed construction plans consistent with the Design Development Drawings and the requirements of the Municipal Code and other Governmental Requirements sufficient for the issuance of building permits for the Participant Improvements which shall have been prepared by a registered civil engineer (the "Construction Drawings"). The Agency shall approve or disapprove the Construction Drawings within the time set forth therefore in the Schedule of Performance.
ATTACHMENT NO. 7

Form of Environmental Covenants

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
Anaheim Redevelopment Agency
200 S. Anaheim Boulevard, 2nd Floor
Anaheim, California 92805
Attention: Agency Secretary

WITH A CERTIFIED COPY TO:
Anaheim Redevelopment Agency
201 S. Anaheim Boulevard, 10th Floor
Anaheim, California 92805
Attention: Property Services

ENVIRONMENTAL COVENANT

This ENVIRONMENTAL COVENANT (“Covenant”) is made as of the date set forth below by WESTGATE INVESTMENT GROUP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (“Covenantor”), who is the owner of record of that certain real property commonly described as the former Rains Landfill (the “Burdened Property”), the legal description of which is attached hereto as Exhibit A and incorporated herein by this reference.

The Covenant is for the benefit of the ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic (“Agency”), with reference to the following facts:

A. Conditions at the Burdened Property: The site is a former landfill and as such, may contain certain contaminants including methane and other landfill gases, which may be harmful.
B. **Benefit:** Covenantor desires and intends that in order to benefit the Agency and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from the Burdened Property’s historic landfill use.

C. **Agreement:** Covenantor has agreed to fulfill its obligations as set forth in that certain Owner Participation Agreement by and between Agency and Covenantor dated ________ (“OPA”), including recording Additional Environmental Covenants against the Burdened Property requiring ongoing obligations with respect to environmental conditions at the Burdened Property. The recording of Additional Environmental Covenants in accordance with the terms of the OPA will supersede this Covenant; however, this Covenant can only be terminated by a written release signed by the Agency.

**ARTICLE I**

**GENERAL PROVISIONS**

1.1 **Provisions to Run with the Land:** This Covenant sets forth protective provisions, covenants, conditions and restrictions (“Restrictions”) upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety and/or the environment as a result of the historical use of the Burdened Property as a landfill. The Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, injure to the benefit of, and bind the Covenantors and their respective successors in interest thereof, for the benefit of the Agency and all current and future Owners and Occupants. The Restrictions are imposed upon the entire Burdened Property and run with the land pursuant to Section 1471 of the Civil Code.

1.2 **Concurrence Presumed:** All Owners and Occupants of the Burdened Property, or any portion thereof, shall be deemed by their purchase, lease, or possession, to be in accord with the terms of this Covenant and to agree for themselves, their successors, heirs, and assigns, including their agents and employees, that the Restriction set forth herein must be adhered to for the benefit of the Agency and present and future Owners and Occupants of the Burdened Property, and that all interests of the Owners and Occupants of the Burdened Property shall be subject to the Restriction contained herein.

1.3 **Purpose:** It is the purpose of this instrument to convey to the Agency real property rights, which will run with the land, to enter upon the Burdened Property to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.
ARTICLE II
DEFINITIONS

2.1 “Occupants” shall mean Owners, and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.2 “Owner” or “Owners” shall mean the Covenantors and all successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III
DEVELOPMENT AND USE OF THE PROPERTY

3.1 The Covenantor, and each successive Owner and Occupant, hereby covenants as follows:

a. No permanent structures other than those approved by the Regional Water Quality Control Board, Santa Ana Region (“RWQCB”) as part of the development proposed under the Agency’s December 2004 Remedial Action Plan will be built on the Burdened Property without approval from the appropriate regulatory agency(ies) and the beneficiary hereof.

b. No new groundwater wells will be drilled, bored, or constructed on the Burdened Property for any purpose other than groundwater monitoring and remediation. Furthermore, groundwater monitoring extraction wells will only be drilled, constructed, bored, abandoned or destroyed on the Burdened Property pursuant to the approval of the appropriate regulatory agency(ies).

c. Water for the existing groundwater wells on the Burdened Property will not be used for any purpose, including but not limited to domestic, potable, or industrial uses unless approved in writing by the appropriate regulatory agency(ies).

d. All use and development of the Burdened Property will preserve the integrity of and physical accessibility to the capped areas and to all the operations, maintenance, and monitoring equipment including without limitation the landfill gas monitoring and control equipment and the groundwater monitoring system.

e. All post-closure operations, maintenance and monitoring obligations approved by the RWQCB with respect to the Burdened Property, including without limitation, the obligation to conduct groundwater and landfill gas monitoring; preservation and maintenance of the landfill cap; preservation and maintenance of the asphalt parking lot; and operation, maintenance and monitoring of the landfill gas control system are restrictions against the Burdened Property.

f. Owners shall provide and maintain financial assurance obligations to secure the ongoing operations, maintenance and monitoring obligations for the Burdened Property in accordance with the California Code of Regulations Title 27 as applicable.
3.2 **Enforcement:** Upon written request to the Owner, the Agency or its contractors, or any person acting pursuant to an authorized regulatory agency(ies) order, shall be granted reasonable access to the Burdened Property for the purpose of inspecting, maintaining, or monitoring any remedial measures at the Burdened Property. Violation of this Covenant shall be grounds for filing of a civil action as provided by law.

**ARTICLE IV**

**MISCELLANEOUS**

4.1 **Term:** Unless terminated in perpetuity.

4.2 **No Dedication Intended:** Nothing in this Covenant is intended or shall be construed as a gift, dedication, easement, or interest in the Burdened Property or any portion thereof, of any kind or type, to or for the benefit of the general public.

4.3 **Notice:** Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested: if to Agency: Anaheim Redevelopment Agency, 200 S. Anaheim Boulevard, 2nd Floor, Anaheim, CA 92805, Attention: Agency Secretary, with copies to: Anaheim Redevelopment Agency, 201 S. Anaheim Boulevard, 10th Floor, Anaheim, CA 92805, Attention: Property Services Division; and Anaheim Redevelopment Agency, 200 S. Anaheim Boulevard, 3rd Floor, Anaheim, CA 92805, Attention: Assistant City Attorney for Redevelopment and if to Covenantor: Westgate Investment Group, LLC c/o Brian Ton 17330 Brookhurst Street # 265, Fountain Valley, CA 92708 Attention: Tina Tran, with copies to: Greenberg, Glusker, Fields, Claman & Machtinger, LLP, 1900 Avenue of the Stars 21st Floor, Los Angeles, CA 90064, Attention: Henry D. Finkelstein, Esq.

4.4 **Partial Invalidity:** If any portion of this Covenant is determined to be invalid for any reason, the remaining portions shall remain in full force and effect to the full extent permitted by law.

4.5 **Article Headings:** Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

4.6 **References:** All references to Code sections include successor provisions.

4.7 **Construction:** Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to affect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

4.8 **Governing Law:** This Covenant is and shall be governed by the laws of the State of California.
4.9 **Responsibility to Maintain:** Nothing herein is intended to relieve the Covenantor of any existing responsibilities to maintain the Burdened Property in accordance with laws and governmental requirements.

IN WITNESS WHEREOF, Covenantor has executed this Covenant as of the date set forth below.

“**Covenantor**”

WESTGATE INVESTMENT GROUP,
A LIMITED LIABILITY COMPANY

Date: ___________________________   By: ___________________________
Name: ___________________________

Date: ___________________________   By: ___________________________
Name: ___________________________
STATE OF CALIFORNIA             )

COUNTY OF ORANGE              ) ss:

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

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

WITNESS my hand and official seal.

________________________________________
Notary Public
EXHIBIT “A”
LEGAL DESCRIPTION OF SITE

THE NORTH 876 FEET OF THE PARCEL DESCRIBED AS: THE EAST 165 FEET OF THE WEST 495 FEET OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS COYOTES, IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 PAGE 11 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY; SAID EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12 BEING DESCRIBED AS COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION NORTH 89° 41’ EAST 662.75 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 0° 13’ WEST 1328.09 FEET TO A POINT; THENCE NORTH 89° 41’ 10” EAST 663.44 FEET TO A POINT; THENCE SOUTH 0° 14’ 45” EAST 1328.05 FEET TO A POINT; THENCE SOUTH 89° 41’ WEST 662.75 FEET TO THE PLACE OF BEGINNING.

TOGETHER WITH: THE NORTH 876 FEET OF THAT PORTION OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS COYOTES, IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51 PAGE 11 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY; DESCRIBED AS COMMENCING AT A POINT IN THE SOUTH LINE OF SAID SECTION NORTH 89° 41’ EAST 662.75 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 0° 13’ WEST 1328.09 FEET TO A POINT; THENCE NORTH 89° 41’ 10” EAST 663.44 FEET TO A POINT; THENCE SOUTH 0° 14’ 45” EAST 1328.05 FEET TO A POINT; THENCE SOUTH 89° 41’ WEST 662.75 FEET TO THE PLACE OF BEGINNING. EXCEPTING THEREFROM THE WEST 495 FEET.
ATTACHMENT NO. 8

Environmental Insurance Parameters

The Agency shall fund the costs and cause the issuance of Environmental Liability Insurance with respect to the Environmental Condition of the Property within ten (10) business days of the later to occur of (i) the Effective Date of the Settlement Agreement, or (ii) the Agency receipt of Five Million, One Hundred Seventy Six Thousand, Two Hundred Ninety Dollars ($5,176,290) from the County pursuant to the Settlement Agreement which Environmental Liability Insurance shall be in the amount of not less than Twenty Five Million Dollars ($25,000,000) for a period of not less than ten (10) years (the “Environmental Liability Insurance”) in the form approved by the parties prior to the Effective Date. The Agency, City, and County shall be “first named insureds.” Participant, among others, shall be “named insureds.” The following shall be “additional insureds:” other major tenants of the Shopping Center, Zelman’s lenders and others approved by Agency. In the event the Agency has obtained the Environmental Liability Insurance prior to execution of this Agreement by Participant, then, as of the Effective Date of this Agreement and at no additional cost to Participant, Agency shall add Participant as a “named insured,” as described above. No changes shall be made to the Environmental Liability Insurance other than the addition of additional insured parties as provided above without the prior written approval of the “first named insureds” and the “named insureds” which approval shall not be unreasonably withheld, conditioned or delayed. In the case of the transfer of the Westgate Center Site and/or Participant Property, the Parties shall cooperate, at no cost to such Parties, with the then owners of the Westgate Center Site and/or Participant Property in connection with the addition of such transferees to the Environmental Liability Insurance as “named insureds.” The parties agree to reasonably cooperate and to execute such documents as are reasonably necessary in connection with the addition of tenants or other parties with an insurable interest in the Westgate Center Site and/or Participant Property as additional insureds and in the issuance of any additional endorsements.
ATTACHMENT NO. 9

Geotechnical Standards for Initial Agency Work
ATTACHMENT NO. 10

Form of Purchase Price Note

PROMISSORY NOTE
(Secured by Deed of Trust)

________________, 2008
_________________________, California

$_________________________

FOR VALUE RECEIVED, the undersigned WESTGATE INVESTMENT GROUP, LLC, a California limited liability company (“Maker” or “Participant”), having its principal place of business at 17330 Brookhurst Street, #265, Fountain Valley, California 92708, Attention: Tina Tran, promises to pay to the order of ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic (“Payee” or “Agency”), at 201 South Anaheim Boulevard, Anaheim, 10th Floor, Anaheim, California 92805, or at such other place as the holder of this Note from time to time may designate in writing, in accordance with the following:

1. **Recitals.** Participant and Agency have entered into that certain OWNER PARTICIPATION AGREEMENT (“OPA”) dated _________________, 2008 pursuant to which the Agency has conveyed to the Participant the Access Easement and Sign Easement (the “Easements”) as more fully described in the OPA. All capitalized terms not defined herein shall have the meaning set forth in the OPA. The payment of the Purchase Price for the Easements is to be evidenced by this Promissory Note and secured by the Deed of Trust.

2. **Payment.** Participant shall pay to Agency the principal sum of Five Million, One Hundred Seventy Six Thousand, Two Hundred Ninety Dollars ($5,176,290) together with interest thereon at the rate of five percent (5%) per annum with equally amortized monthly payments over a period of fifteen (15) years in the amount of Forty Thousand, Nine Hundred Thirty Three Dollars and Seventy Seven Cents ($40,933.77) per month payable commencing on the first (1st) day of the first calendar month following the month in which the Conveyance Closing (as defined in the OPA) occurs with all unpaid principal and accrued interest due and payable on the fifteenth (15th) anniversary date thereafter.

3. **Miscellaneous.**

   (a) **Governing Law.** All questions with respect to the construction of this Note and the rights and liabilities of the parties to this Note shall be governed by the laws of the State of California.

   (b) **Binding on Successors.** This Note shall inure to the benefit of, and shall be binding upon, the successors and assigns of each of the parties to this Note.
(c) **Attorneys’ Fees.**

(i) Maker shall reimburse Payee for all reasonable attorneys’ fees, costs and expenses, incurred by Payee in connection with the enforcement of Payee’s rights under this Note, including, without limitation, reasonable attorneys’ fees, costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys’ fees, costs and expenses incurred to protect Payee’s security and attorneys’ fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term “expenses” means any expenses incurred by Payee in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Payee in connection with any such proceeding.

(ii) Payee shall also be entitled to its attorneys’ fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the merger of this Note into any judgment on this Note.

(d) **Entire Agreement.** This Note and the relevant provisions of the OPA constitute the entire agreement and understanding between and among the parties in respect of the subject matter of such agreements and supersede all prior agreements and understandings with respect to such subject matter, whether oral or written.

(e) **Time of the Essence.** Time if of the essence with respect to every provision hereof.

(f) **Waivers by Maker.** Except as otherwise provided in any agreement executed in connection with this Note, Maker waives: presentment; demand; notice of dishonor; notice of default or delinquency; notice of acceleration; notice of protest and nonpayment; notice of costs, expenses or losses and interest thereon; and diligence in taking any action to collect any sums arising under this Note or in any proceeding against any of the rights or interests in or to properties securing payment of this Note.
(g) Non-waivers. No previous waiver and no failure or delay by Maker in acting with respect to the terms of this Note Pledge shall constitute a waiver of any breach, default, or failure of condition under this Note. A waiver of any term of this Note, or of any of the obligations secured thereby, must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the loan evidenced by this Note, the terms of this Note shall prevail.

PARTICIPANT:

WESTGATE INVESTMENT GROUP, LLC,

a California limited liability company

By:______________________________
ATTACHMENT NO. 11

Form of PP Trust Deed

RECORDING REQUESTED BY AND )
When Recorded Mail To: )
Anaheim Redevelopment Agency )
201 S. Anaheim Boulevard )
Anaheim, California 92805 )
Attn: Executive Director )

Exempt from recording fee pursuant to Government Code
Section 27383

DEED OF TRUST WITH ASSIGNMENT OF RENTS
(SHORT FORM)

This DEED OF TRUST WITH ASSIGNMENT OF RENTS (this “Deed of Trust”), is
made as of ________________, 200__, by __________________________, a
________________________ (“Trustor”), whose address is ____________________________,
to _________________________________ (and in such capacity herein called the “Trustee”),
for the benefit of the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and
politic (and in such capacity herein called the “Beneficiary”), having an office located at 201 S.
Anaheim Boulevard, Anaheim, California 92805.

WITNESSETH: that Trustor grants to Trustee in Trust, with Power of Sale, that property
in the City of Anaheim, County of Orange, State of California, described as:

See attached Exhibit A, incorporated herein

Together with the rents, issues and profits thereof, subject, however, to the right, power
and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents,
issues and profits.

For the purpose of securing (1) payment of indebtedness according to the terms of a
promissory note of even date herewith made by Trustor, payable to order of Beneficiary, and
extensions or renewals thereof, and (2) the performance of each agreement of Trustor
incorporated by reference or contained herein.

To protect the security of this Deed of Trust, and with respect to the property above
described, Trustor expressly makes each and all of the agreements, and adopts and agrees to
perform and be bound by each and all of the terms and provisions set forth in subdivision A, and
it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of
the fictitious deed of trust recorded in Orange County August 17, 1964, in all other counties August 18, 1964, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

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</table>

shall inure to and bind the Parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivision A and B, (identical in all counties), are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.
Signature of Trustor:

____________________________________, a

____________________________________

By:____________________________________

Its:____________________________________

Signature or Beneficiary

ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic

____________________________________

Chairman

ATTEST:

LINDA NGUYEN, AGENCY SECRETARY

________________________

Agency Secretary

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

________________________

John E. Woodhead IV, Assistant City Attorney

________________________

Stradling Yocca Carlson & Rauth, Agency Special Counsel
Permitted Exceptions
ATTACHMENT NO. 13

Release of Construction Covenants

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

__________________________  
__________________________  
__________, California  ________  
ATTN: _________________   

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the “Release”) is made by the ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic (the “Agency”), in favor of WESTGATE INVESTMENT GROUP, LLC, a California limited liability company (the “Participant”), as of the date set forth below.

RE bâtAL S

A. The Agency and the Developer have entered into that certain Owner Participant Agreement (the “OPA”) dated ____________, 2008 concerning the redevelopment of certain real property situated in the City of Anaheim, California as more fully described in Exhibit “A” attached hereto and made a part hereof.

B. As referenced in Section 410 of the OPA, the Agency is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in Section 100 of the OPA) upon completion of construction of the Participant Improvements (as defined in Section 100 of the OPA) or a portion thereof, which Release is required to be in such form as to permit it to be recorded in the Recorder’s office of Orange County. This Release is conclusive determination of satisfactory completion of the construction and development required by the OPA of the Project or such portion thereof.

C. The Agency has conclusively determined that such construction and development has been satisfactorily completed.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The Participant Improvements have been fully and satisfactorily completed in conformance with the OPA. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the OPA and other documents executed and recorded pursuant to the OPA shall remain in effect and enforceable according to their terms.
2. Nothing contained in this instrument shall modify in any other way any other provisions of the OPA.

IN WITNESS WHEREOF, the Agency has executed this Release this _____ day of ________________, 2008.

ANAHEIM REDEVELOPMENT AGENCY,
a public body, corporate and politic

By:_____________________________

Its:____________________________

ATTEST:

________________________________

Agency Secretary
MEMORANDUM OF AGREEMENT

This MEMORANDUM OF AGREEMENT (the “Agreement”) is entered into as of ______________, by and between the ANAHEIM REDEVELOPMENT AGENCY, a public body corporate and politic (herein referred to as “Agency”) and WESTGATE INVESTMENT GROUP, LLC, a California limited liability company (hereinafter referred to as “Participant”).

RECITALS

A. Pursuant to an Owner Participation Agreement dated as of ______________, 2008 (the “OPA”), the Agency, Participant and others have entered into the Settlement Agreement and the Agency has caused the issuance of the Environmental Insurance as those terms are defined in the OPA.

B. Upon fulfillment of the above-described conditions, Agency has required the recordation of this Memorandum of Agreement, and Participant has agreed to execute and record this Agreement, which shall run with the land until the recording of the Release of Construction Covenants.

C. This Agreement is entered into and recorded in accordance with California Health and Safety Code Section 33437 and 33439 and the Redevelopment Plan.

NOW, THEREFORE, THE AGENCY AND PARTICIPANT AGREE AS FOLLOWS:

1. Incorporation of OPA Provisions. The provisions of the OPA are hereby incorporated by reference as though set forth in full. The inclusion of the following provisions shall not limit the incorporation of the OPA, but is merely for convenience. Capitalized terms not defined herein shall have the meanings defined in the OPA. Paragraphs 2 through 8 hereof include some of the salient provisions of the OPA.
2. Transfers of Interest in Participant Property or Agreement.

2.1 Prohibition. The qualifications and identity of the Participant are of particular concern to the Agency. Furthermore, the Parties acknowledge that the Agency has negotiated the terms of the OPA in contemplation of the development and operation of the Participant Improvement and the property tax increment to be generated by the Participant Improvement and the operation of the Participant Improvement on the Participant Property. Accordingly, for the period commencing upon the date of the OPA and until the issuance by Agency of the Release of Construction Covenants for the Participant Improvement, no voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under the OPA, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the whole or any part of the Participant Property or the Participant Improvements thereon, nor shall any uses other than the Participant Improvement be operated thereon, either in addition to or in replacement of the Participant Improvement on the Participant Property, nor shall the Participant make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the Participant Improvement being operated upon the Participant Property (collectively referred to herein as a “Transfer”), without the prior written approval of the Agency, except as expressly set forth in the OPA. As used in the OPA, the term “Transfer” shall not include the sale or leasing of storage or parking spaces to tenants or occupants or the leasing of parking space to the owner or the Adjacent Property within the Residential Parking Area.

2.2 Permitted Transfers or other Conveyances. Notwithstanding any other provision of the OPA to the contrary, Agency approval of a Transfer or other conveyance shall not be required in connection with any of the following (“Permitted Transfers”):

(a) Any Transfer to an entity or entities in which Participant, and/or Tina Tran directly retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities, and the Participant Improvement is operating on a continuous basis on the Participant Property.

(b) The conveyance or dedication of any portion of the Participant Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction or operation of the Participant Improvement.

(c) Any requested assignment for financing purposes permitted pursuant to this Agreement for which approval by the Agency has been obtained, including the grant of a mortgage or deed of trust or sale-leaseback to secure the funds necessary for construction and permanent financing of the Participant Improvement and, excepting therefrom any transfer to any entity to which any interest is held by the Participant, a Related Entity, or the principals of Participant, the following in connection with such financing as shall have theretofore been approved by the Agency: (i) any Transfer to any person or entity pursuant to foreclosure or deed-in lieu of foreclosure of any such mortgage or deed of trust; (ii) any Transfer of the reversionary interest and estate of the lessor in any sale-leaseback; and (iii) any lease termination by the lessor under the lease in a sale-leaseback due to default of the lessee thereunder.
(d) Transfers of the Participant Property after the Agency has issued a Release of Construction Covenants for the Participant Improvement thereon.

In the event of a Transfer or Conveyance by Participant not requiring the Agency's prior approval, Participant nevertheless agrees that at least thirty (30) days prior to such Transfer or Conveyance it shall give written notice to Agency of such Transfer. In the case of a Transfer pursuant to subparagraph (a) above, Participant agrees that at least thirty (30) days prior to such Transfer it shall provide satisfactory evidence that the transferee has assumed or upon the effective date of transfer will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the Agency all of the obligations of the Participant under the OPA which remain unperformed as of such Transfer or which arise from and after the date of Transfer.

2.3 Successors and Assigns. All of the terms, covenants and conditions of the OPA shall be binding upon and shall inure to the benefit of the Participant and its successors and assigns, including those acquiring such interest pursuant to a permitted Transfer or Conveyance. Whenever the term “Participant” is used in the OPA, such term shall include any other permitted successors and assigns, including those acquiring such interest pursuant to a permitted Transfer or Conveyance, as herein provided.

3. Compliance With Laws. Each Party shall carry out the design, construction and operation of its respective improvements in conformity with all Governmental Requirements, including without limitation, all laws, regulations, rules and guidance documents relating to air quality.

4. Liens and Stop Notices. Prior to the issuance of Release of Construction Covenants for the Participant Improvements, the Participant shall not allow to be placed on the Participant Property or any part thereof any lien or stop notice except for liens to secure financing approved pursuant to this Section. If a claim of a lien or stop notice is given or recorded affecting the Site or the Participant Improvements, except as set forth above, the Participant shall within thirty (30) days of such recording or service or within five (5) days of the Agency's demand, whichever first occurs:

(a) pay and discharge the same; or

(b) affect the release thereof by recording and delivering to the Agency a statutory surety bond in sufficient form and amount; or

(c) cause the Title Company to issue an updated Title Policy, dated as of the date of the Release of Construction Covenants, which Title Policy does not include such claim as an exception to title to the Participant Property or the Participant Improvements; or

(d) provide the Agency with other assurance which the Agency deems, in its sole and absolute discretion, to be satisfactory for the payment or discharge 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.
5. **Environmental Covenants.** The Participant has caused the recording of the Environmental Covenants concurrently herewith.

6. **Ongoing Participant Obligations.** Participant has agreed to perform the Ongoing Participant Obligations.

7. **Agency Improvements.** Agency shall cause the construction and/or installation of the Agency Improvements.

8. **Conveyance.** Subject to fulfillment of the Conveyance Conditions, Agency will convey the Access Easement and Sign Easement to Participant.
IN WITNESS WHEREOF, the Agency and Participant have signed this Agreement as of the date first set forth above.

AGENCY:

ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic

Chairman

ATTEST:

LINDA NGUYEN, AGENCY SECRETARY

Agency Secretary

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

John E. Woodhead IV, Assistant City Attorney

Stradling Yocca Carlson & Rauth, Agency Special Counsel

PARTICIPANT:

_________________________, a ______________________

By: ___________________, its general partner

By: ______________________________
This **RIGHT OF ENTRY AND LICENSE AGREEMENT** (Agency Improvements) (this “Agreement”), dated for purposes of identification only as of May 15, 2008 (the “Date of Agreement”), is entered by and between the **ANAHEIM REDEVELOPMENT AGENCY**, a public body, corporate and politic, (the “Redevelopment Agency”), and **WESTGATE INVESTMENT GROUP, LLC**, (the “Owner”).

**RECITALS:**

A. Owner is the owner of approximately seven (7) acres of real property generally located at the northwest corner of Lincoln Avenue and Bel Air Street in the City of Anaheim, California (the “Owner’s Property”) which property was formerly the Rains Pit Landfill Site. The Owner’s Property is depicted on the Map which is attached hereto as Exhibit A and incorporated herein by this reference.

B. The Redevelopment Agency is in the process of redeveloping an approximately twenty-five (25) acre site immediately west of the Owner’s Property (the “Westgate Site”). To this end, the Redevelopment Agency has, among other things, (i) obtained approval of the Redevelopment Agency’s December 2004 Remedial Action Plan covering portions of the Westgate Site, as well as the Owner’s Property which includes the Rains Pit Landfill Site (the “RAP”), (ii) conducted a surcharge test and developed a surcharge plan for portions of the Westgate Site, and (iii) entered into an agreement providing for the redevelopment of the Westgate commercial center.

C. The Redevelopment Agency and Owner have entered into an Owner Participation Agreement dated ______________, 2008 (the “OPA”) pursuant to which, among other things, Agency has agreed to cause the installation and/or construction of the Agency Improvements as that term is defined in the OPA. Capitalized terms not defined herein shall have the meaning set forth in the OPA.

D. The Redevelopment Agency intends to have portions of the Westgate Site and the Rains Pit Landfill Site remediated in accordance with the RAP. In order to facilitate such remediation and Owner’s future development of the Owner’s Property, Redevelopment Agency desires to enter the Owner’s Property to construct and/or install the Agency Improvements (the “Permitted Work”) hereunder; the Permitted Work is more fully set forth in the Scope of Development attached to the OPA as Attachment No. 3.

E. Owners are willing to permit the Redevelopment Agency to enter the Owner’s Property to perform the Permitted Work 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, Owners hereby grant to Redevelopment Agency and its agents, contractors, subcontractors and their invitees the nonexclusive right to enter the Owner’s Property for the purpose of conducting the Permitted Work (the “License”) and for no other purposes without the prior written approval of Owners. The License shall include, without limitation, the right to conduct vehicular ingress and egress over and through the Owner’s Property. This Agreement shall run for a term commencing on the Effective Date and terminating on November 30, 2009 (the “License Term”).

Section 2 Conditions to Entry. Prior to Redevelopment Agency initially entering the Owner’s Property, the conditions set forth in Section 2.1 must be satisfied (the “Conditions Precedent”).

2.1 Permits. Prior to commencing any activities under this Agreement, Redevelopment Agency shall secure all permits needed to carry out the actions to be performed on the Owner’s Property pursuant to this Agreement.

Section 3 Liens. With regard to actions performed on the Owner’s Property under this Agreement, Redevelopment Agency shall not permit to be placed against the Owner’s Property, or any part thereof, any design professional's, mechanic's, materialmen's, contractor's, or subcontractor's liens (collectively, “Liens”). Redevelopment Agency shall indemnify, defend and hold harmless Owner from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens. Owner reserves the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Owner’s Property, or any portion thereof, or on the improvements on the Owner’s Property, any notices of non-responsibility or other notice as may be desirable to protect Owner against liability. In addition to, and not as a limitation of Owner’s other rights and remedies under this Agreement, should Redevelopment Agency fail, within ten (10) days of written request from Owner, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless Owners from and against any loss, damage, injury, liability or claim arising out of a Lien, then Owner, 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 Owner by Redevelopment Agency upon written demand.

Section 4 Compliance With Laws/Permits. Redevelopment Agency 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. Without limiting the generality of the foregoing, Redevelopment Agency, at its sole cost and expense, shall obtain any and all permits which may be required by any law for any activities Redevelopment Agency desires to conduct or have conducted pursuant to this Agreement. Owner shall provide reasonable assistance to Redevelopment Agency in obtaining such permits.
**Section 5  Indemnity re Permitted Work.** Redevelopment Agency shall indemnify, defend, and hold harmless the Owner from any and all claims, suits, or actions or any name, kind and description brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willfulness conduct, negligent act, errors or omissions, ultra-hazardous activities, or activities giving rise to strict liability in connection with the performance of the Permitted Work by the Redevelopment Agency or any person directly or indirectly employed by or acting as agent for the Redevelopment Agency in the performance of the Permitted Work except that such indemnity shall not apply to the extent such matters are caused by the gross negligence or willfulness misconduct of the Owner, its officers, agents, employees or volunteers.

**Section 6  Inspection.** Owner and its representatives, employees, agents or independent contractors may enter and inspect the Owner’s Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify Redevelopment Agency's compliance with the terms and conditions of this Agreement.

**Section 7  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 Owner’s Property to Redevelopment Agency.

**Section 8  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 Redevelopment 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

John E. Woodhead, Assistant City Attorney
City of Anaheim
200 S. Anaheim Boulevard, 3rd Floor
Anaheim, California 92805
FAX No. (714) 765-4630

ATTACHMENT NO. 15
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Section 9  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 10  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 11  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 Owner and Redevelopment Agency.

Section 12  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 13  Owner’s Representations. Owner represents and warrants that Owner has the authority to enter into this Agreement, but otherwise make no representations and warranties with respect to the Owner’s Property.

Section 14  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 15  Effective Date of this Agreement. This Agreement shall take effect immediately upon the execution of this Agreement by Redevelopment Agency (the “Effective Date”).

[Signatures appear on following page.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

AGENCY:

ANAHEIM REDEVELOPMENT AGENCY, a public body, corporate and politic

Dated: ________________________

ELISA STIPKOVICH
Executive Director

APPROVED AS TO FORM:

JACK L. WHITE, CITY ATTORNEY

JOHN E. WOODHEAD IV,
Assistant City Attorney

Stradling Yocca Carlson & Rauth,
Agency Special Counsel

[Signatures continue on next two pages.]
OWNER:

WESTGATE INVESTMENT GROUP, a California limited liability company

Dated: ___________________________  By: ___________________________

Its: ___________________________
LIST OF ATTACHMENTS

ATTACHMENT “1” Site Map
ATTACHMENT “2” Legal Description of the Site
ATTACHMENT “3” Scope of Development
ATTACHMENT “4” Schedule of Performance
ATTACHMENT “5” Access Easement and Sign Easement
ATTACHMENT “6” Design Requirements
ATTACHMENT “7” Environmental Covenants
ATTACHMENT “8” Environmental Insurance Parameters
ATTACHMENT “9” Geotechnical Standards for Initial Agency Work
ATTACHMENT “10” Form of Purchase Price Note
ATTACHMENT “11” Form of PP Trust Deed
ATTACHMENT “12” Permitted Exceptions
ATTACHMENT “13” Release of Construction Covenants
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