

ITEM 20

**OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY**

DATE ISSUED: 4/10/14

SUBJECT:

Adoption of a Resolution to Approve a Rehabilitation Loan Agreement with Lotus Equity Group, LLC and associated Escrow Agreement with Lotus Equity Group, LLC and Dixieline Builders Fund Control, Inc. for the Silverado Ballroom Building, City Heights.

CONTACT/PHONE NUMBER: Tracy Reed/236-6543

STAFF RECOMMENDATION:

Approve proposed resolution.

DESCRIPTIVE SUMMARY OF ITEM:

Adoption of a resolution to approve the Rehabilitation Loan Agreement with Lotus Equity Group, LLC, including all exhibits thereto, and an associated Fund Control Agreement (entitled "Escrow Agreement") with Lotus Equity Group, LLC and Dixieline Builders Fund Control, Inc. for the historic rehabilitation and renovation of the Silverado Ballroom Building. The building is located at the intersection of University and Euclid Avenues within City Heights and the former City Heights Redevelopment Project Area (Attachment A – Site Map). The rehabilitation loan amount is \$1,379,358. The Successor Agency recently received its Finding of Completion from the State Department of Finance and is now permitted to spend unexpended bond proceeds on eligible projects. On March 11, 2014 the Successor Agency approved the Rehabilitation Loan Agreement. The Rehabilitation Loan Agreement and its associated Fund Control Agreement (Escrow Agreement) are now being presented to the Oversight Board for its consideration.

BACKGROUND:

The proposed Silverado Ballroom Building Rehabilitation Project ("Project"), is a legacy project between the current property owner and the former Redevelopment Agency of the City of San Diego, a public body, corporate and politic ("Former RDA"). In August 2011, the property owner and Former RDA entered into a Rehabilitation Loan Agreement regarding the Project. The Rehabilitation Loan Agreement was never fully executed due to the dissolution of

redevelopment pursuant to AB 1x26 and the invalidation by the State Department of Finance (DOF) of the Cooperation Agreement. However, the Successor Agency recently received its Finding of Completion, and all loan funding for the Project is now approved pursuant to the Recognized Obligation Payment Schedule (“ROPS”) 13-14 B (January-June 2014).

DISCUSSION:

Lotus Equity Group (“Owner”) has proposed a complete historic rehabilitation of the Silverado Ballroom Building. The two story building totals approximately 11,500 square feet with commercial space on the ground floor and the ballroom and support space on the second floor. The proposed scope of work includes: rehabilitation of the exterior of the building and the ballroom located on the second floor; vanilla shell tenant improvements on the first floor; installation of an elevator for Americans with Disabilities Act (ADA) accessibility; new paving and hardscape; and structural, mechanical, and electrical upgrades (Attachment B – Basic Concept Drawings). All improvements will be completed in compliance with the U.S. Secretary of the Interior’s Standards for Rehabilitation. Upon completion of the rehabilitation of the building, the first floor will continue to serve as commercial space, and the second floor ballroom will once again become available to the general public as an art/dance and martial arts studio, meeting/event room, and hall space for special occasions.

On November 4, 2013, the City Heights Area Planning Committee recommended approval of expending former City Heights Redevelopment Project Area bond proceeds for this project.

Total Project cost is \$1,473,300. The sources of funding for the Project include the proposed Successor Agency loan of \$1,379,358 and the Owner’s financial contribution of \$93,942. The State DOF has approved the expenditure of former City Heights Redevelopment Project Area bond proceeds for this project with the approval of Line Item #564 on ROPS 13-14 B (January – June 2014). The Owner’s \$93,942 investment in the Project includes a combination of debt and cash including a \$81,000 loan from the City of San Diego’s Small Business Loan Program. The Owner will be required to pay prevailing wages and will be subject to the City’s Equal Opportunity Contracting and Non-Discrimination in Contracting Ordinance. The Project is categorically exempt from the California Environmental Quality Act (CEQA).

The Successor Agency’s loan is for ten years (Attachment C – Rehabilitation Loan Agreement). A ten-year deed restriction will be imposed as a condition of the Successor Agency’s loan. At the end of the ten year term, if the Owner complies with provisions of the loan and deed restrictions, the loan will be forgiven. Use restrictions will be recorded and imposed on the property until May of 2033, which include requirements regarding: the use of the ballroom as a ballroom/meeting hall, maintenance of the building improvements by the Owner, and availability of the ballroom for rent/lease to the general public.

Finally, as noted in the Rehabilitation Loan Agreement, a Fund Control Agreement must be entered into among the Successor Agency, Owner and a fund control agent as a condition precedent to the loan closing. The proposed Fund Control Agreement (“Escrow Agreement”) between the Successor Agency, the Owner and Dixieline Builders Fund Control, Inc., a bonded funding control agent (Attachment D – Escrow Agreement), sets forth the terms of the disbursement of the loan. Among other things, this Escrow Agreement provides that all of the Successor Agency’s loan funds will be deposited with the fund control agent during the ROPS 13-14B time period, and then disbursed for project expenses in increments over multiple ROPS time periods, based upon Successor Agency staff’s review and approval of draw expense reports. This up-front funding mechanism will provide the necessary assurance that the Project will be fully funded and enable the Owner to commence and complete the improvements without any disruptions in funding. To the extent that the Successor Agency’s disbursement of loan funds into the escrow account occurs during the ROPS 13-14B time period, the Successor Agency will account for this disbursement as an expenditure of all such loan funds for purposes of the prior period adjustment form contained in ROPS 14-15B.

The schedule for the Project is as follows:

- April 2014 State DOF Consideration
- May/June 2014 Deposit of Loan Funds into Escrow
- July 2014 Begin Construction
- September 2015 Complete Construction
- October 2015 Begin Historic Designation Process

CONCLUSION:

The Oversight Board is respectively requested to approve the resolution approving the Rehabilitation Loan Agreement, including all exhibits thereto, and the Fund Control Agreement. The City Heights Redevelopment Plan identified various redevelopment priorities, including preservation and enhancement of historically and architecturally significant resources. The City Heights Fourth Implementation Plan (2009-2014) supported the identification and preservation of historical objects, buildings, architectural style, and neighborhood context, wherever possible; more specifically, it identified the designation and restoration of historic structures, including the Silverado Ballroom Building. The expenditure of unexpended City Heights Series 2010 B Taxable Bond proceeds for this project is consistent with the bond covenants.

Respectively submitted,



Tracy Reed
Project Manager
City of San Diego
Planning, Neighborhoods
& Economic Development
Department

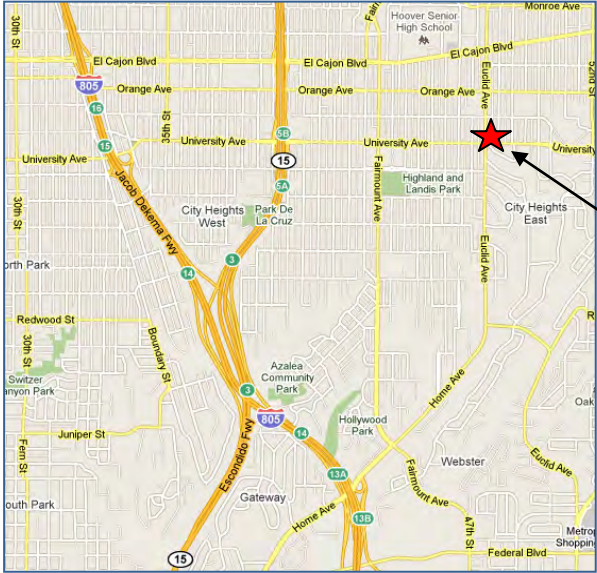


William Fulton
Director
City of San Diego
Planning, Neighborhoods
& Economic Development
Department

- Attachments:
- A. Site Map
 - B. Basic Concept Drawings
 - C. Rehabilitation Loan Agreement
 - D. Escrow Agreement

Attachment A

Site Map

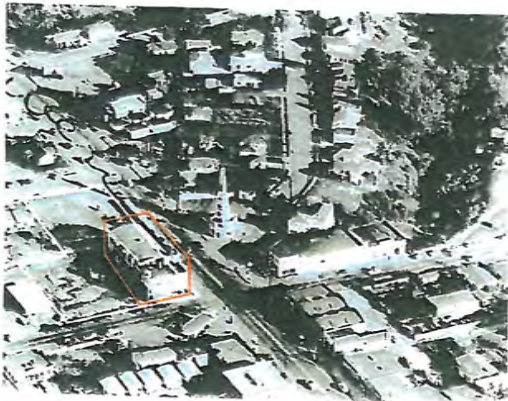


Silverado Ballroom Building





historic photo from intersection
of Euclid and University
circa 1989
courtesy of the San Diego Historical Society



historic aerial photo
of Euclid and University intersection
circa 1951
courtesy of the San Diego Historical Society

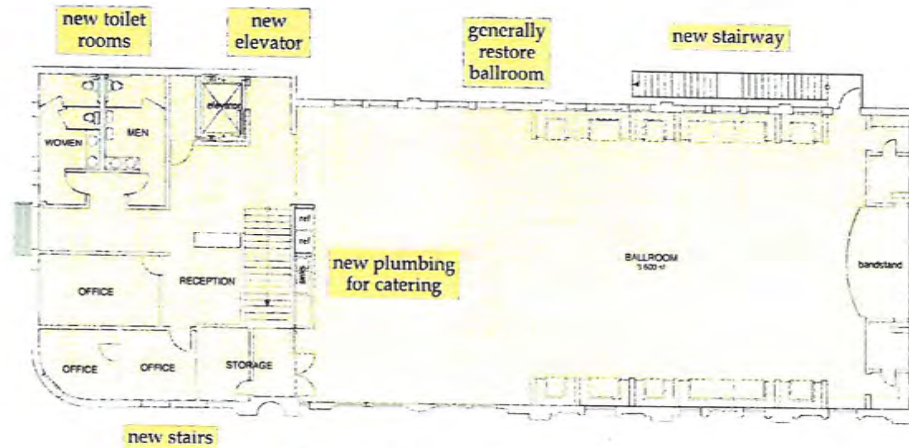
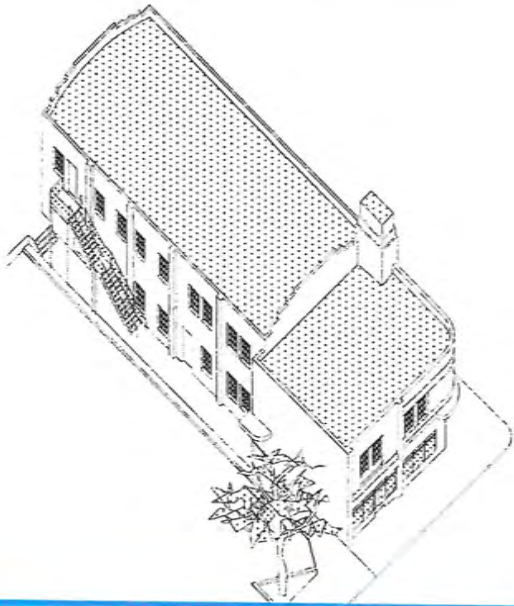


neighborhood plan

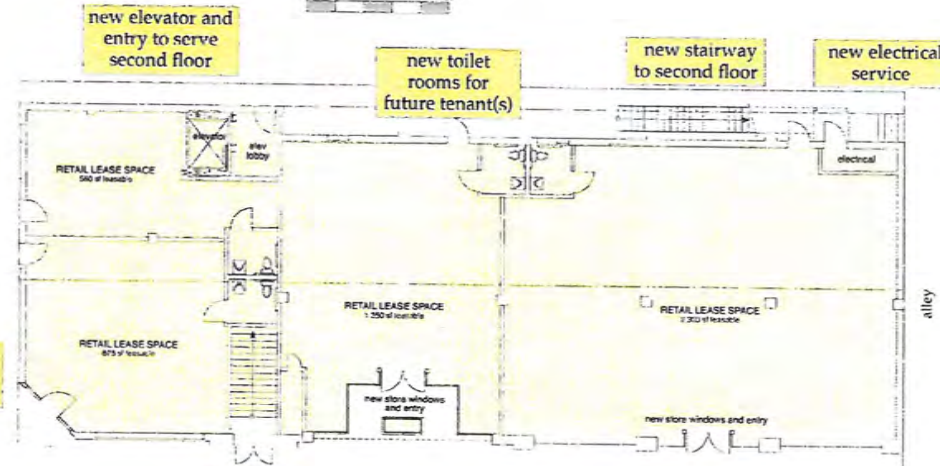
RESTORATION & REBIRTH
of the
SILVERADO BALLROOM BUILDING
Euclid and University Avenues
San Diego, California

Basic Concept Drawings

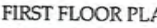
Attachment B



SECOND FLOOR PLAN



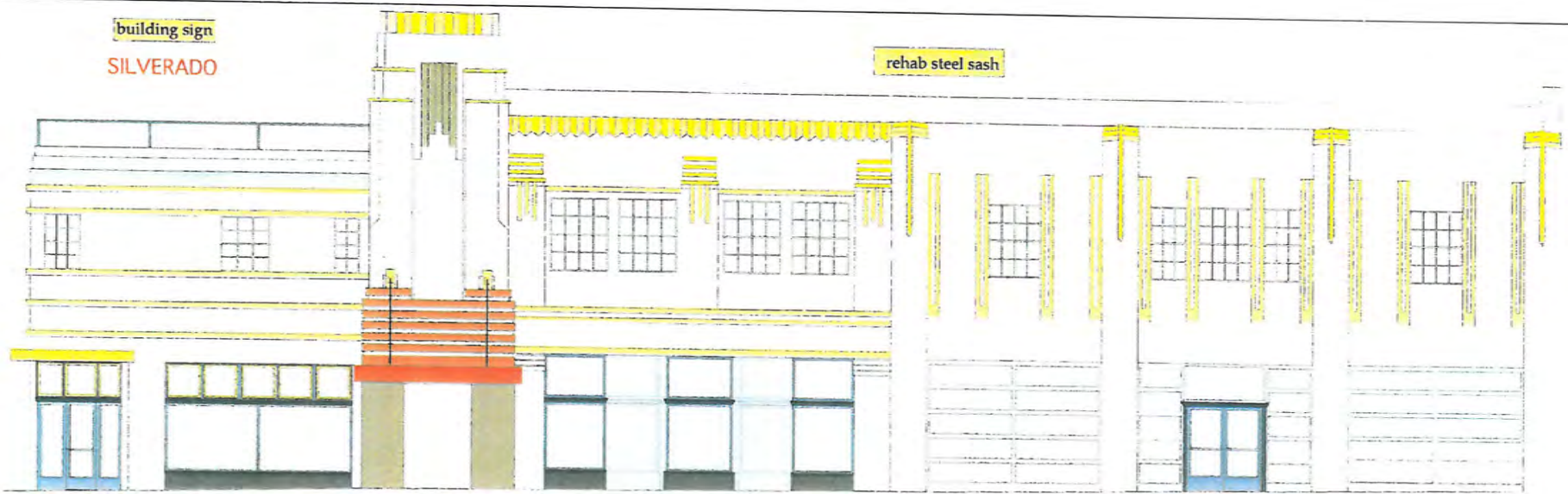
FIRST FLOOR PLAN



SILVERADO BALLROOM BUILDING
ARCHITECTS RICHARD BUNDY & DAVID THOMPSON

building sign
SILVERADO

rehab steel sash



new "Art Deco"
color scheme
includes complete
building prep

new entry gates
& canopy detail

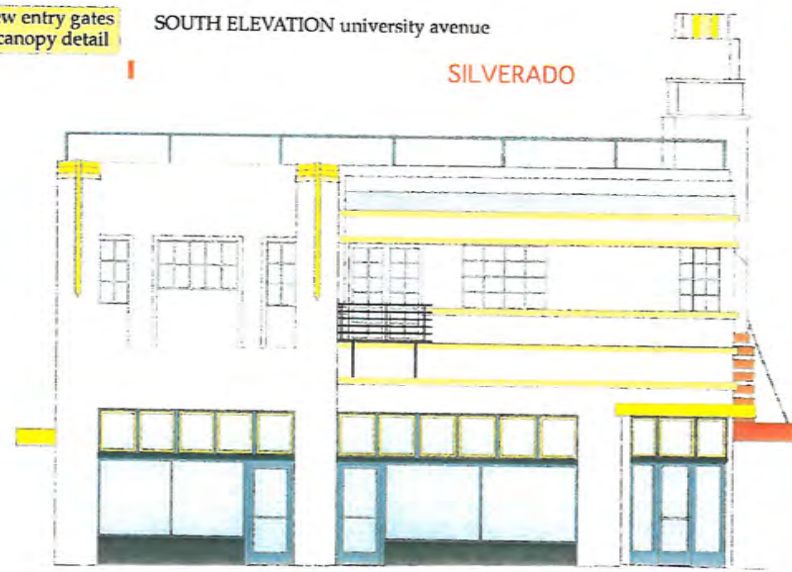
SOUTH ELEVATION university avenue

SILVERADO

new storefronts
entire two street fronts
to match historical



EXISTING VIEW
from university

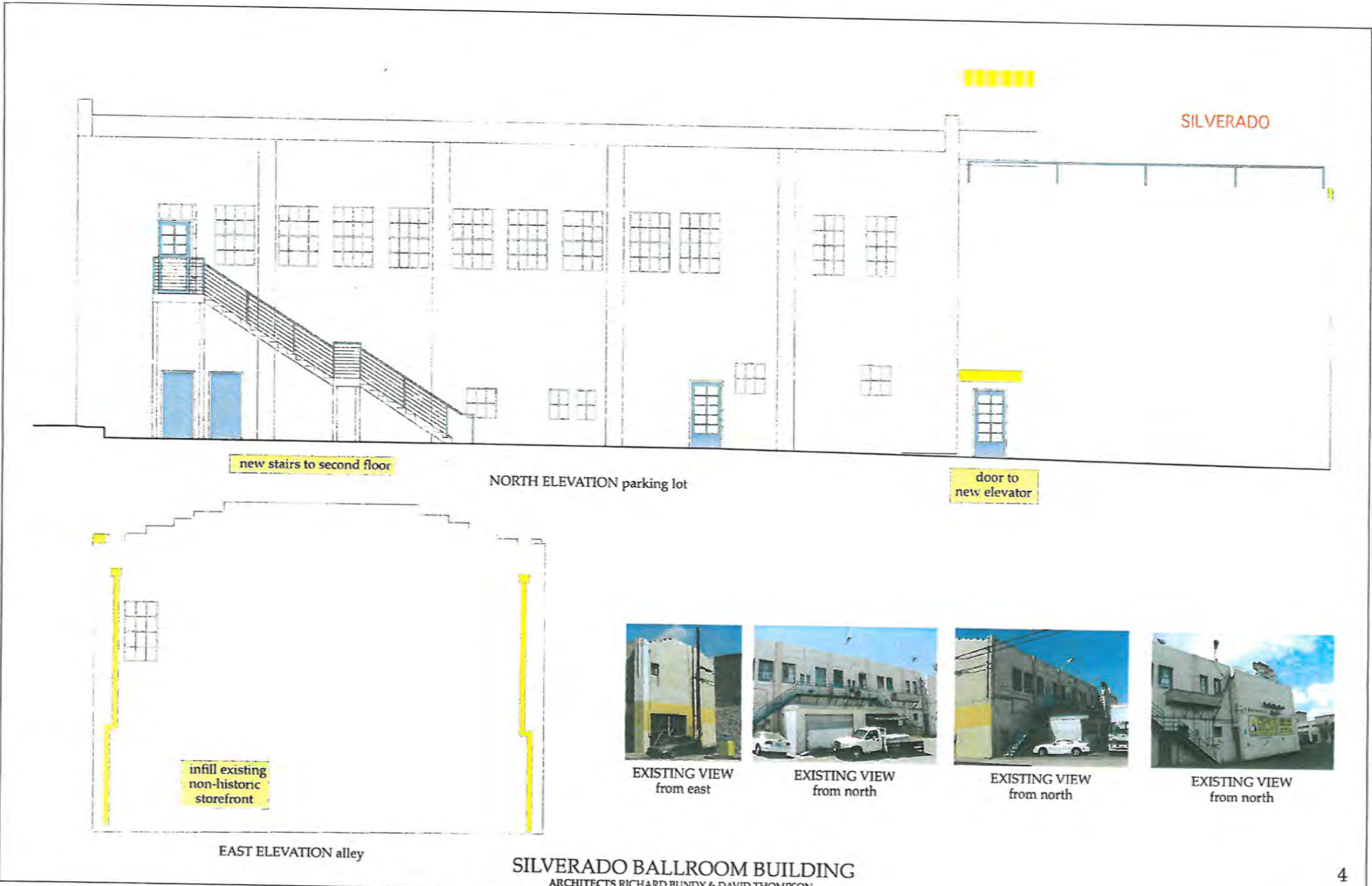


WEST ELEVATION euclid avenue



EXISTING VIEW
from euclid

SILVERADO BALLROOM BUILDING
ARCHITECTS RICHARD BUNDY & DAVID THOMPSON





existing photographs

SILVERADO BALLROOM BUILDING
ARCHITECTS RICHARD BUNDY & DAVID THOMPSON

ATTACHMENT C
REHABILITATION LOAN AGREEMENT

[BEHIND THIS PAGE]

REHABILITATION LOAN AGREEMENT

by and between

**CITY OF SAN DIEGO, SOLELY IN ITS CAPACITY AS THE DESIGNATED
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF
SAN DIEGO**

and

LOTUS EQUITY GROUP, LLC

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REHABILITATION LOAN AGREEMENT

THIS REHABILITATION LOAN AGREEMENT (this “**Agreement**”) is entered into by and between the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body corporate and politic (“**Successor Agency**”) and LOTUS EQUITY GROUP, LLC, a California limited liability company (“**Owner**”), based upon the following facts:

RECITALS

- A. In 2011, Owner, the City of San Diego (“City”), and the former Redevelopment Agency of the City of San Diego (the “Former RDA”) negotiated a rehabilitation loan agreement to effectuate the Redevelopment Plan for the City Heights Redevelopment Project Area (the “Original Loan Agreement”). Under the Original Loan Agreement, redevelopment funds would be used to finance a portion of the costs of rehabilitation of certain improvements on the hereinafter described Property located within the City Heights Redevelopment Project Area for uses permitted by the Redevelopment Plan.
- B. On August 2, 2011, the Former RDA’s board, by Resolution No. R-04865, authorized the Former RDA’s execution of the Original Loan Agreement, and the City Council, by Resolution No. 306987 authorized the City’s execution of the Original Loan Agreement. On August 11, 2011, the California Supreme Court issued a stay order pending the Court’s final opinion in the case of *California Redevelopment Association v. Matosantos*, designated as Case No. S194861. The stay order prevented the Former RDA from executing the Original Loan Agreement. The City and the Owner executed the Original Loan Agreement, without the Former RDA’s signature.
- C. The City’s obligation to issue the rehabilitation loan to Owner under the Original Loan Agreement was predicated upon the continued availability of redevelopment funds transferred from the Former RDA to the City under that certain Cooperation Agreement for Payment of Costs Associated with certain Redevelopment Agency Funded Projects between the City and the Former RDA effective February 28, 2011, including all subsequent amendments thereto (collectively, “Cooperation Agreement”). In December 2012, the State Department of Finance invalidated the Cooperation Agreement on the basis of provisions in State legislation that dissolved the Former RDA. As a result, the Original Loan Agreement has been effectively invalidated because Cooperation Agreement funds are no longer available to the City for purposes of fulfilling the obligation to issue the rehabilitation loan under the Original Loan Agreement.

- D. As of February 1, 2012, the Former RDA dissolved by operation of law, at which time Successor Agency became vested with all of the Former RDA's authority, rights, powers, duties, and obligations under the California Community Redevelopment Law.
- E. On December 2, 2013, the Successor Agency received its Finding of Completion ("FOC") from the State Department of Finance ("DOF"). Pursuant to the Successor Agency receiving its FOC, the DOF confirmed in writing on December 17, 2012 that the Successor Agency is permitted to expend non-housing bond proceeds for the purpose provided in this Agreement, consistent with the covenants of the City Heights Series 2010B Taxable Bonds, in accordance with Health and Safety Code section 34191.4(c).
- F. This Agreement supersedes the Original Loan Agreement in its entirety. Owner acknowledges that, as of December 2012, the Original Loan Agreement between the City and Owner is of no further force or effect due to the DOF's invalidation of the Cooperation Agreement.
- G. David Chau, an individual, pursuant to Quitclaim Deed dated and recorded on January 10, 2014, in the Official Records of the San Diego County Recorder's Office as Document No. 2014-0012735, transferred ownership in the Property to Lotus Equity Group, LLC, a California limited liability company. This conveyance was a Permitted Transfer as David Chau is the managing member of Lotus Equity Group, LLC and there is no significant change in the management or control of Owner.

Successor Agency and Owner agree as follows:

PART 1. SUBJECT OF AGREEMENT

Section 101 Purpose of the Agreement

The purpose of this Agreement is to rehabilitate certain improvements on the hereinafter described Property located within the City Heights Redevelopment Project Area by providing part of the financing. The rehabilitation and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement are in the vital and best interest of the City of San Diego and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

Section 102 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Agreement Affecting Real Property" means that certain Form of Agreement Affecting Real Property attached hereto as Attachment No. 9.

“Approved Title Conditions” means title that is subject to current property taxes and assessments, Permitted Mortgages and any other easements and other encumbrances specifically approved by the Mayor.

“City” means the City of San Diego, California, and includes any assignee or successor to its rights, power and responsibilities.

“Closing” means the date the Deed of Trust and Agreement Affecting Real Property are recorded in the official records of San Diego County and all conditions precedent to release of the Successor Agency Loan funds have been satisfied by Owner.

“Closing Date” means that certain date upon which the Closing shall occur.

“Completion” means the point in time when all of the following shall have occurred: (1) issuance of a permanent Certificate of Occupancy to Owner by the City for the Improvements; (2) recordation of a Notice of Completion by Owner or its contractor for the Project; (3) certification by the Owner’s architect that such Improvements (with the exception of minor "punchlist" items) have been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) any mechanic's liens that have been recorded or stop notices that have been delivered have been paid, settled or otherwise extinguished, discharged, released, waived, bonded around or insured against; and (5) the Improvements have been constructed in accordance with this Agreement and the Scope of Rehabilitation.

“Completion Date” means the date that Completion has occurred.

“Covenant Period” means that certain period of time which commences upon the recordation of the Agreement Affecting Real Property, attached hereto as Attachment No. 9, and terminates upon May 11, 2033.

“Deed of Trust” means that certain Form of Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) attached hereto as Attachment No. 7.

“Direct Costs” means direct rehabilitation costs incurred by or on behalf of Owner in connection with the Project, as itemized in the Project Budget.

“Hazardous Materials” or **“Hazardous Substances”** shall include, but not be limited to, substances defined as “extremely hazardous substances,” “hazardous substances,” “hazardous materials,” “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. sections 5101, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, *et seq.*; and those substances defined as “hazardous waste” in section 25117 of the California Health and Safety Code, or as “hazardous substances” in section 25316 of the California Health and Safety Code or “hazardous

materials” as defined in section 353 of the California Vehicle Code; and in the regulations adopted and publications promulgated pursuant to said laws.

“**Improvements**” means the improvements to be rehabilitated on the Property together with those adjacent sidewalks identified in the Site Map in accordance with this Agreement, including but not limited to the Scope of Rehabilitation.

“**Indirect Costs**” means costs, other than Direct Costs, incurred by or on behalf of Owner in connection with the Project, as itemized in the Project Budget.

“**Legal Description**” means the legal description of the Property attached to this Agreement as Attachment No. 1.

“**Loan Note**” means that certain Form of Successor Agency Loan Note attached hereto as Attachment No. 6.

“**Mayor**” refers to the Mayor of the City of San Diego or designee.

“**Mortgagee**” means the maker of a mortgage loan.

“**Owner Financial Contribution**” means the Owner’s contribution to the rehabilitation of the Property in the approximate amount of \$93,942 as set forth in the Project Budget.

“**Permitted Mortgage**” means any conveyance of a security interest in the Property to one or more Mortgagees to secure any loan to finance the rehabilitation of the Property as required by this Agreement, or the conveyance of title to the Mortgagee in connection with a foreclosure or a deed in lieu of foreclosure of such loan.

“**Permitted Mortgagee**” means any maker of a Permitted Mortgage Loan to Owner.

“**Permitted Mortgage Loan**” means the obligations secured by a Permitted Mortgage.

“**Permitted Transfer**” means any of the following:

- a. Any Permitted Mortgage;
- b. A conveyance of a security interest in the Property in connection with any Senior Loan and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection or following the same;
- c. The lease for occupancy of all or any part of the Improvements within the Property; and

d. The granting of easements or Permits to facilitate the rehabilitation of the Property in accordance with this Agreement.

Any transfer described in clauses a. through d. shall be subject to the reasonable approval of documentation by the Mayor.

“Permits” means any building permit or other land use approval relating to the Project which may be required by the City or any other governmental agency having jurisdiction over the Property and Improvements.

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

“Plans” shall have the meaning set forth in Section 302.

“Project” means the financing, planning, construction, rehabilitation and use of the Improvements as provided in this Agreement and the Scope of Rehabilitation.

“Project Budget” shall have the meaning set forth in Section 202.a.

“Project Costs” means, collectively, Direct Costs and Indirect Costs for the Project.

“Property” means the real property described in Section 104 hereof.

“Redevelopment Plan” means the Redevelopment Plan for the City Heights Redevelopment Project which was approved and adopted on May 11, 1992, by the City Council of the City of San Diego by Ordinance No. 17768[NS], as amended from time-to-time, which is incorporated herein by this reference.

“Release of Construction Covenants” means that certain Form of Release of Construction Covenants attached hereto as Attachment No. 8.

“Relocation Laws” means all applicable state and local relocation laws, including, without limitation, the California Relocation Assistance Law, Government Code Section 7260 *et seq.* and the implementing regulations thereto in the California Code of Regulations, Title 24, Section 6000 *et seq.* and the local implementing regulations thereto, and all applicable federal relocation laws, including, without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.*, and 49 CFR Part 24.1, the acquisitions and eminent domain laws in Government Code Section 7267 *et seq.* and Code of Civil Procedure Section 1240.010 *et seq.* and any other applicable federal, state or local enactment, regulation or practice providing for relocation assistance and benefits, acquisition and/or compensation of property interests (including, without limitation, goodwill and furnishings, fixtures and equipment, leasehold bonus value, and moving expenses).

“**Senior Loan**” means all loans secured by a deed of trust, recorded as liens against the Property prior to the Closing Date and any other loan to finance Project Costs that is secured by a deed of trust to which Successor Agency has agreed to subordinate the lien of the Deed of Trust.

“**Schedule of Performance**” means the document attached to this Agreement as Attachment No. 3.

“**Scope of Rehabilitation**” means the document attached to this Agreement as Attachment No. 4.

“**Site**” means the Property as described in the Legal Description attached hereto as Attachment No. 1 and as depicted in the Site Map attached hereto as Attachment No. 2.

“**Site Map**” means that certain illustration depicting the location of the Property and all Improvements which is attached to this Agreement as Attachment No. 2.

“**Successor Agency Loan Documents**” means this Agreement, the Successor Agency Loan Note, the Deed of Trust and the Agreement Affecting Real Property.

“**Successor Agency Loan**” means the loan by Successor Agency to Owner not to exceed the amount of \$1,379,358.00 to pay for a portion of Project Costs incurred in completion of the rehabilitation obligations under this Agreement.

“**Term**” means that certain period of time which commences upon the recordation of the Release of Construction Covenants, attached hereto as Attachment No. 8, and terminates ten (10) years thereafter.

“**Title Company**” means a title insurance company mutually acceptable to Mayor and Owner.

Section 103 The Redevelopment Plan

This Agreement is subject to and in furtherance of the Redevelopment Plan. Any amendments hereafter to the Redevelopment Plan which change the uses or development permitted on the Property as proposed in this Agreement, or otherwise change the restrictions or controls that apply to the Property, or otherwise affect Owner’s obligations or rights with respect to the Property, shall not be effective as to the Property without the written consent of Owner. Amendments to the Redevelopment Plan that do not affect the Property shall not require the consent of Owner.

Section 104 The Property

The “Property” is that property in the City described in the Legal Description attached hereto as Attachment No. 1 and depicted in the Site Map attached hereto as Attachment No. 2.

Section 105 Successor Agency

- a. Successor Agency is the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA.
- b. The address of Successor Agency for purposes of this Agreement shall be:

City of San Diego
Attn: Economic Development
1200 Third Avenue, Suite 1400
San Diego, California 92101

With a copy by First Class Mail to:

San Diego City Attorney
Attention: Economic Development Unit
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

Section 106 Owner

- a. Owner is Lotus Equity Group, LLC, a California limited liability company.
- b. The address of Owner for receiving notices pursuant to this Agreement is 4029 Euclid Ave, San Diego California 92105.
- c. Whenever the term "Owner" is used herein, such term includes Owner as of the date hereof or any assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

Section 107 Assignments and Transfers

a. Owner represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Property and not for speculation in land holding. Owner further recognizes that the qualifications and identity of Owner are of particular concern to Successor Agency, in light of the following: (1) the importance of the redevelopment of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in management or control of Owner or any other act or transaction involving or resulting in a significant change in management or control of Owner, is for practical purposes a transfer or disposition of the property interests then owned by Owner. Owner further recognizes that it is because of such qualifications and identity that Successor Agency is entering into the Agreement with Owner. Therefore, no voluntary or involuntary successor in interest of

Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein.

b. Except as provided for herein with respect to Permitted Transfers, prior to expiration of the Term, Owner shall not assign all or any part of this Agreement, or any interest herein, or convey any part of the Property or the Improvements or any interest therein, without the prior written approval of Successor Agency.

c. For the reasons cited above, Owner represents and agrees for itself and any successor in interest that prior to expiration of the Term, and without the prior written approval of Successor Agency, there shall be no significant change in the management or control of Owner or with respect to the identity of the parties in control of Owner, by any method or means, except Permitted Transfers.

d. Owner shall promptly notify Successor Agency of any and all changes whatsoever in the identity of the parties in control of Owner, or the degree of control, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by Successor Agency if there is any significant change (voluntary or involuntary) in membership, management or control, of Owner, or the persons in control of Owner, prior to expiration of the Term.

e. For purposes of this Section 107, a significant change means any change in the identity of the person or persons having control over the day-to-day management of Owner. Any periodic, routine changes in board membership shall not be considered a "significant change."

f. If, except as provided in this Section 107, there is an assignment of this Agreement, or change in the management or control of Owner which the Mayor does not approve, Successor Agency may take such reasonable action as Successor Agency may deem appropriate to ensure that the purposes of this Agreement will be carried out, including without limiting the generality of the foregoing, terminating this Agreement and exercising any rights set forth in the Successor Agency Loan Documents.

g. The restrictions of this Section 107 shall terminate upon expiration of the Term.

Section 108 Relocation

a. All rights to possession of all portions of the Property necessary for rehabilitation and operation of the Project shall be cleared by Owner at Owner's cost and expense. The relocation of any occupants or businesses, if any, required for redevelopment and operation of the Project, including provisions of relocation assistance and benefits pursuant to Relocation Laws shall be the financial responsibility of Owner. Relocation obligations, if any, which arise from the Property, Project and/or this Agreement, shall be administered by Successor Agency (or its designee, a qualified relocation consultant chosen by Successor Agency) in conformity with the Relocation Laws, with such administration paid by Owner.

b. All of the cost and expenses incurred or to be incurred by Owner to cause the vacating of the Property and/or relocation of all occupants and businesses from the Property for implementation of the Project (including, but not limited to, payments made to displaced persons and businesses, pre or post relocation rental payments, fees and actual expenses of attorneys, relocation consultants and other experts employed to effect the relocation of occupants and businesses, etc.) shall be the financial responsibility of Owner. Any costs arising related in any respect to such displacement, such as, but without limitation, claims for loss of business goodwill, payment for furniture, fixtures and equipment, payment for leasehold bonus value, and any other compensable interest under Relocation Laws shall be the financial responsibility of Owner and administered and reviewed by Successor Agency (or its designee).

c. Owner hereby covenants and agrees to indemnify, save, protect, hold harmless, pay for and defend Successor Agency, the City, and their respective elected officials, officers, employees, agents, consultants, contractors, attorneys and representatives (collectively, the "**Indemnified Parties**") from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs, or expenses, including, without limitation, reasonable consultants' and reasonable attorneys' fees, or relocation benefits claimed or payable under the Relocation Laws which may now or in the future be incurred or suffered by Successor Agency, the City or the Indemnified Parties by reason of, or resulting from, in full or in part, or in any respect whatsoever from the displacement of businesses or other occupants of the Property pursuant to this Agreement. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion.

d. Owner, on behalf of itself and any and all successors and assigns, hereby fully and finally releases Successor Agency, the City and the Indemnified Parties from any and all manner of actions, causes of actions, suits, obligations, liabilities, judgments, executions, debts, claims, and demands of every kind and nature whatsoever, known and unknown, which Owner or any of its successors or assigns may now have or hereafter obtain against Successor Agency, or the City or the Indemnified Parties by reason of, arising out of, relating to, or resulting from, in full or in part, Owner's election to acquire fee title to the Property. The parties agree that, with respect to the release of claims as set forth above, all rights under Section 1542 of the California Civil Code and any similar law of any state or territory of the United States are expressly waived. Section 1542 reads as follows:

Civil Code Section 1542. 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.

Owner's Initials

PART 2. SUCCESSOR AGENCY ASSISTANCE

Section 201 Successor Agency Rehabilitation Loan

In accordance with and subject to all the terms, covenants, and conditions of this Agreement, Successor Agency agrees to provide the Successor Agency Loan for the Project in an amount to complete the Scope of Rehabilitation, such amount not to exceed \$1,379,358.00 in consideration for Owner's agreement to complete the Project in accordance with the Scope of Rehabilitation.

Section 202 Project Costs

a. All Project Costs shall be the sole responsibility of Owner as provided in the Project Budget, attached to this Agreement as Attachment No. 5. The parties acknowledge and agree that any increase in costs above the amounts heretofore projected or assumed by Owner, or decreases in revenues below the amounts heretofore projected or assumed by Owner, shall be at the sole financial risk of Owner.

b. The parties anticipate that all Project Costs shall be as set forth in the Project Budget. Any change order in excess of Fifty Thousand Dollars (\$50,000) or any amendment to the total Project Budget in excess of Fifty Thousand Dollars (\$50,000) (collectively referred to as a "**Revision**") shall require the approval of the Mayor; provided that the principal amount of the Successor Agency Loan shall not be increased without the express approval of the governing body of Successor Agency in its sole and absolute discretion. Except as provided in the previous sentence, the Mayor shall not unreasonably withhold approval of any requested Revision if the following conditions are satisfied:

(1) to the extent the Revision is limited to a reallocation of budgeted funds among Project Budget line items without any increase in the total Project Budget or the Successor Agency Loan, (i) the funds in the line item(s) to be reduced remain sufficient for completion of the Project, and (ii) the requested increase in one or more line item(s) is to be used to pay approved costs; and

(2) to the extent the Revision involves an increase in the total Project Budget, (i) additional funds in an amount equal to the increase in the total Project Budget will be provided by Owner or Permitted Mortgagee and (ii) the requested increase in the Project Budget is to be used to pay approved costs.

Upon approval of any Revision, the Project Budget shall be replaced by the approved revised Project Budget.

Section 203 Conditions Precedent to Closing

The following conditions shall be conditions precedent to Closing, each of which is for the sole benefit of Successor Agency:

a. Successor Agency's receipt of the following, each in form and substance satisfactory to the Mayor, in his or her sole reasonable discretion:

(1) An Owner executed Loan Note conforming in form and substance to the Form of Successor Agency Loan Note attached hereto as Attachment No. 6;

(2) An Owner executed in recordable form a Deed of Trust conforming in form and substance to the Form of Deed of Trust attached hereto as Attachment No. 7;

(3) An Owner has executed in recordable form Agreement Affecting Real Property conforming in form and substance to the Form of Agreement Affecting Real Property attached hereto as Attachment No. 9;

(4) A funding control agreement executed among Successor Agency, Owner, and a bonded funding control agent mutually acceptable to Successor Agency and Owner for the purpose of disbursing the Successor Agency Loan;

(5) Plans for the Scope of Rehabilitation attached hereto as Attachment No. 4, approved by both Successor Agency and Owner;

(6) A copy of the contract between Owner and the contractor for the Project pursuant to the Scope of Rehabilitation, certified by Owner to be a true and correct copy thereof;

(7) An Owner provided list of all permits required for the Project, including construction and rehabilitation of the Improvements, and Owner demonstration that all variances, entitlements and approvals (if any) have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget);

(8) Owner provided proof that all permits required by the City for the Project have been obtained;

(9) Owner provided evidence of insurance as set forth in Section 304.b herein;

(10) Owner provided documentation satisfactory to the Mayor that Owner has obtained all of the financing necessary for the Project in accordance with this Agreement, including, but not limited to the Owner Financial Contribution in the amount of \$93,942;

(11) Owner provided Work Force Report or Equal Opportunity Plan, and Initial

Equal Opportunity Report, to the extent required by this Agreement;

(12) Owner's final Project Budget conforming in form and substance to Attachment No. 5;

(13) Owner provided evidence of compliance with the process for historical designation pursuant to the Historical Resource Regulations in accordance with San Diego Municipal Code sections 143.0201 through 143.0280. The Project shall be consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation (Standards) and all Plans related thereto shall have been reviewed and approved by City of San Diego historic resources staff;

(14) Written confirmation that the Title Company is committed to issue a standard form ALTA Lender's Title Insurance Policy to Successor Agency, subject to the Approved Title Conditions, together with such endorsements as Successor Agency shall reasonably require, in the amount of the Successor Agency Loan insuring the Deed of Trust. Owner shall pay the cost of any premiums for said policy.

(15) Any other documents requested by the Mayor; and

Successor Agency shall approve or disapprove all items submitted pursuant to subsection 203.a within the time established in the Schedule of Performance. Such approval shall not be unreasonably withheld. If the Agency shall disapprove any such item, the Agency shall do so by written notice to the Owner stating the reasons for such disapproval, in which case the Owner shall have a reasonable period of time to correct and resubmit for Successor Agency approval any disapproved item.

b. Owner is in compliance with any and all applicable environmental review requirements under the California Environmental Quality Act;

c. Owner shall have entered into relocation or termination agreements or shall have otherwise complied with the Relocation Laws with respect to each of the occupants of the Property and in accordance with Section 108;

d. Owner is not in default of this Agreement and all documents related hereto;

e. The terms of the Successor Agency Loan shall be as set forth in this Agreement, the Loan Note evidencing such Successor Agency Loan and that certain Deed of Trust securing the Loan Note.

Section 204 Conditions to Loan Disbursements

Disbursement of the Successor Agency Loan shall be pursuant to the terms of a funding control agreement between Successor Agency, Owner and a bonded funding control agent mutually acceptable to Successor Agency and Owner. Subject to the Closing, the Successor

Agency Loan shall be funded pursuant to draw requests submitted to the funding control agent in accordance with the terms of the executed funding control agreement and shall be subject to the conditions set forth below:

a. Successor Agency shall, within twenty (20) business days after receipt of a draw request, determine the amount of the draw request to be approved, notify Owner in writing (which may be via electronic email) and approve the draw request through the funding control agent.

b. Any item in the draw request which is not specifically approved within twenty (20) business days shall be deemed disapproved. In the event Successor Agency disapproves any portion of the amount requested by Owner in a draw request, Successor Agency shall promptly notify the Owner of the disapproved amount and the reason therefor via electronic email and first class mail.

c. In the event that any item shall be disapproved or deemed disapproved, Owner and Successor Agency shall meet to promptly and in good faith attempt to resolve the matter to their mutual satisfaction.

d. In the event of any dispute, Successor Agency shall approve the amount of the draw request not in dispute and fund any disputed amounts promptly upon resolution of the dispute.

e. Successor Agency shall have the right to inspect the Property. Inspection of the Property shall be for the sole purpose of protecting the security of Successor Agency and is not to be construed as a representation by Successor Agency that there has been compliance with the plans approved for the Project or that the Project will be free of faulty materials or workmanship. Owner may make or cause to be made such other independent inspections as Owner may desire for its own protection.

f. The Mayor shall have the right to condition any disbursement upon the receipt and approval of such documentation, evidence or information that the Mayor may reasonably request, including, but not limited to, estimated or final closing or settlement statements, vouchers, and invoices. In addition, the Mayor shall have the right in its sole discretion to make disbursements directly to third parties entitled to such payment.

g. The Mayor may draw upon such Successor Agency Loan funds as necessary to pay for any and all of the costs and expenses incurred or to be incurred in accordance with the provisions of Section 108 of this Agreement. Owner shall thereafter indemnify Successor Agency in accordance with Section 108 for any such payments made by Successor Agency, but Owner shall be limited to use as a source of funds the applicable line item(s) in the Project Budget and the provisions related thereto.

PART 3. REHABILITATION OF THE PROPERTY

Section 301 Obligation to Complete Project

The Project shall be completed in accordance with the Scope of Rehabilitation and Plans (as defined below) approved in accordance with this Agreement. If (i) the Scope of Rehabilitation is completed in accordance with the terms of this Agreement, (ii) the Term has expired, and (iii) Owner, after notice and opportunity to cure, is not in default pursuant to this Agreement, the Loan Note or the Deed of Trust, then the Successor Agency Loan disbursed by Successor Agency pursuant to the terms and conditions of this Agreement shall be forgiven and deemed a grant to Owner.

Section 302 Plans

a. Subject to the terms of this Agreement, the Mayor shall have the right of review of all plans and submissions, including any proposed changes therein.

b. Prior to the time provided in the Schedule of Performance for the Closing, Owner shall cause to be prepared and shall submit to the Mayor for approval all drawings and related documents, if any, needed for the Project (collectively called the “**Plans**”). The Plans shall be consistent with the Scope of Rehabilitation. Any disapproval shall state in writing the reasons for disapproval and the changes which the Mayor requests to be made. Such reasons and such changes must be consistent with the Scope of Rehabilitation and any items previously approved hereunder. Owner, upon receipt of a disapproval based upon powers reserved by Successor Agency hereunder shall revise the plans, drawings and related documents, and shall resubmit to the Mayor in a timely manner after receipt of the notice of disapproval.

c. If any revisions or corrections of plans approved by Successor Agency shall be required by any government official, agency, department or bureau having jurisdiction over the Property, Owner and Successor Agency shall mutually agree to such changes or cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

d. In addition, Owner shall use its best efforts for the Property to be designated a historical landmark in accordance with the Historical Resource Regulations pursuant to San Diego Municipal Code sections 143.0201 through 143.0280. The Project shall be consistent with the U.S. Secretary of the Interior’s Standards for Rehabilitation (Standards) and all Plans related thereto shall be reviewed and approved by the City’s historic resources staff prior to Closing.

e. If Owner desires to make any significant change in the Plans after their approval, such proposed change shall be submitted to the Mayor for approval. If the Plans, as modified by the proposed change, conform to the requirements of this Agreement and the Scope of Rehabilitation (as the same may be modified in accordance with paragraph (b) of this Section 302), the proposed change shall be approved and Owner shall be notified in writing within thirty (30) days after submission.

f. Following Completion of the Project, the Owner shall submit a nomination for historic designation, along with a Historic Resource Research Report prepared consistent with Historical Resources Guidelines to Successor Agency and to the City's historic resources staff for processing and review by the Historical Resources Board.

Section 303 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time.

b. After the Closing, Owner shall promptly begin and thereafter diligently proceed until completion of the rehabilitation and construction of the Improvements as provided in the Scope of Rehabilitation. Owner shall begin and complete all construction and rehabilitation within the times specified in the Schedule of Performance with such reasonable extensions of said dates as may be granted by the Mayor, provided Owner submits a timely written request with substantiating documentation that establishes good cause for such an extension, and provided such an extension will not have a detrimental effect on Successor Agency's interests.

c. During periods of construction, Owner shall submit to Successor Agency a written report of the progress of rehabilitation when and as reasonably requested by Successor Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by Successor Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by Owner.

Section 304 Indemnification and Insurance

a. Owner's Indemnity. To the maximum extent permitted by law, Owner agrees to and shall defend, indemnify and hold harmless Successor Agency, the City and their respective officers, officials, employees, contractors and agents (the "**Indemnified Parties**") from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following (provided Owner shall not be responsible for (and such indemnity shall not apply to) the established sole negligence or willful misconduct of Successor Agency, the City or their respective officers, officials, employees, contractors and agents or the Indemnified Parties):

(1) The existence, release, presence or disposal on, in, under, about or adjacent to the Property of any Hazardous Materials;

(2) The development, construction, marketing, operation or use of the Property in any way by Owner, its officers, contractors, subcontractors, agents, employees or other persons acting on Owner's behalf (the "**Indemnifying Parties**");

(3) The displacement or relocation of any person from the Property as the result of development of the Property by the Indemnifying Parties;

(4) Any Plans or designs for Improvements prepared by or on behalf of Owner, or any of the Indemnifying Parties including without limitation any errors or omissions with respect to such Plans or designs;

(5) Any loss or damage to Successor Agency resulting from any inaccuracy in or breach of any representation or warranty of Owner, or resulting from any breach or default by Owner, under this Agreement; and

(6) Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City or Successor Agency.

The foregoing indemnity shall survive the Closing and any termination of this Agreement and shall continue to remain in effect after the recordation of the Release of Construction Covenants.

b. Insurance Policies.

(1) Commencing upon the first to occur of (i) the commencement of any work contemplated by this Agreement and/or entry by Owner onto the Property for any purposes hereunder and (ii) the Closing, until the full reconveyance of the Successor Agency Deed of Trust, Owner shall maintain in effect and deliver to Successor Agency duplicate originals or appropriate certificates of the following insurance policies (the “**Insurance Policies**”) with endorsements naming Successor Agency, the City and the Indemnified Parties as additional insureds:

(A) All-Risk Policies: Owner shall maintain or cause to be maintained coverage of the type now known as All Risk Insurance. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a “Replacement Cost Endorsement” in amount sufficient to prevent Owner from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Successor Agency, and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence (except that earthquake coverage, if obtained, shall carry a deductible not to exceed 25% of the policy amount, or such

other deductible amount as Successor Agency may reasonably determine is acceptable, in light of the cost of the premium for such insurance);

(B) **Liability Insurance:** Owner shall maintain or cause to be maintained general liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death there from, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Owner on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Owner, or any person acting for Owner, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Owner or its tenants, or any person acting for Owner, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Successor Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect until reconveyance in full of the Deed of Trust in the following amounts: commercial general liability in a general aggregate amount of not less than Four Million Dollars (\$4,000,000), Four Million Dollars (\$4,000,000) Products and Completed Operations Aggregate, and Two Million Dollars (\$2,000,000) for each occurrence. Owner shall deliver to Successor Agency a Certificate or Certificates of Insurance evidencing such insurance coverage prior to the occurrence of the Closing. Owner agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Owner may be held responsible for the indemnification of Successor Agency, the City or the Indemnified Parties or the payment of damages to persons or property resulting from Owner's activities, activities of its tenants or the activities of any other person or persons for which Owner is otherwise responsible.

(C) **Automobile Insurance:** Owner shall maintain or cause to be maintained automobile insurance, maintained in full force and effect in an amount of not less than Two Million Dollars (\$2,000,000) per accident, which amount shall be subject to increases equal to increases in the Consumer Price Index.

(D) **Workers' Compensation Insurance:** Owner shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Owner in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Owner. Notwithstanding the foregoing, Owner may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in

which event Owner shall deliver to Successor Agency evidence that such self-insurance has been approved by the appropriate State of California authorities.

(2) All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least thirty (30) calendar days prior written notice to Successor Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name Successor Agency, the City, the Indemnified Parties, and Owner as insured's, additional insured's, and/or loss payable parties as their interests may appear.

(3) The Insurance Policies shall name as additional insureds the following:

“The City of San Diego, a municipal corporation, and the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego and their respective officers, employees, contractors, agents and attorneys.”

(4) Owner agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Owner agrees to submit binders or certificates evidencing such insurance to Successor Agency prior to the Closing. Within thirty (30) calendar days, if practicable, but in any event prior to expiration of any such policy, Owner shall submit to Successor Agency copies of renewal policies, or certificates evidencing the existence thereof. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better. To the extent that Owner maintains increased or additional insurance coverage, in excess of the minimum coverage requirements prescribed by paragraphs (b)(1)(B) and (b)(1)(C) of this Section 304, Owner shall ensure that the additional insureds specified in paragraph (b)(3) of this Section 304 derive the benefit of such increased or additional insurance coverage.

(5) If Owner fails or refuses to procure or maintain insurance as required by this Agreement, Successor Agency shall have the right, but not the obligation, at Successor Agency's election, and upon ten (10) calendar days prior notice to Owner, to procure and maintain such insurance. The premiums paid by Successor Agency shall be treated as a loan, due from Owner, to be paid on the first day of the month following the date on which the premiums were paid. Successor Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

(6) Owner shall have the right in its discretion to provide the insurance coverage required by this Section 304 through one or more umbrella policies, so long as the type and level of insurance protection to be maintained by Owner in accordance with this Section 304 is not diminished by so doing (as reasonably determined by the Mayor).

Section 305 Nondiscrimination and Equal Opportunity

a. Compliance with City's Equal Opportunity Contracting Requirements. Owner and its contractors, subcontractors, consultants, subconsultants, vendors and suppliers shall comply with the City's Equal Opportunity Contracting Requirements, attached to this Agreement as Attachment No. 10. Owner represents and warrants that it has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Information Packet provided by Successor Agency. Owner represents and warrants that it has received, read, understands and agrees to be bound by City of San Diego Municipal Code Division 27 (Equal Employment Opportunity Outreach Program), the City Manager's Policies and Procedures implementing that Program contained in the Equal Opportunity Packet provided by Successor Agency.

b. Nondiscrimination. Owner shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Owner understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. This language shall be incorporated into all contracts between Owner and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

c. Compliance Investigations. Upon the City's request, Owner agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all contractors, subcontractors, consultants, subconsultants, vendors and suppliers that Owner has used in the past five (5) years on any of its contracts that were undertaken in San Diego County, including the total dollar amount paid by Owner for each subcontractor or supply contract. Owner further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance, Municipal Code Sections 22.3501 through 22.3517. Owner understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in remedies being ordered against Owner up to and including contract termination, debarment and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Owner further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of the Ordinance.

d. City's Equal Opportunity Contracting Program. Prior to commencing construction and in accordance with the Schedule of Performance, Owner shall contact the City's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

Section 306 Local, State, and Federal Laws

a. Owner hereby agrees to carry out development, construction, improvement, rehabilitation (as defined by applicable law) and operation of the Improvements on the Property, including, without limitation, any and all public works (as defined by applicable law), in conformity with all applicable local, state and federal labor laws, including, without limitation, the payment of and requirement to pay state or federal prevailing wages, if required for the Project.

b. Owner hereby expressly acknowledges and agrees that neither City nor Successor Agency has ever previously affirmatively represented to Owner or its contractor(s) for the Project in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code or otherwise. Owner hereby agrees that Owner shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner hereby agrees that Owner shall have the obligation to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner hereby agrees that Owner shall have the obligation, at Owner's sole cost, risk and expense, to obligate any party as may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Owner shall indemnify, protect, defend and hold harmless Successor Agency, City and their respective officers, employees, contractors and agents and the Indemnified Parties, with counsel reasonably acceptable to Successor Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction, improvement, development, rehabilitation (as defined by applicable law) and/or operation of the 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 Owner of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages or otherwise); (2) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (3) failure by Owner to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; (4) failure by Owner to provide and maintain any and all bonds to secure the payment to contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (5) failure by Owner to obligate any party as

may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law.

c. It is agreed by the parties that, in connection with the development, construction, improvement, rehabilitation (as defined by applicable law) and operation of the Improvements, including, without limitation, any public work (as defined by applicable law), Owner shall bear all risks of payment or non payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

d. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion and recordation of the Release of Construction Covenants.

e. Without limiting or relieving Owner of its obligations and indemnity in Subsections 306 a. through 306 d. above, Owner expressly acknowledges and agrees:

(1) Owner shall ensure that prevailing wages are paid on the entire Project as required by law.

(2) Before awarding any contract for such work to be done in the Project, Owner shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed, for each craft or type of workman needed to execute the services, and to the extent permitted by law, specify in the call for bids for the contract and in the contract such rate and the general prevailing rate for regular holiday and overtime work in the locality, for each craft or type of workman needed to execute the contract.

(3) Owner shall ensure that the contractor to whom the contract is awarded and any subcontractor under it shall pay not less than the specified prevailing rate of wages to all workmen employed in furtherance of the contract.

(4) To the extent permitted by law, Owner shall require that the contractor forfeit ten dollars (\$10) for each calendar day or portion thereof for each workman paid less than the stipulated prevailing rates for any public work done under the contract by it or by any subcontractor under it.

(5) Owner shall ensure that each contractor and subcontractor keep an accurate record showing the name, occupation, and actual per diem wages paid to each workman employed by it in connection with the work. Owner shall keep open any and all such records in its possession at all reasonable hours to the inspection of Successor Agency.

Section 307 Permits and Approvals

a. Owner shall be responsible for obtaining all building, development and land use permits and approvals (“Permits”) required by the City or any other governing agency for the Project.

b. Prior to or concurrently with the Closing, Owner shall satisfy all conditions to the issuance of any Permit required for the Project. Before commencement of demolition, construction, development or rehabilitation of any buildings, structures or other work of Improvement upon any portion of the Property, the Owner shall, at its own expense, secure or cause to be secured, any and all Permits which may be required by the City or any other governmental agency affected by such rehabilitation or work. The disbursement of the Successor Agency Loan is subject, among other conditions, to the issuance of all building permits required by the City for the Project.

c. This Agreement is not a “Development Agreement” as provided in Section 65864 et seq. of the California Government Code. Owner shall comply with all applicable conditions of approval required by the City or other governing agency.

d. Owner shall pay all fees and charges, if any, for the issuance of all Permits, and any costs or fees required as a condition of approval of such Permits.

Section 308 Rights of Access; Inspection of Property

After the Closing and continuing until Completion, representatives of Successor Agency and the City shall have the reasonable right of access to the Property, upon 24 hours written notice to Owner (except in the case of an emergency, in which case Successor Agency shall provide such notice as may be practical under the circumstances), without charges or fees, at normal construction hours during the period of work for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in rehabilitating the Improvements. Such representatives of Successor Agency or the City shall be those who are so identified in writing by the Mayor.

Section 309 Disclaimer of Responsibility by Successor Agency

Except as provided in this Agreement, Successor Agency neither undertakes nor assumes nor will have any responsibility or duty to Owner or to any third party to review, inspect, supervise, pass judgment upon or inform Owner or any third party of any matter in connection with the Project, whether with respect to the quality, adequacy or suitability of any plans, labor, service, equipment or material furnished to the Property, Improvements, any person furnishing the same or otherwise. Owner and all third parties shall rely upon its or their own judgment with respect to such matter, and any review, inspection, supervision, exercise of judgment or information supplied to Owner or to any third party by Successor Agency in connection with such matter is for the public purpose of carrying out the Community Redevelopment Law in

accordance with this Agreement, and neither Owner (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. Successor Agency shall not be responsible for any of the work of construction, improvement or development of the Property.

Section 310 Taxes, Assessments, Encumbrances and Liens

Owner shall pay when due all real estate taxes and assessments assessed and levied on or against the Property. Prior to the expiration of the Term, Owner shall not place, or allow to be placed, on title to the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Owner shall remove, or shall have removed, any levy or attachment made on title to the Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Owner from contesting in good faith the validity or amount of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Owner in respect thereto. The covenants of the Owner set forth in this Section 310 shall remain in effect throughout the Term of the Loan Note.

Section 311 Prohibition against Transfer

a. Prior to expiration of the Term, Owner shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any right herein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property or the Improvements thereon, without prior written approval of Successor Agency. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property, nor shall it prohibit Permitted Transfers.

b. Except as permitted by paragraph a., in the event Owner does assign this Agreement or any of the rights herein, or does sell, transfer, convey or assign the Property or the buildings or structures thereon prior to expiration of the Term without the approval of Successor Agency, subject to the notice and cure provisions of Section 501, Successor Agency shall have the right to terminate this Agreement.

c. In the absence of a specific written agreement by Successor Agency, and except as otherwise provided in this Agreement, no such sale, transfer, conveyance or assignment of this Agreement or the Property (or any portion thereof), or approval by Successor Agency of any such sale, transfer, conveyance or assignment, shall be deemed to relieve Owner or any other party from any obligations under this Agreement.

Section 312 No Encumbrances except Permitted Mortgages

a. Notwithstanding Section 311, upon and after the Closing, Owner shall have the right to encumber the Property with a Permitted Mortgage, but only for the purpose of securing loans of funds to be used for financing the rehabilitation of the Improvements (“**Permitted Financing Purposes**”). Prior to the expiration of the Term: (1) Owner shall not have any

authority to encumber the Property for any purpose other than Permitted Financing Purposes; (2) the Owner shall notify Successor Agency in advance of any proposed financing; and (3) Owner shall not enter into any mortgage without the prior written approval of Successor Agency, which approval Successor Agency shall grant if it is a Permitted Mortgage. A Permitted Mortgagee of a Permitted Mortgage Loan approved by Successor Agency pursuant to this Section 312 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

b. Owner shall promptly notify Successor Agency of any mortgage created or attached to the Property whether by voluntary act of Owner or otherwise.

c. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing rehabilitation, construction and land development.

d. Successor Agency agrees to consider making reasonable modifications to Sections 310 through 317 that may be requested by a Permitted Mortgagee, provided such modification does not adversely affect the receipt of any benefit by Successor Agency hereunder.

e. The requirements of this Section 312 shall not apply following expiration of the Term.

Section 313 Permitted Mortgagee Not Obligated to Complete Project

A Permitted Mortgagee shall not be obligated by the provisions of this Agreement to rehabilitate, construct or complete the Project or to guarantee such rehabilitation, construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such Permitted Mortgagee to devote the Property to any uses, or to rehabilitate any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

Section 314 Notice of Default to Permitted Mortgagees; Right of Permitted Mortgagee to Cure Defaults

Whenever Successor Agency shall deliver any notice or demand to Owner with respect to any breach or default by the Owner in completion of the Project, Successor Agency shall at the same time deliver to any Permitted Mortgagee of record a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of Successor Agency are concerned) have the right at its option within ninety (90) calendar days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee upon obtaining possession of the Property, such Permitted Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession; provided that in the case of a default which cannot with

diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety (90) calendar day period, such Permitted Mortgagee shall have such additional time as Successor Agency reasonably determines is necessary to remedy or cure such default with diligence and continuity; provided that such Permitted Mortgagee shall not be required to remedy or cure any non-curable default of the Owner. Any Permitted Mortgagee who forecloses on its Permitted Mortgage, or is assigned or otherwise succeeds to Owner's rights under this Agreement, shall have the right to undertake or continue the Project upon execution of a written agreement with Successor Agency by which such Permitted Mortgagee expressly assumes the Owner's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Successor Agency. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to Successor Agency, to a Release of Construction Covenants from Successor Agency.

Section 315 Failure of Permitted Mortgagee to Complete Project

In any case where, six (6) months after default by Owner, any Permitted Mortgagee has not elected to complete the Project, or has elected to complete the Project but has not proceeded diligently with completion, Successor Agency may purchase the mortgage, deed of trust or other security interest by payment to the Permitted Mortgagee of the amount of the unpaid debt, plus any accrued and unpaid interest and other charges permitted by the mortgage instrument approved by Successor Agency. If the ownership of the Property (or portion thereof) has vested in the Permitted Mortgagee, Successor Agency, if it so desires, shall be entitled to a conveyance of the Property from the Permitted Mortgagee to Successor Agency upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the Permitted Mortgagee (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.
- c. The net expense, if any (exclusive of general overhead), incurred by the Permitted Mortgagee as a direct result of the subsequent ownership or management of the Property (or portion thereof), such as insurance premiums and real estate taxes.
- d. The cost of any improvements made by such Permitted Mortgagee.
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by Successor Agency.

Section 316 Right of Successor Agency to Cure Defaults

In the event of a default or breach by Owner of a Permitted Mortgage prior to the expiration of the Term, and the Permitted Mortgagee has not commenced to complete the Project, Successor Agency may cure the default prior to completion of any foreclosure. In such event, Successor Agency shall be entitled to reimbursement from the Owner of all costs and expenses incurred by Successor Agency in curing the default. Successor Agency shall also be entitled to a lien upon the Property to the extent of such costs and disbursements. Any such lien shall be subordinate and subject to any Senior Loan.

Section 317 Right of Successor Agency to Satisfy Other Liens on the Property

Prior to recordation of the Release of Construction Covenants and after Owner has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Property, Successor Agency shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require Owner to pay or make provisions for the payment of any tax, assessment, lien or charge or allow Successor Agency to pay such tax, assessment, lien or charge, so long as Owner in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Property to forfeiture or sale. In such event, Successor Agency shall be entitled to reimbursement from the Owner of all costs and expenses incurred by Successor Agency in satisfying any such liens or encumbrances. Successor Agency shall also be entitled to a lien upon the Property to the extent of such costs and expenses. Any such lien shall be subordinate and subject to any Senior Loan.

Section 318 Release of Construction Covenants

a. Promptly after completion of the Project as required by this Agreement and the Scope of Rehabilitation, Successor Agency shall deliver to Owner a Release of Construction Covenants, upon written request therefor by Owner. Successor Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the Project required by this Agreement.

b. The Release of Construction Covenants shall be in such form as to permit it to be recorded in the Office of the Recorder of San Diego County.

c. If Successor Agency fails to deliver the Release of Construction Covenants within ten (10) calendar days after written request from Owner, Successor Agency shall provide Owner with a written statement of its reasons (the "**Statement of Reasons**") within that ten (10) calendar day period. The statement shall also set forth the steps Owner must take to obtain the Release of Construction Covenants. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by Successor Agency, Successor Agency will issue the Release of Construction Covenants upon the

posting of a bond by Owner with Successor Agency in an amount representing Successor Agency's estimate of the cost to complete the work.

d. Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any mortgagee, or any insurer of a mortgage securing money loaned to finance the Improvements, nor any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in Section 3093 of the California Civil Code.

PART 4. USE OF THE PROPERTY

Section 401 Uses

Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that the Owner, such successors and assignees shall use the Property only for the uses specified in this Agreement (including the Scope of Rehabilitation) and the Agreement Affecting Real Property. No change in the Property shall be permitted without the prior written approval of Successor Agency.

Section 402 Maintenance of the Property

Owner shall be responsible to assure that the Project is maintained in good repair and free from any accumulation of debris, graffiti or waste materials; that landscaping required to be planted under the Plans is maintained in a healthy and attractive condition; and take all other actions necessary to maintain and ensure the neat and clean appearance of the streetscape area.

During the Project, Owner shall maintain a well-kept construction site.

Section 403 Obligation to Refrain from Discrimination

Owner covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees of the Property.

Section 404 Form of Nondiscrimination and Nonsegregation Clauses

Owner shall refrain from restricting the rental, sale or lease of the Property on the basis of the race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

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

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land. The foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument."

Section 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, and without regard to technical classification and designation, shall be binding for the benefit and in favor of, and enforceable against the original Owner and successors in interest by Successor Agency, its successors and assigns, and the City for such periods set forth herein.

Section 406 Agreement Affecting Real Property

a. Owner shall execute, notarize and record against the Property the Agreement Affecting Real Property. The covenants contained in the Agreement Affecting Real Property shall, without regard to technical classification and designation, be binding for the benefit and in favor of Successor Agency, its successors and assigns, and any successor in interest to the Property and the Project or any part thereof.

b. All conditions, covenants and restrictions contained in this Part 4 and the Agreement Affecting Real Property shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Successor Agency, its successors and assigns, and its successors and assigns, against the Owner, its successors and assigns, to or of the Property, the Project or any portion thereof or any interest therein.

c. Except as set forth in the last sentence of this Section 406.c, every covenant and condition and restriction contained in the Agreement Affecting Real Property shall remain in effect for the Covenant Period from the date the Agreement Affecting Real Property is recorded against the Property. The covenants against discrimination set forth therein shall remain in effect in perpetuity.

PART 5. DEFAULTS AND REMEDIES AND TERMINATION

Section 501 Defaults – General

a. Subject to the extensions of time set forth in Section 602, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement (“**Event of Default**”). The party who fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, 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. Delays by either party in asserting any of its rights and remedies shall not deprive either 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.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to affect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) calendar days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in no event shall such additional period exceed sixty (60) calendar days. In no event shall the injured party be precluded from exercising remedies if the non-monetary event of default is not cured within ninety (90) calendar days, or the injured party's rights under this Agreement becomes or is about to become materially jeopardized by any failure to cure a default.

Section 502 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in any other appropriate court of that county.

Section 503 Applicable Law

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

Section 504 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive 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.

Section 505 Damages

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

Section 506 Specific Performance

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

Section 507 Termination by Either Party

Prior to the Closing, either party shall have the right to terminate this Agreement, by providing written notice to the other party, in the event of a failure of any condition precedent to Successor Agency Loan Closing as set forth in Section 204 of this Agreement, provided that such failure is outside the control of the party seeking to terminate this Agreement.

Section 508 Termination by Owner

Prior to the Closing, subject to the notice and cure provisions of Section 501, Owner shall have the right to terminate this Agreement, by providing written notice to Successor Agency, in the event of a material default by Successor Agency pursuant to this Agreement.

Section 509 Termination by Successor Agency

a. Subject to the notice and cure provisions of Section 501, Successor Agency shall have the right, prior to the Closing, to terminate this Agreement, by providing written notice to Owner, in the event of a material default by Owner under the terms of this Agreement or failure of any condition precedent to the Closing which is in the control of Owner, including but not limited to the following:

(1) Owner fails to satisfy any condition precedent to the Closing as provided in Section 204 within the time established therefore in the Schedule of Performance; or

(2) Owner assigns or attempts to assign the Agreement or any right therein, or transfers Owner's interest in the Property (or any portion thereof or interest therein), except as

permitted by this Agreement; or

(3) there is a significant change (as defined in Section 107) in the management or control of Owner contrary to the provisions of Section 107; or

(4) Owner fails to submit any of the Plans and related documents required by this Agreement by the respective dates provided in this Agreement therefor.

b. After the Closing but before the Recordation of the Release of Construction Covenants, subject to the notice and cure provisions of Section 501, Successor Agency shall have the right to terminate this Agreement, by providing written notice to Owner, and all outstanding amounts due under the Loan Note, including accrued interest, shall become immediately due and payable by Owner to Successor Agency as set forth therein, in the event any of the following defaults shall occur:

(1) Owner fails to commence construction of the Project as required by this Agreement without the consent of Successor Agency; or

(2) Owner fails to use the Successor Agency Loan funds exclusively for the costs incurred in the completion of the rehabilitation obligations as required by this Agreement; or

(3) Owner abandons or substantially suspends the Project for any consecutive period of thirty (30) calendar days without the consent of Successor Agency; or

(4) Owner assigns or attempts to assign this Agreement, or any rights herein, or transfer, or there is any transfer of Owner's interest in the Property, or any part thereof, in violation of this Agreement, or there is a significant change (as defined in Section 107) in the management or control of Owner contrary to the provisions of Section 107; or

(5) Owner otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

c. After recordation of the Release of Construction Covenants but before the expiration of the Term, subject to the notice and cure provisions of Section 501, Successor Agency shall have the right to terminate this Agreement, by providing written notice to Owner, and all outstanding amounts due under the Loan Note, including accrued interest, shall become immediately due and payable by Owner to Successor Agency as set forth therein, in the event any of the following defaults shall occur:

(1) Owner assigns or attempts to assign this Agreement, or any rights herein, or transfer, or there is any transfer of Owner's interest in the Property, or any part thereof, in violation of this Agreement, or there is a significant change (as defined in Section 107) in the management or control of Owner contrary to the provisions of Section 107; or

(2) Owner changes the use of the Property as set forth herein, in violation of this Agreement; or

(3) Owner otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

PART 6. GENERAL PROVISIONS

Section 601 Notices

Formal notices, demands and communications between Successor Agency and Owner shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Successor Agency and Owner as set forth in Sections 105 and 106 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

Section 602 Force Majeure: Extension of Time of Performance

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City or any other public or governmental agency or entity (except that acts or failure to act of Successor Agency shall not excuse performance of Successor Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "**Force Majeure Delay**") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) calendar days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice

describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) calendar days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by Successor Agency and Owner.

Section 603 Conflict of Interest

a. No member, official, or employee of Successor 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.

b. Owner warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

Section 604 Non-liability of Successor Agency Officials and Employees

No member, official, agent, legal counsel or employee of Successor Agency shall be personally liable to Owner, or any successor in interest in the event of any default or breach by Successor Agency or for any amount which may become due to Owner or successor or on any obligation under the terms of this Agreement.

Section 605 Inspection of Books and Records

For a period of five (5) years following the expiration of the Term, Successor Agency shall have the right at all reasonable times to inspect the books and records of Owner pertaining to the use of the Successor Agency Loan funds and the Project pursuant to this Agreement.

Section 606 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Successor Agency or Owner in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed disapproval, and failure by either party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of Successor Agency shall be deemed granted by the written approval of the Mayor. Successor Agency agrees to provide notice to Owner of the name of the Mayor on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Mayor may, in his or her sole discretion, refer to the governing body of Successor Agency any item requiring Successor

Agency approval; otherwise, "Successor Agency approval" means and refer to approval by the Mayor.

Section 607 Real Estate Commissions

Neither Owner nor Successor Agency shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. Owner and Successor Agency each represent that it has engaged no broker, agent or finder in connection with this Agreement.

Section 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections, and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) shall mean, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

Section 609 Time of Essence

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

Section 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other relationship between the parties hereto other than lender and Owner according to the provisions contained herein, or cause Successor Agency to be responsible in any way for the debts or obligations of Owner, or any other party.

Section 611 Compliance with Law

Owner agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property, and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Owner or any lessee or permittee in any action or proceeding against them, or any of them, whether Successor Agency be a party thereto or not, that Owner, lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between Successor Agency and Owner.

Section 612 Binding Effect

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

Section 613 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Successor Agency and Owner, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

Section 614 Authority to Sign

Owner hereby represents that the person executing this Agreement on behalf of Owner have full authority to do so and to bind Owner to perform pursuant to the terms and conditions of this Agreement.

Section 615 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined with the balance of the Agreement, it shall constitute one single instrument.

Section 617 Joint and Severally Liable

The undersigned for Owner shall be jointly and severally liable hereunder.

PART 7. SPECIAL PROVISIONS

Owner acknowledges and agrees that the Successor Agency intends to fulfill its financial obligations under this Agreement using bond proceeds as authorized by California Health and Safety Code section 34191.4(c). Due to the dissolution of the Former RDA by operation of law, the Oversight Board and the DOF will need to approve this Agreement pursuant to California Health and Safety Code section 34181(e). Furthermore, the funds will be available for this Agreement only if the DOF approves sufficient expenditures, if any, on the appropriate ROPS. Owner shall not be entitled to any payments provided in this Agreement unless and until the DOF has approved such expenditure on the ROPS for the period during which the payment is to be made.

PART 8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original.
- b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Successor Agency and Owner, and all amendments hereto must be in writing and signed by the appropriate authorities of Successor Agency and Owner.

PART 9. TIME FOR ACCEPTANCE OF AGREEMENT BY SUCCESSOR AGENCY

This Agreement, when executed by Owner and delivered to Successor Agency must be authorized, executed and delivered by Successor Agency within forty-five (45) calendar days

after date of signature by Owner or this Agreement may be terminated by Owner upon written notice to Successor Agency. The effective date of this Agreement shall be the date when this Agreement has been executed by Successor Agency.

[Signatures on following page]

IN WITNESS WHEREOF, Successor Agency and Owner have signed this Agreement as of the dates set opposite their signatures.

CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Dated: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM
AND LEGALITY:

JAN I. GOLDSMITH
CITY ATTORNEY

By: _____

Michael Reid
Deputy City Attorney

OWNER
LOTUS EQUITY GROUP, LLC, a California
limited liability company

By: David Chau

David Chinh Chau
Operating Manager

ATTACHMENT NO. 1

LEGAL DESCRIPTION

All the certain real property located in the County of San Diego, State of California, described as follows:

LOTS 23 AND 24 IN BLOCK 21 OF FAIRMOUNT ADDITION TO CITY HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1035, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON MARCH 8, 1907.

ATTACHMENT NO. 2

SITE MAP

[BEHIND THIS PAGE]

ATTACHMENT NO. 2

SITE MAP



ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

[BEHIND THIS PAGE]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

1. Execution of Agreement by Successor Agency and Owner. Successor Agency shall execute and deliver the Agreement to Owner. Within forty-five (45) calendar days after submission of executed Agreement by Owner.
2. Basic Concept and Schematic Drawings. Owner shall complete and submit for approval to Successor Agency the Basic Concept and Schematic Drawings required to implement the Scope of Rehabilitation. Concurrently with the approval of the Agreement.
3. Evidence of Financing. Owner shall submit to the Successor Agency evidence of financial commitments for Completion of the Project, including evidence of the Owner's Financial Contribution as set forth in the Project Budget. No later than three (3) months after execution of the Agreement by the Successor Agency.
4. Approval of Financing. The Successor Agency shall approve or disapprove of the evidence of financing. Within twenty (20) calendar days after Successor Agency receives each such submission of evidence of financing.
5. Submission of 100% Design Development Drawings. The Owner shall prepare and submit to the Successor Agency for approval the 100% Design Development Drawings. No later than three months after Successor Agency approval of the Basic Concept and Schematic Drawings.
6. Approval of 100% Design Development Drawings. The Successor Agency shall approve or disapprove the 100% Design Development Drawings. Within thirty (30) calendar days after submittal.

Note: These drawings will be approved in increments as they are submitted.
7. Submission of 50% Final Construction Drawings and Specifications. The Owner shall prepare and submit to the Successor Agency for approval the 50% Final Construction Drawings which implement the Scope of Rehabilitation. No later than six (6) months after Successor Agency approval of the Basic Concept and Schematic Drawings.
8. Approval of 50% Final Construction Drawings and Specifications. The Successor Agency Within thirty (30) calendar days after submittal.

shall approve or disapprove the 50% Final Construction Drawings.

Note: These drawings will be approved in increments as they are submitted.

9. Submission of 100% Final Construction Drawings and Specifications. The Owner shall prepare and submit to the Successor Agency for approval the 100% Final Construction Drawings which implement the Scope of Rehabilitation. No later than ten (10) months after Successor Agency approval of the Basic Concept and Schematic Drawings.
10. Approval of 100% Final Construction Drawings and Specifications. The Successor Agency shall approve or disapprove the 100% Final Construction Drawings. Within thirty (30) calendar days after submittal.

Note: These drawings will be approved in increments as they are submitted.
11. Submission – Conditions Precedent to Closing. Borrower shall satisfy all conditions precedent to Closing, as required by Section 203 of the Agreement. Prior to the Closing.
12. Loan Closing. The Closing shall occur and the Deed of Trust and the Agreement Affecting Real Property shall be recorded. Successor Agency shall begin making disbursements of the Successor Agency Loan to Owner in accordance with Section 204 of the Agreement. Within fifteen (15) business days of the date that all conditions precedent have been satisfied or waived as set forth in Section 203 of Agreement, but no later than twelve (12) months from execution of the Agreement by the Successor Agency.
13. Relocation of Occupants or Businesses. Owner shall relocate the occupants or businesses pursuant to Section 108 of the Agreement. Prior to commencement of the rehabilitation of the Improvements.
14. Commencement of Project. The qualified licensed contractor shall commence construction of the Improvements pursuant to the Scope of Rehabilitation. No later than ten (10) calendar days after the Closing Date.
15. Completion of Project. Owner shall complete the rehabilitation of the Improvements pursuant to the Scope of Rehabilitation. No later than fifteen (15) months after commencement of the rehabilitation of the Improvements.

16. Historic Designation. Owner shall submit a nomination for historic designation, pursuant to Section 302 of the Agreement. No later than thirty (30) calendar days after the Completion Date of Project.

NOTES:

1. Deadlines set forth in this Schedule of Performance are subject to the enforced delay provisions of Section 602 of the Agreement.
2. Extensions may be approved in writing pursuant to Section 303 of the Agreement.
3. Descriptions of items of performance and deadlines in this Schedule of Performance are not intended to supersede more complete descriptions in the text of the Agreement; and in the event of any conflict between the text of the Agreement and this Schedule, the text of the Agreement shall govern.

ATTACHMENT NO. 4

SCOPE OF REHABILITATION

[BEHIND THIS PAGE]

ATTACHMENT NO. 4

SCOPE OF REHABILITATION

This Scope of Rehabilitation is attached to the Rehabilitation Loan Agreement (the "Agreement") entered into by and among the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Successor Agency") and LOTUS EQUITY GROUP, LLC, a California limited liability company ("Owner"). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Agreement.

Project Description:

Owner shall cause the timely completion of Improvements at the Property (including the adjacent sidewalks identified in the Site Map), consisting of the historic restoration of the Art Deco building including the restoration/reconstruction of the second floor for a ballroom/meeting hall space (200 person capacity) with kitchen facilities, common areas and related parking. Upgrades to the building shall include structural, mechanical, electrical, exiting, and wheelchair accessibility.

Project Approvals and Construction Standards:

Owner shall obtain all permits and entitlements as may be necessary for completion of the Improvements, and shall comply with all applicable local, state and federal laws and regulations in connection with the performance of all work on the Property. Without limiting the generality of the immediately preceding sentence, (i) the Project shall comply with the City's building code and all other applicable local codes, construction standards, ordinances and zoning ordinances in effect at the time of Completion, (ii) the Project shall be conducted in a decent, safe and sanitary manner, and (iii) the Project shall comply with all applicable accessibility requirements.

Owner shall be responsible for payment of all fees required by the City or other public agency in connection with the subdivision of the Property and the permitting and construction of the Improvements.

Successor Agency and Owner agree to consider in good faith written changes to this Scope of Rehabilitation to the extent necessary to conform to any requirements imposed by other regulatory or permitting authorities. The Mayor or designee is permitted to make such changes on behalf of the Successor Agency without further or additional review or consideration by the Successor Agency Board.

Construction Drawings:

Owner shall submit to Successor Agency, for approval by the Mayor or designee, Final Construction Drawings and Specifications which implement the design and intent of the

Agreement and this Scope of Rehabilitation.

Project Identification Signs:

Prior to commencement of any work on the Property, Owner shall prepare and install, at Owner's cost and expense, at least one sign on the Property which identifies the Project. The sign shall be at least four (4) feet by six (6) feet and be visible to passing pedestrian and vehicular traffic. The design of the sign as well as its proposed location shall be submitted to the Mayor or designee for review and written approval prior to installation. Owner shall obtain a current roster of Successor Agency members before any sign is manufactured. The sign shall at a minimum include:

- Illustration of the Project
- Project name
- Owner
- The text:

A project of the Successor Agency

Mayor: Interim Mayor Todd Gloria

Successor Agency Members:

Sherri Lightner
Kevin Faulconer
Todd Gloria
Myrtle Cole
Mark Kersey
Scott Sherman
Lorie Zapf
David Alvarez
Marti Emerald

- Completion Date _____
- For Information, Call _____

Owner shall provide on the sign any updated and current names and information as of the start of construction for the site.

ATTACHMENT NO. 4

SCOPE OF REHABILITATION (CONTINUED)

	COST	ELIGIBLE AGENCY EXPENSE	OWNER EXPENSE
CONSTRUCTION COSTS			
SITE REQUIREMENTS			
Pedestrian Protection	\$ 25,000	\$ 25,000	
GENERAL REHAB-FIRST FLOOR			
Existing flooring demolition	\$ 8,318	\$ 8,318	
Demo and construction elevator pit	\$ 8,000	\$ 8,000	
New shaft walls around new elevator	\$ 5,000	\$ 5,000	
Weathered ceiling removal	\$ 11,090	\$ 11,090	
Storefront glass removal	\$ 12,750	\$ 12,750	
Prep existing wall for finishes	\$ 21,500	\$ 21,500	
Misc rehab of MEP equip.	\$ 33,270	\$ 33,270	
INTERIOR FINISHES-FIRST FLOOR "VANILLA"			
Prep existing floor for new flooring	\$ 15,390	\$ 15,390	
New floor covering	\$ 21,800	\$ 21,800	
Cosmetic upgrades to ceilings	\$ 11,543	\$ 11,543	
Patch drywall ceiling	\$ 19,238	\$ 19,238	
Rework lighting and convenience power	\$ 30,780	\$ 30,780	
Reconfigure ductwork and diffusers	\$ 19,238	\$ 19,238	
Finishing interior walls and ceilings	\$ 18,630	\$ 18,630	
BUILDING EXTERIOR			
Infill and Patching	\$ 17,500	\$ 17,500	
1 Entry Change	\$ 35,000	\$ 35,000	
Wall Prep	\$ 24,500	\$ 24,500	
Exterior Painting	\$ 15,750	\$ 15,750	
Sash Repair	\$ 12,500	\$ 12,500	
5 Storefront entry doors	\$ 12,500	\$ 12,500	
4 Sash Windows	\$ 8,000	\$ 8,000	
Storefront Glazing	\$ 76,500	\$ 76,500	
METALS			
1 Exterior Stair and Handrail	\$ 40,000	\$ 40,000	

WOODS & PLASTICS			
1 Interior Stair	\$ 50,000	\$ 50,000	
INTERIOR FINISHES-SECOND FLOOR			
Prep and polish existing wood floor	\$ 25,028	\$ 25,028	
New finishes in bathrooms	\$ 7,300	\$ 7,300	
New ceiling in office area	\$ 7,200	\$ 7,200	
New walls in office area with insulation	\$ 11,887	\$ 11,887	
Lighting and power for office and ballroom	\$ 69,814	\$ 69,814	
Ductwork diffusers for office and ballroom	\$ 62,543	\$ 62,543	
Patch ceiling in ballroom	\$ 11,700	\$ 11,700	
Paint walls in office and ballroom	\$ 13,002	\$ 13,002	
GENERAL REHAB-SECOND FLOOR			
General demolition of office area	\$ 6,808	\$ 6,808	
2 New bathrooms walls and fixtures	\$ 40,000	\$ 40,000	
New structure around new elevator opening	\$ 7,500	\$ 7,500	
New shaft walls around new elevator	\$ 5,000	\$ 5,000	
3 New split system mech equip	\$ 24,000	\$ 24,000	
New electrical panels and feeders	\$ 66,540	\$ 66,540	
Misc rehab items	\$ 12,365	\$ 12,365	
CONVEYING SYSTEMS			
1 Hydraulic Elevator	\$ 65,000	\$ 65,000	
ELECTRICAL			
Main Distribution (Electrical Service)	\$ 15,000	\$ 15,000	
EXTERIOR IMPROVEMENTS (PAVING & HARDSCAPE)			
Remove and Replace 4" Concrete Sidewalks	\$ 37,000	\$ 37,000	
Redo Parking Area for Stair & Rear entries	\$ 12,000	\$ 12,000	
INDIRECT COSTS			
Permit Fees	\$ 13,000		\$ 13,000
Arch & Engineering Fees	\$ 77,777		\$ 77,777
Funding Control Agent	\$ 3,165		\$ 3,165
General Contractor	\$126,418	\$ 126,418	
Historical Designation/Approvals	\$ 19,800	\$ 19,800	
Title & Recording	\$ 5,000	\$ 5,000	
Relocation	\$ 51,400	\$ 51,400	
Contingency for Design Completion	\$ 123,256	\$ 123,256	
TOTAL COSTS	\$1,473,300	\$1,379,358	\$ 93,942

ATTACHMENT NO. 5

PROJECT BUDGET

[BEHIND THIS PAGE]

ATTACHMENT NO. 5

PROJECT BUDGET

SOURCES

Successor Agency	\$ 1,379,358
Owner	\$ 93,942
TOTAL SOURCES	<u>\$ 1,473,300</u>

USES

CONSTRUCTION COSTS

Site Requirements	\$ 25,000
General Interior and Exterior Improvements	\$ 608,797
Second Floor (Ballroom) Improvements	\$ 370,687
Paving and Hardscape	\$ 49,000
Total Construction Costs	<u>\$ 1,053,484</u>

INDIRECT COSTS

Permit Fees	\$ 13,000
Funding Control Agent	\$ 3,165
Arch & Engineering Fees	\$ 77,777
General Contractor	\$ 126,418
Historic Designation/Approval (Local)	\$ 19,800
Title & Recording	\$ 5,000
Relocation	\$ 51,400
Contingency for Design Completion	\$ 123,256
Total Indirect Costs	<u>\$ 419,816</u>

TOTAL USES

<u>\$ 1,473,300</u>

ATTACHMENT NO. 6

FORM OF SUCCESSOR AGENCY LOAN NOTE

[BEHIND THIS PAGE]

**PROMISSORY NOTE
SECURED BY DEED OF TRUST**

\$1,379,358

San Diego, California
_____, 20__

FOR VALUE RECEIVED, the undersigned LOTUS EQUITY GROUP, LLC, a California limited liability company (“**Owner**”) to pay to the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“**Successor Agency**”), at 1200 Third Avenue, Suite 1400, San Diego, California 92101, or at such other address as the Successor Agency may direct from time-to-time in writing, the principal sum ONE MILLION THREE HUNDRED SEVENTY NINE THOUSAND THREE HUNDRED FIFTY EIGHT DOLLARS (\$1,379,358) (the “**Note Amount**”), as provided in this Promissory Note. All sums hereunder shall be payable in lawful money of the United States of America.

1. **Rehabilitation Loan Agreement.** This Promissory Note is made and delivered pursuant to and in implementation of that certain Rehabilitation Loan Agreement entered into by and between the Successor Agency and Owner dated _____, 2014 (the “**Loan Agreement**”), a copy of which is on file as a public record with the Successor Agency and is incorporated herein by reference. The Loan Agreement provides for a Successor Agency Rehabilitation Loan (referred to herein as the “**Successor Agency Loan**”) in the Note Amount set forth herein to Owner to be used towards the Project, including the rehabilitation of the Improvements, as set forth in the Loan Agreement. Any capitalized term not defined herein shall have the meaning ascribed to such term in the Loan Agreement.

2. **Successor Agency Loan.** Successor Agency has provided to Owner the Successor Agency Loan in the amount of this Promissory Note pursuant to the Loan Agreement. Owner’s use of the Successor Agency Loan shall be subject to the terms and conditions set forth in the Loan Agreement. Owner acknowledges that but for the execution of this Promissory Note; the Successor Agency would not make the loan evidenced by this Promissory Note. This Note is secured by that certain Deed of Trust and Security Agreement dated on or about the date hereof, executed by Owner in favor of Successor Agency (the “**Deed of Trust**”).

3. **Interest.** This Promissory Note shall bear no interest, except in the Event of Default, as defined below, during its Term, as defined below, which shall be from the date of this Promissory Note until it is repaid to the Successor Agency or canceled.

4. **Term of Note.** The term of this Promissory Note shall be ten (10) years commencing upon the date of the issuance of the Certificate of Occupancy for the Improvements by the City of San Diego or the recordation of the Release of Construction Covenants pursuant to the Loan Agreement, whichever is later (the “**Term**”). Provided no Event of Default remains uncured after notice and opportunity to cure as provided herein, an amount equal to 10.00% of the

Note Amount shall be deemed paid on each anniversary of this Promissory Note, so that on the tenth (10th) anniversary of this Promissory Note, the Note Amount shall be deemed paid in full and this Promissory Note shall be marked as cancelled and the Deed of Trust shall be reconveyed.

5. **Acceleration.** The principal amount of this Promissory Note shall become immediately due and payable upon the occurrence of any one of the following events during the Term of this Promissory Note (“**Event of Default**”):

- (a) The sale, transfer, assignment or other conveyance of the Property, any portion thereof or interest therein, or any significant change in the management or control of Owner contrary to the provisions of Section 107 of the Loan Agreement, prior to the tenth (10th) anniversary of the Loan Date, unless approved in writing by Successor Agency;
- (b) Changes or alterations in any way of the current use of the Property as set forth in the Loan Agreement; or
- (c) An uncured default in performance or breach by Owner of any provision of the Loan Agreement, this Promissory Note, the Agreement Affecting Real Property, or the Deed of Trust or any deed of trust securing a Senior Loan or any deed of trust secured as a lien against the Property.

The Successor Agency may, in its sole and absolute discretion, waive these requirements and/or defer repayment and/or extend the term of the Successor Agency Loan. Any such waiver, deferment or extension must be in writing and signed by the Successor Agency.

Amounts declared due and payable under this Promissory Note shall thereafter bear interest at the “Default Interest Rate” (as hereinafter defined) until the Event of Default is cured. For purposes of this Note, the “Default Interest Rate” shall be the higher of (i) the interest rate payable hereunder, or (ii) a per annum percentage rate which is five (5) percentage points above the rate on the twenty-fifth (25th) day of the month preceding the date of such Event of Default established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended. Notwithstanding the foregoing or any other provision of this Promissory Note, in no event shall the Default Interest Rate or any other rate of interest under this Promissory Note exceed the maximum rate permitted by law; and if such rate of interest, computed in the amount provided for in this Promissory Note, should exceed said maximum legal rate, then the rate of interest shall be automatically reduced to such maximum legal rate. The imposition of the Default Interest Rate shall be in addition to and not in lieu of any other rights and remedies provided for in the Deed of Trust or otherwise by law. The remedies of a holder of this Promissory Note as provided herein and in the Deed of Trust shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of the holder, and may be exercised as often as occasion therefor may arise under the terms of such documents.

6. **No Payments Due Except in the Event of Declaration.** Except as otherwise provided herein, Owner shall have no obligation to make any payments of principal in connection with this Successor Agency Loan. Notwithstanding the foregoing, upon the occurrence of any Event of Default as provided in Section 5 above, and the failure to cure such Event of Default as provided in this Promissory Note, the outstanding principal balance of this Successor Agency Loan shall immediately be due and payable.

7. **Nondiscrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Owner itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.

8. **Defaults.** Failure or delay by Owner to perform any term or provision of this Promissory Note, the Deed of Trust or the Agreement Affecting Real Property that is to be performed by Owner constitutes a default under this Promissory Note. The Successor Agency shall give written notice of default to the Owner specifying in reasonable detail the matter constituting the default. If a monetary event of default occurs, Owner shall have a period of seven (7) calendar days after such notice is received or deemed received within which to cure the default prior to the Successor Agency exercising its remedies. If a non-monetary event of default occurs, Owner shall have thirty (30) calendar days following receipt of notice to cure the default. Except as required to protect against further damages, the Successor Agency shall not institute proceedings against the Owner unless the matter is not cured within such thirty (30) calendar day period, or, if the default is of a nature requiring more than thirty (30) calendar days to cure, the Owner commences to cure the matter within such thirty (30) calendar day period and diligently pursues such cure to completion within a reasonable time, but in no event more than sixty (60) days after notice of default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Failure to cure the default within the applicable cure period shall entitle the Successor Agency to terminate the Successor Agency Loan, accelerate payment under this Promissory Note, and/or exercise any other remedies available to such party, including, without limitation, foreclosure on the Deed of Trust.

9. **Non-Waiver.** Failure to exercise or delay in exercising any right the Successor Agency may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.

10. **Owner's Waivers.** Owner hereby waives diligence, presentment, protest and demand, notice of protest, dishonor and nonpayment of this Promissory Note, and expressly agrees that, without in any way affecting the liability of Owner hereunder, the Successor Agency may extend any maturity date or the time for payment of any installment due hereunder, accept additional security, release any party liable hereunder and release any security now or hereafter securing this Promissory Note. Owner further waives, to the full extent permitted by law, the

right to plead any and all statutes of limitations as a defense to any demand on this Promissory Note, or on any deed of trust, security agreement, guaranty or other agreement now or hereafter securing this Promissory Note.

11. **Governing Law.** This Promissory Note shall be governed by the internal laws of the State of California.

12. **Severability.** In the event that any provision or clause of this Promissory Note conflicts with applicable law, such conflict will not affect other provisions of this Promissory Note which can be given effect without the conflicting provision, and to this end the provisions of the Promissory Note are declared to be severable.

13. **Amendment of Promissory Note.** No modification, rescission, waiver, release or amendment of any provision of this Promissory Note shall be made except by a written agreement executed by Owner and the duly authorized representative of the Successor Agency.

14. **Assignment by Agency Permitted.** The Successor Agency may, in its sole and absolute discretion, assign its rights under this Promissory Note and/or its right to receive repayment of the Successor Agency Loan without obtaining the consent of Owner.

15. **Assignment by Owner Prohibited.** In no event shall Owner assign or transfer any portion of this Promissory Note or any rights herein without the prior express written consent of the Successor Agency, which consent the Successor Agency may give or withhold in its sole and absolute discretion. This provision shall not affect or diminish the Successor Agency's right to assign all or any portion of its rights under this Promissory Note or to the proceeds of the Successor Agency Loan hereunder.

16. **Junior Liens.** Except for the pre-existing deed of trust securing the Senior Loan, if any, Owner shall not encumber the Property for the purpose of securing financing either senior or junior in priority or subordinated to this Successor Agency Loan without the prior written approval of the Successor Agency in its sole and absolute discretion.

17. **Relationship of Owner and Successor Agency.** The relationship of Owner and Successor Agency pursuant to this Promissory Note is that of debtor and creditor and shall not be, or be construed to be a joint venture, equity venture, partnership or other relationship.

18. **Notices.** Except as otherwise expressly provided in this Promissory Note, in every case when, under the provisions of this Promissory Note, it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

To Owner: Lotus Equity Group, LLC
4029 Euclid Ave
San Diego, California 92105

To Successor Agency: City of San Diego, as Successor Agency
1200 Third Avenue, Suite 1400
San Diego, CA 92101
Attention: Economic Development

19. **Attorneys' Fees.** In the event that any action is instituted to enforce payment or performance under this Promissory Note, or otherwise in connection with this Promissory Note, the parties agree that the prevailing party shall be reimbursed by the other party for all costs and all attorneys' fees incurred by the prevailing party in such action. In addition, Owner agrees to reimburse the Successor Agency for reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Promissory Note, whether or not suit is filed.

20. **Captions.** The captions and headings in this Promissory Note are for convenience only and are not to be used to interpret or define the provisions hereof.

21. **Joint and Several Liability.** The undersigned for Owner shall be jointly and severally liable hereunder.

22. **Successors Bound.** This Promissory Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

“OWNER”

LOTUS EQUITY GROUP, LLC, a California
limited liability company

By: _____
David Chinh Chau
Operating Manager

ATTACHMENT NO. 7

FORM OF DEED OF TRUST

[BEHIND THIS PAGE]

No Fee for Recordation
Government Code Section 6103

Recording Requested by
Redevelopment Agency of the City of San Diego

When Recorded Return to:
City of San Diego
1200 3rd Ave., 14th Floor
San Diego, California 92101

Attention: Economic Development

Recordable Document:
Government Code Sections 27279,
27280 and 27281.5

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST, SECURITY AGREEMENT
AND FIXTURE FILING
(WITH ASSIGNMENT OF RENTS)**

This Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) is made as of _____, 20____, by LOTUS EQUITY GROUP, LLC, a California limited liability company ("Trustor"), whose address for purposes of notice is 4029 Euclid Ave, San Diego California 92105 to _____ ("Trustee"), for the benefit of the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Beneficiary"), whose address is 1200 Third Avenue, Suite 1400, San Diego, California 92101, Attn: Economic Development.

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors and assigns, in Trust, with POWER OF SALE TOGETHER WITH RIGHT OF ENTRY AND POSSESSION the following property (the "Trust Estate"):

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

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

(c) all tenements, hereditaments, appurtenances, privileges, franchises and other rights and interests now or in the future benefitting or otherwise relating to the Subject Property

Attachment No. 7

Deed of Trust, Security Agreement and Fixture Filing
Page 1 of 10

or the Improvements, including easements, rights-of-way and development rights (the "Appurtenances"). (The Appurtenances, together with the Subject Property and the Improvements, are hereafter referred to as the "Real Property");

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

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

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

intangible personal property of any kind or nature, and (ix) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the "Intangibles").

Trustor further grants to Trustee and Beneficiary, pursuant to the UCC, a security interest in all present and future right, title and interest of Trustor in and to all Goods and Intangibles and all of the Trust Estates described above in which a security interest may be created under the UCC (collectively, the "Personal Property"). This Deed of Trust constitutes a security agreement under the UCC, conveying a security interest in the Personal Property to Trustee and Beneficiary. Trustee and Beneficiary shall have, in addition to all rights and remedies provided herein, all the rights and remedies of a "secured party" under the UCC and other applicable California law. Trustor covenants and agrees that this Deed of Trust constitutes a fixture filing under Section 9313 and 9402(6) of the UCC.

FOR THE PURPOSE OF SECURING due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:

- (1) due, prompt and complete observance, performance and discharge of each and every condition, obligation, covenant and agreement contained herein or contained in the following:
 - (a) the Promissory Note executed by Trustor (Owner therein) of even date herewith in the principal amount of \$1,379,358 ("Note");
 - (b) the Rehabilitation Loan Agreement dated _____, 20____ by and between Trustor (Owner therein), and Beneficiary (Successor Agency therein) ("Loan Agreement"); and
 - (c) the Agreement Affecting Real Property between Trustor (Owner therein) and Beneficiary (Successor Agency therein) recorded concurrently herewith ("Agreement Affecting Real Property").

(2) payment of indebtedness of the Trustor to the Beneficiary not to exceed \$1,379,358 according to the terms of the Note.

Said Note, Loan Agreement and Agreement Affecting Real Property (collectively, the "Secured Obligations") and all of their terms are incorporated herein by reference and this conveyance shall secure any and all extensions, amendments, modifications or renewals thereof however evidenced, and additional advances evidenced by any promissory note, agreement or instrument reciting that it is secured hereby.

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

1. That Trustor shall pay the obligation set forth in the Note as provided therein and perform the obligations of Trustor as set forth in the Loan Agreement, the Agreement Affecting Real Property and the Note in the time and in the manner respectively provided therein.
2. That Trustor shall not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.
3. That the Secured Obligations are incorporated in and made a part of the Deed of Trust. Upon default of a Secured Obligation, and after the giving of notice and the expiration of any applicable cure period, the Beneficiary, at its option, may declare the whole of the indebtedness secured hereby to be due and payable.
4. That all rents, profits and income from the property covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder after the giving of notice and the expiration of any applicable cure period, to collect such rents, profits and income for use in accordance with the provisions of the Loan Agreement and the Agreement Affecting Real Property.
5. That upon default hereunder or under the aforementioned agreements, and after the giving of notice and the expiration of any applicable cure period, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the property described herein and operate same and collect the rents, profits and income therefrom.
6. That Trustor will keep the improvements now existing or hereafter erected on the Property insured against loss by fire and such other hazards, casualties, and contingencies as may reasonably be required in writing from time to time by the Beneficiary, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than 100 percent of the insurable value of the Property. Such policies shall be endorsed with standard mortgage clause with loss payable to the Beneficiary and certificates thereof together with copies of original policies shall be deposited with the Beneficiary.
7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Property; to pay, when due, all encumbrances, charges and liens, with interest, on said Property; and to pay all costs, fees, and expenses of this Deed of Trust.
8. To keep said property in good condition and repair, subject to ordinary wear and tear, casualty and condemnation, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon (subject to

Trustor's right to contest the validity or applicability of laws or regulations); not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law and/or covenants, conditions and/or restrictions affecting said property; not to permit or suffer any material alteration of or addition to the buildings or improvements hereafter constructed in or upon said property without the consent of the Beneficiary.

9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and reasonable attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
10. Should Trustor fail, after the giving of notice and the expiration of any applicable cure period, to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Following default, after the giving of notice and the expiration of any applicable cure period, Beneficiary or Trustee being authorized to enter upon said property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; may pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees.
11. Beneficiary shall have the right to pay fire and other property insurance premiums when due should Trustor fail to make any required premium payments. All such payments made by the Beneficiary shall be added to the indebtedness and obligations secured hereby.
12. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Note.
13. That upon the failure of Trustor, after the giving of notice and the expiration of any applicable cure period, to keep and perform all the covenants, conditions, and agreements of the Loan Agreement, the Note and/or the Agreement Affecting Real Property, the entire indebtedness evidenced by the Note shall at the option of the Beneficiary of this Deed of Trust become due and payable, anything contained herein to the contrary notwithstanding.
14. Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the property subject to this Deed of Trust any lien or liens except as authorized by Beneficiary and further that they will keep and maintain the property free from the claims of all persons supplying labor or materials which will enter into the construction of any

and all buildings now being erected or to be erected on said premises. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor shall not be obligated to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting, provided that Trustor shall, at Beneficiary's written request, within thirty (30) days after the filing of any claim or lien (but in any event, and without any requirement that Beneficiary must first provide a written request, prior to foreclosure) record in the Office of the Recorder of San Diego County, a surety bond in an amount one-and-one-half (1 1/2) times the amount of such claim item to protect against a claim of lien, or provide such other security reasonably satisfactory to Beneficiary.

15. That any and all improvements made or about to be made upon the premises covered by the Deed of Trust, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other applicable regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.
16. Trustor herein agrees to pay to Beneficiary or to the authorized loan servicing representative of the Beneficiary a reasonable charge for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2 Title 14, Division 3, of the California Civil Code.

IT IS MUTUALLY AGREED THAT:

17. Should the property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary. After deducting therefrom all its expenses, including attorney's fees, the balance of the proceeds which are not used to reconstruct, restore or otherwise improve the property or part thereof that was taken or damaged, shall be applied to the amount due under the Note secured hereby. No amount applied to the reduction of the principal shall relieve the trustor from making regular payments as required by the Note.
18. Upon default by Trustor in making any payments provided for herein or upon default by Trustor in making any payment required in the Note secured hereby, or if Trustor shall fail to perform any covenant or agreement in this Deed of Trust, after the giving of notice and the expiration of any applicable cure period, Beneficiary may declare all sums

secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the property to be sold, which notice Trustee shall cause to be duly filed for record and Beneficiary may foreclose this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

19. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of sale to payment of (1) the expenses of such sale, together with the reasonable expenses of this Deed of Trust including therein reasonable Trustee's fees or attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (2) the cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto.
20. Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.
21. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.
22. Upon written request of Beneficiary stating that all sums secured hereby have been paid and all obligations secured hereby have been satisfied, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or fact shall be conclusive proof of the truthfulness

thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".

23. The trust created hereby is irrevocable by Trustor.
24. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgees, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.
25. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.
26. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth in the first paragraph of this Deed of Trust.
27. Trustor agrees at any time and from time to time upon receipt of a written request from Beneficiary, to furnish to Beneficiary detailed statements in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the Premises and their use as may be requested by Beneficiary.
28. Trustor agrees that the indebtedness secured by this Deed of Trust is made expressly for the purpose of financing the construction of improvements thereon as provided in the Loan Agreement and to be operated as provided in the Agreement Affecting Real Property.
29. (a) Failure or delay by Trustor to perform any term or provision respectively required to be performed under the Note, the Loan Agreement, the Agreement Affecting Real Property or this Deed of Trust constitutes a default under this Deed of Trust.
(b) Beneficiary shall give written notice of default to Trustor, specifying the default complained of by the Beneficiary. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

- (c) Any failures or delays by Beneficiary in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by Beneficiary in asserting any of its rights and remedies shall not deprive Beneficiary of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
 - (d) If a monetary event of default occurs, prior to exercising any remedies hereunder Beneficiary shall give Trustor written notice of such default. Trustor shall have ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by Beneficiary under the this Deed of Trust. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially impaired by any failure to cure a default or the default is not cured within ten (10) calendar days after the notice of default is received or deemed received.
 - (e) If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Beneficiary shall give Trustor notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, Trustor shall have such period to effect a cure prior to exercise of remedies by the Beneficiary. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Trustor (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary; provided, however, that in no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the notice of default is received or deemed received.
 - (f) Any notice of default that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by Trustor; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.
30. Trustor agrees that, except as otherwise provided in the Note, upon sale or refinancing of the property, the entire indebtedness secured by this Deed of Trust shall at the option of Beneficiary be immediately due and payable.
31. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the obligations described

herein, the unsecured portion of such obligations shall be completely performed and paid prior to the performance and payment of the remaining and secured portion of the obligations, and all performance and payments made by Trustor shall be considered to have been performed and paid on and applied first to the complete payment of the unsecured portion of the obligations.

32. The undersigned for Trustor shall be jointly and severally liable hereunder.

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

“TRUSTOR”

LOTUS EQUITY GROUP, LLC, a California
limited liability company

By: _____
David Chinh Chau
Operating Manager

CALIFORNIA ACKNOWLEDGEMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

All the certain real property located in the County of San Diego, State of California, described as follows:

LOTS 23 AND 24 IN BLOCK 21 OF FAIRMOUNT ADDITION TO CITY HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1035, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON MARCH 8, 1907.

ATTACHMENT NO. 8

FORM OF
RELEASE OF CONSTRUCTION COVENANTS

[BEHIND THIS PAGE]

No Fee for Recordation
Government Code Section 6103

Recording Requested by
Redevelopment Agency of the City of San Diego

When Recorded Return to:
City of San Diego
1200 3rd Ave., 14th Floor
San Diego, California 92101

Attention: Economic Development

Recordable Document:
Government Code Sections 27279,
27280 and 27281.5

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (the "**Successor Agency**") has entered into a Rehabilitation Loan Agreement with LOTUS EQUITY GROUP, LLC, a California limited liability company ("**Owner**") which was approved by the Successor Agency on _____ pursuant to Resolution No. R-_____ and filed as Document No. _____ (the "**Loan Agreement**") relating to property in the City of San Diego, County of San Diego and State of California described as set forth in Exhibit A (the "**Property**"), for the specific purpose of rehabilitating certain improvements on the Property (the "**Project**") in accordance with the terms and conditions contained in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement;

WHEREAS, pursuant to Section 318 of the Loan Agreement, upon the completion of the Project and the request of Owner, the Successor Agency is required to issue for recordation a Release of Construction Covenants ("**Release**") acknowledging the completion of the rehabilitation required by the Loan Agreement relating to the Property and releasing certain obligations and rights of the Owner and the Successor Agency set forth in the Loan Agreement;

WHEREAS, the Owner has completed the rehabilitation required by the Loan Agreement relating to the Property as required by the Loan Agreement and has requested that the Successor Agency issue the Release for the Project;

WHEREAS, the Successor Agency has inspected and determined that the rehabilitation

required by the Loan Agreement relating to the Property has been satisfactorily completed and now desires to issue the Release pursuant to the terms and conditions of the Loan Agreement.

NOW THEREFORE, it is hereby acknowledged and certified by the Successor Agency that:

1. The rehabilitation of the Property is in substantial compliance with the plans, drawings and related documents referred to in Section 302 of the Loan Agreement.

2. The Owner is in full compliance with the terms of Section 318 of the Loan Agreement.

3. All Successor Agency rights pursuant to Section 509.b of the Loan Agreement providing the Successor Agency the right to terminate the Loan Agreement in the event of an uncured default prior to Completion of the Project are no longer enforceable.

4. The issuance and recording of this Release shall cancel and release any rights, remedies or controls that the parties would otherwise have or be entitled to exercise under the Loan Agreement with respect to the Property as a result of a default in or breach of any provision thereof prior to Completion of the Project, and the respective rights and obligations of the parties with reference to the Property (or any portion thereof) shall thereafter be limited to those provided by the terms of the Loan Agreement, Successor Agency Promissory Note, Successor Agency Deed of Trust and the Agreement Affecting Real Property that survive the issuance and recordation of this Release.

[Signatures appear on following page]

IN WITNESS WHEREOF, Successor Agency has executed this Release this ____ day of _____, 20__.

CITY OF SAN DIEGO,
SOLELY IN ITS CAPACITY AS DESIGNATED
SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE CITY
OF SAN DIEGO, A FORMER PUBLIC BODY,
CORPORATE AND POLITIC

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM
AND LEGALITY:

JAN I. GOLDSMITH
City Attorney

By: _____
Katherine A. Malcolm
Deputy City Attorney

[Signatures continued on following page]

OWNER

LOTUS EQUITY GROUP, LLC, a California
limited liability company

By: _____
David Chinh Chau
Operating Manager

CALIFORNIA ACKNOWLEDGEMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

CALIFORNIA ACKNOWLEDGEMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

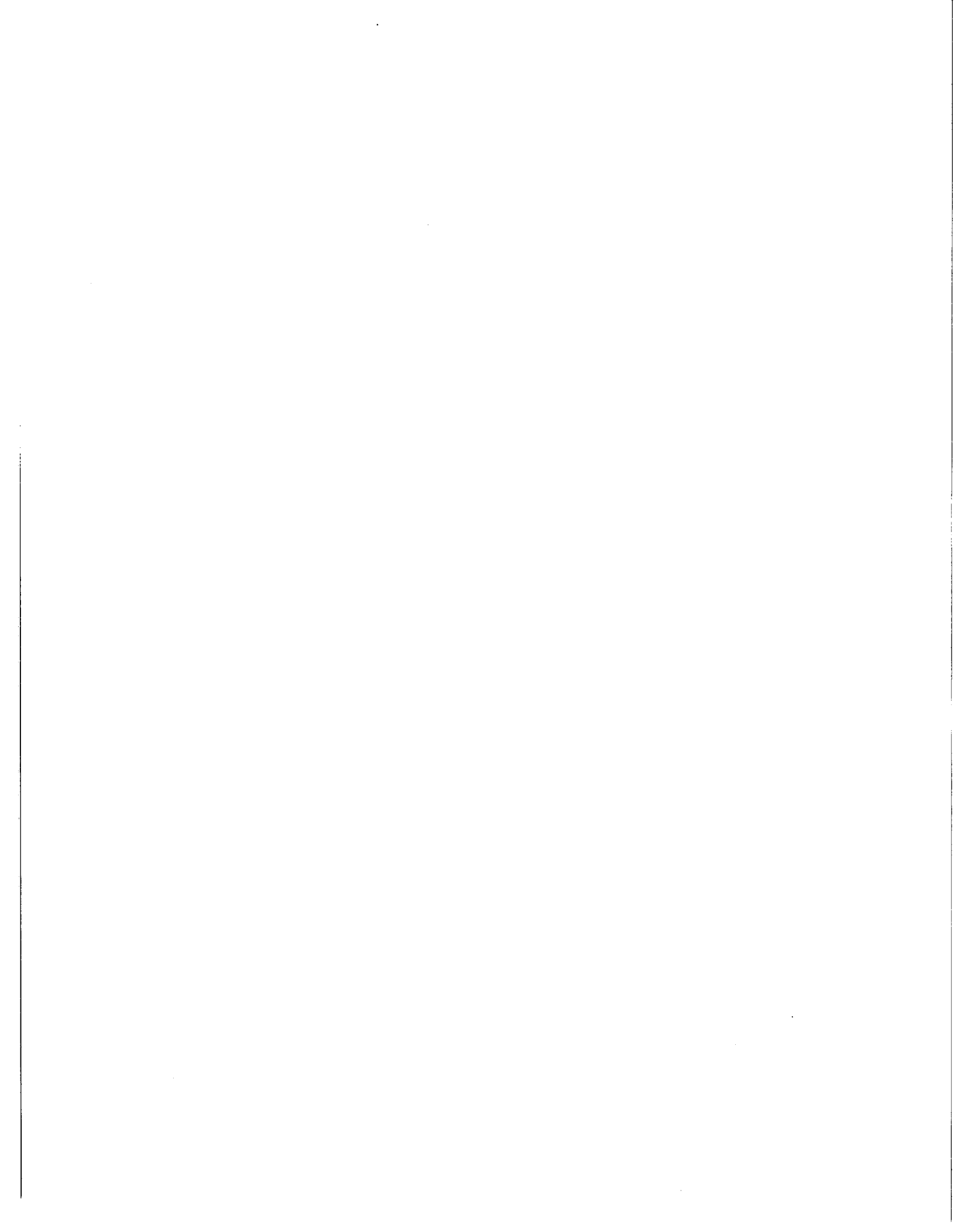
All the certain real property located in the County of San Diego, State of California, described as follows:

LOTS 23 AND 24 IN BLOCK 21 OF FAIRMOUNT ADDITION TO CITY HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1035, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON MARCH 8, 1907.

ATTACHMENT NO. 9

FORM OF
AGREEMENT AFFECTING REAL PROPERTY

[BEHIND THIS PAGE]



No Fee for Recordation
Government Code Section 6103

Recording Requested by
Redevelopment Agency of the City of San Diego

When Recorded Return to:
City of San Diego
1200 3rd Ave., 14th Floor
San Diego, California 92101

Attention: Economic Development

Recordable Document:
Government Code Sections 27279,
27280 and 27281.5

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT AFFECTING REAL PROPERTY (this "**Agreement**") is entered into as of _____, 20____ by and between the CITY OF SAN DIEGO, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("**Successor Agency**"), and LOTUS EQUITY GROUP, LLC, a California limited liability company ("**Owner**"). Successor Agency and Owner shall be referred to herein collectively as the "**Parties**".

A. Owner is the owner of that certain real property located in the City of San Diego, County of San Diego, State of California, legally described in the "Legal Description" attached hereto as Exhibit A and incorporated herein by this reference (the "**Property**").

B. The Property is within the City Heights Redevelopment Project Area (the "**Project Area**") in the City of San Diego and is subject to the provisions of the redevelopment plan for the Project Area, which was approved and adopted on May 11, 1992 by the City Council of the City of San Diego by Ordinance No. 17768[NS], as amended from time-to-time, which is incorporated herein by this reference (the "**Redevelopment Plan**").

C. The Successor Agency has entered into that certain Rehabilitation Loan Agreement with Owner, dated _____, 2014 (the "**Loan Agreement**"), which is incorporated herein by this reference. "Loan Agreement" as used herein shall mean, refer to and include the Loan Agreement, as well as any amendments, exhibits and attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.

Whenever the term "Owner" is used herein, such term shall mean and include: (i) Owner as of the date hereof, (ii) any assignee of, or successor to its rights, powers and responsibilities permitted by the Loan Agreement and (iii) every successor in interest to the Property or any part thereof.

D. Pursuant to the Loan Agreement, Owner shall develop the Project, including the improvements to be rehabilitated on the Property together with those adjacent sidewalks identified in the Site Map attached thereto, including but not limited to the Scope of Rehabilitation (the "Improvements").

E. This Agreement is entered into and recorded in accordance with the Loan Agreement and the California Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (the "CRL").

NOW, THEREFORE, SUCCESSOR AGENCY AND OWNER HEREBY AGREE AS FOLLOWS:

1. Owner covenants and agrees as follows:

(a) Owner shall use the Property only for the uses specified in the the Loan Agreement (including the Scope of Rehabilitation) and this Agreement. No change in the use of the Property shall be permitted without the prior written approval of Successor Agency. The Improvements shall be constructed in compliance with the California Building Code applicable at the time of submittal of the application for rehabilitation of the Improvements.

(b) Without limiting the generality of the foregoing, Owner shall use the Property, in part, for the rehabilitation and operation on the second floor for a ballroom/meeting hall space (200 person capacity) with kitchen facilities, common areas and related parking (collectively, the "Ballroom/Meeting Hall"), as described in the Scope of Rehabilitation and in accordance with this Agreement. Owner shall operate and manage (or cause to be managed) the Ballroom/Meeting Hall in a manner consistent with comparable facilities, and shall provide (or cause to be provided) appropriate security and comply with all governmental regulations (e.g., ABC daily license). Owner shall make good faith efforts to make available at all times to the public the rental of the Ballroom/Meeting Hall at market rates comparable to the City Heights Redevelopment Project Area.

(c) Owner shall maintain the Improvements and landscaping on the Property in first-class order, condition and repair (and, as to landscaping, in a healthy and thriving condition) in accordance with the approved plans for the Project and all applicable governmental restrictions.

(d) If Successor Agency gives written notice to Owner that the maintenance or condition of the Property, the Project or any portion thereof or any other Improvements thereon does not comply with this Agreement, then Owner shall correct, remedy or cure the deficiency within 30 days following the date of such notice, unless the notice states that the

deficiency is an urgent matter relating to public health and safety, in which case, Owner shall cure such deficiency within 48 hours following the date of the notice. In the event that Owner fails to cure any such deficiencies within the applicable period described above, Successor Agency shall have, in addition to any other rights and remedies hereunder, the right to maintain the Property, the Project or any portion thereof or any other Improvements thereon or to contract for the correction of any deficiencies, and Owner shall be responsible for payment of all such costs actually and reasonably incurred by Successor Agency, and such payment shall constitute a lien on the Property until paid by Owner pursuant to California Civil Code Section 2881. Any such lien shall be subordinate and subject to the lien of any Senior Loan.

(e) Owner shall be responsible for the operation of the Improvements either by direct management or by contracting its managerial functions to a third party property manager, which property manager will be charged with managing the Improvements on behalf of Owner.

(f) Owner covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, subtenants, sublessees, or vendees of the Property.

(g) Owner shall refrain from restricting the rental, sale or lease of the Property on the basis of the race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or

through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(3) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land. The foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties or other transferees under the instrument."

2. In accordance with California Civil Code Section 1461 *et seq.*, all conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land. The Parties acknowledge and agree that the conditions, covenants and restrictions directly benefit the Property and benefit property Successor Agency and/or the City of San Diego, a municipal corporation ("City") owns or will own (including, without limitation, underlying interests in streets) within the Project Area and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Successor Agency, City and their respective governmental successors and assigns and any property Successor Agency and/or City owns or will own (including, without limitation, underlying interests in streets) within the Project Area, against Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Successor Agency and City shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of Successor Agency and City, without regard to whether Successor Agency or City has been, remains or is an owner of any land or interest therein in the

Property or the Project Area. Except as provided in the preceding sentences and in applicable law (as now exists or as hereinafter may be amended), the covenants, conditions and restrictions contained herein shall not be enforceable by any third party.

In addition to the authority provided under California Civil Code Section 1461 *et seq.*, the Parties acknowledge and agree that CRL Sections 33435, 33436, 33437 and 33439 provide legal authority, separate and apart from California Civil Code Section 1461 *et seq.*, for establishing the covenants running with the land set forth herein. Successor Agency deems the covenants, conditions and restrictions in this Agreement to be necessary to prevent speculation and to carry out the purposes of the CRL.

3. Successor Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage permitted by the Loan Agreement.

5. Except as set forth in the last sentence of this Section 5, every covenant, condition and restriction contained in this Agreement shall remain in effect until May 11, 2033, which coincided with the period of effectiveness of the prior Redevelopment Plan (the "**Covenant Period**"). The covenants against discrimination set forth therein shall remain in effect in perpetuity.

6. a. Prior to exercising any remedies hereunder, Successor Agency shall give Owner notice of such default. Except as otherwise set forth herein, if a non-monetary default is reasonably capable of being cured within 30 calendar days, then Owner shall have such period to effect a cure prior to exercise of remedies by Successor Agency. If the non-monetary default is such that it is not reasonably capable of being cured within 30 calendar days, and Owner (i) initiates corrective action within said period and (ii) diligently, continually and in good faith works to effect a cure as soon as possible, then Owner shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Successor Agency; provided, however, that in no event shall Successor Agency be precluded from exercising remedies if the default is not cured within 120 days after the first notice of default is given. Monetary defaults shall be cured within 10 days.

b. Successor Agency shall give a Permitted Mortgagee notice of any Owner default. Successor Agency agrees to accept cures tendered by any Permitted Mortgagee within the cure periods provided herein. In no event shall Successor Agency be precluded from exercising remedies if its rights become or are about to become materially jeopardized by any failure to cure a default or the default is not cured by the Permitted Mortgagee within 150 calendar days after the first notice of default is given to Owner.

7. If a violation of any of the covenants or provisions of this Agreement remains uncured after the respective time period set forth in Section 6, above, then Successor Agency and its governmental successors and assigns, without regard to whether Agency, or its governmental successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Owner of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

8. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original agreement.

9. The undersigned for Owner shall be jointly and severally liable hereunder.

[Signatures on following page]

IN WITNESS WHEREOF, Successor Agency and Owner have executed this Agreement as of the dates set opposite their signatures.

THE CITY OF SAN DIEGO,
SOLELY IN ITS CAPACITY AS
DESIGNATED SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO, A FORMER PUBLIC
BODY, CORPORATE AND POLITIC

Dated: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH,
City Attorney

By: _____
Katherine A. Malcolm
Deputy City Attorney

[Signatures continue on following page]

OWNER

LOTUS EQUITY GROUP, LLC, a California
limited liability company

By: _____
David Chinh Chau
Operating Manager

CALIFORNIA ACKNOWLEDGEMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

CALIFORNIA ACKNOWLEDGEMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All the certain real property located in the County of San Diego, State of California, described as follows:

LOTS 23 AND 24 IN BLOCK 21 OF FAIRMOUNT ADDITION TO CITY HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1035, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON MARCH 8, 1907.

ATTACHMENT NO. 10

CITY OF SAN DIEGO'S EQUAL OPPORTUNITY CONTRACTING REQUIREMENTS

[BEHIND THIS PAGE]

ATTACHMENT NO. 10

EQUAL OPPORTUNITY CONTRACTING REQUIREMENTS

TABLE OF CONTENTS

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I. **City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees, developers, contractors, subcontractors, subconsultants and vendors/suppliers doing business with the City. The City encourages its developers to share this commitment.

II. **Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion. Developers are encouraged to take positive steps to diversify and expand their contractor, subcontractor, subconsultant, and vendor/supplier solicitation base and to offer contracting opportunities to these groups. To support its Equal Opportunity Contracting commitment, the Developer is required to submit with its development proposal/application for Affordable Housing Program Funding (NOFA) a Letter of Commitment which must contain the following:

A. Subcontracting Commitment Goal. Anticipated subcontracting participation goal for utilization of Disadvantaged Business Enterprises (DBE's) and underrepresented firms during the course of the project.

B. Outreach Efforts. Network activities and outreach strategies intended to be utilized to recruit, hire, train and promote a diverse workforce.

- C. Community Activities. Listing of Developer's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

III. Reporting Requirements.

- A. Quarterly Update Report. Developer is required to submit quarterly reports detailing and explaining efforts made to reach its stated commitment goal.
 - 1. Due Date: *Quarterly Update Report* must be submitted every three months by the 30th day of the month.
- B. Monthly Invoicing Report. Developer must list monthly dollar amounts invoiced and paid by contractor to subcontractor, subconsultant and vendor/supplier.
- C. Monthly Employment Report. Developer must have Contractor list each employee working on the specific project by full name, social security number, gender, ethnic category, craft and employee source. Developer is responsible for collecting and submitting *Monthly Employment Report* from prime contractor and all subcontractors at any level, working at the site. Contractors and all subcontractors must submit this report monthly until their portion of work is complete. Reporting period is from first day of calendar month through last day of calendar month and reflects total work hours performed on this project.
 - 1. Due Date: *Monthly Invoicing Report* and *Monthly Employment Report* must be submitted by the 5th day of the subsequent month.
- D. Certified Payroll. If project is federally and/or state funded prevailing wages apply and certified payrolls must be submitted either weekly, bi-weekly or monthly.

During the course of the project, reports and certified payrolls must be submitted to the EOC Program Manager at 1010 Second Ave., Suite 500, San Diego, CA 92101.

IV. Nondiscrimination in Contracting Ordinance. All developers, contractors, and consultants doing business with the City, and their subcontractors, subconsultants and vendors/suppliers must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.

- A. Developers Proposal/Application to include Disclosure of Discrimination Complaints. As part of its proposal/application, Developer shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Developer in a legal or administrative proceeding alleging that Developer discriminated against its employees, subcontractors, subconsultants and

vendors/suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

- B. Contract Language. The following language shall be included in contracts for City projects between the Developer and any contractor, subcontractor, subconsultant and vendor/supplier:

Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors to participate in subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations. Upon the City's request, Developer agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, subconsultants, vendors, and suppliers that Developer has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance*.

- V. **Equal Employment Opportunity**. Developers shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Developers must submit with its proposal/application a *Work Force Report* or an *Equal Employment Opportunity (EEO) Plan* to the Manager of the City of San Diego Equal Opportunity Contracting for approval. All submittals must be sent to 1010 Second Ave., Suite 500, San Diego, CA 92101.

- A. Work Force Report. If a *Work Force Report* (Attachment AA) is submitted, and the Work Force Analysis reflects under representations when compared to County

Labor Force Availability data, Developer will be required to submit an *Equal Employment Opportunity Plan*.

B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:

1. The Developer will maintain a working environment free of discrimination harassment, intimidation and coercion at all sites and in all facilities at which the Developer's employees are assigned to work;
2. A responsible official is designated to monitor all employment related activity to ensure the Developer's EEO Policy is being carried out and to submit reports relating to EEO provisions;
3. Developer disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Developer reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Developer discusses its EEO Policy Statement with Subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Developer documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors and subconsultants, consultant associations, vendors/suppliers and other business associations;
7. The Developer disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Developer disseminates its EEO Policy to union and community organizations;
9. The Developer provides immediate written notification to the City when any union referral process has impeded the Developer's efforts to maintain its EEO Policy;

10. The Developer maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Developer maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Developer encourages all present employees, including people of color and women employees, to recruit others;
13. The Developer maintains all employment selection process information with records of all tests and other selection criteria;
14. The Developer develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Developer's employment needs;
15. The Developer conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Developer ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Developer establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Developer is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Developer is a member will be considered as being part of fulfilling these obligations, provided the Developer actively participates.

VI. **List of Subcontractors.** Developers are required to submit a *Subcontractors List* for their Prime Contractor at the start of the project. As subcontractors are added to the

project, the Developer is required to notify EOC by submitting an updated *Subcontractors List* within five (5) days of addition of subcontractor to the project.

A. Subcontractors List. The *Subcontractors List* (Attachment EOC-7) shall indicate the name and address, scope of work, dollar amount and percent of total proposed subcontract amount, certification status and where certified for each proposed subcontractor.

1. Subcontractors must be named on the *Subcontractors List* if they receive more than one-half of one percent (0.5%) of the Developer's fee.

VII. Certification.

A. The City of San Diego is a signatory to a Memorandum of Agreement (MOA) in the statewide California Unified Certification Program, and therefore has adopted a policy regarding certification of DBE firms. Pursuant to the MOA, a DBE can be certified by any participating government agency in the State of California.

B. The City will accept a current certification by the State of California Department of Transportation (CALTRANS) or any other participating government agency in the State of California as an MBE or WBE; or

C. The City will accept current DVBE certification granted by the State of California's Department of General Services, Office of Small and Minority Business, (916) 322-5060.

VIII. Definitions.

Certified "**Minority Business Enterprise**" (MBE) means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least fifty one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent

(51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified “**Disabled Veteran Business Enterprise**” (DVBE) means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

“**Other Business Enterprise**” (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

IX. List of Attachments.

EOC-7- Subcontractors List

EOC -8- Subconsultants List

EOC -AA (1-3) - Work Force Report

EOC-BB - Developer Monthly Invoicing Report

EOC-CC-Monthly Employment Report

SUBCONTRACTORS LIST
INFORMATION REGARDING SUBCONTRACTOR PARTICIPATION:

1. Subcontractor's List shall include name and complete address of all Subcontractors who will receive more than one half of one percent (0.5%) of the Developer's fee.
2. Developer shall also submit subcontractor commitment letters on subcontractor's letterhead, no more than one page each, from subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.
3. Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.

NAME AND ADDRESS OF SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/DBE/DVBE/OBE	**WHERE CERTIFIED

**For information only.* As appropriate, Developer shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

***For information only.* As appropriate, Developer shall indicate if Subcontractor is certified by:

City of San Diego
 State of California Department of Transportation
SUBCONSULTANTS LIST

CITY
 CALTRANS

INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:

4. Subconsultant's List shall include name and complete address of all Subconsultants who will receive more than one half of one percent (0.5%) of the Prime Consultant's fee.
5. Developer shall also submit Subconsultant commitment letters on Subconsultant's letterhead, no more than one page each, from Subconsultants listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.
6. Subconsultants shall be used for scope of work listed. No changes to this Subconsultants

NAME AND ADDRESS SUBCONSULTANTS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	*MBE/WBE/ DBE/DVBE/ OBE	**WHERE CERTIFIED

List will be allowed without prior written City approval.

**For information only.* As appropriate, Developer shall identify Subconsultants as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE

Other Business Enterprise

OBE

***For information only.* As appropriate, Developer shall indicate if Subconsultant is certified by:

City of San Diego

CITY

State of California Department of Transportation

CALTRANS

City of San Diego

CITY

State of California Department of Transportation

CALTRANS



THE CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING
 1010 SECOND AVENUE, SUITE 500
 SAN DIEGO, CA 92101
 PHONE (619) 533-4464 • FAX (619) 533-4474

WORK FORCE REPORT

The objective of the Equal Employment Opportunity is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship.

**NO OTHER FORMS WILL BE ACCEPTED
 CONTRACTOR IDENTIFICATION**

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: _____

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ - _____ Fax Number: () _____ - _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City _____ County _____ State _____ Zip _____

Telephone Number: () _____ - _____ Fax Number: () _____ - _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: () _____ - _____ Fax Number: () _____ - _____

For Firm's: San Diego Work Force and/or Managing Office Work Force

I, The undersigned representative of _____
 (Firm Name)

_____ (County) _____ (State)
 hereby certify that information provided herein is true and correct. This document was executed on this day of _____, 20____

 (Authorized Signature)

 (Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) African-American, Black
- (2) Latino, Hispanic, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) Caucasian
- (7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
	Executive, Administrative, Managerial													
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN:														
---------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

WORK FORCE REPORT – Page 3

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|--|
| (1) African-American, Black | (5) Filipino |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Carpenter														
Drywall Installer														
Electrician														
Elevator Installers														
Finishers, Concrete or Terrazzo														
Glaziers														
Helpers, Construction Trade														
Ironworkers, Structural Metal Workers														
Laborers														
Millwrights														
Masons, Bricklayers														
Tile setters														
Operators														
Painters														
Pipe fitter, Plumbers														
Plasterers														
Roofers														
Security, Protective Services														
Sheet Metal, Duct Installers														
Welders, Cutters														

TOTALS EACH COLUMN															
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES	
---------------------------	--

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED															
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

DEVELOPER MONTHLY INVOICING REPORT

Developer: _____

Contract Value To-Date: _____

Prime Contractor: _____

Current Reporting Month: _____ 200 _____

Submitted By: _____

Work Order No: _____

Project Title: _____

NOFA Project No: _____

Contact Person and Phone Number: _____

Original Contract Amt: _____

SUBCONTRACTORS/SUPPLIERS: List Names of all Subcontractors/Suppliers:	*DBE or DVBE	Anticipated Start Date	Date of Last Inv.	Dollar Amount Paid This Month	Total Dollar Amount Invoiced To Date	CUMULATIVE AMOUNTS Paid To Date		ORIGINAL AMOUNTS LISTED IN BID		Change Order Paid this Month
						Dollar Amount	%	Dollar Amount	%	
SUBCONTRACTORS:										
SUPPLIERS:										
TOTAL DBE Subcontractors/Suppliers										
TOTAL DVBE Subcontractors/Suppliers										
TOTAL NON-DBE/DVBE Subcontractors/suppliers										
TOTAL AMOUNT PAID TO PRIME										
TOTAL CHANGE ORDERS TO DATE										
Use this table for federal or federally funded projects:										
TOTAL MBE Subcontractors/Suppliers:										
TOTAL WBE Subcontractors/Suppliers:										

*On federal or federally funded projects indicate whether DBE is an MBE
 I certify under penalty of perjury that the foregoing information is true and correct: _____

MONTHLY EMPLOYMENT REPORT

Contractor: _____

Employer I.D. Number: _____

Project Title: _____

Work Order Number: _____

Reporting Period: From: _____ To: _____

NOFA Project No: _____

Employee List		Social Security #	Male or Female	1 Ethnic Symbol	Craft	2 Employee Source	Number of Hours Worked
Last Name	First Name, Middle Initial						
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							

1 Ethnic Symbol	
Black, African American	BL
Mexican American, Hispanic, Latino, Puerto Rican	MA
Native American, American Indian, Eskimo	NA
Asian, Pacific Islander	AP
Filipino	FI
Caucasian	CA
Other Ethnicity (not defined above)	OTH

2 Employee Source	
Apprenticeship Program	A
Employment Agency	E
Training Program	T
Union Hiring Hall	U
Other	O

I certify under penalty of perjury that the foregoing information is true and correct:

Authorized Signature

Printed Name / Title

Date Prepared

ATTACHMENT D
ESCROW AGREEMENT
[BEHIND THIS PAGE]

ESCROW AGREEMENT
(Silverado Ballroom Building)

This **ESCROW AGREEMENT** (this “**Agreement**”), entered into as of _____, 2014, by and among the **City of San Diego**, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body corporate and politic (the “**Lender**” or “**Agency**”), Dixieline Builders Fund Control, Inc., a California corporation (the “**Escrow Agent**”), not in its individual capacity but solely in its capacity as escrow agent, and Lotus Equity Group, LLC, a California limited liability company (the “**Borrower**”) (collectively, the “**Parties**”).

RECITALS

A. The Agency and Borrower entered into that certain Rehabilitation Loan Agreement dated as of _____, 2014 (referred to herein, along with its Exhibits and Attachments, as the “**RLA**”) under which the Agency has provided a loan to the Borrower in an amount not to exceed \$1,379,358 (the “**Loan**”) for the rehabilitation of certain improvements on that certain Property (as the term “Property” is defined in the RLA) located within the City Heights Redevelopment Project Area in the City of San Diego (the “**Project**”).

B. The Loan is evidenced by that certain Promissory Note, dated on or about the date hereof, made by Borrower to Agency (the “**Note**”) and secured by, or to be secured by, that certain Deed of Trust, Security Agreement, and Fixture Filing (with Assignment of Rents) (the “**Security Instruments**”), dated on or about the date hereof, and recorded concurrently herewith in the Official Records of San Diego County, encumbering Borrower’s ownership interests in the Property on which the Project will be completed, and will be advanced to Borrower pursuant to the terms of the RLA and this Agreement.

C. As a condition to the disbursement of the Loan, the Agency, Borrower, and a bonded funding control agent are required to enter into a funding control agreement under which the Loan will be funded.

D. Pursuant to such funding control agreement, the Agency will deposit \$1,379,358 of the Loan proceeds (the “**Loan Proceeds**”) with a funding control agent, and the Loan Proceeds will thereafter be funded to the Borrower pursuant to draw requests submitted to the funding control agent in accordance with the terms of the executed funding control agreement and subject to the terms set forth in the RLA.

E. The Agency and Borrower have determined that this Escrow Agreement is a mutually acceptable funding control agreement for purposes of the RLA, that the Escrow Agent (a bonded funding control agent) is acceptable for purposes of disbursing the Loan, and that this Escrow Agreement shall constitute the funding control agreement as required by the RLA and shall, along with the RLA, govern the funding of the Loan.

F. The Escrow Agent has agreed to act as Escrow Agent upon the terms and subject to the conditions set forth in this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Escrow Agent, Lender and Borrower agree as follows:

1. Incorporation of Recitals; Definitions; Interpretation; Reference Materials.

1.1. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

1.2. Interpretation. Words importing any gender include all genders. The singular form of any word used in this Agreement shall include the plural, and vice versa, unless the context otherwise requires. Words importing persons include natural persons, firms, associations, partnerships, corporations and public entities.

1.3. Reference Materials. Sections cited by number only refer to the respective sections of this Agreement so numbered. Reference to "this section" or "this subsection" shall refer to the particular section or subsection in which such reference appears. Any captions, titles or headings preceding the text of any section and any table of contents or index attached to this Agreement are solely for convenience of reference and shall not constitute part of this Agreement or affect its meaning, construction or effect.

1.4. Effective Date. The parties agree that this Agreement is dated as of the date first above written for convenience of the parties, and agree that it shall be effective on, from and after the date upon which the proceeds of the Loan are funded into the "Escrow Fund" (as that term is defined in Section 3.1 below) (the "**Funding Date**").

1.5. Definitions. Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings given to those terms in the RLA.

2. Escrow Payments. Concurrently with the execution of this Agreement, the Lender is depositing the Loan Proceeds with the Escrow Agent. The Escrow Agent acknowledges receipt of the Loan Proceeds and agrees to hold the proceeds in accordance with the terms and conditions of this Agreement.

3. Establishment of Escrow Fund.

3.1. The Escrow Agent has established, at the request of the parties hereto, a special and irrevocable escrow fund for the Project (the "**Escrow Fund**"). Such Escrow Fund is a special, segregated escrow fund maintained by the Escrow Agent separate and apart from the general banking assets and liabilities or other escrow funds of the Escrow Agent and held and administered by the Escrow Agent in accordance with the terms and provisions of this Agreement.

3.2. The Escrow Agent acknowledges that (i) it will hold the Escrow Fund pursuant to the terms of this Agreement; (ii) it will credit the Loan Proceeds and any investments

in the Escrow Fund on its own books and records to the Escrow Fund; and (iii) it will hold such Loan Proceeds for the credit of the Escrow Fund as Escrow Agent hereunder subject to the terms of this Agreement.

3.3. Until disbursed by Escrow Agent in accordance with this Agreement, all amounts held in the Escrow Fund are and shall be the property of the Lender. Any funds remaining in the Escrow Fund on December 31, 2016, shall be remitted by the Escrow Agent to the Lender.

3.4 Escrow Agent's obligations are limited to those obligations expressly imposed on Escrow Agent by the provisions of this Agreement and applicable federal, state and local laws. "*Ancillary Agreements*" means all agreements, understandings, and documents (including those identified in this Agreement) to which Escrow Agent is not an express party or which have not been signed by Escrow Agent. Escrow Agent is not required to review or take into consideration any Ancillary Agreements, and Escrow Agent shall have no obligations or liability of any kind in connection with Ancillary Agreements.

4. Investment of Moneys In Escrow Fund; Interest Earnings.

4.1. Funds deposited in the Escrow Fund may be invested and reinvested by and in the name of the Escrow Agent only in money market funds or in other investment funds identified by the Lender as permitted investments on Exhibit A hereto ("**Permitted Investments**"). All Permitted Investments shall be made by the Escrow Agent at the prior written direction of the Lender. The Escrow Agent or its affiliates may act as principal, agent, sponsor or depository with respect to any Permitted Investments. To insure that cash on hand is invested, if the Lender does not give the Escrow Agent written or timely instructions with respect to investments of funds, the Escrow Agent shall invest, to the extent that timing permits, cash balances only in the designated AAA-rated money market funds that qualify as a Permitted Investment. The Escrow Agent is specifically authorized to implement an automated cash investment system to assure that cash on hand is invested at all times.

4.2. The Escrow Agent agrees to keep accurate records regarding amounts on deposit in the Escrow Fund and any interest earned on or profits realized from amounts on deposit in the Escrow Fund and to provide the Lender with monthly statements indicating any and all amounts on deposit and the money market funds or other investments in which any of the Loan Proceeds are being held. Additionally, upon reasonable request of the Lender, Escrow Agent agrees to share such records with the Lender.

4.3. Any interest earnings and other investment proceeds from the funds on deposit in the Escrow Fund shall be deposited into the escrow account and disbursed by Escrow Agent directly to Lender promptly upon written request, or if no written request is made by Lender, on a quarterly basis, with the first such quarterly remittance occurring on or before five (5) days following the initial quarterly period after the deposit of the Funds into the Escrow Fund, and all subsequent quarterly remittances on or before five (5) days after the applicable quarterly periods.

4.4 The Lender agrees that, prior to the Escrow Agent investing Loan Proceeds into any Permitted Investments, the Lender shall consent to the terms of such a transfer of funds

by executing the form attached hereto as Exhibit A-1.

5. Application of Escrow Fund. Escrow Agent shall disburse the Loan Proceeds on deposit in the Escrow Fund in accordance with the Disbursement Requests made by the Lender using the form attached hereto as Exhibit B, signed by an authorized representative of Lender, consistent with the terms of Subsection 5.1 below. Withdrawals from the Escrow Fund under this Section 5 may be made by the Lender, to the extent such request is in accordance with this Section 5 upon written request in the form of Exhibit B delivered to the Escrow Agent specifying the amount being withdrawn and the person to whom the proceeds of the withdrawal are to be remitted. The Escrow Agent shall disburse amounts on deposit in the Escrow Fund solely in accordance with the directions of Lender given by persons at the time designated and authorized to act on behalf of the Lender, respectively, as indicated on Exhibit B-1 hereto, or in another written certificate furnished to the Escrow Agent by the Lender, as applicable, and containing the specimen signature of such person and signed on behalf of the Lender. Exhibits B and B-1 are hereby incorporated into this Agreement. Escrow Agent is authorized and instructed to conclusively presume, without investigation or inquiry, that (a) any Disbursement Request submitted to Escrow Agent by Lender fully complies with all requirements of the Agreement, (b) there are no conditions to making the disbursement other than conditions expressly set forth in the Disbursement Request, and (c) all signatures on a Disbursement Request submitted to Escrow Agent by Lender are authentic and made by the person identified in the Disbursement Request. Escrow Agent is not required to verify or authenticate any signatures. The provisions of Section 5.1 are matters between Lender and Borrower, and Escrow Agent shall not be bound by those provisions and shall have no obligations or liability in connection with those provisions.

5.1. Disbursements of the Loan shall be funded pursuant to draw requests submitted to the Escrow Agent in accordance with the terms of this Agreement and subject to the conditions set forth below:

(a) Agency shall, within twenty (20) business days after receipt of a draw request, determine the amount of the draw request to be approved, notify Borrower in writing (which may be via electronic email) and approve the draw request through the Escrow Agent;

(b) Any item in the draw request which is not specifically approved within twenty (20) business days shall be deemed disapproved. In the event Agency disapproves any portion of the amount requested by Borrower in a draw request, Agency shall promptly notify the Borrower of the disapproved amount and the reason therefor via electronic email and first class mail;

(c) In the event that any item shall be disapproved or deemed disapproved, Borrower and Agency shall meet to promptly and in good faith attempt to resolve the matter to their mutual satisfaction;

(d) In the event of any dispute, Agency shall approve the amount of the draw request not in dispute and fund any disputed amounts promptly upon resolution of the dispute;

(e) Agency shall have the right to inspect the Property. Inspection of

the Property shall be for the sole purpose of protecting the security of Agency and is not to be construed as a representation by Agency that there has been compliance with the plans approved for the Project or that the Project will be free of faulty materials or workmanship. Borrower may make or cause to be made such other independent inspections as Borrower may desire for its own protection;

(f) The Mayor of the City of San Diego or his or her designee (“**Mayor**”) shall have the right to condition any disbursement upon the receipt and approval of such documentation, evidence or information that the Mayor may reasonably request, including, but not limited to, estimated or final closing or settlement statements, vouchers, and invoices. In addition, the Mayor shall have the right in his or her sole discretion to make disbursements directly to third parties entitled to such payment; and

(g) The Mayor may draw upon such Successor Agency Loan funds as necessary to pay for any and all of the costs and expenses incurred or to be incurred in accordance with the provisions of Section 108 of the RLA. Borrower shall thereafter indemnify Agency in accordance with Section 108 for any such payments made by Agency, but Borrower shall be limited to use as a source of funds the applicable line item(s) in the Project Budget and the provisions related thereto.

6. Banker’s Lien; Set-Off. The Escrow Agent hereby acknowledges and agrees that it shall have no lien on or security interest in, or right of setoff in respect of, monies or investments in the Escrow Fund for the payment of fees and expenses or for any other purpose whatsoever.

7. Representations and Warranties

7.1 Representations and Warranties of the Lender. The Lender represents and warrants to the Escrow Agent that:

(a) It is a public entity organized and existing under the laws of the State of California;

(b) It has the power and authority to execute, deliver, and perform its obligations under, this Agreement; and

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of the Lender; this Agreement has been duly executed and delivered by it and is the valid and binding obligation of the Lender, and assuming the enforceability hereof against the other parties hereto, is enforceable against it in accordance with its terms.

7.2 Representations and Warranties of the Escrow Agent. The Escrow Agent represents and warrants to the Agency and the Borrower that:

(a) It is a corporation duly organized and existing under the laws of the State of California;

(b) It has the power and authority to execute, deliver, and perform its obligations under, this Agreement; and

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of the Escrow Agent; this Agreement has been duly executed and delivered by it and is the valid and binding obligation of the Escrow Agent, and assuming the enforceability hereof against the other parties hereto, is enforceable against it in accordance with its terms.

7.3 Representations and Warranties of the Borrower. The Borrower represents and warrants to the Escrow Agent and the Lender that:

(a) It is a California limited liability company duly organized and existing under the laws of the State of California;

(b) It has the power and authority to execute, deliver, and perform its obligations under, this Agreement; and

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of the Borrower; this Agreement has been duly executed and delivered by it and is the valid and binding obligation of the Borrower, and assuming the enforceability hereof against the other parties hereto, is enforceable against it in accordance with its terms.

8. Provisions Regarding the Escrow Agent.

8.1 Powers of the Escrow Agent.

(a) The Lender and Borrower hereby authorize the Escrow Agent to (i) take such action and to exercise such rights, powers and privileges under this Agreement as are specifically authorized to be exercised by the Escrow Agent by the terms of this Agreement, together with such rights, remedies, powers and privileges as are reasonably incidental thereto; (ii) execute any of its duties as Escrow Agent under this Agreement by or through agents or employees; and (iii) retain experts (including counsel) and act in reliance upon the advice of such experts concerning all matters pertaining to the agencies created by this Agreement and its duties under this Agreement, free from any liability for any action taken or omitted to be taken by it in good faith in accordance with the advice of such experts.

(b) The Escrow Agent agrees to perform only those duties specifically set forth in this Agreement and no implied duties or obligations shall be read into this Agreement. The Escrow Agent shall not, without the prior written approval of the Lender, consent to any departure by the Borrower from the terms of this Agreement, or amend, modify, supplement or terminate, or agree to any surrender of, this Agreement or the Escrow Fund; provided, however, that the Escrow Agent shall not be required to take any action which requires it to expend or advance its

own funds, exposes the Escrow Agent to personal liability or which is contrary to this Agreement, or any other agreement or instrument relating to the Escrow Fund or applicable law.

(c) Neither the Escrow Agent nor any of its directors, officers, employees or agents shall be liable for any action taken or omitted to be taken by it or them under this Agreement, or in connection with this Agreement, except for its or their own gross negligence or willful misconduct.

(d) Escrow Agent is authorized and instructed to conclusively presume, without investigation or inquiry, that any communication, instrument, paper or other document is genuine and correct and has been signed or sent by the proper person or persons. The Escrow Agent may accept deposits from, lend money to, and generally engage in any kind of business with, the Lender.

8.2 Successor Escrow Agent.

(a) The Escrow Agent may at any time resign and be discharged of the duties and obligations created by this Agreement by giving notice to the Lender and the Borrower by an instrument in writing addressed and delivered to the Lender and the Borrower. Such resignation shall take effect upon the date specified in such notice, unless a successor has not been appointed, in which event such resignation shall take place upon the appointment of a successor. The Escrow Agent may be removed at any time with or without cause by an instrument in writing duly executed by or on behalf of the Lender. If the parties shall not have appointed a successor Escrow Agent prior to the expiration of thirty (30) days following the effective date of the notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief, and any such resulting appointment shall be binding upon the parties.

(b) The Lender shall, concurrently with any such resignation or removal, appoint a successor Escrow Agent by a written instrument of substitution which complies with any requirements of applicable law. Upon the making and acceptance of such appointment, the execution and delivery by such successor Escrow Agent of a ratifying instrument pursuant to which such successor Escrow Agent agrees to assume the duties and obligations imposed on the Escrow Agent by the terms of this Agreement, and the delivery to such successor Escrow Agent of the Escrow Fund and documents and instruments then held by the retiring Escrow Agent, such successor Escrow Agent shall thereupon succeed to and become vested with all the estate, rights, powers, remedies, privileges, immunities, indemnities, duties and obligations by this Agreement granted to or conferred or imposed upon the predecessor Escrow Agent. No Escrow Agent shall be discharged from its duties or obligations under this Agreement until the Escrow Fund and documents and instruments then held by such Escrow Agent shall have been transferred or delivered to the successor Escrow Agent and until such retiring Escrow Agent shall have executed and delivered to the successor Escrow Agent appropriate instruments assigning the retiring Escrow Agent's security or other

interest in the Escrow Fund to the successor Escrow Agent. The retiring Escrow Agent shall not be required to make any representation or warranty in connection with any such transfer or assignment.

8.3 No Additional Waiver Implied by One Waiver. If a party shall fail to perform any obligation it is required to perform under this Agreement, and such failure is thereafter waived by any other party, such waiver shall be limited to the particular failure so waived and shall not be deemed to waive any other failure to perform as required under this Agreement.

8.4 Disputes. If there is any dispute between the Lender and the Borrower as to the disposition of the Escrow Funds, Escrow Agent shall continue to hold the Escrow Funds subject to the order of a court of competent jurisdiction as to the disposition thereof or, at the option of Escrow Agent at any time after Escrow Agent becomes aware of such dispute, Escrow Agent may deposit the Escrow Funds with the clerk of a court of competent jurisdiction and commence an action in the nature of an interpleader for a determination of the respective rights of the parties and, in such case, recover Escrow Agent's reasonable out of pocket costs and expenses, including a reasonable third party attorney's fee.

8.5 Fees. Borrower shall be responsible for the payment of Escrow Agent's normal cash management fees in connection with the establishment and administration of the Escrow Fund, which shall be billable to Borrower by Escrow Agent from time to time. Without limiting the foregoing (or any other provision of this Agreement and the exhibits hereto), Escrow Agent acknowledges and agrees that the Lender shall not have any responsibility for the payment of any fees to Escrow Agent hereunder. In no event shall any of the Loan Proceeds be used to pay any amounts due or payable to Escrow Agent.

9. Miscellaneous Provisions.

9.1 Cooperation. At any time and from time to time after the date of this Agreement, a party shall, at the request of another party, execute and deliver any instruments or documents, and shall take all such further actions as such party may reasonably request in order to consummate and effectuate the transactions contemplated by this Agreement.

9.2 Fee; Costs and Expenses; Indemnification. The Borrower shall: (a) pay to the Escrow Agent a set up fee of \$250.00; (b) reimburse the Escrow Agent, on demand, for all reasonable costs and expenses actually incurred by the Escrow Agent in connection with the administration and enforcement of this Agreement which costs and expenses are currently estimated to be \$4,243.00; and (c) indemnify and hold harmless the Escrow Agent from and against any and all losses, costs, claims, damages, penalties, causes of action, suits, judgments, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses actually incurred) actually incurred by the Escrow Agent in connection with this Agreement, unless such liability shall be finally adjudicated to be directly caused by the willful misconduct or gross negligence on the part of the Escrow Agent or its agents or employees. The obligations of the Borrower under this Section 9.2

shall survive the termination of this Agreement, the resignation or removal of the Escrow Agent, and the discharge of the other obligations of the Lender under this Agreement.

9.3 Termination. This Agreement shall terminate upon the earliest of the three following events: (i) disbursement pursuant to Section 5 above of all Loan Proceeds required to be disbursed pursuant to the terms of this Agreement including the conditions set forth in Section 5.1; (ii) termination by mutual written agreement of the Lender and Borrower; or (iii) termination of the RLA by the Lender in accordance with the terms of the RLA following the passage of any applicable notice and cure periods set forth in the RLA, as such date is designated in writing by the Lender to the Escrow Agent. Any funds remaining in the Escrow Fund upon termination of this Agreement pursuant to this Section 9.3 or on the date referenced in Section 3.3, shall be immediately disbursed directly to the Lender.

9.4 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties to this Agreement with respect to the subject matter of this Agreement. This Agreement may not be amended, changed, waived or modified except by a writing executed by all parties hereto.

9.5 Successors and Assigns. Subject to the terms and conditions of the RLA, this Agreement shall inure to the benefit of, and be enforceable by, the Lender, the Escrow Agent and the Borrower and their respective successors and permitted assigns, and nothing herein expressed or implied shall be construed to give any other person or entity any legal or equitable rights under this Agreement. No party to this Agreement shall assign any of the rights, interests or obligations under this Agreement without the prior written consent of the other parties to this Agreement, except that the Agency may assign its rights, interest or obligations under this Agreement to the City of San Diego without the prior written consent of the other Parties to this Agreement.

9.6 Notices. All written notices, certificates or other communications shall be sufficiently given and shall be deemed to be given on the date on which the same shall have been mailed by certified first class mail, postage prepaid, return receipt requested, commercial delivery service, overnight courier, telecopier or facsimile transmission, air or other courier, or hand delivery addressed as follows:

To the Lender:

City of San Diego, as redevelopment successor agency
Attn: Economic Development
1200 Third Avenue, Suite 1400
San Diego, California 92101

With a copy to:

San Diego City Attorney
Attn: Economic Development Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

To the Escrow Agent:

Dixieline Builders Fund Control, Inc.
Attn: Cathy Osberg
7700 Ronson Road, Suite 101
San Diego, California 92111

If to the Borrower:

Lotus Equity Group, LLC
Attn: David Chau
4029 Euclid Avenue
San Diego, California 92105

Any of such addresses may be changed at any time upon written notice of such change sent, as provided above in this Section 9.6, to the other party.

9.7 Books and Records. The Escrow Agent agrees to maintain its books and records relevant to the amounts on deposit held by it in the Escrow Fund from time to time pursuant hereto for at least ten years following termination of this Escrow Agreement in accordance with applicable law, corporate trust industry practice, and the terms and provisions hereof. The Escrow Agent agrees that the Lender may at any time upon reasonable advance request and during normal business hours examine or copy the books and records of the Escrow Fund and the Permitted Investments.

9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles except to the extent that Federal laws may prevail.

9.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effectuate the original intent of the transactions contemplated hereby.

9.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

9.11 Representation and Warranty. Each party hereby represents and warrants that: (i) this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (ii) the execution, delivery and performance of this Agreement by the parties hereto and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions of each party.

9.12 Attorneys' Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled."

[remainder of page intentionally left blank]

The Lender and the Escrow Agent have caused this Agreement to be signed, on the date first written above, by their respective officers duly authorized.

LENDER:

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body corporate and politic

Dated: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:
City Attorney, Jan Goldsmith

Michael Reid
Deputy City Attorney

ESCROW AGENT:

Dixieline Builders Fund Control, Inc.,
a California corporation, as Escrow Agent

Dated: _____

By: Cathy Osberg 4/9/2014

Cathy Osberg
President

[signatures continued on next page]

BORROWER HEREBY ACKNOWLEDGES AND AGREES TO FULLFILL ALL OBLIGATIONS ASCRIBED TO BORROWER IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THOSE OBLIGATIONS CONTAINED IN SECTION 8.5 AND SECTION 9.2 AS OF THE DATE FIRST SET FORTH ABOVE:

BORROWER:

Lotus Equity Group, LLC, a California limited liability company

Dated: 4/9/14

By: David Ching Chau
David Ching Chau
Operating Manager

EXHIBIT A

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

- a. Federal Securities.
 - (i) United States Treasury bills, bonds, and notes for which the full faith and credit of the United States are pledged for payment of principal and interest;
 - (ii) Direct obligations issued by the following agencies of the United States Government: the Federal Farm Credit Bank System, the Federal Home Loan Bank System, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Tennessee Valley Authority;
 - (iii) Mortgage backed securities (except stripped mortgage securities) issued by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association;
 - (iv) United States Treasury Obligations, State and Local Government Series; and
 - (v) Issues guaranteed as to timely payment of principal and interest by the full faith and credit of the Federal Deposit Insurance Corporation.
- b. Commercial Paper, payable in the United States of America and issued by corporations that are organized and operating in the United States with total assets in excess of \$500 million and having a rating in the “A” rating category or better for the issuer’s long-term debt as provided by Moody’s, Standard & Poor’s, or Fitch and “P-1”, “A-1”, “F1” or better rating for the issuer’s short-term debt as provided by Moody’s, Standard & Poor’s, or Fitch, respectively.
- c. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which have short-term obligations outstanding which are rated by two or more of Moody’s, Standard & Poor’s, and Fitch in its respective highest short-term rating categories, a long-term debt rating of not less than the “A” rating category by one or more of Moody’s, Standard & Poor’s, and Fitch, and a maturity no later than the final maturity of the Notes.
- d. Negotiable or non-negotiable certificates of deposit issued by a nationally- or state-chartered bank or a state or federal association (as defined by Section 5102 of the California Financial Code) or by a state-licensed branch of a foreign bank, in each case which has, or which is a subsidiary of a parent company which has, obligations outstanding having a rating in the “A” category or better from Moody’s, Standard & Poor’s, or Fitch.
- e. Any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association, or a

state-licensed branch of a foreign bank, having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by two or more of Moody's, Standard & Poor's, and Fitch in their respective three highest short-term rating categories or any government bond dealer reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clause (i) of this definition and having maturities equal to or less than 5 years from the date of delivery, which shall have a market value (valued at least monthly) not less than 102% of the principal amount of such investment.

f. Shares of beneficial interest issued by diversified management companies, known as money market funds which invest in securities described in (1) through and including (5) above, registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and whose fund has received the highest possible rating from Standard & Poor's and at least either Moody's or Fitch.

g. Investment agreements and guaranteed investment contracts with issuers having a long-term debt rating in the "AA" or "Aa2" categories, or better, by Standard & Poor's or Moody's, respectively.

h. Investments in the City's Pooled Investments Fund.

EXHIBIT A-1

Dixieline Builders Fund Control, Inc.

Department of Corporations File No. 963 2038

INSTRUCTIONS FOR TRANSFER OF FUNDS TO INTEREST-BEARING ACCOUNT AND
INDEMNIFICATION AGREEMENT

RE: Fund Control Account #

Lender: The undersigned Lender, as described in that certain Escrow Agreement dated _____ (the "Fund Control Agreement") to which these Instructions are attached.

Project: The rehabilitation of certain improvements on the Property as described in the Fund Control Agreement.

The undersigned Lender hereby authorizes and instructs Dixieline Builders Fund Control, Inc. (hereafter referred to as "Fund control") to place the funds held in the above fund control Account in an interest-bearing account, in the name of Fund control as Trustee for the above Fund Control Account at California Bank and Trust 4320 La Jolla Village Drive, Suite 130, San Diego, CA 92122.

Account # _____
Taxpayer ID# for tax reporting purposes # _____

These instructions do not in any way alter or change the terms for disbursing funds as set forth in the Fund Control Agreement for the above Account; specifically, you are to disburse funds (including any interest) only as provided in said Fund Control Agreement.

The undersigned agrees to hold harmless, indemnify and defend Fund Control from any and all claims, costs, expenses and liabilities, including attorney's fees, arising out of this instruction for the Fund Control Agreement for the above account.

The undersigned has been advised by Fund Control of possible restrictions and/or penalties for early withdrawal of funds from said interest-bearing account. Amounts over \$250,000.00 are not insured by FDIC. Fund Control shall not withdraw funds from the interest-bearing account except for deposit into its "trust" or "escrow" account. \$250.00 will be charged for account set up.

Dated : _____ Dated : _____

Signed: _____ Signed: _____
Owner: _____ Owner: _____

EXHIBIT B

(Form of Disbursement Request – Section 5)

To: _____, as Escrow Agent

Re: Escrow Agreement dated as of _____, 2014 by and among the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body corporate and politic (the "Agency"), _____ (the "Escrow Agent"), not in its individual capacity but solely in its capacity as escrow agent, and Lotus Equity Group, LLC, a California limited liability company (the "Borrower") (collectively, the "Parties") (the "Escrow Agreement")

Pursuant to the provisions of Section 5 of the Escrow Agreement, the Lender confirms its approval of the release of Escrow Funds in the amount of \$_____ as requested by Borrower through disbursement request dated _____ and the Lender hereby directs the Escrow Agent to transfer and release such funds from the Escrow Fund to the following account used by Borrower:

Bank: _____
ABA: _____
Account #: _____
Account Name: _____
Reference: _____
Contact: _____

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Escrow Agreement.

Dated: _____, 20__

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body corporate and politic

By: _____
Name: _____
Title: _____

EXHIBIT B-1

Certificate as to Authorized Signatures

Account # 18310

The signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the **Agency** (as defined above), and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit B-1 is attached, on behalf of the Agency.

Name / Title

Specimen Signature

William Fulton

Name




Signature

Planning, Neighborhoods and Economic
Development Department,
Director

Title

Mary Lewis

Name




Signature

Chief Financial Officer

Title

Ron Villa

Name



Signature

Deputy Chief Operating Officer,
Neighborhood Services

Title

Name

Signature

Title

OVERSIGHT BOARD RESOLUTION NUMBER OB-2014-32

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE REHABILITATION LOAN AGREEMENT WITH LOTUS EQUITY GROUP, LLC AND THE ASSOCIATED ESCROW AGREEMENT WITH LOTUS EQUITY GROUP, LLC AND DIXIELINE BUILDERS FUND CONTROL, INC.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26) enacted on June 28, 2011, the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency's approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming six-month period and identifies the funding sources that will be used to make such payments; and

WHEREAS, the Oversight Board's adopted resolution approving ROPS 13-14B included language that authorized the Successor Agency to enter into contracts, and amendments thereto,

for the expenditure of excess non-housing bond proceeds that are budgeted in the approved ROPS 13-14B (Authorization for Bond-Funded Contracts), as permitted by California Health and Safety Code (HSC) section 34191.4(c), upon the Successor Agency's receipt of a finding of completion pursuant to HSC section 34179.7; and

WHEREAS, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) rejecting the Authorization for Bond-Funded Contracts in connection with expenditures during the ROPS 13-14B time period (January through June 2014); and

WHEREAS, the November 2013 Letter effectively requires the Oversight Board and the DOF to approve all new contracts that will involve the Successor Agency's expenditure of excess non-housing bond proceeds in the ROPS 13-14B time period and beyond; and

WHEREAS, one such new contract is the Rehabilitation Loan Agreement (Loan Agreement) between the Successor Agency and Lotus Equity Group, LLC (Owner), which involves the expenditure of ROPS-approved non-housing excess bond proceeds from the City Heights Redevelopment Project Area (Project Area) in an amount not to exceed \$1,379,358 to provide a forgivable loan to fund the historic rehabilitation and renovation of the Silverado Ballroom Building (Project), located within the Project Area; and

WHEREAS, the Successor Agency, or Civic San Diego as the contracting agent on its behalf, will pay for the Project services performed by the Owner under the Loan Agreement utilizing the funding sources shown in line item 564 of ROPS 13-14B covering the time period of January through June 2014; and

WHEREAS, the Loan Agreement provides for the Successor Agency's disbursement of all loan funds during the ROPS 13-14B time period into an escrow account to be administered by a bonded funding control agent (Escrow Agent), pursuant to an escrow agreement (Escrow Agreement) among the Successor Agency, the Escrow Agent, and the Owner; and

WHEREAS, the Successor Agency and the Owner have mutually selected Dixieline Builders Fund Control, Inc. to serve as the Escrow Agent; and

WHEREAS, to the extent that the Successor Agency's disbursement of loan funds into the escrow account occurs during the ROPS 13-14B time period, the Successor Agency will account for this disbursement as an expenditure of all such loan funds for purposes of the prior period adjustment form contained in ROPS 14-15B; and

WHEREAS, the Successor Agency will authorize the disbursement of loan funds from the Escrow Agent to the Owner in increments during multiple ROPS time periods to reimburse the Owner for substantiated Project expenses, based upon Successor Agency staff's review and approval of draw expense reports submitted by the Owner; and

WHEREAS, the up-front funding mechanism created by the Escrow Agreement is necessary to provide the Owner with reasonable certainty, before the Owner commences construction of the Project, that the entire amount of loan funds will be available to finance the construction of the Project and that no work stoppages will occur due to lack of available loan funds during the construction phase.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board, as follows:

1. The Loan Agreement, a copy of which is attached as Attachment C to the Staff Report dated April 10, 2014 accompanying this item (Staff Report), is hereby approved.
2. The Escrow Agreement, a copy of which is attached as Attachment D to the Staff Report, is hereby approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on April ____, 2014.

Chair, Oversight Board

ITEM 21

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: April 17, 2014

SUBJECT: Lyceum Theatre Capital Improvement Project (79 Horton Plaza) – Authorization to Bid and Award Construction Contract and to Enter into Other Construction-Support Contracts Related to the Project

CONTACT/PHONE NUMBER: Daniel Kay, 619-533-7159

STAFF RECOMMENDATION: That the Oversight Board adopts a resolution:

- Making a finding that authorizing the Successor Agency or its agent, Civic San Diego (“CivicSD”) to advertise and receive bids and award a contract to the lowest responsible bidder (“Construction Contract Procurement Process”) for the renovation of public spaces at the Lyceum Theatre (“Project”), subject to an established not-to-exceed amount of \$3,531,000 (“Maximum Funding Amount”) is in the best interests of the local taxing entities in accordance with California Health and Safety Code (HSC) Section 34181(e);
- Making a finding that the Construction Contract Procurement Process is necessary for the administration or operation of the Successor Agency in accordance with HSC Section 34171(d)(1)(F);
- Authorizing the Successor Agency or its agent, CivicSD, to engage in the Construction Contract Procurement Process in order to fulfill the obligations under the Sublease Agreement using Recognized Obligation Payment Schedule (ROPS) Project Funds, provided responsive bids from a responsible contractor allow the Project to be delivered within the Maximum Funding Amount;
- Making a finding that authorizing the modification of the existing contract with Westlake Reed Leskosky (WRL) to amend the scope of services to include construction administration support services for the Project (“Construction Administration Support Services Contract Process”), subject to the Maximum Funding Amount, is in the best interests of the local taxing entities in accordance with HSC Section 34181(e);
- Making a finding that the Construction Administration Support Services Contract Process is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F);
- Authorizing the Successor Agency or its agent, CivicSD, to engage in the Construction Administration Support Services Contract Process in order to fulfill the obligations under the Sublease Agreement using ROPS Project Funds, subject to the Maximum Funding Amount;

- Making a finding that authorizing the Successor Agency or its agent, CivicSD to select (through a qualifications-based selection process), negotiate and enter into an agreement with a consultant for construction management and inspection services for the Project (“Construction Management and Inspection Services Contract Process”), subject to the Maximum Funding Amount, is in the best interests of the local taxing entities in accordance with HSC Section 34181(e);
- Making a finding that the Construction Management and Inspection Services Contract Process is necessary for the administration or operation of the Successor Agency in accordance with HSC Section 34171(d)(1)(F); and
- Authorizing the Successor Agency or its agent, CivicSD, to engage in the Construction Management and Inspection Services Contract Process in order to fulfill the obligations under the Sublease Agreement using ROPS Project Funds subject to the Maximum Funding Amount

DESCRIPTIVE SUMMARY OF ITEM: There are three contracts contemplated under this Project. Under the Construction Contract (“Construction Contract”) between CivicSD, acting as the Successor Agency’s contracting agent, and the selected contractor (“Contractor”), the Contractor will construct the Project in accordance with the agreed-upon scope of services. Under the Amendment to the Agreement for Architectural and Engineering Design Services (“Construction Administration Support Services Contract”) between CivicSD, acting as the Successor Agency’s contracting agent, and WRL, WRL will provide construction administration support services relating to the Project. Under the Professional Services Agreement (“Construction Management and Inspection Services Contract”) between CivicSD, acting as the Successor Agency’s contracting agent, and the selected consultant (“Consultant”), the Consultant will provide project management and inspection services (CMIS) relating to the Project.

BACKGROUND: The purpose of the staff report is to explain the need for the above-requested authorizations and for the resulting execution of the Construction Contract, the Construction Administration Support Services Contract, and the Construction Management and Inspection Services Contract (collectively “Agreements”), as the basis for the expenditure of Successor Agency funds for substantiated work to be performed by Contractor, WRL and Consultant (collectively “Service Providers”) in accordance with the Agreements. As discussed below, these actions will enable the Successor Agency to fulfill an underlying enforceable obligation and thereby fulfill its statutory responsibilities, notwithstanding certain statutory prohibitions that generally prevent the execution of new agreements or amendments thereto as of June 28, 2011.

Pursuant to Assembly Bill x1 26 (“AB 26”) and Assembly Bill 1484, the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“Former RDA”) dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former RDA’s assets, rights, and obligations under the California Community Redevelopment Law. In addition, CivicSD, formerly Centre City Development Corporation (CCDC), has replaced CCDC as the Successor Agency’s representative for, among other duties, many aspects of the winding down of redevelopment in the City of San Diego.

Section 34177.3(a) of the California Health and Safety Code states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011.” However, Section 34177.3(b) permits successor agencies to “create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.” Section 34171(d)(1)(E) and (F) defines “enforceable obligation” to include, “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy” and “contracts or agreements for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements concerning litigation expenses related to assets prior to disposition, and agreements to purchase or rent office space, equipment and supplies, and pay-related expenses” Finally, Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

The Oversight Board’s adopted resolution approving prior ROPS included language that authorized the Successor Agency to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS (“Authorization for Services Contracts”), consistent with Sections 34171(d)(1) and 34177.3(b). Although the Department of Finance (DOF) had approved the Oversight Board’s Authorization for Services Contracts with respect to prior ROPS time periods through ROPS 13-14A, the DOF issued a letter dated November 8, 2013 (“November 2013 Letter”) rejecting the Authorization for Services Contracts for the first time in connection with expenditures during the ROPS 13-14B time period (January through June 2014). The November 2013 Letter effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond. To comply with the November 2013 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, various new contracts and new amendments to existing contracts that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond.

On April 1, 2014, the DOF issued a letter denying the approval of various Successor Agency contract amendments for the provision of services on the following grounds:

[A]ny services provided wherein the underlying obligation does not meet the definition of an enforceable obligation pursuant to HSC Section 34171(d) (1) will not be authorized and will not be eligible for funding... HSC section 34171 (d) (1) (F) states that agreements necessary for the administration or operation of the Agency, such as the cost of maintaining assets prior to disposition, are enforceable obligations. However, HSC section 34181 (e) authorizes an OB to approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best

interests of the taxing entities. These amendments, which increase the compensation and/or scope, do not include language substantiating the changes made. Thus it is not clear whether the amendments are in the best interests of the taxing entities or that the increases in compensation and/or scope are necessary for the administration or operation of the Agency.

Thus, the DOF interpreted the Dissolution Laws to mean that the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC Section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F).

In light of the DOF's April 1, 2014 letter, the Successor Agency's staff report and resolution addressing the Agreements sets forth the basis upon which such findings can be made and contains the language requested by the DOF for the approval of the Amendments.

DISCUSSION: The Agreements should be permitted under Sections 34171, 34177(c) and 34177.3(b) as they will allow the Successor Agency, through CivicSD, to utilize Service Providers to fulfill an enforceable obligation that existed prior to June 28, 2011. The enforceable obligation was created through a Lease Agreement ("Lease") between the Former RDA and the owner of the Lyceum, Horton Plaza Associates ("HPA"), entered into on June 21, 1985, which defined in Article 17, Subsection 17.1, the Former RDA's obligations as follows:

"[Former RDA] agrees at all times, from and after substantial completion of the [Lyceum], at its own expense, to repair, replace and maintain in good and tenantable condition the [Lyceum] and every part thereof, and those additional areas which exclusively serve the [Lyceum]...including, without limitation, the utility meters, pipes and conduits, all fixtures, air conditioning equipment and heating equipment, if any, exclusively serving the [Lyceum] and other equipment therein, including any equipment installed by [Former RDA] which is part of said system, the storefront or storefronts, all signs, locks and closing devices, and all window sash, casement or frames, door and door frames, floor coverings, including carpeting, terrazzo or other special flooring, and all such items of repair maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof."

The obligation of the Former RDA is further described in the Master Sublease Agreement ("Sublease") entered into by the Former RDA and Horton Plaza Theatres Foundation (HPTF) on July 3, 1985, which in Section XIII, narrowed the definition of the Former RDA's obligations as follows.

“[HPTF] agrees to comply, at its expense, with all repair, replacement and maintenance obligations of Article 17 of the Lease, and otherwise to be subject to the terms thereof, except that [Former RDA] agrees to replace, at its expense, any personal property and fixtures originally installed by [Former RDA] on the premises which need replacement due to ordinary wear and tear or obsolescence.”

The Project, which consists of Americans with Disabilities Act (“ADA”) upgrades and the replacement of fixtures and personal property within the facility’s two lobbies and four restrooms, as well as the replacement of mechanical, electrical, lighting and backstage-monitoring systems, proposes to solely replace personal property and fixtures which have reached the end of their useful lives and need replacement due to ordinary wear and tear and/or obsolescence, and were originally installed by the Former RDA.

As mentioned above, the Project proposes three contracts – the Construction Contract, the Construction Administration Support Services Contract, and the Construction Management and Inspection Services Contract. At this time, not-to-exceed amounts have not been assigned to these individual contracts; however, the execution of each of these individual contracts is contingent on the Successor Agency being able to deliver the Project within the established not-to-exceed amount of \$3,531,000, which was determined by a cost estimate from Nasland Engineering on September 4, 2013. This means the Successor Agency, or its agent CivicSD, is only authorized to enter into the above-mentioned contracts with regard to the Project, to the extent that the following items are within an aggregate cost not exceeding \$3,531,000: 1) a responsive bid from a responsible contractor for the construction; 2) a proposal for construction administration support services, and, 3) a proposal for construction management and inspection services.

Findings Regarding Contracting Process: The contracting processes for the three proposed contracts – the Construction Contract Procurement Process, the Construction Administration Support Services Contract Process, and the Construction Management and Inspection Services Contract Process will benefit the local taxing entities and will be in their best interests, in that the Successor Agency’s completion of each contracting process will ensure that the Successor Agency fulfills its enforceable obligation related to the replacement of fixtures and equipment at the Site in accordance with the Sublease Agreement and does not commit any breach or default under the Sublease Agreement that could expose the Successor Agency to the payment of any damages or claims. The contracting processes also will benefit the taxing entities and will be in their best interests, in that, among other things, the contracting processes will enable the Successor Agency to complete the Project within the Maximum Funding Amount and will facilitate the renovation of the Site, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the improvement of a public amenity benefiting the local community.

Moreover, the Successor Agency, Oversight Board, and DOF have approved line items 205 and 299 in ROPS 13-14B and 14-15A, which cumulatively provide funding for the Project.

CONCLUSION: Based on the foregoing, the Successor Agency respectfully requests that the Oversight Board approve the contracting processes with the Service Providers, as further described in the accompanying resolution.

Respectfully submitted,



Daniel Kay
Senior Project Manager, Civic San Diego

Concurred by:



Andrew T. Phillips
Interim President, Civic San Diego

OVERSIGHT BOARD RESOLUTION NUMBER OB-2014-33

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING CERTAIN CONTRACTS AND EXPENDITURES RELATED TO THE RENOVATION OF PUBLIC SPACES AT THE LYCEUM THEATRE WITHIN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, in 1986, the Former RDA and the Horton Plaza Theatres Foundation (HPTF) executed a Master Sublease Agreement (Sublease Agreement) with respect to the Lyceum Theatre (Site) within the Horton Plaza Redevelopment Project Area; and

WHEREAS, as of February 1, 2012, the Successor Agency has assumed the Former RDA's rights and obligations under the Sublease Agreement by operation of AB 26; and

WHEREAS, among other things, the Sublease Agreement requires HPTF to operate and manage a theatre at the Site; and

WHEREAS, Section XIII of the Sublease Agreement obligates the Successor Agency to replace fixtures and equipment for a theatre at the Site that were originally installed by the

Former RDA and are in need of replacement from time to time due to ordinary wear and tear or obsolescence; and

WHEREAS, in order to comply with the Sublease Agreement, Civic San Diego (CivicSD), acting on behalf of the Successor Agency, engaged the services of Nasland Engineering to procure a cost estimate for necessary improvements at the Site in need of repair or replacement due to ordinary wear and tear and obsolescence, including: the renovation of two lobbies and four restrooms, the replacement of mechanical and electrical systems, lighting, the back stage monitoring system and installation of new carpet (Project); and

WHEREAS, based on the current design of the Project, the total costs for construction and construction-support services related to the Project are estimated not to exceed \$3,531,000 (Maximum Funding Amount); and

WHEREAS, in order to complete the Project, the Successor Agency or its agent, CivicSD is required to (1) advertise and receive bids and award a contract for the Project to the lowest responsible bidder for construction (Construction Contract Procurement Process), (2) modify the existing contract with Westlake Reed Leskosky to amend the scope of services to include construction administration support services for the Project (Construction Administration Support Services Contract Process), and (3) select (through a qualifications-based selection process), negotiate and enter into an agreement with a consultant for construction management and inspection services for the Project (Construction Management and Inspection Services Contract Process); and

WHEREAS, the Successor Agency, the Oversight Board, and the California Department of Finance, have approved line items 205 and 299 in the Recognized Obligation Payment Schedules that cumulatively provide funding for the Project.

WHEREAS, California Health and Safety Code (HSC) section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and HSC section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, the Successor Agency's completion of the Construction Contract Procurement Process, the Construction Administration Support Services Contract Process, and the Construction Management and Inspection Services Contract Process will ensure the Successor Agency's fulfillment of the enforceable obligation established by the Sublease Agreement and the Successor Agency's compliance with HSC sections 34171(d)(1)(F), 34177(a), 34177(c), and 34177.3(b); and

WHEREAS, the DOF issued a letter dated April 1, 2014, interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F); and

WHEREAS, the Construction Contract Procurement Process will benefit the local taxing entities and will be in their best interests, in that the Successor Agency's completion of the Construction Contract Procurement Process will ensure that the Successor Agency fulfills its enforceable obligation related to the replacement of fixtures and equipment at the Site in accordance with the Sublease Agreement and does not commit any breach or default under the Sublease Agreement that could expose the Successor Agency to the payment of any damages or claims; and

WHEREAS, the Construction Contract Procurement Process also will benefit the taxing entities and will be in their best interests, in that the Construction Contract Procurement Process will enable the Successor Agency to complete the Project within the Maximum Funding Amount and will facilitate the renovation of the Site, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the improvement of a public amenity benefiting the local community; and

WHEREAS, the Construction Contract Procurement Process will not involve an increase in compensation or scope of services, in that the Construction Contract Procurement Process implements the Successor Agency's renovation obligations for the Site in accordance with the Sublease Agreement; and

WHEREAS, in any event, the Construction Contract Procurement Process is necessary for the operation or administration of the Successor Agency because the Construction Contract Procurement Process will allow the Successor Agency to advertise and receive bids and award a construction contract for the Project to the lowest responsible bidder, thereby enabling the Successor Agency to fulfill its enforceable obligation in compliance with the Sublease Agreement; and

WHEREAS, the Construction Administration Support Services Contract Process will benefit the local taxing entities and will be in their best interests, in that it will enable the Successor Agency to provide necessary construction administration support services associated with the Project to ensure that the Successor Agency fulfills its enforceable obligation at the Site in accordance with the Sublease Agreement and does not commit any breach or default under the Sublease Agreement that could expose the Successor Agency to the payment of any damages or claims; and

WHEREAS, the Construction Administration Support Services Contract Process also will benefit the taxing entities and will be in their best interests, in that the Construction Administration Support Services Contract Process will enable the Successor Agency to complete the Project within the Maximum Funding Amount and will facilitate the renovation of the Site, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the improvement of a public amenity benefiting the local community; and

WHEREAS, the Construction Administration Support Services Contract Process will involve an increase in compensation or scope of services in that it contemplates the modification of an existing agreement between CivicSD and Westlake Reed Leskosky in order to allow for the Successor Agency to obtain the construction administration support services necessary for the Project; and

WHEREAS, the Construction Administration Support Services Contract Process is necessary for the operation or administration of the Successor Agency because it will enable the Successor Agency to obtain necessary construction administration support services for the Project, thereby enabling the Successor Agency to fulfill its enforceable obligation in compliance with the Sublease Agreement; and

WHEREAS, the Construction Management and Inspection Services Contract Process will benefit the local taxing entities and will be in their best interests, in that it will enable the Successor Agency to provide necessary construction management and inspection services associated with the Project to ensure that the Successor Agency fulfills its enforceable obligation at the Site in accordance with the Sublease Agreement and does not commit any breach or default under the Sublease Agreement that could expose the Successor Agency to the payment of any damages or claims; and

WHEREAS, the Construction Management and Inspection Services Contract Process also will benefit the taxing entities and will be in their best interests, in that the Construction Management and Inspection Services Contract Process will enable the Successor Agency to complete the Project within the Maximum Funding Amount and will facilitate the renovation of the Site, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the improvement of a public amenity benefiting the local community; and

WHEREAS, the Construction Management and Inspection Services Contract Process will not involve an increase in compensation or scope of services, in that the Construction Management and Inspection Services Contract Process will allow the Successor Agency to perform the necessary construction management and inspection services associated with the Project to ensure that the Successor Agency fulfills its enforceable obligation at the Site in accordance with the Sublease Agreement; and

WHEREAS, the Construction Management and Inspection Services Contract Process is necessary for the operation or administration of the Successor Agency because it will enable the Successor Agency to obtain necessary construction management and inspection services for the Project, thereby enabling the Successor Agency to fulfill its enforceable obligations in compliance with the Sublease Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Board finds, in accordance with HSC section 34181(e), that the Construction Contract Procurement Process is in the best interests of the local taxing entities.
2. The Board finds, in accordance with HSC section 34171(d)(1)(F), that the Construction Contract Procurement Process is necessary for the administration or operation of the Successor Agency.

3. The Successor Agency or its agent, CivicSD, is authorized to engage in the Construction Contract Procurement Process in order to fulfill the obligations under the Sublease Agreement using ROPS Project Funds, provided responsive bids from a responsible contractor allow the Project to be delivered within the Maximum Funding Amount.

4. The Board finds, in accordance with HSC section 34181(e), that the Construction Administration Support Services Contract Process is in the best interests of the local taxing entities.

5. The Board finds, in accordance with HSC section 34171(d)(1)(F), that the provision of services under the Construction Administration Support Services Contract Process is necessary for the administration or operation of the Successor Agency.

6. The Successor Agency or its agent, CivicSD, is authorized to engage in the Construction Administration Support Services Contract Process, subject to the Maximum Funding Amount.

7. The Board finds, in accordance with HSC section 34181(e), that the Construction Management and Inspection Services Contract Process is in the best interests of the local taxing entities.

8. The Board finds, in accordance with HSC section 34171(d)(1)(F), that the provision of services under the Construction Management and Inspection Services Contract Process is necessary for the administration or operation of the Successor Agency.

9. The Successor Agency or its agent, CivicSD, is authorized to engage in the Construction Management and Inspection Services Contract Process, subject to the Maximum Funding Amount.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on April ____, 2014.

Chair, Oversight Board

ITEM 22

**OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY**

DATE ISSUED: April 17, 2014

SUBJECT: Adoption of a Resolution Approving the Park Improvements Construction Contract with Pinnacle Bayside Development US L.P. for the construction of the public park at the 15th & Island Project, and Approving the Professional Services Agreement with Harris & Associates, Inc. for construction monitoring services for the public park at the 15th & Island Project.

CONTACT/PHONE NUMBER: John W. Collum, 619-533-7124

STAFF RECOMMENDATION: That the Oversight Board approves the Park Improvements Construction Contract with Pinnacle Bayside Development US L.P. and the Professional Services Agreement with Harris & Associates, Inc. and makes certain findings to the effect that the provision of services under these agreements is in the best interests of the local taxing entities and that the agreements are necessary for the administration or operation of the Successor Agency.

DESCRIPTIVE SUMMARY OF ITEM: To fulfill an enforceable obligation created long before the enactment of the dissolution laws, the Successor Agency must enter into the Park Improvements Construction Contract (“Construction Contract”) with Pinnacle Bayside Development US L.P. (“Developer”) for Developer’s construction of the public park (“Project”) as part of its 15th & Island residential mixed-use development. Likewise, Civic San Diego (“CivicSD”), acting as the Successor Agency’s contracting agent, must enter into the Professional Services Agreement (“Consultant Agreement”) with Harris & Associates, Inc. (“Consultant”) for Consultant’s provision of construction monitoring services on the Successor Agency’s behalf relating to the Project.

BACKGROUND: The purpose of this staff report is to explain the need for execution of the Construction Contract and Consultant Agreement (attached to this report as Attachments A and B) as the basis for the expenditure of Successor Agency funds for substantiated work performed by Developer and Consultant in accordance with the Construction Contract and Consultant Agreement. As discussed below, these actions will enable the Successor Agency to fulfill an underlying enforceable obligation and thereby fulfill its statutory responsibilities, notwithstanding certain statutory prohibitions that generally prevent the execution of new agreements or amendments thereto as of June 28, 2011.

Pursuant to Assembly Bill x1 26 (“AB 26”) and Assembly Bill 1484, the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“Former RDA”) dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former RDA’s assets, rights, and obligations under the California Community Redevelopment Law. In addition, CivicSD, formerly Centre City Development Corporation (CCDC), has replaced CCDC as the Successor Agency’s representative for, among other duties, many aspects of the winding down of redevelopment in the City of San Diego (“City”).

Section 34177.3(a) of California Health and Safety Code (HSC) states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with HSC Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011.” However, HSC Section 34177.3(b) permits successor agencies to “create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.” HSC Section 34171(d)(1)(E) and (F) defines “enforceable obligation” to include, “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy” and “[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements concerning litigation expenses related to assets prior to disposition, and agreements to purchase or rent office space, equipment and supplies, and pay-related expenses” Finally, HSC Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

The Oversight Board’s adopted resolution approving prior ROPS included language that authorized the Successor Agency to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS (“Authorization for Services Contracts”), consistent with HSC Sections 34171(d)(1) and 34177.3(b). Although the Department of Finance (DOF) had approved the Oversight Board’s Authorization for Services Contracts with respect to prior ROPS time periods through ROPS 13-14A, the DOF issued a letter dated November 8, 2013 (“November 2013 Letter”) rejecting the Authorization for Services Contracts for the first time in connection with expenditures during the ROPS 13-14B time period (January through June 2014). The November 2013 Letter effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond. To comply with the November 2013 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, various new contracts and new amendments to existing contracts that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond.

In a letter dated April 1, 2014 (“April 2014 Letter”), the DOF interpreted the dissolution laws to mean the Oversight Board must find that any post-AB 26 contract for the provision of services is in the best interests of the local taxing entities in accordance with HSC Section 34181(e) or that the contract is necessary for the administration or operation of the Successor Agency in accordance with HSC Section 34171(d)(1)(F). The accompanying resolution presented to the Oversight Board in its consideration of this item includes information to substantiate findings for the Construction Contract and Consultant Agreement in both of the areas noted within the April 2014 Letter.

DISCUSSION: The Construction Contract and Consultant Agreement should be permitted under HSC sections 34171, 34177(c) and 34177.3(b) as they will allow the Successor Agency to utilize the Developer and Consultant (through CivicSD) to fulfill an enforceable obligation. The Former RDA and Pinnacle International Development, Inc., a California corporation (Developer’s predecessor-in-interest), entered into an Owner Participation Agreement dated October 12, 2005 (the “Original OPA”), as amended by that certain First Implementation Agreement dated August 7, 2006 (the “First Implementation Agreement”), that certain Second Implementation Agreement dated May 2, 2007 (the “Second Implementation Agreement”), and that certain Third Implementation Agreement dated January 3, 2011 (the “Third Implementation Agreement”). The Original OPA, as amended by the First Implementation Agreement, the Second Implementation Agreement, and the Third Implementation Agreement, shall be referred to herein as the “OPA.”

The OPA provides for a neighborhood public park and a private development on the 120,000 square-foot “super block” bounded by Island Avenue and 14th, 15th, and J streets, in the City of San Diego, State of California, which implements the “neighborhood center” concept in a location designated in the Downtown Community Plan. The private development to be constructed consists of a mixed-used, high-density development, east of the public park, and a commercial structure including joint-use public restrooms (to be used by both patrons of the park and the commercial structure tenant) and a patio at the corner of 14th Street and Island Avenue. The public park to be constructed would lie within a perpetual park easement, as well as over a portion of the private development’s subterranean parking garage to be constructed as part the first phase of the Developer’s mixed-use residential project.

Among other terms, the OPA obligated the Former RDA to sell a parcel it owned within the super block to Pinnacle for \$5,045,000. The Developer would design and construct the public park, while the Former RDA is obligated to pay (via reimbursement) for the design and construction of the park. Further, the Developer agreed, along with its successors, to maintain the completed public park and joint-use public restrooms in perpetuity through a Park Maintenance Agreement with the City, in exchange for receiving a credit (refund) towards the

Former RDA's parcel purchase price of the capitalized value of the costs to perform the park maintenance. Through the OPA's Third Implementation Agreement (TIA), the parties agreed that the park's baseline budget for design, construction and maintenance credit would fit within the total amount of the Pinnacle's \$5,045,000 purchase price of the Former RDA parcel as follows: Design/Permits & Fees – \$565,200; Construction – \$2,842,295; and Capitalized Maintenance Credit – \$1,637,505.

Construction Contract: The OPA required that the Former RDA's reimbursement for design of the park improvements be in accordance with a "Park Improvement Design Contract" ("Design Contract") between the Former RDA and Developer. The parties entered into the Design Contract in 2006 and a First Amendment in 2008. The OPA's Section 307 and its Method of Financing (Attachment No. 2) states that the Former RDA's reimbursement for construction of the public park shall be in accordance with a "Park Improvement Construction Contract" ("Construction Contract") to be entered into between the Former RDA (now Successor Agency) and the Developer, including a detailed list of certain terms that shall be included within the Construction Contract. The Developer has completed construction of the subterranean parking garage and is preparing the park site for start of park construction. The Developer anticipates starting construction of the park improvements that will be reimbursed by the Former RDA by August 2014. The parties have now agreed on a final Construction Contract that is attached to this report (Attachment A), and it will need to be executed in advance of the Developer starting construction of the park improvements. The Construction Contract includes \$2,992,495 in eligible expenses ("Eligible Expenses") for the Developer to be paid for construction of the park improvements and associated costs for permits, fees and construction administration. It also includes establishment of an escrow fund (discussed in more detail later in this report) that would be utilized to hold the funds needed to cover the Successor Agency's payment of Eligible Expenses and the Capitalized Maintenance Credit.

In regard to HSC Section 34181(e), the Construction Contract will benefit the local taxing entities and will be in their best interests, in that the Successor Agency's execution and performance of the Construction Contract will ensure that the Successor Agency fulfills its enforceable obligation related to funding of the park improvements in accordance with the OPA and does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims. Further, the Construction Contract will benefit the taxing entities and will be in their best interests as it will facilitate construction of the park improvements, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the creation of a new public amenity benefiting the local community on a previously-underutilized site.

In regard to HSC Section 34171(d)(1)(F), the Construction Contract will not involve an increase in compensation or scope of services, in that the Construction Contract implements the Successor Agency's funding obligation for the park improvements in accordance with the OPA. In any event, the Construction Contract is necessary for the operation or administration of the Successor Agency because the Construction Contract will provide essential funding for construction-related services and long-term maintenance expenses for the park improvements, thereby enabling the Successor Agency to fulfill its enforceable obligation for these funding mechanisms in compliance with the OPA.

The Developer's proceeds from the purchase of the Former RDA parcel on the super block were intended to be utilized by the Former RDA to fully cover the costs of the park design, construction and the Capitalized Maintenance Credit. In late 2013, the DOF approved the Successor Agency's request for \$2,021,983 in the Recognized Obligation Payment Schedule (ROPS) 13-14B time period (January –June 2014) utilizing "Other Funds" in line item #171. The Other Funds category sought to reflect that the Successor Agency held, and would expend, the Developer's proceeds from its earlier acquisition of the Former RDA parcel. However, due to an inadvertent omission in Successor Agency accounting records to classify the Developer's proceeds for this use as restricted funds, the DOF did not treat the Developer's proceeds as restricted funds in the context of the due diligence review of non-housing assets. Accordingly, the DOF required the Successor Agency to remit the Developer's proceeds to the County Auditor-Controller for pro rata distribution to the local taxing entities in November 2013. This effectively has left the Successor Agency without available funding to process Developer's payment requests during the current ROPS 13-14B period, including requests received for the balance of the park design and permitting processes.

When the Successor Agency notified the DOF of this dilemma several months ago, the DOF acknowledged that the OPA is an enforceable obligation and directed the Successor Agency to request funding related to the Project on the next available ROPS from the Redevelopment Property Tax Trust Fund (RPTTF). The Successor Agency has followed through on the DOF direction by including the balance of the project costs (\$4,701,766) on ROPS 14-15A, which is currently under review by the DOF. The project costs balance includes the Eligible Expenses amount under the Construction Contract, the Capitalized Maintenance Credit value, and the outstanding balance of the Design Contract.

Provided that the DOF approves line item #171 on ROPS 14-15A, and in accordance with the terms of the Construction Contract, the Successor Agency would deposit the portion of the line item total amount intended to cover the Eligible Expenses and the Capitalized Maintenance Credit (collectively, the "Contributed Funds") into an escrow fund at the earliest opportunity after the commencement of the ROPS 14-15A time period on July 1, 2014. The purpose of the escrow fund is to simplify the payment process and provide Developer with reasonable certainty

of a continued funding source for payment of the Contributed Funds to the Developer once the park is under construction and the Successor Agency is requested to fund progress payment requests from the Developer. The escrow fund also will ensure the availability of Capitalized Maintenance Credit refunding monies due to the Developer at the time construction of the park improvements and joint-use public restrooms are complete and open to the public as agreed to within the OPA's Third Implementation Agreement.

To the extent that the Successor Agency's disbursement of Contributed Funds into the escrow account occurs during the ROPS 14-15A time period, the Successor Agency will account for this disbursement as an expenditure of all Contributed Funds for purposes of the prior period adjustment form contained in ROPS 15-16A. The Successor Agency will authorize the disbursement of the Eligible Expenses from the Escrow Agent to the Developer in increments during multiple ROPS time periods to reimburse the Developer for substantiated actual construction costs related to the Project, based upon Successor Agency staff's review and approval of periodic reimbursement requests submitted by the Developer. The Successor Agency will authorize the disbursement of the Capitalized Maintenance Credit from the Escrow Agent to the Developer in a future ROPS time period upon Successor Agency staff's confirmation that the Developer has completed the Project and that the park improvements and the joint-use public restrooms are open for daily public use.

Consultant Agreement: The Successor Agency, through its agent CivicSD, would hire the Consultant to assist performing the Former RDA's obligations required pursuant to the OPA. The Consultant would monitor the Developer's construction of the park to ensure, on the Successor Agency's behalf, that the park is constructed in accordance with the Successor Agency-approved 100% Complete Construction Drawings and the validity of construction progress payment requests submitted by the Developer to CivicSD, as part of the Former RDA's reimbursement of the park's construction costs. The Consultant Agreement's not-to-exceed amount is set at \$84,729.

In regard to HSC Section 34181(e), the Consultant Agreement will benefit the local taxing entities and will be in their best interests in that the execution and performance of the Consultant Agreement will provide that the Successor Agency fulfills its enforceable obligation related to funding of the park improvements in accordance with the OPA and does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims. Through the Consultant's provision of services on the Successor Agency's behalf, the Successor Agency can determine that the park improvements are constructed in accordance with the approved construction drawings and the Developer's construction progress payment requests are reviewed in advance of the Successor Agency's reimbursement of the park's construction-related costs. Further, the Consultant Agreement also will benefit the taxing entities and will be in their best interests as it will facilitate oversight of the construction of the

park improvements, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the creation of a new public amenity benefiting the local community on a previously-underutilized site.

In regard to HSC Section 34171(d)(1)(F), the Consultant Agreement will not involve an increase in compensation or scope of services, in that the Consultant Agreement will assist the Successor Agency to implement its funding obligation for the park improvements in accordance with the OPA. In any event, the Consultant Agreement is necessary for the operation or administration of the Successor Agency because the Consultant Agreement will provide essential oversight of the construction of the park improvements, thereby enabling the Successor Agency to determine that the park is being constructed in accordance with the approved and permitted construction drawings that meet local, state and federal codes, as applicable, for a public facility. Through the Consultant Agreement, the Consultant will provide essential review of construction draw payment requests, thereby enabling the Successor Agency to determine that the funding it is utilizing to fulfill its enforceable obligation in compliance with the OPA is being distributed in the proper manner.

Consultant's costs under the Consultant Agreement are included in prior approved ROPS in line item #172, described as "Civic San Diego (Formerly Centre City Development Corporation) via the City of San Diego or other consultants." The DOF has approved line item #172 reflecting \$39,000 in ROPS 13-14B, and the Successor Agency has requested the balance of the Consultant Agreement's not to exceed amount (\$46,000) in ROPS 14-15A. The Consultant's expenses will be paid outside of the escrow account described above.

DOF ROPS 14-15A Review: In a letter dated April 14, 2014, the DOF provided its preliminary determination on its review of the ROPS 14-15A, in which it denied funding for the Construction Contract and Consultant Agreement for the period July-December 2014 primarily due to the contract and agreement not having been approved by the Oversight Board. DOF also noted that the escrow fund proposed in the Construction Contract to cover both construction-related and Capitalized Maintenance Credit funding is not required pursuant to the OPA. Finally, the DOF indicated that the Capitalized Maintenance Credit was not paid pursuant to the OPA upon conveyance of the property from the Former RDA to the Developer.

Successor Agency staff plans to meet and confer with the DOF on these disputed items, which should lead to an expected final determination by mid-May 2014. Meet and confer justifications will be transmitted to the DOF within the same general time period as information related to the Oversight Board's review and anticipated approval of the Construction Contract and Consultant Agreement, including this report and its attachments and the approval resolution. The basic arguments that the Successor Agency will use to refute the DOF's position on the denied and disputed items are included within this report, and can be summarized as follows:

1. The Capitalized Maintenance Credit is contractually required to be paid after completion of the park improvements, per the Third Implementation Agreement (Section 307) amending the original OPA provisions.
2. The Construction Contract and Consultant Agreement are being submitted to the Oversight Board for approval on April 21, 2014, as the March 28, 2014 Oversight Board meeting was adjourned unexpectedly due to a lack of a quorum. Following the Oversight Board meeting, the Construction Contract and Consultant Agreement will be transmitted to the DOF for review as part of the entire package of items on the April 21, 2014 Oversight Board agenda. The Construction Contract and Consultant Agreement are necessary to carry out the Successor Agency's enforceable obligation under the OPA to provide funding for the park improvements.
3. The purpose of depositing the park construction-related and Capitalized Maintenance Credit funding amounts into an escrow at the outset is to achieve certainty before the Developer commences construction of the park improvements and incurs any future park maintenance costs, and to ensure that the construction and Capitalized Maintenance Credit funds will be available without interruption and the ROPS process will not cause any delays or stoppages during the construction phase. Any work delays or stoppages would likely cause an increase in the overall project costs, to the Developer's substantial detriment.
4. The necessary findings related to HSC sections 34181(e) (benefit to the local taxing entities and within their best interests) and 34171(d)(1)(F) (do not involve an increase in compensation or scope of services and necessary for the operation or administration of the Successor Agency) for the respective documents are included in the resolution submitted to the Oversight Board for approval of the Construction Contract and Consultant Agreement and highlighted in this report.

CONCLUSION: Based on the foregoing, the Successor Agency respectfully requests that the Oversight Board approve the Construction Contract and Consultant Agreement and make certain findings to the effect that the provision of services under these agreements is in the best interests of the local taxing entities and that the agreements are necessary for the administration or operation of the Successor Agency, as further described in the accompanying resolution.

Respectfully submitted,

Concurred by:



John W. Collum, AICP
Senior Project Manager



Andrew T. Phillips
Interim President, Civic San Diego

Attachments: A – Construction Contract
B – Consultant Agreement

PARK IMPROVEMENTS CONSTRUCTION CONTRACT

by and between

THE CITY OF SAN DIEGO,
solely in its capacity as the designated successor agency to
the former Redevelopment Agency of the City of San Diego
(**“Agency”**)

and

PINNACLE BAYSIDE DEVELOPMENT US L.P.,
a California limited partnership
(**“Developer”**)

PARK IMPROVEMENTS CONSTRUCTION CONTRACT

PREAMBLE

THIS PARK IMPROVEMENTS CONSTRUCTION CONTRACT (this “**Agreement**”) is made and entered into as of _____, 2014 (the “**Effective Date**”), by and between the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“**Agency**”), and Pinnacle Bayside Development US L.P., a California limited partnership (“**Developer**”). Agency and Developer may be referenced individually herein as a “**Party**” and collectively herein as the “**Parties**”.

RECITALS

A. The former Redevelopment Agency of the City of San Diego (“**Former RDA**”) and Pinnacle International Development, Inc., a California corporation (Developer’s predecessor-in-interest), entered into that certain Owner Participation Agreement dated October 12, 2005 (the “**Original OPA**”), as amended by that certain First Implementation Agreement dated August 7, 2006 (the “**First Implementation Agreement**”), that certain Second Implementation Agreement dated May 2, 2007 (the “**Second Implementation Agreement**”), and that certain Third Implementation Agreement dated January 3, 2011 (the “**Third Implementation Agreement**”). The Original OPA, as amended by the First Implementation Agreement, the Second Implementation Agreement, and the Third Implementation Agreement shall be referred to herein as the “**OPA**”. Except as expressly provided herein, all capitalized terms shall have the meaning set forth in the OPA. As of February 1, 2012, the Former RDA dissolved by operation of law, at which time Agency assumed all of the Former RDA’s rights and obligations under the OPA. In addition, in or about June 2012, Centre City Development Corporation, which administers the wind-down of many of the Former RDA’s activities, filed an amendment to its articles of incorporation, changing its name to Civic San Diego.

B. The OPA provides for a neighborhood public park and a private development on the 120,000 SF “super block” bounded by Island Avenue and 14th, 15th, and J Streets, in the City of San Diego, State of California, which implements the “neighborhood center” concept in a location designated in the Downtown Community Plan. The private development to be constructed consists of a mixed-used, high density development, easterly of the Park Improvements, and a Corner Commercial Structure including the Joint-Use Public Restrooms and the Patio at the corner of 14th Street and Island Avenue. The Park Improvements to be constructed lie within a perpetual Park Easement.

C. The OPA provides for, among other things, (1) Developer’s construction of the Park Improvements; (2) Developer’s payment of any Cost Overruns (as defined in Section 304 of the Third Implementation Agreement); (3) Developer’s performance, completion and payment of the Park Preparation Work; and (4) Developer’s restoration of the entire Site under certain circumstances and Developer’s provision of security therefor in the form of a completion bond. Pursuant to Section 302(2) of the Third Implementation Agreement, the Parties agreed to the “Baseline Budget” for design and construction of the Park Improvements and payment of the

Capitalized Maintenance Credit to Developer. The Baseline Budget equals \$5,045,000, itemized as follows: (a) \$565,000 for remaining design work, permitting and fees; (b) \$2,842,295 for construction; and (c) \$1,637,505 for the Capitalized Maintenance Credit. Pursuant to Section 302(4) of the Third Implementation Agreement, if there are any savings in design and construction costs relative to the Baseline Budget, then those savings must be used to reincorporate items into the design of the Park Improvements that were previously removed as the result of a value engineering exercise or must be used to augment the Capitalized Maintenance Credit. As described in the Method of Financing (Attachment No. 2 to the OPA), the Capitalized Maintenance Credit will serve as a credit to Developer equal to the reasonably foreseeable capitalized cost of Developer's obligation to maintain the Park Improvements in perpetuity, plus one-half of the reasonably foreseeable capitalized cost of Developer's obligation to maintain the Joint-Use Public Restrooms in perpetuity.

D. This Agreement implements the provisions of Section IV.1 of the Method of Financing (Attachment No. 2 to the Original OPA) providing for a "Park Improvement[s] Construction Contract" in the event that Developer undertakes the construction of the Park Improvements. Nothing in this Agreement shall constitute an amendment or modification of the OPA and, in the event of any inconsistencies between the OPA and this Agreement, the provisions of the OPA, and the various other agreements related thereto or attached thereto as exhibits or attachments, shall apply.

E. This Agreement will benefit the local taxing entities (i.e., the City, the County, the local school districts, and the local special districts) by ensuring that the Successor Agency fulfills its enforceable obligation related to funding of the Park Improvements in accordance with the OPA and does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims. This Agreement also will benefit the taxing entities by facilitating construction of the Park Improvements, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the creation of a new public amenity benefiting the local community on a previously-underutilized site. Moreover, this Agreement is necessary for the operation or administration of the Successor Agency because this Agreement will provide essential funding for construction-related services and long-term maintenance expenses for the Park Improvements, thereby enabling the Successor Agency to fulfill its enforceable obligation for these funding mechanisms in compliance with the OPA.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other valuable consideration, receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

ARTICLE 1
CONSTRUCTION

1.1 REQUIREMENTS FOR CONSTRUCTION OF THE PROJECT

1.1.1 Project Description. The Project shall consist of the “Park Improvements” (i.e., the Final Restored Park and certain associated improvements) as defined in Section 301(1) of the Third Implementation Agreement.

1.1.2 Construction Documents. Developer has provided to Agency, and Agency has generally approved, construction drawings for the Final Restored Park, which constitute and are referred to in the OPA and attached as Exhibit No. 7 of the Third Implementation Agreement as the FR-1 and FR-2 Plans (collectively, the “**Park Plans**”), and which are incorporated herein by this reference. Developer shall develop and construct the Final Restored Park in accordance with the Park Plans and any and all review comments provided by the City of San Diego (“**City**”) as part of the Park Improvements building permit review process.

1.1.3 Payment for Project Costs. Agency’s sole financial contribution to Developer toward the Project shall be in the form of funding Developer’s bona fide costs incurred to third parties to complete remaining design and permitting work for the Project and to construct the Project in accordance with this Agreement in an amount not to exceed TWO MILLION NINE HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED NINETY-FIVE DOLLARS (\$2,992,495) (“**Eligible Expenses**”). The amount of Eligible Expenses includes all of the construction line item, plus a portion of the design/permitting line item, in the Baseline Budget. Developer shall not expend any funds for which it anticipates payment or reimbursement by Agency without the written approval of the Mayor or designee concerning such expenditures. In particular, Developer agrees for itself and any of its affiliates that Eligible Expenses shall not include any expenses for any general conditions, including, without limitation, labor, overhead (including field, home or general), unearned profits, or any construction, management or development fees, it being understood that this Paragraph 1.1.3 shall be read as broadly as possible to conform to the Parties’ intent in the OPA that only costs incurred to third parties for construction of the Project shall be paid or reimbursed by Agency and that neither Developer nor its affiliates shall be entitled to receive funds from Agency that are not paid to third parties; provided, however, that Agency acknowledges and agrees that certain expenses typically referred to as “General Conditions” (*e.g.*, site utilities, site sanitation, site clean-up, temporary construction fencing, cost of the bond required by Paragraph 1.3.3 of this Agreement, construction-period site security, escrow fees, *etc.*) that are expected to be incurred by Developer have been included in the Project Budget attached hereto as Exhibit “B” and are considered Eligible Expenses to the extent paid or payable to third-party providers. For purposes herein, “**affiliate**” means (1) any person directly or indirectly controlling, controlled by or under common control with another person; (2) any person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other person; or (3) if that other person is an officer, director, member or partner, any company for which such person acts in any such capacity. The term “**control**” as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to

exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. It shall also be a presumption that the managing general partner of a limited partnership controls the limited partnership. “**Person**” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

1.1.4 Project Budget. Developer has provided to Agency, and Agency has generally approved the Project Budget attached hereto as Exhibit “B”, which the Parties agree contains all approved Eligible Expenses. Agency shall be presented with Developer’s bids and proposals prior to an award of a bid or proposal so that the Mayor or designee may make a written determination whether the bid or proposal is reasonable and whether the expenditure is an Eligible Expense. The bid form shall be in the form attached hereto as Exhibit “E”.

1.1.5 Subcontractor Bids. Unless otherwise agreed in writing by the Mayor or designee, Developer, acting through its general contractor, Pinnacle International Development, Inc. (“**Contractor**”), shall solicit no less than three (3) bids (“**Subcontractor Bids**”) from prospective subcontractors for each element of the Project and shall submit those Subcontractor Bids to Agency for review and approval before acceptance of any Subcontractor Bid and before entering into the related Subcontract, together with Developer’s statement of which Subcontractor Bid Developer intends to select. Unless otherwise agreed in writing by the Mayor or designee, all Subcontractor Bids for the Project shall be submitted to Agency for review and approval at once in a single package; such package shall include every Subcontractor Bid received by Developer and/or Contractor. Agency shall approve Developer’s selection of which Subcontractor Bid to accept for each element of the Project if that Subcontractor Bid is the lowest-priced bid and the subcontractor is otherwise qualified and capable of performing the applicable element of the Project or, if not the lowest-priced bid, is reasonably consistent in amount with the applicable element of the Project Budget. In the absence of a written notice of disapproval from the Mayor or designee within fifteen (15) business days following the submittal of the required Subcontractor Bids, which written notice shall state in detail and with particularity the basis for such disapproval, Developer’s selection of the subcontractor shall be deemed approved and, in any case, Agency’s approval shall not be unreasonably withheld, conditioned or delayed, it being acknowledged that Developer bears financial responsibility for any Cost Overruns and Agency has the ability to inspect the work being performed in constructing the Project and to approve the completion of the Project pursuant to the provisions of the OPA.

Notwithstanding the foregoing, the following Eligible Expenses shall not be subject to the bidding requirements of the preceding paragraph: “Permit Review – Final CD’s and Permit Costs”, “Construction Administration – Design Team”, “Irrigation Water Meter (1-1/2”) and CWA Capacity Charges”, and “Art Component”, provided, however, that with regard to the “Construction Administration – Design Team” and “Art Component” items, the contracts and scopes of work therefor shall be submitted to Agency along with the single package of Subcontractor Bids described above.

1.1.6 Contingency. Developer shall be entitled to use the contingency line item in the Project Budget (Exhibit “B”) for Eligible Expenses, subject to prior written approval by the Mayor or designee following submission of a request by Developer (a “**Contingency Use Request**”), either in advance of incurring an Eligible Expense (*e.g.*, at the time a Subcontractor Bid is submitted for Agency approval, in connection with a subcontractor’s change order, *etc.*) or in connection with a Progress Payment Request (as defined in Paragraph 2.1 below). Developer shall exercise best efforts to obtain such approval in advance of incurrence rather than after-the-fact; if such approval is sought after-the-fact rather than in advance, then Developer shall explain in writing at the time of submittal of the Progress Payment Request in connection therewith why such approval was unable to be sought in advance. The Mayor or designee shall not deny the Contingency Use Request if the item of expense that is the subject thereof is an Eligible Expense and Developer or Contractor presents a reasonable explanation for the need to access the contingency for that purpose and shall be deemed approved if not validly disapproved by the Mayor or designee within ten (10) business days following submission of the Contingency Use Request.

1.1.7 Excluded Costs. None of the following costs shall be deemed attributable to the design and construction of the Park Improvements and, therefore, shall not be reimbursable by Agency to Developer (“**Excluded Costs**”):

- (1) Any direct or indirect costs associated with the Parking Garage (as defined in the Scope of Development), including without limitation: (a) any and all costs to Developer incurred by reason of the Park Easement and/or its location; the inefficiency of the Parking Garage design, loss of parking spaces, or increased costs of the Parking Garage to accommodate trees or other landscaping or hardscape within the Park Easement; weight of the Park Improvements and soil when developed and similar factors; (b) the need to provide adequate structural integrity therefor; (c) the waterproofing of the Parking Garage beneath the Park Improvements, and (d) the placement and grading of soil on the entire surface of the Park Easement to meet the specific soil depth requirements of Section 9 of the Scope of Development and the soil depth and grading requirements of the Final Construction Drawings for the Park Improvements. All grading of the Site and any soils remediation to accommodate the construction of private improvements and the construction of the Park Improvements shall be the responsibility of Developer;
- (2) Costs associated with the Corner Commercial Structure (as defined in the Scope of Development);
- (3) Costs associated with the Joint-Use Public Restrooms (as defined in the Scope of Development);
- (4) Costs associated with the Patio (as defined in the Scope of Development);
- (5) Costs associated with the curbs, gutters, sidewalks and street trees adjacent to the Corner Commercial Structure, Joint Use Public Restrooms and the Patio and to all other private development on the Site;

- (6) Costs described in Section 303(1)(d) of the Third Implementation Agreement; or
- (7) Cost Overruns, per Section 304 of the Third Implementation Agreement.

1.1.8 Public Art. Developer shall be responsible for installation of the public art approved by the City of San Diego Commission of Arts and Culture (“**Commission**”) for the Project on January 19, 2007 and shall comply with all procedures and/or requirements of Commission for installation.

1.1.9 Park Construction Inspection Stages and Inspection Team.

1.1.9.1 Inspection Team. The Project shall be inspected by a team (collectively, the “**Inspection Team**”) composed of representatives from:

- (1) Developer (*e.g.*, site superintendent);
- (2) Contractor(s);
- (3) Civic San Diego Public Works Department;
- (4) Agency/Civic San Diego lead project manager and/or a construction monitor consultant;
- (5) Design consultant; and
- (6) City of San Diego Park and Recreation Department (City to determine appropriate personnel).

To the extent not included in the attached Project Budget, any incremental cost associated with participation on the Inspection Team pursuant to (3), (4) or (6) above are neither Eligible Expenses nor Excluded Costs and are the sole responsibility of the participating agency.

1.1.9.2 Inspection Stages. The Project shall be inspected by the Inspection Team in accordance with the following stages:

- (1) Pre-construction meeting;
- (2) Rough grading and drainage;
- (3) Irrigation mainline pressure test;
- (4) Irrigation lateral line pressure test;
- (5) Wiring prior to backfilling trenches;
- (6) Hardscape at time of finished staking and layout;
- (7) Finish grading and soil preparation;

- (8) Irrigation coverage test;
- (9) Plant material (when delivered) and placement approval;
- (10) Playground inspection;
- (11) Project construction ninety percent (90%) complete (develop punch list and submit red-line as-builts);
- (12) Ninety (90) –day plant maintenance period (this inspection is to be held when the punch list items are complete; if turf area is planted from seed or stolons, then the plant maintenance period shall be one hundred twenty (120) days); and
- (13) Final walk-through and acceptance by City and Agency. Contractor to submit final approved as-built drawings to City and Agency.

Agency reserves the right to request other inspections as deemed necessary and applicable during the construction period.

1.1.9.3 Inspection Process. Developer’s site superintendent/representative shall be responsible for scheduling such inspections, working in conjunction with Agency/Civic San Diego lead project manager and/or the construction monitor consultant.

1.2 TIME AND SCHEDULE

1.2.1 Time of the Essence. All time limits set forth in this Agreement pertaining to Developer’s performance of any obligation or act for the benefit of Agency are deemed to be of the essence to this Agreement. All references to “**days**” in this Agreement shall mean calendar days unless otherwise specified herein.

1.2.2 Schedule. Developer has provided to Agency, and Agency has generally approved, the Construction Schedule attached hereto as Exhibit “C”.

1.2.3 Agency Cooperation. Agency shall at all times reasonably cooperate with Developer in performing its obligations under this Agreement, providing such approvals and other information as are needed promptly and without material delay to achievement of completion of the Construction Schedule.

1.3 DEVELOPER’S OBLIGATIONS

1.3.1 The Project shall be consistent with this Agreement, the List of Construction Drawings (Exhibit “A”), the Project Budget (Exhibit “B”), and the Construction Schedule (Exhibit “C”).

1.3.2 The Parties acknowledge and agree that the Project is a public work subject to all of the requirements, including, without limitation, the payment of prevailing wages, referred to in Section 311 of the Original OPA, which section is hereby incorporated herein by this reference. Developer shall reasonably cooperate with Agency’s prevailing wage monitoring

consultant in providing required documentation and information in a timely manner, including payroll records submitted on a weekly basis, or as otherwise agreed to by Agency. Payments made under this Agreement shall be conditioned upon the monitoring consultant's written confirmation of Developer's compliance with this Paragraph 1.3.2.

1.3.3 Developer shall require Contractor to provide a combined "Performance and Payment Bond" for one hundred percent (100%) of the Construction Contract price, to (i) secure Contractor's promise to perform the Construction Contract in accordance with its terms and conditions, at the agreed upon price, and within the time allowed and (ii) satisfy claims of material suppliers and of mechanics and laborers employed on the Project. This new bond shall be maintained by Contractor in full force and effect until the work is accepted by Agency or City and until all claims for materials and labor are paid. Promptly after Agency's confirmation that Contractor has provided this new bond and that Developer has completed the Park Preparation Work in accordance with the OPA, including Sections 308 and 309 of the Third Implementation Agreement, Agency shall permit the existing bond referenced in clause (4) of Recital C of this Agreement to be released.

ARTICLE 2 COMPENSATION AND FUNDING BY AGENCY

2.1 PROGRESS PAYMENT REQUESTS

In order to receive progress payments for payment of Eligible Expenses under this Agreement, Developer shall deliver to Agency a Progress Payment Request in the form of Exhibit "D", together with all attachments and exhibits required by Exhibit "D" and this Paragraph 2.1 to be included therewith (including, without limitation, Attachments 1 and 2 to Exhibit "D"). Developer shall include with each Progress Payment Request a description of those elements of the Project that have been completed (or the extent to which they have been completed) as of the date of such Progress Payment Request, including, without limitation, the progressed percentage of the Project and/or deliverables completed or caused to be completed by Developer during the period of time covered by the Progress Payment Request; copies of invoices, receipts, and other documentation verifying the amounts of Eligible Expenses for which payment or reimbursement is sought; conditional waivers and releases as to all amounts to be disbursed and unconditional waivers and releases as to all amounts previously disbursed that conform to California Civil Code Section 3262; and other documentation substantiating Developer's requested payment or reimbursement for Eligible Expenses as may be reasonably requested by Agency.

2.2 PROCESSING PROGRESS PAYMENT REQUESTS

Upon receipt of a Progress Payment Request (and all accompanying documents), Agency shall conduct a review in order to confirm that such request is complete and to verify and approve the amount that is specified in such Progress Payment Request. Developer agrees to cooperate with Agency in conducting such review and to provide Agency with such additional information and documentation as is reasonably necessary for Agency to conclude such review. Within ten (10) business days following receipt of any Progress Payment Request, the Mayor or designee shall notify Developer whether such Progress Payment Request is complete and

conforms to this Agreement, and, if not, provide a complete and detailed written statement of the manner in which the Progress Payment Request fails to comply with the provisions of this Agreement and what additional documentation, corrections or changes Agency believes are required in order for the Progress Payment Request to comply. Agency may withhold up to ten percent (10%) from each progress payment payable to Developer (“**Retention**”) pending the final progress payment following the recordation of the Release of Construction Covenants as described in Section 324 of the Original OPA; provided, however, that Agency shall release partial payments of the Retention to each subcontractor once that subcontractor’s element of the Project is completed, subject to Agency’s inspection and confirmation, not to be unreasonably withheld, conditioned or delayed, and provided that final unconditional lien releases and waivers have been provided by any such subcontractor. Mark-ups for change orders shall be limited to those allowances permitted under Section 3-3.2.3 of the City of San Diego Standard Specifications for Public Works Construction (2010) (the “**Whitebook**”).

2.3 PAYMENT OF ELIGIBLE EXPENSES

2.3.1 Establishment of Escrow Fund. Developer acknowledges that Agency’s ability to expend funds for the payment of Eligible Expenses to Developer under this Agreement is contingent upon the prior approval of such expenditure by the California Department of Finance (“**DOF**”) in the applicable Recognized Obligation Payment Schedule. In February 2014, Agency submitted to the DOF the sixth Recognized Obligation Payment Schedule (“**ROPS 14-15A**”), showing payments owed by Agency to third parties during the second half of calendar year 2014. Line item 171 in ROPS 14-15A reflects Agency’s request for a distribution from the Redevelopment Property Tax Trust Fund (“**RPTTF**”) to allow Agency’s disbursement of funds during the ROPS 14-15A time period covering, among other things, (a) all Eligible Expenses, in the amount of \$2,992,495, and (b) the Capitalized Maintenance Credit, in the estimated amount of \$1,637,505, subject to potential augmentation within the limits of the Baseline Budget pursuant to Section 302(4) of the Third Implementation Agreement. Provided the DOF approves line item 171 in ROPS 14-15A and Agency receives the RPTTF distribution in or about June 2014 corresponding to line item 171, Agency shall cause the full amount of the Eligible Expenses and estimated amount of the Capitalized Maintenance Credit to be deposited at the earliest opportunity after the commencement of the ROPS 14-15A time period on July 1, 2014 into an escrow fund which shall be administered by an escrow agent or a bonded funding agent mutually acceptable to the Parties, pursuant to an escrow agreement or a fund control agreement executed by the Parties and the escrow agent or bonded funding agent in substantially the same form as Exhibit “F” (“**Escrow Agreement**”).

2.3.2 Payments to Developer. All payments to which Developer is entitled under this Agreement in response to any Contingency Use Request or any Progress Payment Request, as applicable, shall be disbursed in accordance with the Escrow Agreement. The Mayor or designee shall approve or disapprove any Progress Payment Request within forty-five (45) days following Agency’s receipt of the Progress Payment Request prepared in accordance with this Agreement. Developer shall allow Agency to make site inspections to verify completion of work asserted as the basis of payment during such 45-day period. Any site inspection shall be for the sole purpose of protecting Agency’s interests and is not to be construed as a representation by Agency that there has been compliance with the plans approved for the Project or that the Project will be free

of faulty materials or workmanship. Developer may make or cause to be made such other independent inspections as Developer may desire for its own protection.

2.3.3 Processing of Disbursement Requests. Concurrent with Developer's submittal of any Contingency Use Request and any Progress Payment Request, Developer shall submit to Agency an executed Disbursement Request, containing Developer's insertion of the proposed monetary amount for disbursement, in accordance with Section 5 of the Escrow Agreement and Attachment 2 to the Escrow Agreement. If the Disbursement Request reflects a proposed monetary amount that is ultimately approved by the Agency in response to the corresponding Contingency Use Request or Progress Payment Request, Agency shall execute the Disbursement Request in the form provided by Developer and shall submit the fully-executed Disbursement Request to the Escrow Agent in accordance with Section 5 of the Escrow Agreement. If the Disbursement Request reflects a proposed monetary amount that exceeds the amount approved by the Agency in response to the corresponding Contingency Use Request or Progress Payment Request, Agency shall return the Disbursement Request to Developer for re-execution with an insertion of the corrected monetary amount for disbursement.

ARTICLE 3 RIGHT TO AUDIT

3.1 RIGHT TO AUDIT

3.1.1 Access. Agency retains the right to review and audit, and the reasonable right of access, upon reasonable advance notice, but no earlier than 5 days, to Developer, to review and audit, inspect and photocopy all Project related accounting records in the possession of Developer substantiating Developer's right to compensation claimed under this Agreement.

3.1.2 Accounting Records. Developer shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. Developer shall make available to Agency originals of all accounting records substantiating Developer's right to compensation claimed under this Agreement. Upon Agency's request, Developer shall submit exact duplicates of originals of all requested records to Agency.

3.1.3 Contracts. The contracts entered into by Developer with Contractor shall include provisions allowing for review, audit and copying by Agency of all documents related to the Project, excepting those documents that are proprietary to the business of Contractor and unrelated to any claim by Contractor for compensation or reimbursement under its governing contract with Developer.

3.1.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation provided for in Article 7, below, is Developer's full compliance with the provisions of this Article 3.

ARTICLE 4
LICENSE FOR DOCUMENTS

4.1 WORK PRODUCT

4.1.1 Work Product – Developer. Developer understands, acknowledges and agrees that upon Agency’s full payment of compensation incurred and earned by Developer in accordance with this Agreement, Developer shall be deemed to have granted to Agency a non-exclusive license for use of all documents (both paper and electronic versions) prepared or produced by Developer or Contractor for the Project (“**Developer Work Product**”). Agency shall be entitled to retain one copy of all Developer Work Product at Agency’s request.

4.1.2 Agency’s Right to Use. Agency’s ownership of the Developer Work Product referred to in Paragraph 4.1.1, above, includes, and is limited to, its or its successors or assigns’ right to use, reproduce and reuse the Developer Work Product in connection with the construction, re-construction, use, occupancy or maintenance of the Project, including, without limitation, future additions, alterations, corrections or repairs to the Project; provided, however, that nothing herein shall be deemed as a transfer, alteration, modification, change, or reduction of Developer’s obligations under the OPA to maintain all of the Park Improvements in perpetuity.

ARTICLE 5
DEFAULTS

5.1 DEVELOPER DEFAULT

If Developer materially breaches this Agreement, and thereafter fails to cure such breach within a reasonable time as hereinafter defined, then such breach shall constitute a default (“**Developer Default**”). A reasonable time shall mean ten (10) days for cure of any breach related to the payment or non-payment of money by Developer, the provision of any documents or any similar matter that can reasonably be performed by Developer within ten (10) days. Where Developer’s breach relates to a matter that cannot be cured in ten (10) days or less, the breach shall be cured in a reasonable time not to exceed thirty (30) days, which reasonable time shall be that time within which a reasonable person in the position of Developer would be expected to cure the breach exercising all due diligence to effect the cure as quickly as reasonably possible. Nothing in this Paragraph 5.1 or this Agreement waives or denies any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to Agency against Developer for Developer Default. The rights and obligations of Agency under this Agreement are separate from, and independent of, any rights and obligations of Agency under any other agreements existing between Developer and Agency, and the occurrence of a Developer Default shall not be a default, or constitute grounds for a claim by Agency of nonperformance, by Developer under such other agreements.

5.2 AGENCY DEFAULT

If Agency materially breaches this Agreement, including, without limitation, Agency’s failure to approve, and thereafter make, payment of any amount due under this Agreement when due and thereafter fails to cure such breach within a reasonable time as hereinafter defined, then

such breach shall constitute a default (“**Agency Default**”). A reasonable time shall mean three (3) business days for cure of any breach related to a payment of a Progress Payment Request or the Final Payment, ten (10) days for cure of any breach related to any other payment or non-payment of money by Agency, or the provision of any documents or any similar matter that can reasonably be performed by Agency within ten (10) days. Where the Agency Default breach relates to a matter that cannot be cured in ten (10) days or less (other than the payment of money), the breach shall be cured in a reasonable time not to exceed thirty (30) days, which reasonable time shall be that time within which a reasonable person in the position of Agency would be expected to cure the breach exercising all due diligence to effect the cure as quickly as reasonably possible. Any Agency Default in the approval or making of payment of a Progress Payment Request shall entitle Developer to (i) suspend work on the Project until such Agency Default has been cured, and (ii) an extension of the various deadlines for completion of the Project pursuant to the agreements being implemented by this Agreement. Nothing in this Paragraph 5.2 or this Agreement waives or denies any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to Developer against Agency for Agency Default. The rights and obligations of Developer under this Agreement are separate from, and independent of, any rights and obligations of Developer under any other agreements existing between Developer and Agency, and the occurrence of an Agency Default shall not be a default, or constitute grounds for a claim by Developer of nonperformance, by Agency under such other agreements.

ARTICLE 6 INSURANCE, INDEMNIFICATION, LIMITATIONS ON LIABILITY

6.1 INSURANCE

As a condition precedent to Agency’s payment under Article 2, above, Developer shall provide to Agency evidence that it has: (a) obtained insurance certificates reflecting evidence of all insurance required in Paragraph 6.1.1, below; however, Agency reserves the right to request, and Developer shall submit, copies of any policy upon reasonable request by Agency; (b) obtained Agency approval of each company or companies as required by Paragraph 6.1.2, below; and (c) confirmed that all policies contain the specific provisions required in Paragraph 6.1.4, below.

Further, Developer shall not modify any policy or endorsement thereto which increases Agency’s, Civic San Diego’s, and/or City’s exposure to loss for the duration of this Agreement.

6.1.1 Types of Insurance. At all times during the term of this Agreement, Developer shall maintain insurance coverage as follows:

6.1.1.1 Commercial General Liability (“CGL”). For all of Developer’s operations, including contractual, broad form property damage, completed operations, and independent contractor’s liability, Developer shall keep in full force and effect, during any and all work on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing per occurrence coverage to a combined single limit of \$3,000,000 per occurrence, subject to an annual aggregate of \$3,000,000 for general liability. CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form

providing equivalent coverage) and shall cover completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability to another party to pay for bodily injury or property damage to a third person or organization. Completed operations coverage must be maintained for a minimum of three years following the Effective Date or, if the Parties enter into an agreement for further funding and construction of the Project, for a minimum of three years following completion of the construction as defined in such agreement. Contractual liability limitation endorsement is not acceptable. Limits may be provided in a “layered” program, by means of primary and umbrella policies.

6.1.1.2 Commercial Automobile Liability. For all of Developer’s automobiles, including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$2,000,000 per occurrence. Insurance certificate shall reflect coverage for any automobile. Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20 (or a substitute form providing equivalent coverage). Agency, Civic San Diego, City, and these entities’ respective elected officials, officers, employees, agents and representatives shall be named as an additional insured, but only for liability arising out of use of Developer’s automobiles and only arising out of the performance of this Agreement.

6.1.1.3 Architects & Engineers Professional Liability. Developer shall require each architect, engineer, land surveyor, landscape architect, construction manager, scientist and technical consultant providing services to the Project (“**Design Professionals**”) to keep in full force and effect, errors and omissions insurance providing per occurrence coverage for professional liability with a combined single limit of \$2,000,000 per claim and \$2,000,000 annual aggregate for Design Professionals retained directly by Developer and \$1,000,000 annual aggregate for subconsultants retained by such Design Professionals. Developer shall insure both that (1) this policy retroactive date is on or before the date of commencement of the Project; and (2) this policy has a reporting period of three years after the date of completion of performance under or termination of the Design Professional’s contract with Developer. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases Agency’s, Civic San Diego’s, and/or City’s exposure to loss.

6.1.1.4 Worker’s Compensation. For all of Developer’s employees who are subject to this Agreement and to the extent required by the State of California, Developer shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1 million of employer’s liability coverage, and Developer shall provide an endorsement that the insurer waives the right of subrogation against Agency, Civic San Diego, City, and these entities’ respective elected officials, officers, employees, agents and representatives.

6.1.2 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an “A: VI” rating by AM BEST, Rating Service (surplus lines carriers are acceptable if they meet the AM Best requirement). Any modifications to these requirements must be approved by Agency.

6.1.3 Deductibles. All deductibles on any policy shall be the responsibility of Developer.

6.1.4 Specific Provisions Required. Each policy required under Paragraphs 6.1.1.1 through 6.1.1.4 shall expressly provide, and an endorsement shall be submitted to Agency, that:

6.1.4.1 Except as to Workers Compensation insurance policies, “the City of San Diego, a municipal corporation, the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic, and Civic San Diego, and their respective elected officials, officers, employees, agents, and representatives” shall be identified as additional insureds. City’s, Agency’s, and Civic San Diego’s Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to Agency.

6.1.4.2 The policies are primary and non-contributory to any insurance that may be carried by City, Agency, and Civic San Diego, as reflected in an endorsement which shall be submitted to Agency.

6.1.4.3 The policies cannot be canceled, non-renewed or materially changed except after thirty (30) -days prior written notice by Developer to Agency.

6.1.4.4 Before performing under this Agreement, Developer shall provide Agency with all required Certificates of Insurance accompanied with all endorsements.

6.1.4.5 Developer shall include provisions in the contracts with Contractor and each Design Professional requiring each to carry and maintain the commercial general liability, commercial auto liability, errors and omissions insurance, and Worker’s Compensation insurance policies described above, as applicable, during any and all work on this Project and for the specified period(s).

6.2 INDEMNIFICATION

6.2.1 Indemnification by Developer. Developer shall be liable for all injuries to persons and for all damage to real or personal property of Agency, Civic San Diego, City, and third parties, to the extent caused by or resulting from Developer’s acts or omissions, or that of its employees, agents, Contractor, or subcontractor during the performance of the Project. Developer shall likewise be liable for damages to real or personal property, or personal injury to any third party to the extent resulting from the acts or omissions of Developer, its employees, agents, Contractor, and subcontractor. To the fullest extent permitted by Applicable Laws, and except as otherwise provided in this Agreement, Developer shall defend (using counsel acceptable to Agency), indemnify and hold harmless Agency, City, Civic San Diego, and their members, officers, officials, employees, and insurers (“**Agency Indemnitees**”) from and against any and all losses, liabilities, claims, actions, damages, costs, expenses, fines and penalties, including, without limitation, reasonable attorneys’ fees and court costs (“**Loss(es)**”) resulting from, directly arising out of or relating to the Project, save and except to the extent of any such Loss that is caused by an Agency Indemnitee’s breach of this Agreement, negligence or willful misconduct.

6.2.2 No Limitation by Insurance. The indemnification, defense and hold harmless obligations of Developer under Paragraph 6.2.1, above, as well as any indemnification obligations stated elsewhere in this Agreement: (1) shall not be limited by, and are independent of, the amounts or types of insurance (or the deductibles or self-insured retention amounts of such insurance) which Developer is required to carry under the terms of this Agreement; and (2) shall not be limited, in the event of a claim by an Agency Indemnitee, by a limitation on amount or type of damages, compensation or benefits payable under any worker's compensation act, disability benefit act or other employee benefit program.

6.3 LIMITATIONS OF LIABILITY

6.3.1 Mutual Waiver of Consequential Damages. Agency and Developer each hereby agree that, to the fullest extent permitted by Applicable Laws, the Parties shall not be liable to each other for, and each Party hereby waives any right to recover from the other Party, any incidental, special, punitive, indirect or consequential damages, of any kind whatsoever.

6.4 SURVIVAL

The provisions of this Article 6 shall survive completion of performance or termination of this Agreement.

ARTICLE 7 MEDIATION

7.1 MANDATORY NON-BINDING MEDIATION

If a dispute arises out of, or relates to, this Agreement or the breach thereof, and if said dispute cannot be settled through negotiations, the Parties agree to attempt to settle the dispute, pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (“AAA”).

7.2 MEDIATION COSTS

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator (“**Mediator**”), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be allocated equally among the participants to the mediation, unless the Parties agree otherwise.

7.3 SELECTION OF MEDIATOR

A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction matters and may be selected from lists furnished by the AAA or any other Mediator the Parties may mutually agree upon.

7.4 CONDUCT OF MEDIATION

Mediation hearings will be conducted in an informal manner. All discussions, statements, or admissions will be confidential. The Parties may agree to exchange any information they deem necessary. Both Parties must have an authorized representative attend the mediation. Each such representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present.

ARTICLE 8 NOTICES

8.1 DELIVERY

Notices, demands or requests required to be given under this Agreement shall be given in writing and shall be conclusively deemed received when: (1) delivered personally; (2) on the third business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, and addressed as hereinafter provided; or (3) received by the recipient by facsimile transmission or electronically in the form of a PDF attachment to an email, whichever occurs first.

8.2 ADDRESSES

8.2.1 To Developer. All notices, demands, or requests required to be given by Agency to Developer shall be addressed to Developer at:

Attn: Michael DeCotiis, Manager
Suite 300 - 911 Homer Street
Vancouver, British Columbia,
CANADA V6B 2W6

8.2.2 To Agency. All notices, demands or requests required to be given by Developer to Agency shall be addressed to:

Attn: Assistant Vice President, Neighborhood Reinvestment
Civic San Diego
401 B Street, Suite 400
San Diego, CA 92101

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 EQUAL EMPLOYMENT AND NONDISCRIMINATION:

9.1.1 Compliance with the Equal Opportunity Contracting Program. Developer shall comply with City's Equal Opportunity Contracting Program ("EOCP") Developer Requirements. Compliance includes submittal of a signed Equal Opportunity Agreement. The EOCP requirements are set forth in San Diego Municipal Code ("SDMC") Sections 22.2701

through 22.2707. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that Contractor and its subcontractors comply with City's EOC requirements. Nothing in this Paragraph 9.1.1 shall be interpreted to hold Developer liable for any discriminatory practice of Contractor or its subcontractors. Developer shall, at the commencement of this Agreement and annually thereafter, submit to Agency a current Work Force Report as required by the EOC. It shall be Developer's sole responsibility to ensure an annual Work Force Report update is completed and submitted to Agency. Developer shall be required to prepare a current Equal Employment Opportunity ("EEO") Plan, if so requested by City.

9.1.2 Non-Discrimination Ordinance. Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Contractor, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for Contractor and subcontractors to participate in subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in the Construction Contract and contracts between Developer and any subcontractors, vendors and suppliers.

9.1.3 Compliance Investigations. Upon Agency's request, Developer agrees to provide to Agency, within sixty (60) days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Developer has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance (SDMC Sections 22.3501-22.3517).

9.1.4 Title 24/Americans with Disabilities Act Requirements. Any Project plans and specifications prepared pursuant to this Agreement shall meet all current California Building Standards Code, California Code of Regulations, Title 24 ("**Title 24**") and Americans with Disabilities Act Accessibility Guidelines ("**ADAAG**") requirements, and shall be in compliance with the Americans with Disabilities Act (the "**ADA**"). When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

9.1.5 Americans with Disabilities Act. Developer agrees that it is aware of and will comply with San Diego City Council Policy 100-04, adopted by Resolution No. 282153 relating to the ADA. Developer and subcontractors will be individually responsible for their own ADA program.

9.2 NO CONFLICT OF INTEREST

Developer represents and warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

9.3 HEADINGS

All article, section and paragraph headings and titles are for convenience only and shall not affect the interpretation of this Agreement.

9.4 NON-ASSIGNMENT

Neither Party shall assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the prior written approval of the other Party. Any assignment in violation of this Paragraph 9.4 shall constitute a breach of this Agreement and shall be null and void.

9.5 NO AGENCY OR EMPLOYMENT RELATIONSHIP

Neither Developer nor any of its officers or employees shall be considered as having the status of an employee or agent of Agency.

9.6 COVENANTS AND CONDITIONS

All provisions of this Agreement expressed as either covenants or conditions on the part of Agency or Developer, shall be deemed to be both covenants and conditions.

9.7 COMPLIANCE WITH LAW

Developer and Agency shall comply with all Applicable Laws.

9.8 CHOICE OF LAW AND VENUE

This Agreement shall, notwithstanding application of the principles of conflicts of laws, be governed by the laws of the State of California. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.

9.9 ATTORNEYS' FEES

If any legal action, arbitration or other legal proceeding is brought in connection with or related to the interpretation, performance or enforcement of this Agreement, the prevailing Party therein shall be entitled to recover from the other Party its actual costs, expenses and attorneys' fees (both outside and in-house counsel), court costs (statutory and non-statutory), professional, expert and consultant fees, paralegal fees, investigative costs, postage costs, document copying costs, telecopy costs and any and all other costs and expenses, of mediation, arbitration, trial and on appeal.

9.10 SUCCESSORS-IN-INTEREST

This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to this Agreement have been succeeded by another entity,

and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor-in-interest.

9.11 INTEGRATION

No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change or amendment to this Agreement agreed to in writing by both Parties. Nothing contained in this Agreement or in any contract entered into between Developer and Contractor or a Design Professional shall be interpreted as incorporating into the terms of this Agreement any of the terms or conditions of any contract between Developer and Contractor or any Design Professional.

9.12 COUNTERPARTS

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

9.13 NO WAIVER

No failure of either Agency or Developer to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue to apply in full force and effect to any existing or subsequent breach, including, the right to exercise any right or remedy consequent upon such breach.

9.14 SEVERABILITY

Should any part, term, portion or provision of this Agreement, or the application thereof to any Party or circumstance, be held to be illegal, invalid or in conflict with any applicable law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to any other party or circumstance, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by Applicable Laws.

9.15 DRAFTING AMBIGUITIES

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiation, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of this Agreement.

9.16 INCORPORATION OF RECITALS AND EXHIBITS

All recitals set forth in, and all exhibits attached to, this Agreement are incorporated herein by this reference.

9.17 SIGNING AUTHORITY

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or governmental entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist. The Parties acknowledge that Agency will sign this Agreement, and this Agreement will become effective, only after this Agreement has been approved by the Oversight Board and approved or deemed approved by the DOF in accordance with applicable law and, until then, shall not be binding on either Party.

9.18 CONFLICTS

If conflict or inconsistency exists between the terms set forth in the main body of this Agreement and the exhibits attached hereto, the terms of the main body of this Agreement shall control. If a conflict exists between an Applicable Law and this Agreement, the Applicable Law shall control.

9.19 SURVIVAL

The provisions of this Agreement which expressly or impliedly by their nature continue beyond, or require, involve or imply the performance of an act by Agency or Developer after, either termination of this Agreement or completion of performance, including, without limitation, all obligations relating to insurance, defense and indemnification, dispute resolution and confidentiality, shall be deemed to survive and remain in full force and effect after completion of performance or termination of this Agreement.

9.20 NO THIRD-PARTY RIGHTS

Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third-party beneficiary of any right or obligation of Agency or Developer that is expressly or impliedly created by the terms of this Agreement or by operation of law.

[remainder of this page intentionally left blank]

9.21 NO CHANGE TO OTHER AGREEMENTS

Nothing herein shall be deemed to alter, add to, reduce, void, rescind, change or modify the obligations of either Party under any other agreements entered into between or among Agency and Developer.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Agency:

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

William Fulton
Director, Planning, Neighborhoods, and Economic
Development Department

APPROVED AS TO FORM:

Jan I. Goldsmith
City Attorney

By: _____

Kevin Reisch
Chief Deputy City Attorney

Developer:

PINNACLE BAYSIDE DEVELOPMENT US,
L.P., a California limited partnership

By: Island Development US LLC, a California
limited liability company, General Partner

Date: _____

By: _____

Michael De Cotiis
Manager

EXHIBIT "A"

LIST OF CONSTRUCTION DRAWINGS

[behind this page]

Project Name: 15th & Island Park		
Project Location: 15th Street & Island Avenue, San Diego, CA		
LIST OF DRAWINGS & SPECIFICATIONS		
Page Number	Description	Date Issued
	Park Drawings	
1	Title Sheet	17-Dec-13
2	Environmental/ Mitigation Requirements	17-Dec-13
3	Environmental/ Mitigation Requirements	17-Dec-13
4	Key Map and Street Sections	17-Dec-13
5	Demolition Plan	17-Dec-13
6	Grading Plan (Mass Grading)	17-Dec-13
7	Erosion Control Notes and Details	17-Dec-13
8	Shoring General Notes	17-Dec-13
9	Shoring Site Plan	17-Dec-13
10	Shoring North Elevation, Section A, A1	17-Dec-13
11	Shoring East Elevation, Section B	17-Dec-13
12	Shoring East Elevation, Section B1	17-Dec-13
13	Shoring South Elevation, Section C	17-Dec-13
14	Shoring North-West Elevation, Section D	17-Dec-13
15	Shoring Typical Anchor Detail	17-Dec-13
16	Existing Conditions Plan	17-Dec-13
17	Horizontal Control Plan	17-Dec-13
18	Horizontal Control Plan	17-Dec-13
19	Precise Grading Plan	17-Dec-13
20	Drainage Plan	17-Dec-13
21	Park Erosion Control Plan	17-Dec-13
22	Erosion Control Notes and Details	17-Dec-13
23	Park Project Description	17-Dec-13
24	Park Key Plan	17-Dec-13
25	Park Access and Signage Plan	17-Dec-13
26	Park Hardscape Finishes Plan	17-Dec-13
27	Park Rubber Surfaces Plan	17-Dec-13
28	Park Layout Plan & Enlargements	17-Dec-13
29	Park Layout Plan & Enlargements	17-Dec-13
30	Park Hardscape Legend	17-Dec-13
31	Park Hardscape Legend	17-Dec-13
32	Park Hardscape Details	17-Dec-13
33	Park Hardscape Details	17-Dec-13
34	Park Hardscape Details	17-Dec-13
35	Park Hardscape Details	17-Dec-13
36	Park Hardscape Details	17-Dec-13
37	Park Hardscape Details	17-Dec-13
38	Park Fence Details	17-Dec-13
39	Park Planting Details	17-Dec-13
40	Park Gate Detail Plans	17-Dec-13
41	Park Gate Detail Plans	17-Dec-13
42	Park Hardscape Details	17-Dec-13
43	Park Hardscape Details	17-Dec-13
44	Park Hardscape Details	17-Dec-13
45	Park Hardscape Details	17-Dec-13
46	Park Irrigation Plans	17-Dec-13
47	Park Irrigation Legend & Notes	17-Dec-13
48	Park Irrigation Details	17-Dec-13
49	Park Irrigation Details	17-Dec-13
50	Park Planting Plan Trees & Mulch	17-Dec-13

Project Name: 15th & Island Park		
Project Location: 15th Street & Island Avenue, San Diego, CA		
LIST OF DRAWINGS & SPECIFICATIONS		
Page Number	Description	Date Issued
51	Park Planting Plan - Shrubs	17-Dec-13
52	Park Planting Plan Enlargements	17-Dec-13
53	Park Planting Legend	17-Dec-13
54	Park Planting Notes	17-Dec-13
55	Park Planting Details	17-Dec-13
56	Park Planting Details	17-Dec-13
57	Park Artwork Components	17-Dec-13
58	Park Artwork Components	17-Dec-13
59	Park Artwork Components	17-Dec-13
60	Park Artwork Components	17-Dec-13
61	Park Artwork Components	17-Dec-13
62	Park Architectural Trellis and Fence Plan	17-Dec-13
63	Park Architectural Details	17-Dec-13
64	Park Architectural Details	17-Dec-13
65	Park Architectural Details	17-Dec-13
66	Park Architectural Details	17-Dec-13
67	Park Architectural Details	17-Dec-13
68	Park Architectural Details	17-Dec-13
69	Park Architectural Details	17-Dec-13
70	Park Structural General Notes	17-Dec-13
71	Park Structural General Notes	17-Dec-13
72	Park Structural General Notes	17-Dec-13
73	Park Structural Park Layout	17-Dec-13
74	Park Structural Sections and Details	17-Dec-13
75	Park Plumbing Plan	17-Dec-13
76	Park Electrical Site Plan	17-Dec-13
77	Park Electrical Photometric Study	17-Dec-13
78	Park Electrical One-Line Diagram	17-Dec-13
79	Park Electrical Schedule/ Details	17-Dec-13
80	Park Electrical Schedule/ Details	17-Dec-13
81	Park Electrical Load Calculations	17-Dec-13
TC1	Traffic Control Plans	17-Dec-13
TC2	Traffic Control Plans	17-Dec-13
	Total - 83 pages	
	Public Improvement Plans	
1	Title Sheet and Notes	23-Jul-12
2	Notes and Details	23-Jul-12
3	Notes	23-Jul-12
4	Phase 1 Public Improvement Plan	23-Jul-12
5	Phase 1 Public Improvement Plan	23-Jul-12
6	Phase 1 Public Improvement Plan	23-Jul-12
7	Phase 2 Public Improvement Plan	23-Jul-12
8	Phase 2 Public Improvement Plan	23-Jul-12
9	Public Improvement Plan	23-Jul-12
10	Public Improvement Plan	23-Jul-12
11	Notes and Details	23-Jul-12
12	Notes and Details	23-Jul-12
13	Notes and Details	23-Jul-12
14	Hardscape Plan	23-Jul-12

Project Name: 15th & Island Park		
Project Location: 15th Street & Island Avenue, San Diego, CA		
LIST OF DRAWINGS & SPECIFICATIONS		
Page Number	Description	Date Issued
15	Hardscape Plan	23-Jul-12
16	Hardscape Plan	23-Jul-12
17	Hardscape Plan	23-Jul-12
18	Hardscape Plan	23-Jul-12
19	Hardscape Plan	23-Jul-12
20	Irrigation Plan	23-Jul-12
21	Irrigation Plan	23-Jul-12
22	Irrigation Plan	23-Jul-12
23	Irrigation Plan	23-Jul-12
24	Irrigation Legend and Details	23-Jul-12
25	Planting Plan	23-Jul-12
26	Planting Plan	23-Jul-12
27	15th St Between Island & J Planting Plan	23-Jul-12
28	Planting Plan	23-Jul-12
29	Planting Details	23-Jul-12
30	Planting Legend and Details	23-Jul-12
31	Planting Notes	23-Jul-12
TC1	Traffic Control Plan	23-Jul-12
TC2	Traffic Control Plan	23-Jul-12
TC3	Traffic Control Plan	23-Jul-12
TC4	Traffic Control Plan	23-Jul-12
TC5	Traffic Control Plan	23-Jul-12
TC6	Traffic Control Plan	23-Jul-12
TC7	Traffic Control Plan	23-Jul-12
TC8	Traffic Control Plan	23-Jul-12
TC9	Traffic Control Plan	23-Jul-12
Total - 40 pages		
Specifications		
Park Manual (Specifications)		17-Dec-13

EXHIBIT "B"

PROJECT BUDGET

[behind this page]

PROJECT BUDGET	
PARK IMPROVEMENTS CONSTRUCTION CONTRACT	
EAST VILLAGE PARK, SAN DIEGO, CALIFORNIA	
DESCRIPTION	AMOUNT/VALUE
ON-SITE	
General Conditions	\$ 105,560.00
Contingency	\$ 101,020.00
Art Component	\$ 120,000.00
Signage	\$ 5,000.00
Play Equipment	\$ 107,092.00
Rubberized Play Surfacing	\$ 80,684.00
Site Electrical	\$ 208,811.00
Landscaping	\$ 253,978.00
Irrigation	\$ 103,870.00
Drainage/Water	\$ 104,313.00
Site furnishings/Gratings	\$ 99,449.00
Boulders & DG	\$ 107,348.00
Grading & Earthwork	\$ 13,596.00
Structural Soil	\$ 30,285.00
Concrete Paving/Base	\$ 237,600.00
Concrete Walls/Skate Det	\$ 383,417.00
Concrete Footings	\$ 2,533.00
Concrete Headers	\$ 14,579.00
Metal Work	\$ 198,024.00
SUBTOTAL ON-SITE	\$ 2,277,159.00
OFFSITE	
General Conditions	\$ 68,313.00
Contingency	\$ -
Earthwork	\$ -
Site Demolition	\$ -
Landscape & Irrigation	\$ 88,196.00
Signage	\$ 1,280.00
Site furnishings/Gratings	\$ 13,635.00
AC Paving	\$ 24,799.00
Concrete & Site	\$ 136,183.00
Site Lighting	\$ 111,515.00
Relocate Transformer	\$ 39,900.00
Storm Drain	\$ 58,315.00
Water Line	\$ 23,000.00
SUBTOTAL OFF-SITE	\$ 565,136.00
MISCELLANEOUS SOFT	
Permit Review - Final CD's and Permit Costs	\$ 55,000.00
Construction Administration - Design Team	\$ 70,200.00
Irrigation Water Meter / CWA Capacity Charges	\$ 25,000.00
SUBTOTAL MISCELLANEOUS SOFT	\$ 150,200.00
TOTAL	\$ 2,992,495.00

EXHIBIT "C"

CONSTRUCTION SCHEDULE

[behind this page]

EXHIBIT "C"

Park Improvements Construction Contract

Summary Schedule

Oversight Board Approval of Construction Contract	April 21, 2014
Department of Finance (DOF) Approval of Construction Contract	approx. June 15, 2014
Successor Agency Execution of Construction Contract (following/subject to DOF approval)	June 30, 2014
Notice to Proceed	July 1, 2014
Construction Start	August 1, 2014
Completion of Construction	April 27, 2015

Developer shall provide detailed schedule of work consistent with the above dates for construction as part of the Subcontractors Bids package required in Section 1.1.5.

EXHIBIT "D"

FORM OF PROGRESS PAYMENT REQUEST

PROGRESS PAYMENT REQUEST NO. _____

REQUEST DATE: _____

The undersigned ("**Developer**") hereby requests payment in the total amount of \$ _____ for compensation earned under the Park Improvements Construction Contract (the "**Agreement**"), and hereby represents and warrants to Agency as follows:

1. He (she) is duly authorized and qualified to execute this Progress Payment Request for payment on behalf of Developer, and makes the representations hereinafter set forth based on personal knowledge or information and belief as to the matters set forth herein.

2. All costs requested by Developer under the Agreement for which payment is requested hereby are in accordance with the Project Budget (Exhibit "B" to the Agreement), and to the best of Developer's knowledge or information and belief, have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior Progress Payment Request submitted to Agency that has been paid by Agency.

3. Supporting documentation (such as third-party invoices) is attached with respect to each cost and Developer reimbursable expense for which payment is requested.

4. To the best of Developer's knowledge or information and belief, the Project is being or was constructed in accordance with the Agreement, and all applicable Agency or other governmental standards.

5. The progress payment has been calculated in conformance with the terms of the Agreement between Agency and Developer.

I hereby certify that the above statements are, to the best of my knowledge, information and belief, true and correct.

Signature on following page

Developer:

PINNACLE BAYSIDE DEVELOPMENT US,
L.P., a California limited partnership

By: Island Development US LLC, a California
limited liability company, General Partner

Date: _____

By: _____
Michael De Cotiis
Manager

ATTACHMENT 1

[List here a description of work performed in relation to the Project for which payment is requested, and attach support documentation]

ATTACHMENT 2

CALCULATION OF PROGRESS PAYMENT

1. Description of services and work completed to which this Progress Payment Request relates (based upon schedule of values): _____
2. Requested compensation (list here total and supporting invoices and/or other documentation supporting determination of costs): \$ _____
3. Payment Amount Requested: \$ _____

EXHIBIT "E"

FORM OF BID FORM

[behind this page]

BID FORM

Project: A Park for East Village

Table of Articles

Article 1 – Bid Due Date/Time	2
Article 2 – Bid Delivery	2
Article 3 – Bid Recipient	2
Article 4 – Bidder’s Acknowledgement.....	2
Article 5 – Bidder’s Representations	2
Article 6 – Further Representations	2
Article 7 – Basis of Bid	4
Article 8 – Time of Completion	4
Article 9 – Attachments to this Bid	4
Article 10 – Bid Submittal	4

A PARK FOR EAST VILLAGE

ARTICLE 1 – BID DUE DATE/TIME

1.01 Due January 23, 2012 by 4:00PM (Local)

ARTICLE 2 – BID DELIVERY

2.01 Deliver to Jobsite office located at:

Pinnacle International Development, Inc.
1443 Island Ave., San Diego CA 92101

Email to: Alan Ahmad – Project Manager aahmad@pinnacleinternational.ca

and Dennis La Salle – Assistant PM dlasalle@pinnacleinternational.ca

ARTICLE 3 – BID RECIPIENT

3.01 This Bid is submitted to:

Pinnacle International Development Inc.

3.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner to perform all Work as specified or indicates in the Bidding Documents for the process and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 4 – BIDDER’S ACKNOWLEDGEMENTS

4.01 Bidder accepts all of the terms and conditions of these Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 5 – BIDDER’S REPRESENTATIONS

5.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents prepared by Stirling Lands Civil Engineers and Spurlock Poirier Landscape Architects, which include: Improvement Plans for 15th Street & Island Avenue dated November 25, 2011; Grading Plans for 15th Street & Island Avenue dated November 25, 2011; Project Manual for A Park for East Village dated August 23, 2011; and, all Addenda receipt of which is hereby acknowledged.

Addendum No. _____ Addendum Date _____

The Bidding Documents also include: Geotechnical Reports: Supplemental Geotechnical Investigation, Proposed High-Rise Development, East Village Area, dated May 2, 2006; Basement Excavation Geologic Inspection, Park Café at Island Avenue and 14th Street, dated August 22, 2006; Geotechnical Review of Structural Foundation Plans with Supplemental Recommendations, dated January 5, 2007; Addendum to Geotechnical Investigation High-Rise Development, East Village Area, dated February 2007; Soil Inspection Verification, Park Café at Island, dated April 2007 (Revised June 14, 2007); Environmental Assessment: Gradient Engineers Report: “Phase I Environmental Site Assessment Report. Parcels 535-154-01, 02, 03 and 04. 415 14th Street, San Diego, CA. dated April 10, 1998; URS Phase I Environmental Site Assessment and Limited Phase II Environmental Investigation dated March 15, 2004. Bidder acknowledges the receipt and review of these documents and shall make their own interpretation of site conditions.

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local laws and Regulations that may affect cost, progress and performance of the Work.
- D. Bidder understands that this is a Prevailing Wage Project and acknowledges that applicable wage rates have been included in the Bid.
- E. Bidder acknowledges that all applicable taxes have been included in the Bid.
- E. Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site, and all drawings of physical conditions relating to existing surface and/or subsurface structures at or contiguous to the Site.
- F. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions at or contiguous to the Site which may affect cost, progress, or performance of the Work which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- G. Bidder does not consider that any further examinations, investigations, exploration, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times and in accordance with other terms and conditions of the Bidding Documents.
- H. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- I. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all

additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

- J. Bidder has given the Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Owner is acceptable to Bidder.
- K. The Bidding Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- L. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 6 – FURTHER REPRESENTATIONS

6.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 7 – BASIS OF BID

7.01 Bidder will complete the Work in accordance with the Bidding Documents for the following price:

Lump Sum Price _____ \$ _____

All specified cash allowances are included in the price set forth above.

ARTICLE 8 – TIME OF COMPLETION

8.01 Bidder agrees that the Work will be completed in an expeditious manner in accordance with the project schedule.

ARTICLE 9 – ATTACHMENTS TO THIS BID

9.01 The following documents are attached to and made a condition of this Bid:

- A. Required Bid security in the form of Not Applicable.

ARTICLE 10 – BID SUBMITTAL

10.01 This Bid submitted by:

Corporation Name: _____

State of Incorporation: _____

By: _____

(Signature)

Name: _____

(Typed or printed.)

Title: _____

(Corporate Seal)

Date of Qualification to do business in California is _____.

Bidder's Business address: _____

Phone: _____ Facsimile: _____

Email: _____

Submitted on: _____

State Contractor License No. _____.

EXHIBIT "F"

FORM OF ESCROW AGREEMENT

[behind this page]

ESCROW AGREEMENT

(Pinnacle Park)

This **ESCROW AGREEMENT** ("**Agreement**") is entered into as of _____, 2014, by and among the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("**Agency**"), Pinnacle Bayside Development US L.P., a California limited partnership ("**Developer**"), and Dixieline Builders Fund Control, Inc., a California corporation ("**Escrow Agent**"), not in its individual capacity but solely in its capacity as escrow agent. Agency, Developer, and Escrow Agent may be referenced individually herein as a "**Party**" and collectively herein as the "**Parties**".

RECITALS

A. The former Redevelopment Agency of the City of San Diego ("**Former RDA**") and Pinnacle International Development, Inc., a California corporation (Developer's predecessor-in-interest), entered into that certain Owner Participation Agreement dated October 12, 2005 (the "**Original OPA**"), as amended by that certain First Implementation Agreement dated August 7, 2006 (the "**First Implementation Agreement**"), that certain Second Implementation Agreement dated May 2, 2007 (the "**Second Implementation Agreement**"), and that certain Third Implementation Agreement dated January 3, 2011 (the "**Third Implementation Agreement**"). The Original OPA, as amended by the First Implementation Agreement, the Second Implementation Agreement, and the Third Implementation Agreement shall be referred to herein as the "**OPA**". As of February 1, 2012, the Former RDA dissolved by operation of law, at which time Agency assumed all of the Former RDA's rights and obligations under the OPA.

B. Consistent with Section IV.1 of the Method of Financing (Attachment No. 2 to the Original OPA), Developer and Agency have entered into that certain Park Improvements Construction Contract dated _____, 2014 ("**Park Contract**"), pursuant to which Developer has agreed, subject to the fulfillment of certain obligations of Agency, to construct a neighborhood public park defined therein as the "**Park Improvements**" ("**Project**") located adjacent to Developer's private development project in downtown San Diego. The Park Contract states that Agency's sole financial contribution to Developer toward the Project shall be in the form of funding Developer's bona fide costs incurred to third parties to complete remaining design and permitting work for the Project and to construct the Project in an amount not to exceed TWO MILLION NINE HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED NINETY-FIVE DOLLARS (\$2,992,495) ("**Eligible Expenses**"). Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings given to those terms in the Park Contract.

C. The Park Contract states that, subject to specified contingencies, Agency shall cause the full amount of the Eligible Expenses to be deposited into an escrow fund at the earliest opportunity after the commencement of the ROPS 14-15A time period on July 1, 2014. In addition, Section 1.f of the Method of Financing (Attachment No. 2 to the Original OPA), as amended by Section 307 of the Third Implementation Agreement, requires Agency to pay the Capitalized Maintenance Credit to Developer upon Developer's completion of the Project and the opening of the Park Improvements and the Joint-Use Public Restrooms for daily public use. As

described in the Method of Financing, the Capitalized Maintenance Credit will serve as a credit to Developer equal to the reasonably foreseeable capitalized cost of Developer's obligation to maintain the Park Improvements in perpetuity, plus one-half of the reasonably foreseeable capitalized cost of Developer's obligation to maintain the Joint-Use Public Restrooms in perpetuity. The estimated amount of the Capitalized Maintenance Credit is \$1,637,505, subject to potential augmentation within the limits of the Baseline Budget for the Park Improvements in accordance with Section 302(4) of the Third Implementation Agreement.

D. Agency and Developer have mutually selected the Escrow Agent and have determined that this Escrow Agreement is a mutually acceptable agreement for purposes of disbursing payment of the Eligible Expenses in accordance with the Park Contract and disbursing the Capitalized Maintenance Credit in accordance with the OPA.

E. The Escrow Agent has agreed to act as Escrow Agent upon the terms and subject to the conditions set forth in this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals; Definitions; Interpretation; Reference Materials.

1.1. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed a part of this Agreement.

1.2. Interpretation. Words importing any gender include all genders. The singular form of any word used in this Agreement shall include the plural, and vice versa, unless the context otherwise requires. Words importing persons include natural persons, firms, associations, partnerships, corporations and public entities.

1.3. Reference Materials. Sections cited by number only refer to the respective sections of this Agreement so numbered. Reference to "this section" or "this subsection" shall refer to the particular section or subsection in which such reference appears. Any captions, titles or headings preceding the text of any section and any table of contents or index attached to this Agreement are solely for convenience of reference and shall not constitute part of this Agreement or affect its meaning, construction or effect.

1.4. Effective Date. The Parties agree that this Agreement is dated as of the date first above written for convenience of the Parties, and agree that it shall be effective on, from and after the date upon which the full amount of the Eligible Expenses of \$2,992,495 and the estimated amount of the Capitalized Maintenance Credit of \$1,637,505 (collectively, the "**Contributed Funds**") is deposited into the "Escrow Fund" (as that term is defined in Section 3.1 below) (the "**Funding Date**").

2. Escrow Payments. Concurrently with the execution of this Agreement, Agency is depositing the Contributed Funds with the Escrow Agent. The Escrow Agent acknowledges

receipt of the Contributed Funds and agrees to hold the Contributed Funds in accordance with the terms and conditions of this Agreement.

3. Establishment of Escrow Fund.

3.1. The Escrow Agent has established, at the request of the parties hereto, a special and irrevocable escrow fund for the Project (“**Escrow Fund**”). The Escrow Fund is a special, segregated escrow fund maintained by the Escrow Agent separate and apart from the general banking assets and liabilities or other escrow funds of the Escrow Agent and held and administered by the Escrow Agent in accordance with the terms and provisions of this Agreement.

3.2. The Escrow Agent acknowledges that (i) it will hold the Escrow Fund pursuant to the terms of this Agreement; (ii) it will credit the Contributed Funds and any investments in the Escrow Fund on its own books and records to the Escrow Fund; and (iii) it will hold the Contributed Funds for the credit of the Escrow Fund as Escrow Agent hereunder subject to the terms of this Agreement.

3.3. Until disbursed by Escrow Agent in accordance with this Agreement, all amounts held in the Escrow Fund are and shall be the property of Agency. Any funds remaining in the Escrow Fund on December 31, 2018, shall be remitted by the Escrow Agent to Agency.

3.4 Escrow Agent’s obligations are limited to those obligations expressly imposed on Escrow Agent by the provisions of this Agreement and applicable federal, state and local laws. “*Ancillary Agreements*” means all agreements, understandings, and documents (including those identified in this Agreement) to which Escrow Agent is not an express party or which have not been signed by Escrow Agent. Escrow Agent is not required to review or take into consideration any Ancillary Agreements, and Escrow Agent shall have no obligations or liability of any kind in connection with Ancillary Agreements.

4. Investment of Moneys In Escrow Fund; Interest Earnings.

4.1. Funds deposited in the Escrow Fund may be invested and reinvested by and in the name of the Escrow Agent only in money market funds or in other investment funds identified by Agency as permitted investments on Attachment 1 hereto (“**Permitted Investments**”). All Permitted Investments shall be made by the Escrow Agent at the prior written direction of Agency. The Escrow Agent or its affiliates may act as principal, agent, sponsor or depository with respect to any Permitted Investments. To insure that cash on hand is invested, if Agency does not give the Escrow Agent written or timely instructions with respect to investments of funds, the Escrow Agent shall invest, to the extent that timing permits, cash balances only in the designated AAA-rated money market funds that qualify as a Permitted Investment. The Escrow Agent is specifically authorized to implement an automated cash investment system to assure that cash on hand is invested at all times.

4.2. The Escrow Agent agrees to keep accurate records regarding amounts on deposit in the Escrow Fund and any interest earned on or profits realized from amounts on deposit in the Escrow Fund and to provide Agency and Developer with monthly statements indicating any and all amounts on deposit and the money market funds or other investments in which any of the Contributed Funds are being held. Additionally, upon reasonable request, the Escrow Agent agrees to share such records with Agency and Developer.

4.3. Any interest earnings and other investment proceeds from the funds on deposit in the Escrow Fund shall be deposited into the escrow account and disbursed by Escrow Agent directly to Agency promptly upon written request, or if no written request is made by Agency, on a quarterly basis, with the first such quarterly remittance occurring on or before five (5) days following the initial quarterly period after the deposit of the Contributed Funds into the Escrow Fund, and all subsequent quarterly remittances on or before five (5) days after the applicable quarterly periods.

4.4. Agency agrees that, prior to the Escrow Agent investing the Contributed Funds into any Permitted Investments, Agency shall consent to the terms of such a transfer of funds by executing the form attached hereto as Attachment 1-A.

5. Application of Escrow Fund. The Escrow Agent shall disburse the Contributed Funds on deposit in the Escrow Fund in accordance with the Disbursement Requests made by Agency using the form attached hereto as Attachment 2, signed by Agency's and Developer's respective authorized representatives. Agency and Developer shall submit any Disbursement Request to Escrow Agent, via electronic mail or otherwise. As to the Eligible Expenses, submittal of a mutually executed Disbursement Request shall occur promptly upon Agency's approval of any Contingency Use Request under Paragraph 1.1.6 of the Park Contract and Agency's approval of any Progress Payment Request under Article 2 of the Park Contract. As to the Capitalized Maintenance Credit, the one-time submittal of a mutually executed Disbursement Request shall occur promptly upon Agency's confirmation that all conditions to payment of the Capitalized Maintenance Credit under the Method of Financing (Attachment No. 2 to the Original OPA), as amended, have been fulfilled. The Escrow Agent shall disburse amounts on deposit in the Escrow Fund to Developer, Contractor, or any subcontractor solely in accordance with the directions contained in the applicable Disbursement Request. Only those persons as indicated on Attachment 2-A hereto, as may be modified by Agency from time-to-time, or in another written certificate furnished to the Escrow Agent by Agency, as applicable, and containing the specimen signature of such person and signed on behalf of the Agency shall be authorized to act on behalf of Agency in connection with a Disbursement Request. Escrow Agent is authorized and instructed to conclusively presume, without investigation or inquiry, that (a) any duly executed Disbursement Request submitted to Escrow Agent by Agency and Developer fully complies with all requirements of the Agreement, (b) there are no conditions to making the disbursement other than conditions expressly set forth in the Disbursement Request, and (c) all signatures on a Disbursement Request submitted to Escrow Agent by Agency and Developer are authentic and made by the person identified in the Disbursement Request. Escrow Agent is not required to verify the authenticity of any signatures.

6. Banker's Lien; Set-Off. The Escrow Agent hereby acknowledges and agrees that it shall have no lien on or security interest in, or right of setoff in respect of, monies or investments in the Escrow Fund for the payment of fees and expenses or for any other purpose whatsoever.

7. Representations and Warranties

7.1 Representations and Warranties of Agency. Agency represents and warrants to the Escrow Agent that:

- (a) It is a public entity organized and existing under the laws of the State of California;

(b) It has the power and authority to execute, deliver, and perform its obligations under, this Agreement; and

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of Agency; this Agreement has been duly executed and delivered by it and is the valid and binding obligation of Agency, and assuming the enforceability hereof against the other parties hereto, is enforceable against it in accordance with its terms.

7.2 Representations and Warranties of the Escrow Agent. The Escrow Agent represents and warrants to Agency and Developer that:

(a) It is a corporation duly organized and existing under the laws of the State of California;

(b) It has the power and authority to execute, deliver, and perform its obligations under, this Agreement; and

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of the Escrow Agent; this Agreement has been duly executed and delivered by it and is the valid and binding obligation of the Escrow Agent, and assuming the enforceability hereof against the other parties hereto, is enforceable against it in accordance with its terms.

7.3 Representations and Warranties of Developer. Developer represents and warrants to the Escrow Agent and Agency that:

(a) It is a California limited partnership duly organized and existing under the laws of the State of California;

(b) It has the power and authority to execute, deliver, and perform its obligations under, this Agreement; and

(c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on the part of the Developer; this Agreement has been duly executed and delivered by it and is the valid and binding obligation of the Developer, and assuming the enforceability hereof against the other parties hereto, is enforceable against it in accordance with its terms.

8. Provisions Regarding the Escrow Agent.

8.1 Powers of the Escrow Agent.

(a) Agency and Developer hereby authorize the Escrow Agent to (i) take such action and to exercise such rights, powers and privileges under this Agreement as are specifically authorized to be exercised by the Escrow Agent by

the terms of this Agreement, together with such rights, remedies, powers and privileges as are reasonably incidental thereto; (ii) execute any of its duties as Escrow Agent under this Agreement by or through agents or employees; and (iii) retain experts (including counsel) and act in reliance upon the advice of such experts concerning all matters pertaining to the agencies created by this Agreement and its duties under this Agreement, free from any liability for any action taken or omitted to be taken by it in good faith in accordance with the advice of such experts.

(b) The Escrow Agent agrees to perform only those duties specifically set forth in this Agreement and no implied duties or obligations shall be read into this Agreement. The Escrow Agent shall not, without the prior written approval of the Agency, consent to any departure by Developer from the terms of this Agreement, or amend, modify, supplement or terminate, or agree to any surrender of, this Agreement or the Escrow Fund; provided, however, that the Escrow Agent shall not be required to take any action which requires it to expend or advance its own funds, exposes the Escrow Agent to personal liability or which is contrary to this Agreement, or any other agreement or instrument relating to the Escrow Fund or applicable law.

(c) Neither the Escrow Agent nor any of its directors, officers, employees or agents shall be liable for any action taken or omitted to be taken by it or them under this Agreement, or in connection with this Agreement, except for its or their own negligence or willful misconduct.

(d) The Escrow Agent is authorized and instructed to conclusively presume, without investigation or inquiry, that any communication, instrument, paper or other document is genuine and correct and to has been signed or sent by the proper person or persons. The Escrow Agent may accept deposits from, lend money to, and generally engage in any kind of business with, Agency.

8.2 Successor Escrow Agent.

(a) The Escrow Agent may at any time resign and be discharged of the duties and obligations created by this Agreement by giving notice to Agency and Developer by an instrument in writing addressed and delivered to Agency and Developer. Such resignation shall take effect upon the date specified in such notice, unless a successor has not been appointed, in which event such resignation shall take place upon the appointment of a successor. The Escrow Agent may be removed at any time with or without cause by an instrument in writing duly executed by or on behalf of both Agency and Developer. If the parties shall not have appointed a successor Escrow Agent prior to the expiration of thirty (30) days following the effective date of the notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or for other appropriate relief, and any such resulting appointment shall be binding upon the parties.

(b) Developer and Agency shall, concurrently with any such resignation or removal, appoint a successor Escrow Agent by a written instrument of substitution

which complies with any requirements of applicable law. Upon the making and acceptance of such appointment, the execution and delivery by such successor Escrow Agent of a ratifying instrument pursuant to which such successor Escrow Agent agrees to assume the duties and obligations imposed on the Escrow Agent by the terms of this Agreement, and the delivery to such successor Escrow Agent of the Escrow Fund and documents and instruments then held by the retiring Escrow Agent, such successor Escrow Agent shall thereupon succeed to and become vested with all the estate, rights, powers, remedies, privileges, immunities, indemnities, duties and obligations by this Agreement granted to or conferred or imposed upon the predecessor Escrow Agent. No Escrow Agent shall be discharged from its duties or obligations under this Agreement until the Escrow Fund and documents and instruments then held by such Escrow Agent shall have been transferred or delivered to the successor Escrow Agent and until such retiring Escrow Agent shall have executed and delivered to the successor Escrow Agent appropriate instruments assigning the retiring Escrow Agent's security or other interest in the Escrow Fund to the successor Escrow Agent. The retiring Escrow Agent shall not be required to make any representation or warranty in connection with any such transfer or assignment.

8.3 No Additional Waiver Implied by One Waiver. If a party shall fail to perform any obligation it is required to perform under this Agreement, and such failure is thereafter waived by any other party, such waiver shall be limited to the particular failure so waived and shall not be deemed to waive any other failure to perform as required under this Agreement.

8.4 Disputes. If there is any dispute between Agency and Developer as to the disposition of the Escrow Funds, the Escrow Agent shall continue to hold the Escrow Funds subject to the order of a court of competent jurisdiction as to the disposition thereof or, at the option of the Escrow Agent at any time after the Escrow Agent becomes aware of such dispute, the Escrow Agent may deposit the Escrow Funds with the clerk of a court of competent jurisdiction and commence an action in the nature of an interpleader for a determination of the respective rights of the parties and, in such case, recover the Escrow Agent's reasonable out of pocket costs and expenses, including a reasonable third party attorney's fee.

8.5 Fees. The Escrow Agent's cash management fees pertaining to this Agreement, as specified in Section 9.2 below, shall be deducted by the Escrow Agent from the Contributed Funds and shall be treated as a component of the Eligible Expenses.

9. Miscellaneous Provisions.

9.1 Cooperation. At any time and from time to time after the date of this Agreement, a party shall, at the request of another party, execute and deliver any instruments or documents, and shall take all such further actions as such party may reasonably request in order to consummate and effectuate the transactions contemplated by this Agreement.

9.2 Fee; Costs and Expenses; Indemnification. The Escrow Agent's cash management fees pertaining to this Agreement shall include: (a) a set-up fee of \$250; (b) a

one-time management fee of \$8,469. If there is an increase in the Contributed Funds in excess of the amounts reflected in Section 1.4 above, then the portion of the Escrow Agent's cash management fees described in clause (b) of this Section 9.2 shall be increased at the rate of \$1.30 per each \$1,000 of increase in the Contributed Funds. Developer and Agency shall indemnify and hold harmless the Escrow Agent from and against any and all losses, costs, claims, damages, penalties, causes of action, suits, judgments, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses actually incurred) actually incurred by the Escrow Agent in connection with this Agreement, unless such liability shall be finally adjudicated to be directly caused by the willful misconduct or gross negligence on the part of the Escrow Agent or its agents or employees. The obligations of Developer and Agency under this Section 9.2 shall survive the termination of this Agreement, the resignation or removal of the Escrow Agent, and the discharge of the other obligations of such parties under this Agreement.

9.3 Termination. This Agreement shall terminate upon the earliest of the three following events: (i) disbursement pursuant to Section 5 above of all Contributed Funds required to be disbursed pursuant to the terms of this Agreement; (ii) termination by mutual written agreement of Agency and Developer; or (iii) termination of the Park Contract by Agency in accordance with the terms of the Park Contract following the passage of any applicable notice and cure periods set forth in the Park Contract, as such date is designated in writing by Agency to the Escrow Agent. Any funds remaining in the Escrow Fund upon termination of this Agreement pursuant to this Section 9.3 or on the date referenced in Section 3.3, shall be immediately disbursed directly to Agency.

9.4 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties to this Agreement with respect to the subject matter of this Agreement. This Agreement may not be amended, changed, waived or modified except by a writing executed by all parties hereto.

9.5 Successors and Assigns. Subject to the terms and conditions of the Park Contract, this Agreement shall inure to the benefit of, and be enforceable by, Parties and their respective successors and permitted assigns, and nothing herein expressed or implied shall be construed to give any other person or entity any legal or equitable rights under this Agreement. No Party shall assign any of the rights, interests or obligations under this Agreement without the prior written consent of the other Parties, except that Agency may assign its rights, interest or obligations under this Agreement to the City of San Diego without the prior written consent of the other Parties.

9.6 Notices. All written notices, certificates or other communications shall be sufficiently given and shall be deemed to be given on the date on which the same shall have been mailed by certified first class mail, postage prepaid, return receipt requested, commercial delivery service, overnight courier, telecopier or facsimile transmission, air or other courier, or hand delivery addressed as follows:

To the Agency:

City of San Diego, as redevelopment successor agency
Attn: Civic San Diego,
Assistant Vice President, Neighborhood Reinvestment
401 B Street, Suite 400
San Diego, California 92101

With a copy to:

San Diego City Attorney
Attn: Economic Development Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

To the Escrow Agent:

Dixieline Builders Fund Control, Inc.

If to the Developer:

Pinnacle Bayside Development US L.P.
Attn: Michael DeCotiis, Manager
Suite 300 - 911 Homer Street
Vancouver, British Columbia,
CANADA V6B 2W6

With a copy to:

LexTerra PLC
Attention: David L. Dick
3580 Carmel Mountain Road, Suite 460
San Diego, California 92130

Any of such addresses may be changed at any time upon written notice of such change sent, as provided above in this Section 9.6, to the other party.

9.7 Books and Records. The Escrow Agent agrees to maintain its books and records relevant to the amounts on deposit held by it in the Escrow Fund from time to time pursuant hereto for at least ten years following termination of this Escrow Agreement in accordance with applicable law, corporate trust industry practice, and the terms and provisions hereof. The Escrow Agent agrees that Agency may at any time upon reasonable advance request and during normal business hours examine or copy the books and records of the Escrow Fund and the Permitted Investments.

9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles except to the extent that Federal laws may prevail.

9.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effectuate the original intent of the transactions contemplated hereby.

9.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

9.11 Representation and Warranty. Each Party hereby represents and warrants that: (i) this Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (ii) the execution, delivery and performance of this Agreement by the Parties and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions of each Party.

9.12 Attorneys' Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled.

[remainder of page intentionally left blank]

The Parties have caused this Agreement to be signed, on the date first written above, by their respective officers duly authorized.

Agency:

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

William Fulton
Director, Planning, Neighborhoods, and Economic
Development Department

APPROVED AS TO FORM:

Jan I. Goldsmith
City Attorney

By: _____

Kevin Reisch
Chief Deputy City Attorney

Developer:

PINNACLE BAYSIDE DEVELOPMENT US, L.P.,
a California limited partnership

By: Island Development US LLC, a California
limited liability company, General Partner

Date: _____

By: _____

Michael De Cotiis
Manager

Escrow Agent:

Dixieline Builders Fund Control, Inc.,
a California corporation, as Escrow Agent

Date: _____

By: _____

Name: _____

Title: _____

Attachment 1

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

Federal Securities.

- (i) United States Treasury bills, bonds, and notes for which the full faith and credit of the United States are pledged for payment of principal and interest;
- (ii) Direct obligations issued by the following agencies of the United States Government: the Federal Farm Credit Bank System, the Federal Home Loan Bank System, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Tennessee Valley Authority;
- (iii) Mortgage backed securities (except stripped mortgage securities) issued by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association;
- (iv) United States Treasury Obligations, State and Local Government Series; and
- (v) Issues guaranteed as to timely payment of principal and interest by the full faith and credit of the Federal Deposit Insurance Corporation.

Commercial Paper, payable in the United States of America and issued by corporations that are organized and operating in the United States with total assets in excess of \$500 million and having a rating in the “A” rating category or better for the issuer’s long-term debt as provided by Moody’s, Standard & Poor’s, or Fitch and “P-1”, “A-1”, “F1” or better rating for the issuer’s short-term debt as provided by Moody’s, Standard & Poor’s, or Fitch, respectively.

Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which have short-term obligations outstanding which are rated by two or more of Moody’s, Standard & Poor’s, and Fitch in its respective highest short-term rating categories, a long-term debt rating of not less than the “A” rating category by one or more of Moody’s, Standard & Poor’s, and Fitch, and a maturity no later than the final maturity of the Notes.

Negotiable or non-negotiable certificates of deposit issued by a nationally- or state-chartered bank or a state or federal association (as defined by Section 5102 of the California Financial Code) or by a state-licensed branch of a foreign bank, in each case which has, or which is a subsidiary of a parent company which has, obligations

outstanding having a rating in the “A” category or better from Moody’s, Standard & Poor’s, or Fitch.

Any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association, or a state-licensed branch of a foreign bank, having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by two or more of Moody’s, Standard & Poor’s, and Fitch in their respective three highest short-term rating categories or any government bond dealer reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clause (i) of this definition and having maturities equal to or less than 5 years from the date of delivery, which shall have a market value (valued at least monthly) not less than 102% of the principal amount of such investment.

Shares of beneficial interest issued by diversified management companies, known as money market funds which invest in securities described in (1) through and including (5) above, registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and whose fund has received the highest possible rating from Standard & Poor’s and at least either Moody’s or Fitch.

Investment agreements and guaranteed investment contracts with issuers having a long-term debt rating in the “AA” or “Aa2” categories, or better, by Standard & Poor’s or Moody’s, respectively.

Investments in the City’s Pooled Investments Fund.

Attachment 1-A

Dixieline Builders Fund Control, Inc.

Department of Corporations File No. 963 2038

INSTRUCTIONS FOR TRANSFER OF FUNDS TO INTEREST-BEARING ACCOUNT AND INDEMNIFICATION AGREEMENT

RE: Fund Control Account #

Agency: The undersigned party, as described in that certain Escrow Agreement dated _____, 2014 (“Fund Control Agreement”) to which these Instructions are attached.

Project: The payment of Eligible Expenses and the Capitalized Maintenance Credit related to the Park Improvements, as described in the Fund Control Agreement.

The undersigned party hereby authorizes and instructs Dixieline Builders Fund Control, Inc. (hereafter referred to as “Fund control”) to place the funds held in the above fund control Account in an interest-bearing account, in the name of Fund control as Trustee for the above Fund Control Account at California Bank and Trust 4320 La Jolla Village Drive, Suite 130, San Diego, CA 92122.

Account #
Taxpayer ID# for tax reporting purposes #

These instructions do not in any way alter or change the terms for disbursing funds as set forth in the Fund Control Agreement for the above Account; specifically, you are to disburse funds (including any interest) only as provided in said Fund Control Agreement.

The undersigned agrees to hold harmless, indemnify and defend Fund Control from any and all claims, costs, expenses and liabilities, including attorney’s fees, arising out of this instruction for the Fund Control Agreement for the above account.

The undersigned has been advised by Fund Control of possible restrictions and/or penalties for early withdrawal of funds from said interest-bearing account. Amounts over \$250,000.00 are not insured by FDIC. Fund Control shall not withdraw funds from the interest-bearing account except for deposit into its “trust” or “escrow” account. \$250.00 will be charged for account set up.

Dated : _____ Dated : _____

Signed : _____ Signed : _____

Owner: _____ Owner: _____

Attachment 2

(Form of Disbursement Request – Section 5)

To: Dixieline Builders Fund Control, Inc., as Escrow Agent

Re: Escrow Agreement dated as of _____, 2014 (“Escrow Agreement”), by and among the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body corporate and politic (“Agency”), Dixieline Builders Fund Control, Inc. (the “Escrow Agent”), not in its individual capacity but solely in its capacity as escrow agent, and Pinnacle Bayside Development US L.P., a California limited partnership (“Developer”) (collectively, the “Parties”)

Pursuant to the provisions of Section 5 of the Escrow Agreement, Agency confirms its approval of the release of Escrow Funds in the amount of \$ _____, as requested by Developer through a disbursement request submitted on _____, 20____, and Agency hereby directs the Escrow Agent to transfer and release such funds from the Escrow Fund to the following account:

Bank: _____
ABA: _____
Account #: _____
Account Name: _____
Reference: _____
Contact: _____

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Escrow Agreement.

Dated: _____, 20____

Agency:

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

By: _____
Name: _____
Title: _____

Developer:

PINNACLE BAYSIDE DEVELOPMENT US,
L.P., a California limited partnership

By: Island Development US LLC, a California
limited liability company, General Partner

Date: _____

By: _____
Michael De Cotiis
Manager

Attachment 2-A

Certificate as to Authorized Signatures

Account # _____

The signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the **Agency** (as defined above), and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Attachment 2-A is attached, on behalf of the Agency.

Name / Title

Specimen Signature

_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	
_____ Name	_____ Signature
_____ Title	

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) dated this ____ day of _____, 20____, for reference purposes only, is entered into by and between Civic San Diego, a California non-profit public benefit corporation, with its principal place of business at 401 B Street, 4th Floor, San Diego, California 92101 (“CivicSD”), and Harris & Associates, Inc., (“Consultant”), with its principal place of business at 750 B Street, Suite 1800, San Diego, CA 92101. CivicSD and Consultant are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” This Agreement is entered into in light of the following recited facts (each, a “Recital”).

RECITALS

A. CivicSD is a non-profit public benefit corporation created by the City of San Diego (“City”) to engage in economic development, land use permitting and services, and project management services, which, under California law, can be done by contract with or delegated by the City, or the Successor Agency to the Redevelopment Agency of the City of San Diego (also known as the “Agency,” the “Successor Agency” or the “City of San Diego Solely in its Capacity as the Designated Successor Agency to the Redevelopment Agency of the City of San Diego, a Former Public Body, Corporate and Politic”).

B. CivicSD is authorized to enter into contracts pursuant to the California Nonprofit Public Benefit Corporation Law (Corp. Code § 5110 *et seq.*), its Articles of Incorporation and its Bylaws.

C. CivicSD is also authorized to enter into contracts for and on behalf of the City and Successor Agency pursuant to its Agreements for Consulting Services or other Agreements with the City.

D. CivicSD desires to retain the services of a construction monitoring firm to provide professional services relating to the development of a public park to be constructed as part of a residential mixed-use tower at 15th Street and Island Avenue (the “Project”).

E. The professional services required by CivicSD for the Project are detailed within the Scope of Services set forth in Exhibit A to this Agreement (the “Professional Services”).

F. Consultant has represented to CivicSD that it has the expertise, experience, personnel, and the professional licenses, if professional licenses are required for the Professional Services, necessary to provide the Professional Services to CivicSD for the Project.

G. In light of these Recitals, CivicSD and Consultant desire to enter into this Agreement in which CivicSD will retain Consultant to provide, and Consultant shall provide, the Professional Services for the Project. CivicSD enters into this Agreement on behalf of the

Successor Agency and in its role as consultant to the Successor Agency. All payments to be made to Consultant under this Agreement shall be derived from funds made available by the Successor Agency and are predicated upon the California Department of Finance's approval of expenditures for the Project on the appropriate Recognized Obligation Payment Schedule(s) ("ROPS").

H. The Agreement will benefit the local taxing entities and be in their best interests, in that the execution and performance of the Agreement will provide that:

- (1) the Successor Agency fulfills its enforceable obligations related to funding of the Park Improvements Construction Contract ("Park Improvements") with Pinnacle Bayside Development US L.P. ("Developer") in accordance with the Owner Participation Agreement executed between the Former Redevelopment Agency and Developer's predecessor-in-interest dated October 12, 2005 ("OPA"); and
- (2) the Successor Agency does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims; and
- (3) through the Consultant's provision of services, the Successor Agency can determine that:
 - (a) the Park Improvements are constructed in accordance with the approved construction drawings, and
 - (b) the Developer's construction progress payment requests are reviewed in advance of the Successor Agency's reimbursement of the Park Improvements' construction-related costs.

I. The Agreement also will benefit the taxing entities and be in their best interests, in that the Agreement will facilitate oversight of the construction of the Park Improvements, which will assist in the elimination of blight in downtown San Diego and can reasonably be expected to increase property tax revenues through the creation of a new public amenity benefiting the local community on a previously-underutilized site.

J. The Agreement will not involve an increase in compensation or scope of services, in that the Agreement will assist the Successor Agency to implement its funding obligation for the Park Improvements in accordance with the OPA.

K. The Agreement is necessary for the operation or administration of the Successor Agency because the Agreement will provide:

- (1) essential oversight of the construction of the Park Improvements, thereby enabling the Successor Agency to determine that the Park Improvements are being constructed in accordance with the approved and permitted construction drawings that meet local, state and federal codes, as applicable, for a public

facility; and

(2) essential review of construction draw payment requests, thereby enabling the Successor Agency to determine that the funding it is utilizing to fulfill its enforceable obligation in compliance with the OPA is being distributed in the proper manner.

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties set forth their mutual covenants and understandings as follows:

1. SCOPE OF SERVICES:

a. Scope of Services. Consultant shall perform the Professional Services set forth in the Scope of Services, attached to this Agreement as Exhibit A and incorporated into this Agreement by this reference. Consultant shall not be compensated for any services rendered that are outside the scope of services without a written amendment to this Agreement. The Scope of Services may only be changed, modified, or altered through an amendment to this Agreement. Any approved changes, modifications or alterations to the Scope of Services shall be performed in accordance with the provisions of this Agreement, subject to applicable amendments.

2. COMPENSATION:

a. Payment for Professional Services. CivicSD shall pay for the Professional Services in accordance with the payment and fee schedule contained in Exhibit B attached to this Agreement and incorporated into this Agreement by this reference (the "Time and Materials Fee Schedule"). The maximum payment under this Agreement for the Professional Services and, if authorized, reimbursement of expenses, shall not exceed Eighty-Four Thousand Seven Hundred Twenty Nine Dollars (\$84,729.00) (the "Time and Materials Not to Exceed Amount"). Consultant acknowledges that all payments to be made to Consultant under this Amendment shall be derived from funds made available by the Successor Agency. Furthermore, the funds will be available for this Project only if the California Department of Finance ("DOF") approves sufficient expenditures, if any, on the appropriate Recognized Obligation Payment Schedule ("ROPS"). Consultant shall therefore not undertake any work, and shall not be entitled to receive any payment for work until and unless Consultant has received written notification from CivicSD that the DOF has approved such expenditure on the ROPS that covers the period(s) during which such work will be performed. Amounts designated for payment for specific tasks or Work Product in the Time and Materials Fee Schedule may be reallocated to another task or Work Product identified in the Time and Materials Fee Schedule with the advance written approval of CivicSD; however, in no case shall any such reallocation result in an increase in the Time and Materials Not to Exceed Amount without written amendment of this Agreement.

b. Reimbursement of Expenses. Consultant shall be reimbursed for actual, reasonable and necessary expenses incurred in the performance of Professional Services in accordance with the expense reimbursement schedule and limitations included in Exhibit C

attached to this Agreement and incorporated into this Agreement by this reference (the "Time and Materials Reimbursement Schedule"). Payment for reimbursable expenses incurred by the Consultant and its Subconsultant(s) is included in the Time and Materials Not to Exceed Amount. Consultant shall not mark-up reimbursable expenses, including expenses incurred by any Subconsultant. Unless this Agreement is amended, CivicSD shall not be responsible for reimbursement of expenses exceeding the applicable limitations set forth in the Time and Material Reimbursement Schedule. Consultant shall use its best efforts to schedule reimbursable expenses such as travel and lodging in advance in order to reduce costs, and CivicSD reserves the right to reject or reduce expenses resulting from Consultant's failure to use such best efforts.

c. Invoices. Consultant shall submit a monthly itemized statement that reflects the work completed and hours of Professional Services rendered by Consultant in accordance with this Agreement. The monthly statement shall reference this Agreement and shall contain detailed billing information including, but not limited to, a description of the Professional Services rendered, Work Product completed, the date(s) of the Professional Services, time spent on tasks, name of person(s) performing the Professional Services, billing rates, and total amount billed per each service. Invoices shall also include a breakdown and substantiation (such as receipts or other evidence of actual payments acceptable to CivicSD) of all reimbursable expenses by category of expense and amount. Invoices to CivicSD must be in accordance with the Scope of Services and the Time and Materials Fee Schedule and will be generally payable, if approved, within forty-five (45) calendar days of receipt of each monthly statement. Each invoice shall include a statement of the total contract value, amount billed to date under the contract, and the amount remaining under the contract.

d. Audit of Records. Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to CivicSD or establishing the basis for an invoice, for a minimum of four (4) years from the date of final payment to Consultant. Consultant shall allow an authorized representative of CivicSD to inspect, examine, copy and audit such records during regular business hours upon reasonable advance notice.

3. EFFECTIVE DATE AND TERM:

a. Effective Date. This Agreement shall not become effective until the first date on which all of the following are true (the "Effective Date"): (i) this Agreement is approved and signed by the authorized representative(s) of the Consultant and delivered to CivicSD; (ii) following all legally required notices and hearings, this Agreement is approved by the governing board of the Successor Agency, CivicSD's governing board, and/or the authorized representative(s) of CivicSD, as applicable and legally required; and (iii) this Agreement is signed by the authorized representative(s) of CivicSD and delivered to Consultant.

b. Term. Except as provided below, the term of this Agreement (the "Term") shall continue, unless otherwise terminated early as provided in this Agreement, until the sooner of: (i) such time as the compensation remaining under the contract is expended, or (ii) for a period of 3 years following the Effective Date. Consultant shall complete the Professional Services within the Term of this Agreement, and shall meet any other schedules and deadlines mutually established, in writing, between the Parties. If the Term of this Agreement would otherwise

expire while there is both remaining value under the Agreement and when all tasks within the Scope of Services have not been completed, then this Agreement shall remain in effect until the earlier of such time as there is no remaining value under this Agreement or all tasks within the Scope of Services have been completed. Except as expressly provided herein, the Term of this Agreement may not be extended or renewed for any additional time period unless by a written amendment to this Agreement.

4. STANDARD AND RULES OF PERFORMANCE:

The Professional Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the state of California. Whenever the Scope of Services requires or permits approval by CivicSD, it is understood to be approval solely for the purposes of conforming to the requirements of the Scope of Services and not acceptance of any professional or other responsibility for the Professional Services. Such approval does not relieve Consultant of responsibility for complying with the applicable standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant or its Subconsultants. By performance of the Professional Services and delivery of any completed Work Product, Consultant represents that the Professional Services and the Work Product conform to the requirements of this Agreement and all applicable federal, state, and local laws. If Consultant is retained to perform services requiring a license, certification, registration, or other similar requirement under California or other applicable law, Consultant shall maintain that license, certification, registration, or other similar requirement throughout the term of this Agreement.

5. INSURANCE:

a. Requirement. Prior to performing the Professional Services herein, throughout the duration of the Agreement, and for twelve (12) months following completion of this Agreement, Consultant shall, at its sole cost and expense, procure and maintain the following types and limits of insurance, containing the additional insured endorsements and cancellation clause set forth herein. Additionally, Consultant shall require that each Subconsultant procure and maintain the types and limits of insurance required by this Agreement prior to performing any services hereunder. The types and limits of insurance are as follows:

(i) *Minimum Scope of Insurance.* Coverage shall be at least as broad as:

A. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01), or equivalent, (Including operations, products and completed operations, as applicable), with a limit of not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be \$2,000,000.

B. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto), or equivalent, with a limit of not less than \$1,000,000 per accident for bodily injury and property damage.

C. Workers' Compensation insurance as required by the State of California.

D. Employers' Liability insurance with the following limits: \$1,000,000 each accident; \$1,000,000 policy limit bodily injury by disease; \$1,000,000 each employee bodily injury by disease.

E. Errors & Omissions Liability insurance appropriate to the Consultant's profession with a limit of not less than \$1,000,000 per occurrence. Architects' and engineers' coverage is to be endorsed to include contractual liability, to the extent such coverage is reasonably available in the market. Consultant has provided evidence that such insurance coverage is not reasonably available in the market. Consultant is not required to provide such insurance coverage as of the Effective Date of this Agreement. CivicSD reserves the right to request Consultant to inquire as to the availability of such coverage during the Term of this Agreement, and if such coverage is reasonably available, to require Consultant to procure such coverage.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CivicSD prior to the commencement of the Professional Services. At CivicSD's option, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to CivicSD, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to CivicSD guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. Other Mandatory Insurance Provisions.

(i) The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

A. "CIVIC SAN DIEGO," "SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO" AND "CITY OF SAN DIEGO" (AND EACH OF THEIR RESPECTIVE OFFICERS, OFFICIALS, EMPLOYEES, AND VOLUNTEERS) ARE COVERED AS ADDITIONAL INSURED AS RESPECTS: LIABILITY ARISING OUT OF WORK OR OPERATIONS PERFORMED BY OR ON BEHALF OF THE CONSULTANT; OR AUTOMOBILES OWNED, LEASED, HIRED, OR BORROWED BY THE CONSULTANT.

B. For any claims related to the Professional Services, the Consultant's insurance coverage shall be primary insurance as respects Civic San Diego, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by

Civic San Diego, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(ii) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled by either Party, except after thirty (30) days prior written notice has been provided to CivicSD.

d. Acceptability of Insurers. All insurance required by express provision of this Agreement shall be carried only by California-admitted insurance carriers with a current A.M. Best rating of no less than A:V, unless otherwise acceptable to CivicSD.

e. Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of "Civic San Diego," the "Successor Agency to the Redevelopment Agency of the City of San Diego," and the "City of San Diego" for all work performed by the Consultant, its employees, agents, and Subconsultants.

f. Verification of Coverage. Before commencing any Professional Services, Consultant shall furnish CivicSD with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **ALL ENDORSEMENTS MUST BE RECEIVED AND APPROVED BY CIVICSD BEFORE WORK COMMENCES AND NO COMPENSATION SHALL BE DUE AND OWING FOR ANY WORK PERFORMED PRIOR TO THE RECEIPT AND APPROVAL OF THE ENDORSEMENTS.** However, failure by CivicSD to obtain the endorsements shall not operate as a waiver of these insurance requirements.

g. Subconsultant Insurance Requirements. Consultant shall require and verify that each Subconsultant maintains insurance meeting all requirements of this Agreement throughout the performance of any work relating to the Professional Services by such Subconsultant. Upon request of CivicSD, the Subconsultant shall provide proof to CivicSD that each Subconsultant has in place the insurance required by this Agreement.

6. INDEMNITY:

a. The Consultant shall be responsible for all injuries to persons and for all damage to real or personal property of CivicSD or third parties, to the extent caused by or resulting from the Consultant's negligence, or that of its employees, agents, or subconsultants during the performance of or connected with the rendition of services hereunder. The City is an intended beneficiary of any services performed by the Consultant for purposes of establishing a duty of care between the Consultant and the City.

b. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless CivicSD, the Successor Agency, the City and all officers and employees of each entity

(each, an "Indemnified Party") from any and all liability, claims, costs (including reasonable attorneys' fees), demands, damages, expenses, and causes of action:

(i) for damages to real or personal property, or personal injury to any third party to the extent resulting from the negligent error, act or omission of the Consultant, its employees, or its agents; or

(ii) to the extent of any breach of the Consultant's obligations, duties or covenants under this Agreement or transactions related to the Consultant's performance hereunder; or

(iii) arising out of and/or relating to any potential or actual conflict of interest and/or the failure to disclose any potential or actual conflict of interest and/or the failure to disclose any matter required to be disclosed herein or in the Disclosure Statement submitted in connection with this request for proposals or by virtue of any regulation, code or statute referred to herein, including without limitation any direct or indirect financial interest in, or contract, agreement, employment, arrangement or understanding with, or business or personal relationship of any kind with, any of the persons or entities who have submitted proposals, or any affiliate, partner, member or shareholder of any such person or entity.

c. The Consultant's obligations under this Section 6 apply regardless of whether or not a liability is caused or contributed to by the negligence or other act or omission of an Indemnified Party. However, to the extent that liability is caused by the negligence or willful misconduct of an Indemnified Party, the Consultant's indemnification obligation shall be reduced in proportion to the Indemnified Party's share of liability for its negligence or willful misconduct, if any.

7. SUBCONSULTANTS AND EMPLOYEES:

a. Generally. Consultant shall not retain Subconsultants for any portion of the Professional Services authorized by this Agreement, except as expressly stated herein, without prior written approval of CivicSD. Subconsultant agreements, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. A copy of all contracts between Consultant and any Subconsultant(s) shall be kept on file with the Consultant and be made available to CivicSD for inspection upon request at any time during the duration of this Agreement and for a period of three (3) years after the termination of this Agreement. The Consultant shall obtain CivicSD's approval before making any change in a contract between Consultant and any Subconsultant that materially reduces or increases the scope of the Subconsultant services. Consultant shall not charge an administrative fee or mark-up for the cost of the work, if any, performed by an approved Subconsultant. Consultant shall remain solely responsible for Subconsultant's performance of all obligations under this Agreement at all times during the term of the Agreement, including, but not limited to, the timely and satisfactory performance of the Professional Services.

b. Disputes between Consultant and Subconsultant. CivicSD shall not be made a party to any judicial or administrative proceeding in any dispute that arises between Consultant

and any Subconsultant. Consultant agrees to defend and indemnify CivicSD as described in Section 6 of this Agreement in any dispute between Consultant and any Subconsultant.

c. Control and Payment of Subordinates and Subconsultants. The Scope of Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Professional Services subject to the requirements of this Agreement. Consultant shall pay all wages, salaries, and other amounts due or becoming due to Consultant's personnel, employees and Subconsultants in connection with their performance of any services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, employees, and Subconsultants, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

8. INDEPENDENT CONSULTANT:

a. Consultant is an Independent Consultant. Neither Consultant nor any of Consultant's officers, employees, agents, or Subconsultants, if any, is an employee of CivicSD by virtue of this Agreement or performance of any work under this Agreement.

9. SUCCESSORS OR ASSIGNS:

a. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the Parties.

b. Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of CivicSD.

10. CONFLICTS OF INTEREST:

a. Prohibited Interests. Consultant acknowledges that no official or employee of CivicSD who is authorized in such capacity on behalf of CivicSD to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this Agreement, may be directly or indirectly financially interested in this Agreement or in any part thereof. Consultant represents and warrants that it has made all required disclosures under CivicSD's policies and that it has not knowingly or negligently caused any official or employee of CivicSD to participate in this Agreement while having a direct or indirect financial interest in the Agreement. Consultant shall require each Subconsultant to make all required disclosures and shall further require that each Subconsultant include in its Subconsultant agreement an express representation and warranty in substantially the form provided in this paragraph.

b. Covenant against Contingent Fees. Consultant agrees that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this provision, CivicSD shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the consideration, or

otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

c. Conflict of Interest Laws Applicable to Public Contracts and Procurement. Consultant and its Subconsultants are subject to all federal, state, and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code section 1090 et seq. and section 81000 et seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code (“SDMC”) at sections 27.3501 to 27.3595. If Consultant or a Subconsultant violates any conflict of interest law or any provision of this Section 10, the violation shall be grounds for immediate termination of this Agreement.

d. Statements of Economic Interest (Form 700). Consultant and its Subconsultants are subject to CivicSD’s Conflict of Interest Policy and CivicSD’s Policy for Economic Interest (Form 700) for Consultants. If, in performing the Professional Services set forth in this Agreement, Consultant or Subconsultant makes, or participates in, a “governmental decision” as described in title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for CivicSD that would otherwise be performed by a CivicSD employee holding a position specified in CivicSD’s conflict of interest code, Consultant or Subconsultant shall be subject to all provisions of CivicSD’s conflict of interest code requiring the completion of one or more statements of economic interests disclosing Consultant’s relevant financial interests. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk of the City of San Diego. Consultant or Subconsultant shall file a Form 700 (Assuming Office Statement) within thirty (30) calendar days of CivicSD’s determination that Consultant must file a Form 700. Consultant or Subconsultant shall also file a Form 700 (Annual Statement) on or before April 1, of each year relevant to this Agreement, disclosing any financial interests held during the previous calendar year.

e. Ethics Requirements. If CivicSD requires Consultant or Subconsultant to file a statement of economic interests as a result of the Professional Services performed, pursuant to this Agreement, Consultant or Subconsultant shall be considered a “City Official” subject to the provisions of the City of San Diego Ethics Ordinance, codified in the SDMC at sections 27.3501 to 27.3595, including the prohibition against lobbying the City for one (1) year following the termination of this Agreement. Consultant or Subconsultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

f. Prohibition Against Gifts. Consultant and its Subconsultants are subject to CivicSD’s Gift Policy, which prohibits officials and employees of CivicSD from receiving gifts. Consultant and its Subconsultants shall abide by CivicSD’s Gift Policy and shall not knowingly or negligently make gifts to officials or employees of CivicSD.

g. Conflicting Work. During the Term, the Consultant and any approved Subconsultants shall not act as a Consultant or Subconsultant to any person or entity where that work would conflict with the Professional Services, without the prior written consent of CivicSD.

11. EQUAL EMPLOYMENT AND NONDISCRIMINATION:

a. Compliance with the Equal Opportunity Contracting Program. Consultant shall comply with the City of San Diego's Equal Opportunity Contracting Program ("EOCP") Consultant Requirements. The EOCP requirements are set forth in SDMC sections 22.2701 through 22.2707. Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Consultant shall provide equal opportunity in all employment practices. Consultant shall ensure that its Subconsultants comply with the City's EOCP requirements. Nothing in this Section shall be interpreted to hold Consultant liable for any discriminatory practice of its Subconsultants. Consultant shall, at the commencement of this Agreement and annually thereafter, submit to CivicSD a current Work Force Report as required by the EOCP. It shall be the Consultant's sole responsibility to ensure an annual Work Force Report update is completed and submitted to CivicSD. Consultant shall be required to prepare a current Equal Employment Opportunity ("EEO") Plan, if so requested by the City of San Diego.

b. Non-Discrimination Ordinance. Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of Subconsultants, vendors, or suppliers. Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between Consultant and any Subconsultants, vendors and suppliers.

c. Compliance Investigations. Upon CivicSD's request, Consultant agrees to provide to CivicSD, within sixty (60) calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City of San Diego's Nondiscrimination in Contracting Ordinance (SDMC sections 22.3501-22.3517).

d. Equal Benefits Ordinance. This Agreement is subject to the City's Equal Benefits Ordinance ("EBO"), Chapter 2, Article 2, Division 43 of the San Diego Municipal Code. In accordance with the EBO, the Consultant must certify it will provide and maintain equal benefits as defined in SDMC section 22.4302 for the duration of the Agreement. Failure to maintain equal benefits is a material breach of this Agreement. The Consultant must notify its employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with Civic San Diego and/or the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

The Consultant must also give CivicSD and the City access to documents and records sufficient to verify it is providing equal benefits and otherwise complying with EBO requirements. Full text of the FBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

e. Title 24/Americans with Disabilities Act Requirements. Any Project plans and specifications prepared pursuant to this Agreement shall meet all current California Building Standards Code, California Code of Regulations, Title 24 ("Title 24") and Americans with Disabilities Act Accessibility Guidelines ("ADAAG") requirements, and shall be in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

f. Americans with Disabilities Act. Consultant agrees that it is aware of and will comply with San Diego City Council Policy 100-04, adopted by Resolution No. 282153, relating to the federally mandated Americans with Disabilities Act (ADA). Consultant and Subconsultants will be individually responsible for their own ADA program.

12. OWNERSHIP OF WORK PRODUCT:

Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this Agreement (collectively, "Work Product") are the property of CivicSD. Consultant agrees that all copyrights which arise from creation of the Work Product pursuant to this Agreement shall be vested in CivicSD and waives and relinquishes all claims to copyright or other intellectual property rights in favor of CivicSD. CivicSD acknowledges that its use of the Work Product is limited to the purposes contemplated by the Scope of Services and that the Consultant makes no representation of the suitability of the Work Product for use in or application to circumstances not contemplated by the Scope of Services.

13. TERMINATION, DELAY, AND SUSPENSION:

a. Termination for Convenience. CivicSD may, at its sole option, terminate this Agreement for convenience at any time by providing Consultant with thirty (30) days written notice. Notice of termination shall be delivered by certified mail with return receipt.

b. Termination for Cause. Consultant's failure to perform or adequately perform any obligation required by this Agreement constitutes a Default entitling CivicSD to terminate this Agreement upon ten (10) days written notice and opportunity to cure provided to Consultant. If the Default is such that it cannot reasonably be cured within ten (10) days, and Consultant (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Consultant shall have such time as determined by

CivicSD to be reasonably necessary to cure the Default before termination. The rights and remedies of CivicSD enumerated in this subsection 13(b) are cumulative and shall not limit CivicSD's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the Effective Date or enacted or established at a later date, that may be available to CivicSD. Provided that the Consultant is not in default or breach, Consultant may terminate this Agreement for breach of CivicSD's payment obligations under this Agreement by providing CivicSD with thirty (30) days written notice of nonpayment, whereupon CivicSD shall have at least thirty (30) days to cure the breach by providing payment of amounts due as determined by CivicSD, or to dispute Consultant's claim that CivicSD breached its payment obligations under this Agreement, before termination is effective. Notice of termination shall be delivered by certified mail with return receipt.

c. Effect of Termination. Prior to the effective date of termination, Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of Consultant's Professional Services under this Agreement and shall deliver to CivicSD all maps, reports, letters, drawings, plans, calculations, specifications, and other documents or records related to Consultant's Professional Services. Upon termination, Consultant shall be compensated only for those Professional Services which have been adequately rendered to CivicSD as of the effective date of termination, and Consultant shall be entitled to no further compensation. If this Agreement provides for payment of a lump sum for all services, the fee for services performed shall be the reasonable value, as determined by CivicSD, of the portion of work completed in conformance with this Agreement as of the effective date of termination. By accepting payment for completion, filing and delivering documents as called for in this paragraph, Consultant discharges CivicSD of all of CivicSD's payment obligations and liabilities under this Agreement. CivicSD shall not be liable for any fees or costs that Consultant incurs as a result of termination or abandonment.

d. Extension of Time for Unforeseen Circumstances. In the event that the Consultant is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Consultant's reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, except strikes, lockouts, or work slowdown or stoppage of Consultant's employees or employees of Subconsultants, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Consultant shall inform CivicSD of the additional time required to perform the Professional Services and CivicSD may adjust the schedule.

e. Right to Suspend for Convenience. CivicSD may, at its sole option and without cause, suspend all or any portion of Consultant's performance of the Professional Services, for a reasonable period of time not to exceed six (6) months, or as otherwise agreed upon by the Parties. In accordance with the provisions of this Agreement, CivicSD will give written notice to Consultant of such suspension. If this Agreement is for a lump-sum amount, in the event of suspension, CivicSD shall pay to Consultant a sum equivalent to the reasonable value, as determined by CivicSD, of Professional Services that Consultant has satisfactorily performed under this Agreement up to the date of suspension. In order to receive such payment, the Consultant shall provide CivicSD with an invoice for Professional Services rendered through the date of suspension and CivicSD shall pay the invoice in accordance with Section 2 of this Agreement. After suspension, CivicSD may rescind such suspension by giving Consultant

written notice to recommence services; provided, however, that Consultant shall be entitled to an extension of time equal to the length of the suspension to complete the Scope of Services, unless otherwise agreed to in writing by the Parties. If CivicSD does not provide written notice to recommence services to Consultant within six (6) months of the effective date of suspension, or such longer period as agreed upon by the Parties, this Agreement shall terminate effective immediately.

14. GENERAL PROVISIONS:

a. Product/Service Endorsement. Consultant acknowledges and agrees to comply with the provisions of the City of San Diego's Administrative Regulation 95.65 concerning product or service endorsement. Any advertisement identifying or referring to CivicSD or the City of San Diego as the user of a product or service requires the prior written approval of CivicSD or the City of San Diego respectively. In connection with the Professional Services performed pursuant to this Agreement, Consultant shall not recommend or specify any product, supplier, or consultant with whom Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

b. Confidentiality. All Professional Services performed by Consultant, including but not limited to all drafts, data, correspondence, proposals, maps, reports, and estimates compiled or composed by Consultant pursuant to this Agreement are for the sole use of CivicSD. Neither the documents nor their contents shall be released to any third party without the prior written consent of CivicSD. This provision does not apply to information that (i) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by CivicSD, (ii) subsequently becomes publicly known through no act or omission by Consultant, (iii) otherwise becomes known to Consultant other than through disclosure by CivicSD, or (iv) is required to satisfy a valid court order.

c. Drug Free Workplace. Consultant and Consultant's officers, employees, agents, and Subconsultants shall comply with the City of San Diego's Drug-Free Workplace Policy, Council Policy No. 100-17. This policy requires that all City construction Consultants, consultants, grantees, and providers of non-professional services provide a drug-free workplace in accordance with the provisions contained therein. Consultant shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the policy of maintaining a drug-free workplace, available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse. Consultant shall post the drug-free policy in a prominent place and publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition. Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace set forth in Exhibit D to this Agreement.

d. City's Right. According to the Agreement for Consulting Services by and between the City of San Diego and Civic San Diego for Administration of Certain Planned Districts, the Downtown Community Parking District, and Economic Development Services

("Agreement for Consulting Services"), Section 4.2, the City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subconsultant's premises to review and audit the Consultant's or Subconsultant's compliance with the provisions of the Agreement for Consulting Services ("City's Right"). The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant's premises, of any and all records related to the Professional Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law. The City's Right includes the right to examine any and all books, records, documents, and any other evidence of procedures and practices that the City determines are necessary to discover and verify that the Consultant or Subconsultant is in compliance with all requirements under the Agreement for Consulting Services, subject to applicable privileges such as the attorney-client privilege. If there is a claim for additional compensation or for additional services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred. Consultant and any Subconsultants shall fully comply with this provision within sixty (60) days of the date on which the City mailed a written request to review and audit compliance.

e. Disputes. The City shall not be made a party to any judicial or administrative proceeding to resolve any dispute between CivicSD and Consultant.

f. Laws and Venue. This Agreement and disputes arising out of or relating to the Agreement or the Parties' relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the Agreement or the Parties' relationship shall be brought in a state court situated in the County of San Diego, State of California.

g. Notices. Any notice or instrument required to be given or delivered by law or this Agreement shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

To Civic San Diego:	Richard Seges Civic San Diego 401 B Street, 4th Floor San Diego, CA 92101
With Copy to:	Shawn Hagerty, Esq. Best Best & Krieger LLP 665 West Broadway, Suite 1500 San Diego, CA 92101
To Consultant:	Javier Saunders, PE 750 B Street, Suite 1800 San Diego, CA 92101

Either Party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

h. Integration and Modification. This Agreement represents the entire understanding of CivicSD and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified, amended, or altered except in writing signed by CivicSD and Consultant.

i. Exhibits. The Exhibits listed below are attached to and incorporated into this Agreement. To the extent there is a material conflict between the provisions of this Agreement and the provisions of the Exhibits, the provisions of this Agreement shall govern.

Exhibit A	Scope of Services
Exhibit B	Time and Materials Fee Schedule
Exhibit C	Time and Materials Reimbursement Schedule
Exhibit D	Consultant Certification for a Drug-Free Workplace

j. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor or against either Party by reason of the extent to which each Party participated in the drafting of the contract.

k. Time. Time is of the essence in this Agreement. Any reference to days means calendar days unless otherwise specifically stated.

[SIGNATURES ARE ON THE FOLLOWING PAGE.]


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective representatives, thereunto duly authorized, as of the date first written above.

CIVIC SAN DIEGO, on behalf of and in its role as consultant to the Successor Agency to the Redevelopment Agency of the City of San Diego

By (Signature): _____
Andrew T. Phillips
Interim President, CFO and COO

Dated this ____ day of _____ 20__

HARRIS & ASSOCIATES, INC.

By (Signature):  _____
Print Name: Julie M. Saunders

Title or Position MARKET & PRACTICE DIRECTOR

Dated this 16 day of April 2014

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CORPORATE COUNSEL FOR
CIVIC SAN DIEGO

By (Signature): _____
Shawn Hagerty, Esq.
Corporate Counsel

Dated this ____ day of _____ 20__

EXHIBIT A

SCOPE OF SERVICES

I. Introduction

The overall scope of work is to monitor, on a part-time intermittent basis, construction of the public park, known as the “14th & Island Park,” which is being constructed on the site of the Pinnacle 15th & Island residential mixed-use tower project on the block bounded by Island Avenue and 14th, 15th and J streets in the East Village neighborhood of downtown San Diego. The scope does not include construction monitoring related to the 15th & Island private tower, its subterranean parking, and the public improvements fronting the tower, except as may be necessary in relationship to the park’s connections to these improvements.

Under an Owner Participation Agreement (“OPA”) between Pinnacle Bayside Development US L.P. (“Developer”) and the former Redevelopment Agency for the City of San Diego (“Former RDA”), the Developer is responsible for the design and construction of the public park and is also responsible for the maintenance, repair and replacement of the park in perpetuity. Park construction is presently anticipated by the Developer to last eleven (11) months, including a plant maintenance period.

Funding for design, construction and future maintenance of the park will come from proceeds from the Former RDA. In accordance with the OPA, the Developer and the City of San Diego (in its role serving as the Successor Agency to the Former RDA) will enter into a Construction Contract that will serve as the funding reimbursement/disbursement vehicle upon which the Developer will request funding draws on a monthly basis. Civic San Diego (CivicSD) will review, approve and process payment of the draws on behalf of the Successor Agency.

The Developer plans to utilize the general contracting firm managed by its parent company, Pinnacle International Development, Inc., to serve as the park’s general contractor (“GC”). The Developer and GC are responsible for bidding out and contracting with the various disciplines necessary to construct the park and adjacent public improvements.

II. Consultant’s Scope of Work

The Consultant will monitor that the park and the public improvements fronting it are constructed in general accordance with the final drawings, as well as assist staff in reviewing monthly construction disbursement draw requests. On behalf of CivicSD, the Consultant will coordinate its field work with the Developer, the GC, and its design team (led by Spurlock Poirier Landscape Architects) as necessary. The activities to be performed by the consultant include the following:

- A. Perform review of project drawings and advise CivicSD of potential constructability issues identified in the review;
- B. Perform review of other project documentation, such as site background information, Construction Contract, project schedule, etc., and advise CivicSD of potential issues identified in the review;

- C. Act as a liaison and representative of CivicSD and the Successor Agency in meetings with architects, engineers, contractors, and other government representatives as necessary;
- D. Participate in pre-construction meetings, field meetings, construction progress meetings, acceptance of work, final walk-through meetings, as-built plan completion meetings, monthly draw meetings, and other administrative meetings as necessary;
- E. Make weekly site visits to monitor/document construction progress activity and quality installation is in general conformance with final drawings (number of visits per week will depend on construction schedule; however, twice weekly visits are anticipated and may be merged with other site meetings noted above);
- F. Inspect construction site periodically for warranty and guarantee deficiencies;
- G. Participate in and represent CivicSD at required site inspection stages per the Construction Contract. Required site inspection stages per Construction Contract include the following:
 - 1. Pre-construction meeting;
 - 2. Rough grading and drainage;
 - 3. Irrigation mainline pressure test;
 - 4. Irrigation lateral line pressure test;
 - 5. Wiring prior to backfilling trenches;
 - 6. Hardscape at time of finished staking and layout;
 - 7. Finish grading and soil preparation;
 - 8. Irrigation coverage test;
 - 9. Plant material (when delivered) and placement approval;
 - 10. Playground inspection;
 - 11. Project construction ninety percent (90%) complete (develop pre-final punch list and submit red-line as-builts);
 - 12. Ninety (90) –day plant maintenance period; and
 - 13. Final walk-through and acceptance by CivicSD and the City.
- H. Review and advise CivicSD on construction issues related to the project’s submittal reviews, RFI’s, proposed change orders, liability issues, and potential claims;
- I. Provide CivicSD with general construction consultation as may be needed or required;
- J. Review and process the Developer’s monthly and final disbursement payment requests;
- K. Review construction change orders as required for review and approval by CivicSD;

- L. Prepare monthly project status reports, including recommendations on Developer's monthly and final disbursement payment requests based upon the Construction Contract project budget;
- M. Provide weekly telephone or in-person reports to a designated CivicSD project manager; and
- N. Assist CivicSD and Developer in discussions with regulatory agencies, as necessary.
- O. Consultant's assigned personnel shall coordinate as necessary with the CivicSD project manager and associated CivicSD staff (staff engineer and landscape architect).

III. Standards

Construction of this project is in accordance with the project's final drawings ("A Park for East Village" Plans, Public Improvement Plans and Grading Plans) including any updates, amendments, and changes—all as approved by City of San Diego Development Services Department ("City DSD") for permitting, the Project Manual, generally-accepted landscaping and engineering design standards, and the Centre City Streetscape Manual.

IV. Exclusions

Consultant shall not be responsible for means, methods, techniques, sequences or procedures of construction selected by construction contractor for the project or the health or safety precautions and programs incident to the work of such construction contractor, and shall not be responsible for construction contractor's failure to carry out work in accordance with the contract documents.

The construction monitoring services provided by the Consultant are not intended to take the place of typical City DSD inspections related to the City DSD's issuance of any permits for this project.

EXHIBIT B

TIME AND MATERIALS FEE SCHEDULE

Civic San Diego
14th & Island Park Construction Monitoring
March 14, 2014



Harris & Associates.

Project Schedule	2014												2015											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Calendar days	31	28	31	30	31	30	31	30	30	31	30	31	31	28	31	30	31	30	31	30	30	31	30	31
Work days	21	21	22	21	22	21	21	23	19	23	20	20	22	20	21	21	22	20	22	20	23	19	21	
Early Site Prep					1																			
Construction Phase					1	2	3	4	5	6	7	8												
Closeout/Plant Maintenance Period (90 days)													1	2	3									

Estimated Fees			2014												2015												Totals		
Position	Name	Rate	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec			
Project Manager	Javier Saunders	\$200.00					8	4	2	2	2	2	2	2	2	2	2										30	\$6,000	
Construction Manager/Inspector	Eric Schlichter	\$163.00					136	44	44	42	42	42	42	44	16	16	15										483	\$78,729	
Monthly Subtotal		Labor	0	0	0	0	144	48	46	44	44	44	44	46	18	18	17	0	0	0	0	0	0	0	0	0	Labor	\$84,729	
ODC's		allowance																									Increase	\$	-
Technical Support	By Developer	allowance																									Tech	\$	\$0
Environmental	By Developer	allowance																									Env.	\$	\$0
Survey/Landscape	By Developer	allowance																									Survey	\$	\$0
Materials Testing	By Developer	allowance																									Testing	\$	\$0

\$84,729

Notes and Assumptions:

Fees are based on a 11 month construction contract (3 month closeout and plant maintenance) with NTP anticipated May 2014 . Early site prep work in May. Holidays include New Year's Day, Memorial Day; Independence Day; Labor Day; Thanksgiving (2 days), Christmas, and a Floating Holiday Estimate of overall hours during construction and post-construction period are per CCD's RFP dated 5/31/2012. Since this work provides Construction Monitoring and is performed part time, no over itme will be scheduled. Costs for job-site construction management office, office equipment, and office furniture are not included in this estimate. Rain, holidays and potential time extensions or delays may result in additional construction management services. This estimate is based on specific scope of work assumptions. Prevailing Wage- Wages for inspection subject to Calif. Labor Code Section 1772.

EXHIBIT C

TIME AND MATERIALS REIMBURSEMENT SCHEDULE

1. Administrative, overhead, payroll, and similar charges, secretarial time or secretarial overtime, word processing, photocopying, telephone charges, regular postage, computer use, in-house printing, insurance, and other ordinary business expenses are included in the fees set forth in the Time and Material Fee Schedule and are not separately reimbursable expenses. *For certain professional services, reimbursement for word processing, copying and/or computer research may be permitted as specified in the Time and Materials Fee Schedule.*
2. Copying and report production expenses by outside copying or printing services, when necessary for the services and included in the Time and Material Fee Schedule, are reimbursable at actual cost, if previously approved by CivicSD.
3. Federal Express and similar delivery services should be avoided without the prior approval of CivicSD. Charges for approved delivery services are reimbursable at actual cost, if previously approved by CivicSD. Other charges may be approved by CivicSD, in its discretion.
4. Lodging, travel costs, including transportation, and meals, will be reimbursed at actual cost, subject to the following restrictions, and supported by receipts acceptable to CivicSD:
 - (a) No meal, mileage, or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless travel at least fifty (50) miles from Consultant's office is required for performance of the Scope of Services.
 - (b) Consultant shall use the most reasonable mode of transportation for any reimbursable travel, and must use its best efforts to plan its travel in advance to obtain reasonable fares. The maximum for air travel will be the actual cost of coach class travel only. The maximum for train travel will be the actual cost of business class travel only. If appropriate, rental cars must be economy/standard class. Insurance, navigation systems and other additional features are not reimbursable.
 - (c) Hotel expenses shall not exceed \$250 per day, inclusive of applicable taxes and fees, but excluding parking;

- (d) Meal expenses shall not exceed the following, per person, inclusive of applicable taxes and tip:

<u>Meal/ Expense</u>	<u>Reimbursement Rate</u>
Breakfast	\$15.00
Lunch	\$20.00
Dinner	\$30.00

- (e) CivicSD does not reimburse for cost of alcoholic beverages;
- (f) Travel time is not reimbursable or compensable;
- (g) Mileage reimbursement may not exceed the current IRS mileage rates. Gasoline and automobile repair expenses for the Consultant's own vehicle are not reimbursable expenses;
- (h) The maximum rate of reimbursement for parking fees is the actual cost of parking, not to exceed \$28.00 per day.
- (i) Consultant shall retain receipts pertaining to each trip for attachment to invoices for reimbursable costs, and shall furnish written details for each period of travel, including but not limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate documentation. Website and travel company booking confirmation do not constitute a receipt, but may, when combined with a receipt from the hotel or travel provider, be acceptable documentation.

EXHIBIT D

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: CONSTRUCTION MONITORING FOR PINNACLE AT 15TH & ISLAND

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that:

HARRIS & ASSOCIATES, INC.

has in place a drug-free workplace program that complies with said policy. I further certify that each Subconsultant agreement for this project contains language which indicates the Subconsultant's agreement to abide by the provisions of Section 4.10.1 subdivisions A through C of the policy.

Signed  _____

Printed Name JANEL SAUNDERS _____

Title Director _____

Date April 16 2014 _____

OVERSIGHT BOARD RESOLUTION NUMBER OB-2014-34

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING TWO AGREEMENTS RELATED TO CONSTRUCTION OF THE PINNACLE PARK PROJECT IN DOWNTOWN SAN DIEGO, INCLUDING THE PARK IMPROVEMENTS CONSTRUCTION CONTRACT WITH PINNACLE BAYSIDE DEVELOPMENT US L.P. AND THE PROFESSIONAL SERVICES AGREEMENT WITH HARRIS & ASSOCIATES, INC.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26) enacted on June 28, 2011, the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency's approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming six-month period and identifies the funding sources that will be used to make such payments; and

WHEREAS, the Oversight Board's adopted resolution approving prior ROPS included language that authorized the Successor Agency to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS (Authorization for Services Contracts), consistent with California Health and Safety Code (HSC) sections 34171(d)(1)(F) and 34177.3(b); and

WHEREAS, although the DOF had approved the Oversight Board's Authorization for Services Contracts with respect to prior ROPS time periods through ROPS 13-14A, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) rejecting the Authorization for Services Contracts for the first time in connection with expenditures during the ROPS 13-14B time period (January through June 2014); and

WHEREAS, the November 2013 Letter effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, to comply with the November 2013 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, various new contracts and new amendments to existing contracts that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, one such new contract is the Park Improvements Construction Contract (Construction Contract) with Pinnacle Bayside Development US L.P. (Developer), which requires the Successor Agency's payment of ROPS-approved funds to Developer in an amount not to exceed \$2,992,495 for certain Eligible Expenses related to Developer's construction of a public park (Project) as part of the 15th & Island residential mixed-use development; and

WHEREAS, a copy of the Construction Contract, together with all attachments thereto, is included as Exhibit A to the Staff Report dated April 17, 2014 accompanying this item; and

WHEREAS, Developer will complete the Project pursuant to the Owner Participation Agreement between the Former RDA and Developer's predecessor-in-interest dated October 12, 2005, as subsequently amended on three occasions before the enactment of AB 26 (OPA); and

WHEREAS, in accordance with the Escrow Agreement attached in form as Exhibit "F" to the Construction Contract, the Successor Agency will deposit ROPS-approved funds into an escrow account during the ROPS 14-15A time period (July through December 2014), to be administered by an independent escrow agent (Escrow Agent), for payment of the Eligible Expenses of up to \$2,992,495 to Developer and for payment of the Capitalized Maintenance Credit to Developer in the estimated amount of \$1,637,505; and

WHEREAS, the Successor Agency anticipates obtaining the funds for deposit of the Eligible Expenses and the Capitalized Maintenance Credit (collectively, Contributed Funds) into escrow utilizing the Redevelopment Property Tax Trust Fund (RPTTF) funding source shown in line item 171 of ROPS 14-15A covering the second half of calendar year 2014, subject to the DOF's continued approval of such line item in ROPS 14-15A; and

WHEREAS, to the extent that the Successor Agency's disbursement of Contributed Funds into the escrow account occurs during the ROPS 14-15A time period, the Successor Agency will account for this disbursement as an expenditure of all Contributed Funds for purposes of the prior period adjustment form contained in ROPS 15-16A; and

WHEREAS, the Successor Agency will authorize the disbursement of the Eligible Expenses from the Escrow Agent to Developer in increments during multiple ROPS time periods to reimburse Developer for substantiated actual construction costs related to the Project, based

upon Successor Agency staff's review and approval of periodic reimbursement requests submitted by Developer; and

WHEREAS, the Successor Agency will authorize the disbursement of the Capitalized Maintenance Credit from the Escrow Agent to Developer in a future ROPS time period upon Successor Agency staff's confirmation that Developer has completed the Project and that the Park Improvements and the Joint-Use Public Restrooms are open for daily public use; and

WHEREAS, the up-front funding mechanism created by the Escrow Agreement is necessary to provide Developer with reasonable certainty, before Developer commences construction of the Project, that the entire amount of Contributed Funds will be available to finance the construction of the Project and the anticipated maintenance of the Park Improvements in a manner consistent with the OPA and that no work stoppages will occur due to lack of available Contributed Funds during the construction phase; and

WHEREAS, another new contract related to fulfillment of the Project is the Professional Services Agreement with Harris & Associates, Inc. (Consultant Agreement), which involves the expenditure of ROPS-approved funds in an amount not to exceed \$84,729 for construction monitoring services related to the Project; and

WHEREAS, a copy of the Consultant Agreement is included as Exhibit B to the Staff Report dated April 17, 2014 accompanying this item; and

WHEREAS, the Successor Agency, or Civic San Diego as the contracting agent on its behalf, intends to pay for the services performed under the Consultant Agreement utilizing the RPTTF funding source shown in line item 172 of ROPS 13-14B and ROPS 14-15A, subject to the DOF's continued approval of such line item in ROPS 14-15A; and

WHEREAS, the Successor Agency's execution and performance of the Construction Contract, the Escrow Agreement, and the Consultant Agreement will ensure the Successor

Agency's fulfillment of the enforceable obligation established by the OPA and the Successor Agency's compliance with HSC sections 34171(d)(1)(F), 34177(c), and 34177.3(b); and

WHEREAS, the DOF issued a letter dated April 1, 2014, interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F); and

WHEREAS, the Construction Contract, including all attachments thereto, will benefit the local taxing entities and will be in their best interests, in that the Successor Agency's execution and performance of the Construction Contract will ensure that the Successor Agency fulfills its enforceable obligation related to funding of the Park Improvements in accordance with the OPA and does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims; and

WHEREAS, the Construction Contract also will benefit the taxing entities and will be in their best interests, in that the Construction Contract will facilitate construction of the Park Improvements, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the creation of a new public amenity benefiting the local community on a previously-underutilized site; and

WHEREAS, the Construction Contract will not involve an increase in compensation or scope of services, in that the Construction Contract implements the Successor Agency's funding obligation for the Park Improvements in accordance with the OPA; and

WHEREAS, in any event, the Construction Contract is necessary for the operation or administration of the Successor Agency because the Construction Contract will provide essential

funding for construction-related services and long-term maintenance expenses for the Park Improvements, thereby enabling the Successor Agency to fulfill its enforceable obligation for these funding mechanisms in compliance with the OPA; and

WHEREAS, the Consultant Agreement will benefit the local taxing entities and will be in their best interests, in that the execution and performance of the Consultant Agreement will ensure that the Successor Agency fulfills its enforceable obligation related to funding of the Park Improvements in accordance with the OPA and does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims; further, through the Consultant's provision of services on the Successor Agency's behalf, the Successor Agency can determine that the Park Improvements are constructed in accordance with the approved construction drawings and the Developer's construction progress payment requests are reviewed in advance of the Successor Agency's reimbursement of the park's construction-related costs; and

WHEREAS, the Consultant Agreement also will benefit the taxing entities and will be in their best interests, in that the Consultant Agreement will facilitate oversight of the construction of the Park Improvements, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the creation of a new public amenity benefiting the local community on a previously-underutilized site; and

WHEREAS, the Consultant Agreement will not involve an increase in compensation or scope of services, in that the Consultant Agreement will assist the Successor Agency to implement its funding obligation for the Park Improvements in accordance with the OPA; and

WHEREAS, in any event, the Consultant Agreement is necessary for the operation or administration of the Successor Agency because the Consultant Agreement will provide essential oversight of the construction of the Park Improvements, thereby enabling the Successor Agency

to determine that the park is being constructed in accordance with the approved and permitted construction drawings that meet local, state and federal codes, as applicable, for a public facility and essential review of construction draw payment requests, thereby enabling the Successor Agency to determine that the funding it is utilizing to fulfill its enforceable obligation in compliance with the OPA is being distributed in the proper manner; and

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board, as follows:

1. The Board finds, in accordance with HSC section 34181(e), that the Construction Contract is in the best interests of the local taxing entities.

2. The Board finds, in accordance with HSC section 34171(d)(1)(F), that the provision of services under the Construction Contract is necessary for the administration or operation of the Successor Agency.

3. The Construction Contract (together with all attachments thereto, including the Escrow Agreement) is hereby approved.

4. The Board finds, in accordance with HSC section 34181(e), that the Consultant Agreement is in the best interests of the local taxing entities.

5. The Board finds, in accordance with HSC section 34171(d)(1)(F), that the provision of services under the Consultant Agreement is necessary for the administration or operation of the Successor Agency.

6. The Consultant Agreement is hereby approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on April ____, 2014.

Chair, Oversight Board

ITEM 23

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: April 17, 2014

SUBJECT: Adoption of a Resolution Approving the Proposed Professional Services Agreement for Construction Services with the lowest responsible bidder for the Park Boulevard at San Diego High School Pedestrian Traffic Signal and Streetscape Improvements Project (“Project”).

CONTACT/PHONE NUMBER: Gretchen Sorenson, 619-533-7113

STAFF RECOMMENDATION: That the Oversight Board approves the Proposed Professional Services Agreement (“Agreement”) for Construction Services for the Project.

DESCRIPTIVE SUMMARY OF ITEM: Successor Agency staff is seeking approval to appropriate and expend an amount not to exceed \$1,285,000 for the construction of the Project from funds identified in the Recognized Obligation Payments Schedule (ROPS) of the Successor Agency, to execute the proposed construction contract with the lowest responsible bidder for construction of the Project; and, to administer the construction contract and to contract for the provision of such services to the extent that such services do not cause the Project to exceed the budget.

The proposed contract will provide construction services (“Services”) relating to the Project. The maximum payment under this proposed Agreement shall not exceed the amount of \$1,285,000 for the Construction Services of the Project from funds identified in ROPS line item number 387 of the Successor Agency.

BACKGROUND: The purpose of this staff report is to explain the need for execution of the proposed Agreement, as the basis for the expenditure of Successor Agency funds for substantiated work performed by the Consultant in accordance with the Agreement. As discussed below, these actions will enable the Successor Agency to fulfill an underlying enforceable obligation and thereby fulfill its statutory responsibilities, notwithstanding certain statutory prohibitions that generally prevent the execution of new agreements or amendments thereto as of June 28, 2011.

Pursuant to Assembly Bill x1 26 (“AB 26”) and Assembly Bill 1484, the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“Former RDA”) dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former

RDA's assets, rights, and obligations under the California Community Redevelopment Law. In addition, Civic San Diego ("CivicSD"), formerly Centre City Development Corporation (CCDC), has replaced CCDC as the Successor Agency's representative for, among other duties, many aspects of the winding down of redevelopment in the City of San Diego.

Section 34177.3(a) of the California Health and Safety Code states that successor agencies "shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011." However, Section 34177.3(b) permits successor agencies to "create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance." Section 34171(d)(1)(E) and (F) defines "enforceable obligation" to include, "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy" and "contracts or agreements for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements concerning litigation expenses related to assets prior to disposition, and agreements to purchase or rent office space, equipment and supplies, and pay-related expenses." Finally, Section 34177(c) required the Successor Agency to perform obligations required pursuant to any enforceable obligation.

The Oversight Board's adopted resolution approving prior ROPS included language that authorized the Successor Agency to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS ("Authorization for Services Contracts"), consistent with Sections 34171(d)(1) and 34177.3(b). Although the Department of Finance (DOF) had approved the Oversight Board's Authorization for Services Contracts with respect to prior ROPS time periods through ROPS 13-14A, the DOF issued a letter dated November 8, 2013 ("November 2013 Letter") rejecting the Authorization for Services Contracts for the first time in connection with expenditures during the ROPS 13-14B time period (January through June 2014). The November 2013 Letter effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond. To comply with the November 2013 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, various new contracts and new amendments to existing contracts that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond.

DISCUSSION:

Project Description – The Project will improve an existing pedestrian crosswalk on Park Boulevard, north of Russ Boulevard in front of the San Diego High School campus on the east side of the street, and City College facilities on the west side of the street with a pedestrian traffic signal and associated improvements for greater pedestrian safety. An existing bus stop in the middle of Park Boulevard will be relocated to the side of the street and a median will be installed

in that area. The Project also includes drainage improvements necessary due to the median modifications. The Consultant will provide the Services under this proposed Agreement.

The proposed Agreement should be permitted under Sections 34171, 34177.3(b) and 34177(c) as it will allow the Successor Agency, through CivicSD, to utilize the Consultant to fulfill an enforceable obligation for the improvements of the existing pedestrian crosswalk for the Park Boulevard and San Diego High School Crosswalk Improvement project, as required under the SANDAG Smart Growth Grant, with a Grant Agreement Number 5001354 for an amount of \$300,000.

Moreover, the Consultant's costs under the proposed Agreement are included in ROPS line item number 387, described as "Construction agreement for improvements." Contracts in the amount of \$141,440 have been previously executed for design costs including Project design, cost estimates, bidding, construction support, and final Project closeout, including as built. Funds in the amount of \$642,500 are currently available in line item #387 of ROPS 13-14B from RPTTF Fund 200700. Additional funding of \$642,500 is pending approval by the DOF in line #387 of ROPS 14-15A in Fund 400638, Reserves from the approved OFA DDR. CivicSD has been approved for, a \$300,000 SANDAG Smart Growth grant. These funds will be applied to the Project and replace the funds from the ROPS line item #387 if not required for contingency or cost escalation.

CONCLUSION: Based on the foregoing, the Successor Agency respectfully requests that the Oversight Board approves the proposed Agreement, as further described in the accompanying resolution.

Respectfully submitted,

Concurred by:



Gretchen Sorenson
Project Manager, Public Works,
Civic San Diego



Andrew Phillips
Interim President, Civic San Diego

OVERSIGHT BOARD RESOLUTION NUMBER OB-2014-57

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING CERTAIN CONTRACTS AND EXPENDITURES RELATED TO THE PARK BOULEVARD PEDESTRIAN, STREETScape, AND TRANSIT ACCESS IMPROVEMENTS WITHIN THE CENTRE CITY REDEVELOPMENT PROJECT AREA.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, on March 15, 2011, the Former RDA approved a project to install a pedestrian traffic signal, increase the median width, move the southbound bus loading zone from the center lane to the side of the street, install warning signs, and improve sidewalk lighting with new street lights along Park Boulevard, north of Russ Boulevard in front of the San Diego High School campus on the east side of the street, and City College facilities on the west side of the street (Project); and

WHEREAS, on May 23, 2011, the Former RDA, the City, and the San Diego Association of Governments (SANDAG) executed a Grant, Assignment, and Assumption Agreement (SANDAG Agreement) with respect to the Project within the Centre City Redevelopment Project Area (Project Area); and

WHEREAS, as of February 1, 2012, the Successor Agency has assumed the Former RDA's rights and obligations under the SANDAG Agreement by operation of AB 26; and

WHEREAS, contracts in the amount of \$141,440 have been previously executed for design costs including Project design, cost estimates, bidding, construction support, and final Project closeout, including as-builts; and

WHEREAS, based on the current design of the Project, the total costs for construction services related to the Project are estimated not to exceed \$1,285,000 (Maximum Funding Amount); and

WHEREAS, in order to complete the Project, the Successor Agency or its agent, CivicSD will advertise and receive bids and award a contract for the Project to the lowest responsible bidder for construction (Construction Contract Procurement Process); and

WHEREAS, the Successor Agency, the Oversight Board, and the California Department of Finance (DOF) have approved \$642,500 in Line Item 387 of Recognized Obligation Payment Schedule (ROPS) 13-14B and \$642,500 in Line Item 387 of ROPS 14-15A, cumulatively providing funding of \$1,285,000 for the Project; and

WHEREAS, California Health and Safety Code (HSC) section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and HSC section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, the Successor Agency's completion of the Construction Contract Procurement Process will ensure the Successor Agency's fulfillment of the enforceable obligation established by the SANDAG Agreement and the Successor Agency's compliance with HSC sections 34171(d)(1)(F), 34177(a), 34177(c), and 34177.3(b); and

WHEREAS, the DOF issued a letter dated April 1, 2014, interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F); and

WHEREAS, the Construction Contract Procurement Process will benefit the local taxing entities and will be in their best interests, in that the Successor Agency's completion of the Construction Contract Procurement Process will ensure that the Successor Agency fulfills its enforceable obligation related to the Project pursuant to the SANDAG Agreement and does not commit any breach or default under the SANDAG Agreement; and

WHEREAS, the Construction Contract Procurement Process also will benefit the taxing entities and will be in their best interests, in that the Construction Contract Procurement Process will enable the Successor Agency to complete the Project within the Maximum Funding Amount and will facilitate the upgrades to sidewalks and lighting, as well as relocation of an existing bus stop and installation of a new median at a primary entry point to Balboa Park, which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the improvement of public infrastructure benefiting the local community and improving public safety; and

WHEREAS, the Construction Contract Procurement Process will not involve an increase in compensation or scope of services, in that the Construction Contract Procurement Process implements the Successor Agency's construction obligations in accordance with the SANDAG Agreement; and

WHEREAS, in any event, the Construction Contract Procurement Process is necessary for the operation or administration of the Successor Agency because the Construction Contract Procurement Process will allow the Successor Agency to advertise and receive bids and award a construction contract for the Project to the lowest responsible bidder, thereby enabling the Successor Agency to fulfill its enforceable obligation in compliance with the SANDAG Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Board finds, in accordance with HSC section 34181(e), that the Construction Contract Procurement Process, including the award and execution of contracts, is in the best interests of the local taxing entities.

2. The Board finds, in accordance with HSC section 34171(d)(1)(F), that the Construction Contract Procurement Process, including the award and execution of contracts, is necessary for the administration or operation of the Successor Agency.

3. The Successor Agency or its agent, CivicSD, is authorized to engage in the Construction Contract Procurement Process, which includes the award and execution of contracts, in order to fulfill the obligations under the SANDAG Agreement using ROPS Project Funds, provided responsive bids from a responsible contractor allow the Project to be delivered within the Maximum Funding Amount.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on April ____, 2014.

Chair, Oversight Board

ITEM 24

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: April 17, 2014

SUBJECT: Adoption of a Resolution to Approve a Stipulation for Settlement and Conditional Entry of Judgment and the receipt of a settlement amount related to the property at 1343-1345 Market Street and 528 and 542-544 14th Street in downtown San Diego

CONTACT/PHONE NUMBER: Eli Sanchez, 619-533-7121

STAFF RECOMMENDATION: Staff recommends that the Oversight Board approves:

- (1) the Stipulation between Healthcare Services, Inc. (HSI) and the Successor Agency; and
- (2) the Successor Agency's receipt of the aggregate sum of \$50,000, without interest, to be paid in full on or before December 31, 2014 and the deposit of such funds into the Redevelopment Obligation Retirement Fund in full settlement of an existing dispute related to the Property.

DESCRIPTIVE SUMMARY OF ITEM:

The Stipulation for Settlement and Conditional Entry of Judgment ("Stipulation") will achieve a full and final settlement of a dispute between HSI and the Successor Agency related to HSI's occupancy of the property at 1343-1345 Market Street and 528 and 542-544 14th Street in downtown San Diego (collectively, the "Property") without the benefit of a lease and without the payment of rent to the Successor Agency. The Stipulation will require HSI to make installment payments to the Successor Agency, in the aggregate amount of \$50,000, in exchange for the Successor Agency's release of any further claims against HSI. The Stipulation will benefit the local taxing entities by accomplishing a final settlement of pending litigation and by avoiding any further legal expenses.

BACKGROUND:

Pending Litigation

The Stipulation is being entered into by HSI and the Successor Agency to settle a dispute involving two cross-complaints filed against HSI by the Successor Agency in the LaFornara and Hon cases.

1. In the LaFornara matter, Case No. 37-2011-00086995, the Successor Agency filed a cross-complaint on April 5, 2012 against HSI that alleges causes of action for: 1) express indemnity; 2) implied indemnity; 3) contribution; 4) negligence; 5) breach of contract; 6) promissory estoppels; and, 7) declaratory relief.
2. In the Hon matter, Case No. 37-2011-00090762, the Redevelopment Agency filed a cross-complaint on August 11, 2011 against HSI that alleges causes of action for: 1) express

indemnity; 2) implied indemnity; 3) contribution; 4) negligence; 5) breach of contract; 6) promissory estoppels; 7) declaratory relief; 8) specific performance; 9) rescission; 10) common count; 11) fraudulent misrepresentation; and, 12) negligence misrepresentation.

HSI previously occupied the Property, comprised of adjacent sites in downtown San Diego formerly owned by entities commonly referred to as Hon and LaFornara. For at least 10 years, HSI operated residential care facilities on the Property that included drug and alcohol treatment. Separate lawsuits by Hon and LaFornara for inverse condemnation against the former Redevelopment Agency related to the Property were resolved by negotiated settlements in 2012 and 2013, respectively. However, HSI remained in occupancy of the Property, and the negotiated settlements did not resolve the Successor Agency's cross-complaints against HSI in the Hon and LaFornara matters. The Successor Agency sought damages against HSI in the cross-complaints under a best case scenario estimated at \$715,128, mainly attributable to the existing leases between Hon/LaFornara and HSI. The Successor Agency may have faced some hurdles in proving these claims and in recovering any award of damages against HSI, which is a nonprofit entity not believed to possess significant assets or to generate significant net revenue.

The City of San Diego ("City"), as housing successor to the former Redevelopment Agency, is the current owner of the Property, as the State Department of Finance (DOF) approved the inclusion of the Property in the list of housing assets in January 2013. In or about April 2014, construction of a project that will consist of over 200 affordable rental units, known as the Alpha Square project, commenced on the Property, which is subject to a long-term ground lease from the City to the affordable housing developer. This project is being funded largely by excess housing bond proceeds already approved by the Oversight Board and the DOF in the Recognized Obligation Payment Schedule (ROPS).

Following the delivery to HSI of a 60- day notice to vacate, the City filed two separate unlawful detainer lawsuits against HSI on August 12, 2013. On February 5, 2014, HSI moved its operation to a site on Rosecrans Street in the city. HSI voluntarily vacated the Property and has returned possession to the City, allowing construction of the Alpha Square project to proceed on the Property.

Outcome of the Settlement Proposal on April 8, 2014

On March 12, 2014, the City received a written settlement proposal from HSI. On April 8, 2014, the City Council, in closed session, voted to accept this proposal, which will require HSI to make 10 equal payments of \$5,000 for a total of \$50,000, payable on or before December 31, 2014, in exchange for the Successor Agency's release of claims against HSI. There shall be no interest on these payments. The Successor Agency will deposit all payments into the Redevelopment Obligation Retirement Fund and will expend this money through the "Other Funds" category in a future ROPS.

The Stipulation shall not become an effective, binding obligation on the Successor Agency unless and until the Stipulation has been approved by adopted resolution of the Oversight Board in accordance with California Health and Safety Code ("Code") Sections 34171(d)(1)(D) and 34179(e) and has been approved, or deemed approved, by the California Department of Finance in accordance with Code Section 34179(h). Code Section 34171(d)(1)(D) states that an enforceable obligation includes judgments or settlements entered by a competent court of law, although either the Successor Agency or

the Oversight Board is authorized to appeal any judgment or to set aside any settlement. Therefore, the Successor Agency now seeks the Oversight Board's approval of the Stipulation.

DISCUSSION:

Deal Points in the Stipulation

Based on the Stipulation, the Successor Agency and HSI have finalized the settlement of both cross-complaints in the Hon and LaFornara litigation. The Successor Agency's board (i.e., the City Council) approved the deal points in the Stipulation in closed session on April 8, 2014. The Stipulation fully resolves the pending litigation between the Successor Agency and HSI. The main deal points include:

1. The Stipulation operates as a mutual general release as to the claims and disputes asserted or which could have been asserted in the Hon/LaFornara cross-complaints and as to any and all claims, disputes, liabilities, debts, and causes of action, by and in favor of the Successor Agency and HIS.
2. HIS agrees to pay the Successor Agency the aggregate sum of \$50,000, in 10 incremental installments of \$5,000 each (without interest), by the end of 2014.
3. If for any reason the remaining balance of principal owed under the terms of the Stipulation exceeds \$5,000 as of December 31, 2014, the final payment shall be in the form of a "balloon payment" equal to the total amount due and owing as of that date.
4. The Successor Agency agrees to cause no further proceeding to be taken against HSI as long as HSI fully complies with all terms of the Stipulation. The Successor Agency releases all claims and disputes asserted in the Hon/LaFornara cross-complaints.
5. If HSI fails to make any payment as required under the terms of the Stipulation when due, or within 10 days thereafter, then all sums still owed by HSI under the terms of the Stipulation, shall be immediately due and payable and HSI shall be deemed in default or breach of the terms of the Stipulation. In this event, the Successor Agency may obtain an expedited judgment against HIS for the unpaid principal plus accrued interest at the rate of seven percent, and reasonable legal fees and costs.
6. The Successor Agency agrees to file a Request for Dismissal with prejudice in both the Hon and LaFornara cases following receipt of the signed Stipulation from HSI.

Reasons in Support of Settlement

In accordance with the redevelopment dissolution laws, the Oversight Board is being requested to approve the Stipulation and to authorize the Successor Agency's receipt of HSI's aggregate settlement payment of \$50,000. There are several key advantages in approving the Stipulation, as opposed to continuing with the litigation, including:

1. The outcome of the litigation is uncertain. Due to an earlier adverse ruling by the trial court in the liability phase of the LaFornara litigation involving inverse condemnation, the Successor Agency could face substantial bars to its claims. The Successor Agency also may have difficulty in proving up the facts supporting its claims.
2. The Stipulation allows the Successor Agency to resolve the litigation, to receive an aggregate settlement payment of \$50,000 that can be expended through a future ROPS, and to minimize the legal expenses associated with protracted litigation against HSI. The Successor Agency could incur significant legal expenses if the litigation continues.
3. The Stipulation is seen as the best option to help preserve the Successor Agency's assets and minimize its liabilities, as required by Code Section 34169(d). In this sense, the Stipulation will benefit, and will promote the best interests of, the local taxing entities.

CONCLUSION: Based on the foregoing, the Successor Agency respectfully requests that the Oversight Board approve the Stipulation, as further described in the accompanying Resolution.

Respectfully submitted,

Concurred by:



Eli Sanchez
Senior Project Manager



Andrew Phillips
Interim President, Civic San Diego

Attachment: A – Stipulation for Settlement

1 JAN I. GOLDSMITH, City Attorney, City of San Diego
R. CLAYTON WELCH, Chief Deputy City Attorney

2 California State Bar No. 147484

3 JON E. TAYLOR, Deputy City Attorney

4 California State Bar No. 155429

5 Office of the City Attorney

6 1200 Third Avenue, Suite 1100

7 San Diego, California 92101-4100

8 Telephone: (619) 533-5800

9 Facsimile: (619) 533-5856

Exempt from fees per Gov't Code § 6103

To the benefit of the City of San Diego

10 Attorneys for Cross-complainant, City of San Diego
11 as Successor Agency

12 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

13 CIVIL DIVISION, CENTRAL COURT

14 PROVIDENT SAVINGS BANK, F.S.B.,

) Case No. 37-2011-00086995-CU-BC-CTL

15 Plaintiff,

) STIPULATION FOR SETTLEMENT OF

16 v.

) CLAIM AND CONDITIONAL ENTRY

17 CHRIS LAFORNARA, et. Al.,

) OF JUDGMENT IN THE EVENT OF

18 Defendants.

) DEFAULT

) No Hearing Set

19 AND RELATED CROSS-ACTION FOR
20 INDEMNITY, ETC.

) Case No. 37-2011-00090762-CU-OR-CTL

21 HON, LLLP,

22 Plaintiff,

) No Hearing Set

23 v.

24 CITY OF SAN DIEGO REDEVELOPMENT
25 AGENCY et. Al.,

26 Defendants.

27 AND RELATED CROSS-ACTION FOR
28 INDEMNITY, ETC.

RECITALS

29 A. The former Redevelopment Agency of the City of San Diego ("Former RDA")
30 dissolved on February 1, 2012 pursuant to Assembly Bill x1 26 ("AB 26"), at which time the City
31 of San Diego formed an entity known as "The City of San Diego, solely in its capacity as the

1 designated successor agency to the Redevelopment Agency of the City of San Diego, a former
2 public body, corporate and politic ("Successor Agency"). The Successor Agency assumed the
3 Former RDA's assets, rights, and obligations under the California Community Redevelopment
4 Law. On June 27, 2012, the Legislature enacted Assembly Bill 1484 ("AB 1484"), which
5 clarified certain aspects of the process of the expeditious winding down of the Former RDA's
6 operations.

7 B. This Stipulation for Settlement and Conditional Entry of Judgment In the Event of
8 Default is being entered into by Healthcare Services, Inc. and the Successor Agency to settle a
9 dispute involving two cross-complaints filed against Healthcare Services, Inc. in the above-
10 captioned LaFornara and Hon cases.

11 C. In the LaFornara matter, Case No. 37-2011-00086995, the Successor Agency filed
12 a cross-complaint on April 5, 2012 against Healthcare Services, Inc. that alleges causes of action
13 for (1) express indemnity; (2) implied indemnity; (3) contribution; (4) negligence; (5) breach of
14 contract; (6) promissory estoppels; and (7) declaratory relief. The cross-complaint is incorporated
15 herein as if set forth in its entirety.

16 D. In the Hon matter, Case No. 37-2011-00090762, the Redevelopment Agency filed
17 a cross-complaint on August 11, 2011 against Healthcare Services, Inc. that alleges causes of
18 action for (1) express indemnity; (2) implied indemnity; (3) contribution; (4) negligence; (5)
19 breach of contract; (6) promissory estoppels; (7) declaratory relief; (8) specific performance; (9)
20 rescission; (10) common count; (11) fraudulent misrepresentation; and (12) negligent
21 misrepresentation. The cross-complaint is incorporated herein as if set forth in its entirety. By
22 virtue of the facts stated in Recital A, above, Successor Agency succeeded to all rights, title and
23 interests of Redevelopment Agency in and to the claims asserted against Healthcare Services, Inc.
24 in the Hon matter, and is the real party-in-interest and sole and exclusive owner of all claims
25 asserted or which could be asserted against Healthcare Services, Inc. in both the Hon and
26 LaFornara matters.

27 E. Healthcare previously occupied two adjoining properties (the "properties") at
28 1343-1345 Market Street and 528 and 542-544 14th Street that were formerly owned by Hon and

1 LaFornara, respectively, and later owned by the City of San Diego. During the period of time
2 Healthcare Services occupied the properties, they were operated jointly as a residential drug and
3 alcohol treatment facility.

4 F. On April 8, 2014, the City Council in closed session voted to accept a written
5 settlement proposal from Healthcare Services, Inc. that will provide 10 equal payments of \$5,000
6 to Successor Agency for a total of \$50,000 payable on or before December 31, 2014. There shall
7 be no interest on these payments. The Successor Agency will deposit all payments into the
8 Redevelopment Obligation Retirement Fund.

9 G. The payments by Healthcare Services, Inc. shall be made as follows:

- 10 1. \$5,000 on or before April 15, 2014;
- 11 2. \$5,000 on or before April 30, 2014;
- 12 3. \$5,000 on or before May 31, 2014;
- 13 4. \$5,000 on or before June 30, 2014;
- 14 5. \$5,000 on or before July 31, 2014;
- 15 6. \$5,000 on or before August 31, 2014;
- 16 7. \$5,000 on or before September 30, 2014;
- 17 8. \$5,000 on or before October 31, 2014;
- 18 9. \$5,000 on or before November 30, 2014;
- 19 10. \$5,000 on or before December 31, 2014.

20 H. This Stipulation shall not become an effective, binding obligation on the Successor
21 Agency or Healthcare Services, Inc. unless and until the Stipulation has been approved by
22 adopted resolution of the Oversight Board in accordance with California Health and Safety Code
23 sections 34171(d)(1)(D) and 34179(e), and has been approved, or deemed approved, by the
24 California Department of Finance in accordance with California Health and Safety Code section
25 34179(h).
26
27
28

1 STIPULATION

2 WHEREFORE, the City of San Diego, and the Successor Agency(collectively, "cross-
3 complainants") and Healthcare Services, Inc. ("cross-defendant") hereby enter into this
4 Stipulation for Settlement of Claim and Conditional Entry of Judgment In The Event of Default
5 [the "stipulation"], agreeing and stipulating as follows:

6 1. In order to settle and in full satisfaction of any and all claims that the Successor
7 Agency might assert against cross-defendant related to the facts, circumstances, events, and
8 subject matter alleged in the cross-complaints or in the underlying actions to which they relate,
9 cross-defendant agrees to pay the cross-complainants the sum of \$50,000 without interest to be
10 paid in full on or before December 31, 2014. Each of the Parties to this Stipulation hereby agrees
11 that this Stipulation shall operate as a mutual general release by and in favor of each of them, and
12 their respective parents, subsidiaries, employees, officers, attorneys, agents, heirs, successors, and
13 assigns, as to the claims and disputes asserted or which could have been asserted in the
14 Hon/LaFornara cross-complaints and as to any and all claims, disputes, liabilities, debts, and
15 causes of action, that presently exist or might have existed between the Parties at any time,
16 known or unknown, arising out of or relating, directly or indirectly, in any way to the facts,
17 circumstances, events, and subject matter alleged in the cross-complaints or in the underlying
18 actions to which they relate, including, without limitation, any claims for unpaid "rent" or similar
19 amounts alleged to be owing by Healthcare Services, Inc., and any claims arising out of or related
20 in any way to the properties, Healthcare Services, Inc.'s occupancy of the properties, the
21 Settlement Agreement alleged in the cross-complaints, and/or all matters and claims related in
22 any way to any of the foregoing, provided, however, that the foregoing release shall not apply to
23 any rights and remedies which the Parties have under and pursuant to this Stipulation. Each of
24 the Parties to this Stipulation acknowledges it has been informed and is aware of the provisions of
25 California Civil Code Section 1542, which reads as follows:

26 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
28 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST

1 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

2 2. At the time of execution of this agreement, and/or prior to April 15, 2014, cross-
3 defendant shall make an initial settlement payment of \$5,000 to the Successor Agency.
4 Thereafter, beginning April 30, 2014, cross-defendant shall make nine (9) additional monthly
5 payments of \$5,000 each to the Successor Agency on or before the last day of each month,
6 starting with a first payment that will be due on or before April 30, 2014, with subsequent
7 payments made by the last day of each month thereafter through and including December 31,
8 2014.

9 3. The obligation to make payments required pursuant to paragraphs 1 and 2, above,
10 shall not be terminated until such time as the entire amount of principal in the amount of \$50,000
11 under the terms of this stipulation is paid in full. Further, notwithstanding the payment terms set
12 forth in paragraph 2, above, all amounts owed to the Successor Agency pursuant to this
13 stipulation shall be paid in full on or before December 31, 2014, and if for any reason the
14 remaining balance of principal owed under the terms of this stipulation exceeds \$5,000 at the time
15 that the final payment is due on said date, that final payment shall be in the form of a “balloon
16 payment” equal to the total amount due and owing as of December 31, 2014.

17 4. Unless cross-defendant is notified otherwise in writing, each payment to the
18 Successor Agency shall be payable to *Office of the Treasurer, City of San Diego*, and delivered to
19 the Successor Agency at the following address: Jon Taylor, **Office of the City Attorney, 1200**
20 **Third Ave., Suite 1100, San Diego, CA 92101.**

21 5. The cross-complainants agree to cause no further proceeding to be taken against
22 cross-defendant as long as cross-defendant fully complies with all terms of this stipulation,
23 including but not limited to the terms set forth in paragraphs 1 through 4, above.

24 6. In the event that cross-defendant fails to make any payment as required under the
25 terms of paragraphs 1 and 2, above, within 10 days after the respective due date for same, then all
26 sums still owed by cross-defendant under the terms of this stipulation, shall be immediately due
27 and payable and cross-defendant shall be deemed in default or breach of the terms of this
28 stipulation.

1 7. Upon any default or breach of any material term or provision of this stipulation by
2 cross-defendant, the Successor Agency's sole and exclusive remedy thereon shall be to file a
3 competent declaration or other necessary pleading with the above-entitled court, setting forth
4 allegations and/or facts establishing non-payment of any monthly payments called for in
5 paragraph 1 and 2, above, and the failure by Healthcare Services, Inc. to cure said default within
6 the 10-day grace period set forth above, or any other default or breach of the terms of this
7 stipulation, and setting forth all sums theretofore paid to the Successor Agency by cross-
8 defendant pursuant to the terms of this stipulation. Concurrent with the filing of any such
9 declaration or other necessary pleading, and without notice to cross-defendant other than the
10 mailing of a copy of said declaration and/or pleadings by U.S. mail, postage prepaid, to the
11 address for cross-defendant and its counsel, set out below, a judgment may be entered in favor of
12 the Successor Agency and against cross-defendant, thirty (30) days after the declaration or other
13 necessary pleadings have been filed, and a copy of same to cross-defendant and its counsel, in the
14 principal sum of \$50,000, plus allowable interest at the rate of 7% that has accrued on any unpaid
15 principal from and after the effective date of this Stipulation, and reasonable attorney fees and
16 costs, with cross-defendant to first be given credit for all sums paid to City in accordance with the
17 terms of this stipulation.

18 8. Each cross-defendant named herein expressly waives notice, other than as set forth
19 above in paragraph 7 of this Stipulation, of any proceedings by cross-complainants to have a
20 judgment entered in accordance with the terms set forth in this stipulation.

21 9. The parties agree that this Court shall have jurisdiction to enforce the terms of this
22 stipulation.

23 10. Any written notice given by or to any party named herein pursuant to the terms of
24 this stipulation shall be to the City or Successor Agency at:

25 **Jon E. Taylor**
26 **Office of the San Diego City Attorney**
27 **1200 Third Ave., Ste. 1100**
28 **San Diego, CA 92101**

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and notice to Healthcare Services, Inc. shall be addressed to:

Tim Salyer
Healthcare Services, Inc.
151 Kalmus Drive Suite K1
Costa Mesa, CA 92626

With a copy to

Michael Ferdinand Sitzer
Law Offices of Michael F. Sitzer
301 Shipyard Way, Suite B
Newport Beach, CA 92663

The parties agree to keep each other informed of any change of address during the life of this stipulation.

11. Each party signing below, individually or through its authorized representative, acknowledges that he/she/it is aware of his/her/its respective right, and has had an opportunity, to consult with legal counsel regarding the terms of this stipulation and has freely consented to the terms and conditions of this stipulation, which consent has not involved coercion, undue influence or economic pressure.

12. The parties agree that this stipulation may be executed in counterpart and that, when said counterparts are joined, they shall act as if a single document was executed herein.

13. The parties further agree that any copy of this agreement, when fully executed, may be used in place of the original for all purposes.

14. The cross-complainants agree to file a Request for Dismissal with prejudice in both the Hon and LaFornara cases following receipt of a signed stipulation from Healthcare Services, Inc.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

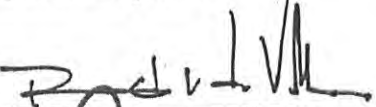
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1 IN WITNESS WHEREOF, this Stipulation is executed by the City of San Diego, solely
2 in its capacity as the designated successor agency to the Redevelopment Agency of the City of
3 San Diego, by the City of San Diego, and by Healthcare Services, Inc. to be effective as of the
4 date of execution by all parties.

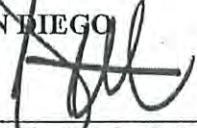
SUCCESSOR AGENCY:

City of San Diego, solely in its capacity as the
designated successor agency to the Redevelopment
Agency of the City of San Diego, a former public
body, corporate and politic

7 Date: April 16, 2014

8 By 
9 Ronald Villa, Deputy COO -
Neighborhood Services

10 Date: April 17, 2014

11 CITY OF SAN DIEGO
12 By 
13 Scott Chadwick, COO
for the City of San Diego

14 Date: April ____, 2014

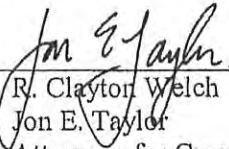
HEALTHCARE SERVICES, INC.

16 By _____
17 Timothy Salyer, President
Healthcare Services, Inc.

18 APPROVED AS TO FORM AND LEGALITY

19 Dated: April 17, 2014

JAN I. GOLDSMITH, City Attorney

20 By 
21 R. Clayton Welch
Jon E. Taylor
22 Attorneys for Cross-complainants
23 Redevelopment Agency of San Diego,
24 And Successor Agency and City of
San Diego

25 Dated: April ____, 2014

LAW OFFICES OF MICHAEL F. SITZER

26 By _____
27 Michael Ferdinand Sitzer
28 Attorneys for Cross-defendant
Healthcare Services, Inc.

1 IN WITNESS WHEREOF, this Stipulation is executed by the City of San Diego, solely
2 in its capacity as the designated successor agency to the Redevelopment Agency of the City of
3 San Diego, by the City of San Diego, and by Healthcare Services, Inc. to be effective as of the
4 date of execution by all parties.

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6 City of San Diego, solely in its capacity as the
7 designated successor agency to the Redevelopment
8 Agency of the City of San Diego, a former public
9 body, corporate and politic

10 Date: April ____, 2014

11 By _____
12 Ronald Villa, Deputy COO -
13 Neighborhood Services

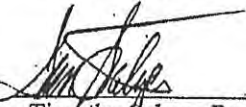
14 Date: April ____, 2014

15 **CITY OF SAN DIEGO**

16 By _____
17 Scott Chadwick, COO
18 for the City of San Diego

19 Date: April 16, 2014

20 **HEALTHCARE SERVICES, INC.**

21 By 
22 Timothy Salyer, President
23 Healthcare Services, Inc.

24 **APPROVED AS TO FORM AND LEGALITY**

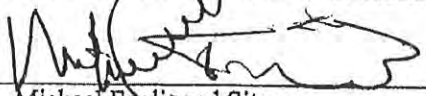
25 Dated: April 16, 2014

26 JAN I. GOLDSMITH, City Attorney

27 By _____
28 R. Clayton Welch
29 Jon E. Taylor
30 Attorneys for Cross-complainants
31 Redevelopment Agency of San Diego,
32 And Successor Agency and City of
33 San Diego

34 Dated: April 16, 2014

35 **LAW OFFICES OF MICHAEL F. SITZER**

36 By 
37 Michael Ferdinand Sitzer
38 Attorneys for Cross-defendant
39 Healthcare Services, Inc.

OVERSIGHT BOARD RESOLUTION NUMBER OB-2014-58

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE STIPULATED SETTLEMENT WITH HEALTHCARE SERVICES, INC. AND THE SUCCESSOR AGENCY'S RECEIPT OF AGGREGATE SETTLEMENT PAYMENTS OF \$50,000.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended; and

WHEREAS, the Successor Agency and Healthcare Services, Inc. (HSI) have agreed upon the terms of the Stipulation for Settlement of Claim and Conditional Entry of Judgment in the Event of Default (Stipulated Settlement) as a method to resolve cross-complaints filed by the Successor Agency against HSI in two pending lawsuits in San Diego County Superior Court, commonly referred to as the Hon and LaFornara matters, Case No. 37-2011-00090762 and Case No. 37-2011-00086995, respectively; and

WHEREAS, for at least ten years until early 2014, HSI operated a residential drug and alcohol treatment facility on the adjacent properties located at 1343-1345 Market Street and 528 and 542-544 14th Street in downtown San Diego (collectively, the Property), formerly owned by entities commonly referred to as Hon and LaFornara; and

WHEREAS, separate lawsuits by Hon and LaFornara for inverse condemnation against the Former RDA related to the Property were resolved by negotiated settlements in 2012 and 2013, respectively;

WHEREAS, notwithstanding those negotiated settlements, HSI remained in occupancy of the Property, and the Successor Agency's cross-claims against HSI remained unresolved; and

WHEREAS, HSI recently vacated the Property and moved its operation to a site on Rosecrans Street; and

WHEREAS, the Successor Agency sought damages against HSI in the cross-complaints estimated at \$715,128.21 under a best case scenario, mainly attributable to unpaid rent under existing leases between HSI and the former owners of the Property; and

WHEREAS, the Successor Agency may have faced some hurdles in proving these claims and in recovering any award of damages against HSI, which is a nonprofit entity not believed to possess significant assets or to generate significant net revenue; and

WHEREAS, the Stipulated Settlement will allow a full and final settlement of the Successor Agency's cross-complaints against HSI in the Hon and LaFornara lawsuits; and

WHEREAS, among other things, the Stipulated Settlement provides for a mutual general release of claims between the settling parties and requires HSI to pay the Successor Agency the aggregate sum of \$50,000, in ten incremental installments of \$5,000 each (without interest), by the end of 2014; and

WHEREAS, the Successor Agency will deposit all settlement payments into the Redevelopment Obligation Retirement Fund and will expend this money through the "Other Funds" category in a future Recognized Obligation Payment Schedule; and

WHEREAS, the Stipulated Settlement will not become an effective, binding obligation on the Successor Agency unless and until the Stipulated Settlement has been approved by

adopted resolution of the Oversight Board in accordance with California Health and Safety Code (Code) sections 34171(d)(1)(D) and 34179(e) and has been approved, or deemed approved, by the California Department of Finance in accordance with Code section 34179(h); and

WHEREAS, Code section 34171(d)(1)(D) states that an enforceable obligation includes judgments or settlements entered by a competent court of law, although the either the Successor Agency or the Oversight Board is authorized to appeal any judgment or to set aside any settlement; and

WHEREAS, the Stipulated Settlement will benefit the local taxing entities because it will allow the Successor Agency to resolve litigation that involves an uncertain outcome and some challenges related to proof of claims and collection of damages, and because it will avoid the expenditure of significant legal expenses.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Stipulated Settlement, in the form included as Attachment A to the Staff Report dated April 17, 2014 accompanying this Resolution, is hereby approved.

2. The Board approves the Successor Agency's receipt of payments in the aggregate amount of \$50,000 in accordance with the Stipulated Settlement, and the deposit of such payments into the Redevelopment Obligation Retirement Fund, in full settlement of the existing dispute with HSI related to the Property.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on April ____, 2014.

Chair, Oversight Board