



Staff Report

Agenda Item No.

F-2

To: City of Imperial Planning Commission
From: Lisa Tylanda, Planner
Date: January 4, 2018
Subject: Informational Site Plan/Project Review of proposed Senior Apartment Complex.

Background:

- Current Zoning: Village Commercial (VC)
- Current Land Use: Vacant Parcel
- Size of Property: 42400 sqft. /0.97 acres
- Parcel Location: 321 N Imperial Avenue
- Site Design: Please see attached Conceptual Site Plans.
- Environmental Clearance: Categorically Exempt.

The City of Imperial entered into a Development Agreement with EAH INC. on March 27, 2013 (Please see attached agreement) for a proposed Senior Apartment Complex. The proposed project is to be a 69 unit Senior Rental Housing complex, including one managers unit and a 4000 sqft. Community center. The project is compatible with the surrounding land uses, the project is consistent with the General Plan Land Use element and the project is consistent with the Housing Element Goals:

- Promote the construction of new housing units and the rehabilitation of existing housing units in order that every citizen of the City may be provided with decent and livable housing.*
- Encourage the construction of additional new assisted housing units in the City for persons and families of very low income.*
- Obtain additional Section 8 unit allocations for the City from the U.S. Department of Housing and Urban Development.*

Staff Recommendation:

Staff is presenting this item to the Planning Commission as an informational item, no action is required.

Attachments:

- Location map.
- Conceptual Site Plan.



EAH Housing

- Value engineering and project bidding
- Oversight of land development and project construction

EAH Housing has a proven track record in its ability to identify opportunities for service, and to creatively and effectively develop and implement plans. EAH has tackled the toughest affordable housing challenges, including Crescent Park, a 378-unit development in one of the most distressed neighborhoods in the City of Richmond, and Ecology House, a development for environmentally sensitive persons. Crescent Park now has the distinction of being the largest solar-powered affordable housing community in the United States, thanks to a \$70 million restoration by EAH that included an 899-megawatt solar installation. EAH focused on “green design” before it was a requirement by affordable housing funders, and built Ecology House with 100% environmentally safe materials. EAH entered the Hawaii marketplace in 1996 with the acquisition from HUD of Kukui Tower in Honolulu, and the subsequent rehabilitation of its 499 units, and has grown our Hawaii portfolio to 960 units owned and 1,787 units managed as of this writing. In 2007 EAH was selected by the residents of Kukui Gardens in Honolulu, and by the State via the Hawaii Housing Finance and Development Corporation, to be the company of choice to acquire, rehabilitate and preserve as affordable 389 of Kukui Gardens’ 851 units.

EAH Housing has worked with all major financing mechanisms in affordable housing. One of our greatest strengths lies with our Development staff and its proficiency in accessing a wide range of financing programs, typically combining several in one project. Decades of successful financing resources utilized include:

- Federal Low Income Housing Tax Credits
 - Tax-Exempt bonds, including private activity bonds, 501(c)(3), rated and unrated
 - State programs: Multifamily Housing Program loans, EHAP grants, Predevelopment Loan Program
 - Community Development Block Grants and HOME Program
 - HUD Section 202 and 811
 - HUD-insured loans
 - Federal Home Loan Bank Affordable Housing Program
 - Tax increment funds (Redevelopment Agencies)
 - Investor Equity
 - Conventional loans
 - Bridge loans
 - Corporate and foundation grants
 - Housing Trust Funds
 - Other State and municipality funding sources (energy conservation, green building, transportation, etc.)
-

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

CITY OF IMPERIAL

and

EAH INC.

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Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Development
Attachment No. 5	Form of Grant Deed
Attachment No. 6	Form of Affordable Housing Covenant
Attachment No. 7	Intentionally Omitted
Attachment No. 8	Form of Pre-Construction Note
Attachment No. 9	Form of City Note
Attachment No. 10	Form of City Deed of Trust
Attachment No. 11	Form of Assignment of Architectural Agreements and Plans And Specifications
Attachment No. 12	Form of Assignment of Construction Agreements
Attachment No. 13	Form of Master Lease

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into as of the 27th day of March, 2013 by and between the CITY OF IMPERIAL (the “**City**”) and EAH INC., a California nonprofit corporation (the “**Developer**”). The City and the Developer agree as follows:

100. SUBJECT OF AGREEMENT

101. Purpose of This Agreement

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Imperial, California (the “**City**”), and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

102. Intentionally Deleted

103. Intentionally Deleted

104. The Site

The “**Site**” is approximately 39,512 square feet and is more particularly shown in the Map of the Site, attached hereto as Attachment No. 1 and incorporated herein by reference (the “**Map of the Site**”), and described in the Legal Description of the Site, attached hereto as Attachment No. 2 and incorporated herein by reference (the “**Legal Description of the Site**”). Prior to the execution of this Agreement, Developer shall have entered into the agreement for the acquisition and purchase of the Site. After the City Acquisition Escrow as hereinafter defined, the Site shall be conveyed to the Developer pursuant to this Agreement for development of an approximately 61 unit senior rental housing complex including one manager’s unit together with approximately four thousand (4,000) square feet of commercial space (the “**Housing Project**”).

105. Parties to This Agreement

The City

The office of the City is located at 420 South Imperial Avenue, Imperial, CA 92251. “**City**,” as used in this Agreement, includes the City of Imperial and any assignee of or successor to its rights, powers and responsibilities.

The Developer and Transfers of Site, Control or Management

The Developer is EAH Inc., a California nonprofit corporation. The principal office of the Developer is located at 2169 E. Francisco Blvd., Suite B, San Rafael, CA 94901. Wherever the term “**Developer**” is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Developer are of particular concern to the City and the City, and it is because of such qualifications and identity that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the City and all loans made by the City and secured by the Site may be accelerated by City if there is (i) any conveyance by Developer of the Site or any portion thereof or interest therein (other than normal easements in connection with the development of the Site); (ii) any change in control of the Developer without the City's prior written consent or (iii) any engagement of, or change in, a property manager or asset manager or similar management entity or agent without the City's prior written consent; provided, however, that such consent will not be unreasonably withheld after the City has issued a Certificate of Completion (but it shall be reasonable for the City to withhold such consent on the grounds that the Developer, its transferee or the applicable management entity (as applicable) does not have extensive experience in operating projects such as the Housing Project or is not reputable, as determined in good faith by the City).

The Developer shall not assign all or any part of this Agreement without the prior written approval of the City, except the Developer shall have the right to assign all of its right, title and interest in and to this Agreement to a California limited partnership or a limited liability company in which Developer, or a reputable affiliate of Developer with comparable experience in owning and operating low/mod rental projects, acts as the managing general partner or managing member (a "**Partnership**"). From and after any such assignment, the Partnership shall be deemed entitled to all rights of Developer with respect to this Agreement. Developer shall provide City with organizational documents of the Developer or its successor-in-interest as City deems reasonably necessary to document the power and authority of the Developer and its obligations under this Agreement. In addition, the City hereby approves the following transfers of interest in the Developer: the addition of tax credit investors as limited partners; and the acquisition of a limited partner's interest in the Developer. Developer shall provide City with a copy of any documents evidencing a transfer of interest to the Partnership or any such approved transferee.

In addition, the following transfers of this Agreement and the Housing Project shall be permitted hereunder (each, a "**Permitted Transfer**") upon prior written notice to the City but without the consent of the City:

A. Transfers of partnership interests in Developer between then existing partners in Developer or (b) any withdrawal, removal, and/or replacement of a general partner of Developer pursuant to the terms of the applicable partnership agreement, so long as after the consummation of the foregoing, the controlling general partner of Developer and the general partner of Developer responsible for the day-to-day management of Developer and the Housing Project is a nonprofit entity with reasonable experience in operating, managing and leasing high quality mixed-income multifamily affordable housing projects in the State of California;

B. Any transfer to an affiliate of Developer or any transfers between or among then existing Developer affiliates, so long as (a) Developer or another limited liability company wholly owned or controlled by Developer continues to have a controlling general partnership interest in Developer and remains responsible for the day-to-day management of

Developer and the Housing Project, and (b) Developer remains a single purpose entity; for purposes hereof, "affiliate" of Developer or Developer or another limited liability company wholly owned or controlled by Developer shall mean any entity in which Developer is a general partner responsible for the day-to-day management of such entity and of any housing and other real estate projects owned, managed or operated by such entity after the Permitted transfer;

C. The granting, entry into and/or exercise of the purchase option and right of first refusal agreement in accordance with Developer's partnership agreement (in the form and content in which such partnership agreement exists as of the date hereof), so long as (a) the purchasing party in any such exercise is Developer, its affiliate or permitted successor or (b) the exercise of rights under said purchase option and right of first refusal agreement is in accordance with Developer's partnership agreement (which is subject to City review and written approval);

D. Any transfer that results in a mere change in type of entity or form rather than in equity ownership (for example, the conversion of Developer from a general partnership to a limited liability company where the members hold all of the interests of the limited liability company in the same proportion as they previously held the partnership interests in the general partnership);

E. Any transfer of a limited partnership interest in Developer and/or Partnership, including, without limitation, to a tax credit investor; and

F. The removal or withdrawal in lieu of removal of a general partner of Developer by its limited partner for cause in accordance with Developer's limited partnership agreement and replacement of such general partner with an affiliate of the limited partner, so long as such affiliate or a remaining general partner of Developer has at least than ten (10) years experience operating low-income housing projects in California similar to the Housing Project and a good reputation.

200. DISPOSITION OF THE SITE

201. City Purchase of the Property.

(a) Subject to the terms and conditions of the Agreement, the City hereby agrees to accept an assignment from the Developer of all of the equitable right-title and interest of the Developer in the Site as arises under that certain [real estate purchase agreement dated as of March 1, 2013].

(b) The City shall acquire the Site as set forth in the Developer Acquisition Assignment Agreement in the form attached hereto as Attachment No. 7 on or prior to the date specified in the Schedule of Performance (the “**City Acquisition Escrow**”). The City agrees to perform all acts necessary to accept title to the Site in accordance with the foregoing provisions.

202. Agreement of the City to Sell the Site to the Developer for the Improvement of the Project. Subject to the Close of the City Acquisition Escrow.

Subject to the City’s acquisition of the Property as set forth in the Developer Acquisition Assignment Agreement and further subject to the terms and conditions of this Agreement, the City hereby agrees to sell the Site to the Developer and the Developer agrees to purchase the Site from the City. The purchase price for the Site is Three Hundred Fifty-Thousand Dollars (\$350,000) (the “**Purchase Price**”), which Purchase Price shall be financed by a portion of the City Loan (as hereinafter defined). The Developer represents and warrants that the Site will be conveyed to the Developer for purposes of development pursuant to this Agreement and not for speculation in undeveloped land.

203. Escrow

The City agrees to open an escrow with Chicago Title Company or any other escrow company approved by the City and the Developer, as escrow agent (the “**Escrow Agent**”), in Imperial, California, within the time established in the Schedule of Performance (Attachment No. 3) (the “**Schedule of Performance**”). This Agreement constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement and, upon indicating its acceptance of the provisions of this Section 203 in writing, delivered to the City and to the Developer within five days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The City and the Developer shall each pay in escrow to the Escrow Agent all fees, charges and costs necessary to close escrow (which shall be divided between the parties as such fees, charges and costs are customarily divided between a seller and buyer in Imperial County, as determined by Escrow Agent, unless specifically provided for herein to the contrary) promptly after the Escrow Agent has notified the City and the Developer of the amount of such fees,

charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow.

Costs necessary to place title to the Site in the condition for conveyance required by this Agreement shall be borne by the City.

All funds received in the Escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30 day month.

The Developer shall deposit into the escrow the following documents, fully executed, acknowledged and in recordable form as applicable:

1. The City Deed of Trust (as hereinafter defined);
2. The City Note (as hereinafter defined);
3. The Affordable Housing Covenant (as hereinafter defined); and

Upon delivery of the Grant Deed to the Escrow Agent by the City pursuant to Section 208 of this Agreement, the Escrow Agent shall record the Grant Deed when title can be vested in the Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Site are not to be transferred.

The Escrow Agent is authorized to:

1. Pay and charge the City and the Developer, respectively, for any fees, charges and costs payable under this Section 203. Before such payments are made, the Escrow Agent shall notify the City and the Developer in writing of the fees, charges and costs necessary to clear title and close the escrow;
2. Disburse funds and deliver the Grant Deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and
3. Record any instruments delivered through this escrow, if necessary or proper, to vest title in the Developer in accordance with the terms and provisions of this Agreement.

Escrow Agent may, within its discretion, execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar California state act and regulations promulgated there under. City agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform

Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent. Further, Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

If this escrow is not in condition to close before the time for conveyance established in Section 204 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner set forth in Section 606.1 or 606.2 hereof, as the case may be, and demand the return of its monies, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Section 606.1 or 606.2 hereof, as the case may be. If neither the City nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 204, no termination or demand for return shall be recognized until 10 days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10 day period, the Escrow Agent is authorized to hold all monies, papers and documents with respect to the Site until instructed in writing by both the City and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 203 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance.

Any amendment of these escrow instructions shall be in writing and signed by both the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 701 of this Agreement for notices, demands and communications between the City and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 203 to 209, both inclusive, of this Agreement.

Neither the City nor the Developer shall be liable for any real estate commissions or brokerage fees that may arise here from. The City and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

204. Conveyance of Title and Delivery of Possession

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred and subject to any mutually agreed upon extensions of time, conveyance to the Developer of title to the Site shall be completed on or prior to the date specified in the Schedule of Performance. The City and the Developer agree to perform all acts necessary to convey title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 214. The Developer shall accept title and possession on or before said date.

205. Form of Grant Deed

The City shall convey to the Developer title to the Site in the condition provided in Section 206 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5 (the “Grant Deed”).

206. Condition of Title

Within the time set forth in the Schedule of Performance, City shall cause Chicago Title Company, or another title company reasonably acceptable to both parties (the “Title Company”), to deliver to Developer a standard preliminary title report (the “Title Report”) with respect to title to the Site, dated within 30 days of the date of this Agreement, together with legible copies of the documents underlying the exceptions (“Exceptions”) set forth in the Title Report. Developer shall have the right to reasonably approve or disapprove the Exceptions. Developer shall have thirty (30) days from the date of receipt of the Title Report pursuant to this Section 206 to give written notice to City of Developer’s approval or disapproval of any of such Exceptions. Developer’s failure to give written approval of the Title Report within such time limit shall be deemed disapproval of the Title Report. If Developer notifies City of its disapproval of any Exceptions in the Title Report, City shall have the right, but not the obligation, to remove any disapproved Exceptions within sixty (60) days after receiving written notice of Developer’s disapproval or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the Commencement of the Ground Lease. If City cannot or in its sole discretion does not elect to remove any of the disapproved Exceptions within that period, Developer shall have ten (10) business days after the expiration of such sixty (60) business day period to either give City written notice that Developer elects to proceed with the acquisition of the Site subject to the disapproved Exceptions or to give City written notice that the Developer elects to terminate this Agreement. The title to the Site, with the Exceptions to title approved by Developer as provided herein, shall hereinafter be referred to as the “Approved Conditions of Title.” Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer). City shall not voluntarily create any new exceptions to title following the date of this Agreement. Time for and Place of Delivery of Grant Deed and Other Documents

The City shall deposit the Grant Deed, and the Developer (and City where applicable) shall deposit the City Note, City Deed of Trust, and Affordable Housing Covenant with the Escrow Agent on or before the date established for the conveyance of the Site in the Schedule of Performance (Attachment No. 3 hereto). Concurrently with delivery of the City Note and recordation of the City Deed of Trust, the City shall also deliver to or for the benefit of the Developer the original Acquisition and Pre-Construction Note, marked as cancelled.

207. Recordation of Grant Deed and Other Documents

Upon the close of escrow, the Escrow Agent shall file the Grant Deed and all applicable Other Documents in the Official Records, shall deliver the City Note to the City, shall deliver the cancelled Acquisition and Pre-Construction Note to the Developer, shall deliver the remaining City Loan funds (provided for under Section 301.3, below) to or for the benefit of the Developer, and shall deliver to the Developer the Developer Title Policy and to the City the City Title Policy in conformity with Section 209.

208. Title Insurance

Upon the close of escrow, the Title Company, shall provide and deliver to the Developer an ALTA extended coverage owner's policy of title insurance issued by the Title Company, in the amount of \$350,000 insuring that title is vested in Developer in accordance with the Approved Conditions of Title (the "**Developer Title Policy**"). The Title Company shall provide the City with a copy of the Developer Title Policy. The Developer shall pay all costs associated with the Developer Title Policy and the City Title Policy hereinafter described. Concurrently with the recording of the Grant Deed, the Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the Site, and the Developer shall pay the entire premium for any such increase in coverage.

Upon the close of escrow, the Title Company shall deliver to the City an ALTA extended coverage lender's policy of title insurance (the "**City Title Policy**"), with any endorsements the City may reasonably require, insuring the City in the principal amount of the City Loan, of the validity and the priority of the City Deed of Trust upon the Site, subject only to those liens approved by the City.

209. Taxes and Assessments

Ad valorem taxes and assessments on the Site, if any, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title shall be borne by the City. All such ad valorem taxes and assessments levied or imposed for any period commencing after closing of the escrow shall be paid by the Developer.

210. Conveyance Free of Possession

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Site shall be conveyed free of any possession or right of possession by any person except that of the Developer and any arising from any Approved Conditions of Title.

211. Inspections; Conditions of the Site; Developer Right to Terminate Prior to Closing Based on New, Material Release.

1. Inspections. Within the time established in the Schedule of Performance (Attachment No. 3), the Developer shall conduct its own investigation of the Site (or portion thereof being conveyed), its physical condition, the

soils and toxic conditions of the Site and all other matters which in the Developer's judgment affect or influence the Developer's proposed use of the Site and the Developer's willingness to develop the Site pursuant to this Agreement. The Developer's investigation may include, without limitation, the preparation by a duly licensed soils engineer of a soils report and environmental report for the Site. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall provide written notice to the City of the Developer's determinations concerning the suitability of the physical condition of the Site. If, in the Developer's reasonable judgment, the physical condition of the Site is unsuitable for the use or uses to which the Site will be put, then the Developer shall have the option either: to (a) take any action necessary to place the Site in a condition suitable for development, at no cost to the City; or (b) terminate this Agreement pursuant to the provisions of Section 606.1. If the Developer has not notified the City of its determinations concerning the suitability of the physical condition of the Site within the time set forth in the Schedule of Performance (Attachment No. 3), the Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section. If there is a material release of hazardous substances on the Site after completion of Developer's inspection and prior to the close of escrow, and City knows of such release, City shall notify Developer of such release. If the new release described in City's notice or a new material release otherwise known to Developer is unacceptable to Developer, the Developer may terminate this Agreement prior to close of escrow by written notice to City (describing the material release and why it is unacceptable) given prior to the close of escrow.

2. "As Is." The City shall deliver to the Developer all information of which it has actual knowledge concerning the physical condition of the Site, including, without limitation, information about any Hazardous Materials, as defined below. The Developer acknowledges and agrees that the Site shall be purchased "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Materials thereon or therein, and any other matters affecting the Site.
3. Indemnity. The Developer agrees, from and after the date of recording of the deed conveying title to the Site from the City to the Developer under this Agreement, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or

nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), ("**Damages**") whenever arising, and whether or not caused in whole or in part by the City, resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (sometimes herein collectively referred to as "**Contamination**"), except if such Damages result from the gross negligence, fraud, misrepresentation or failure to disclose by the Indemnitees. The Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at the Developer's sole cost.

4. Release and Waiver. The Developer hereby releases and waives all rights, causes of action and claims the Developer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein), at, on, in, beneath or from the Site, except if such cause of action arises from the fraud or misrepresentation or failure to disclose by the City. In furtherance of the intentions set forth herein, the Developer acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

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

The Developer hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or no statutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 213.

5. Definitions.

- a. As used in this Agreement, the term "**Environmental Response Actions**" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or

federal governmental or private party claims, including any claims by the Developer.

- b. As used in this Agreement, the term “**Environmental Response Costs**” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.
 - c. As used in this Agreement, the term “**Hazardous Materials**” means any substance, material or waste that is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum; (3) asbestos; (4) poly-chlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.
6. Materiality. The Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Developer for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered this Agreement unless the Developer’s obligations were as provided for herein.

212. Intentionally Deleted.

213. Condition of the Site

The Site shall be conveyed from the City to the Developer in its current “as is” condition, without representation or warranty, express or implied.

It shall be the sole responsibility of the Developer, at the Developer’s sole expense, to investigate and determine the soil conditions of the Site and the suitability of such soil conditions for the improvements to be constructed by the Developer. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Site will be put, then it is

the sole responsibility and obligation of the Developer to take such action as may be necessary to place the soil conditions of the Site in a condition suitable for development of the Site.

214. Preliminary Work by the Developer

Prior to the conveyance of title from the City, representatives of the Developer shall have the right of access to the Site at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The Developer shall defend, indemnify and hold the City harmless from and against any and all claims, liabilities, damages, losses, costs and expenses arising out of or relating to any injury or damage caused directly or indirectly any activity pursuant to this Section. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title thereto shall be done only after written consent of the City and at the sole expense of the Developer. The Developer shall save and protect the City against any claims resulting from such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

300. City LOAN(S)

301. City Loan(s)

The City desires to assist the Developer with the costs of development of the Housing Project and creating affordable housing. Subject to the conditions set forth herein, the City shall provide a loan to the Developer in a total amount not to exceed ONE MILLION THREE HUNDRED THOUSAND DOLLARS (\$1,300,000) (the “**City Loan**”). The City Loan will consist of the following elements:

1. Pre-Construction. An amount not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) to be used to reimburse the Developer for certain design, engineering and other pre-development costs incurred by the Developer for the Housing Project (“**Pre-Construction**”). Upon the execution of this Agreement, Developer shall execute and deliver to City a promissory note in the form attached hereto as Attachment No. 8 and assignments and comments in the forms attached hereto as Attachments No. 11 and 12 from all architects, engineers and contractors (the “**Pre-Construction Note**”). The Pre-Construction Note shall be repayable in accordance with the provisions of the Pre-Construction Note until such time as Developer acquires the Site from the City. Upon close of escrow and conveyance of the Site to the Developer, the Pre-Construction Note shall be “rolled into” and become part of the City Loan evidenced by the City Note and City shall return the Pre-Construction Note to Developer marked “Cancelled”, but the assignments

and consents shall remain in effect. If Developer engages any other architects, engineers or contractors, Developer shall promptly provide similar assignments and consents.

2. Development Costs. The remaining amount of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000), shall be available for use by the Developer to pay for acquisition of the Site and other costs associated with the construction and development of the Housing Project excluding any development fees, development management fees or similar fees.
3. Disbursements. Except with respect to the THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000) available to Developer to finance Developer's acquisition of the Site from the City, the remaining City Loan funds and all of the Pre-Construction funds shall be disbursed on a construction draw basis to pay for predevelopment, construction and development costs in accordance with and subject to typical construction loan disbursement conditions (including, without limitation, absence of a default by Developer under this Agreement, disbursement no more often than once every 30 days, City's receipt of a written disbursement request indicating the amount requested including the names of all contractors and vendors to be paid together with copies of invoices of the costs to be paid, conditional lien releases from all contractors and subcontractors to be paid and unconditional lien releases for all previous contractor invoices for which the previous disbursement of loan proceeds was made). The disbursements of the Pre-Construction funds are also subject to the satisfaction of conditions f, g, h and i set forth below and the disbursement of the remaining balance of City Loan funds are also subject to the satisfaction of conditions a - i set forth below.

Notwithstanding the foregoing, the City Loan shall not exceed an amount necessary to make the Housing Project financially feasible as shall be determined by City in its sole discretion and based upon review of all information which City deems necessary to evaluate the total cost to complete the Housing Project (the "**Project Costs**"), including all debt and tax credit equity available to the Developer to acquire the Site and complete the Housing Project. The City may cease disbursements of the Pre-Construction funds and/or City Loan at any time if the City determines that the City Loan, together with other sources of committed debt and tax credit equity, is insufficient to pay all Housing Project costs.

Except with respect to disbursements of Pre-Construction funds pursuant to the Pre-Construction Note, the following are also conditions precedent to all disbursements of the City Loan and the sale of the Site to Developer, and shall be satisfied as a condition to close of escrow (and if not satisfied as of the scheduled date for Close of Escrow in the Schedule of Performance, City may terminate this Agreement by written notice to Developer):

- a. The Developer shall have delivered to the Escrow Agent the City Note, City Deed of Trust, and Affordable Housing Covenant, all duly executed and in recordable form (if applicable);

- b. The Title Company (as hereinafter defined) is irrevocably committed to issuing the City Title Policy to the City;
- c. The Construction Loan (as hereinafter defined), and all other financing and all commitments for tax credit equity necessary to pay all costs of the Housing Project shall have closed or will close concurrently with the close of escrow (and as to tax credit equity, the limited partnership agreement of the Partnership shall have been delivered to and approved by the City and such Partnership shall have obtained tax credits and commitments for tax credit equity reasonably acceptable to City);
- d. All permits and approvals for the construction of the Housing Project shall have been issued (or are ready to be issued, subject only to payment of applicable fees);
- e. City shall have received and approved GMAX or a stipulated sum with a reputable contractor for the Housing Project, and if required by other sources of financing, copies of payment and performance bonds;
- f. City shall have reviewed and approved a project budget (the "**Project Budget**"), showing all costs for the acquisition of the Site and the design and construction of the Housing Project (collectively, the "**Project Costs**"), including the following materials for City review: (i) sources and uses of funds statement, (ii) cash flow projections, and (iii) first year operating budget.
- g. Developer shall have delivered to City the executed assignments described in Sections 401.9 and 401.10 below.
- h. Developer shall not be in default under the Agreement.
- i. City shall have received a final determination letter from the Department of Finance or such other documentation as may be acceptable to the City and the Developer in their sole and absolute discretion that the City's source of funds intended to be used for the City Loan is a permissible use under applicable law.

302. City Note and City Deed of Trust

The Developer's obligation to repay the City Loan shall be evidenced by a promissory note (the "**City Note**") in substantially the form attached hereto as Attachment No. 9 and incorporated herein by reference. The City Loan shall be repaid pursuant to the terms and conditions set forth in the City Note. The City Note shall be secured by a deed of trust (the "**City Deed of Trust**"), in the form attached hereto as Attachment No. 10 recorded against the Site.

303. Additional Financing

In addition to the City Loan, the Developer will use diligent efforts to obtain financing for the Housing Project through a combination of sources, including (i) federal and/or State Low-Income Housing Tax Credits (the "**Tax Credit Financing**"), (ii) construction loan from a reputable institutional lender (the "**Construction Loan**"), and/or (iii) other funding, as may be necessary to pay all costs necessary for the development and construction of the Housing Project, including without limitation, such sources as the Affordable Housing Program of the Federal Home Loan Bank ("**AHP**"), from the proceeds from the HOME Investment Partnerships Act ("**HOME Program**") (all collectively, the "**Project Financing**").

304. Project Financing

The City shall have the right to disapprove, in its reasonable discretion, the Project Financing. City shall not be obligated to approve tax credit equity without having received true and complete copies of the preliminary reservation and, if available, the carryover allocation and the final allocation of tax credits, and true and complete copies of all documents evidencing the admission of an equity investor and its obligation to contribute the Tax Credit Financing, subject only to reasonable and customary conditions.

305. Affordable Housing Covenant

Concurrently with execution and delivery of the City Note, and prior to and as a condition precedent to funding any remaining portion of the City Loan, the Developer shall also execute and deliver an "**Affordable Housing Covenant**" setting out the Developer's obligations to develop and use the Site for affordable housing purposes, as provided under Section 501. The Affordable Housing Covenant shall be in substantially the form attached hereto as Attachment No. 6 and incorporated herein by reference. The Affordable Housing Covenant shall be recorded against the Site. The City agrees that the Affordable Housing Covenant on the Site shall be subordinate to a regulatory agreement, deed of trust, or other covenants and restrictions relating to the Project Financing, in an amount reasonably approved by the City's Executive Director, subject to the provisions set forth in Paragraph 10 of the Affordable Housing Covenant.

306. Subordination of City Loan

The City agrees to subordinate the City Deed of Trust to regulatory agreements and deed(s) of trust relating to the tax credit financing and other Project Financing secured by the Developer for the Housing Project where such subordination is required in order to obtain the financing needed for the Housing Project; provided the total aggregate amount of all permanent long-term financing secured by the Developer, together with the City Loan, shall not exceed the estimated construction cost of the completed Housing Project, unless otherwise approved by the City; and provided, further, that any such subordination shall be subject to the provisions set forth in this Section 306 and that one (or more) recorded regulatory agreement is required by the other financing or tax credit equity sources and is approved by the Executive Director of the City. Any such subordination shall be pursuant to the terms of the subordination agreements and/or other inter-creditor agreements that may be entered into by the City. The City shall have the right to review and approve the terms and conditions of any such senior financing and

subordination agreement(s), which approval shall not be unreasonably withheld. The City shall have the right to record a request that the City receive notice of any default by the Developer under the tax credit financing and other Project Financing obtained by the Developer with respect to the Housing Project. To implement any such subordination, the Executive Director of the City shall have the authority to execute such subordination agreements and/or inter-creditor agreements that may be reasonably required.

400. DEVELOPMENT OF THE SITE

401. Development of the Site by the Developer

Scope of Development

The Site shall be developed as provided in the Scope of Development, attached hereto as Attachment No. 4 and incorporated herein by reference.

Basic Concept Drawings

The Site shall be developed in accordance with Basic Concept Drawings that are subject to approval by the City. Notwithstanding the foregoing and notwithstanding anything else to the contrary in this Agreement, express or implied, Developer shall obtain all permits and governmental approvals for the Housing Project as may be required by applicable law.

Changes to Plans and Cost of Construction

If the Developer desires to make any mastered change in the construction plans after their approval by the City that will alter the number of units or increase or decrease the Project Budget by \$75,000 or more in any one instance or \$150,000 on a cumulative basis, or affect the number of rental units, the Developer shall submit the proposed change to the City for its approval.

Cost of Construction

The cost of developing the Site and constructing the improvements thereon shall be borne by the Developer except for the loans contemplated herein. The City and the Developer shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

Construction Schedule

After the conveyance of title to the Site, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Site. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance, extended as provided in Section 704. The City's Executive Director, in his or her reasonable judgment, shall have the authority to approve in writing any additional time extensions on behalf of the City.

During the period of construction, but not more frequently than once a month, the Developer shall submit to the City a written progress report of the construction when and as requested by the City. The report shall be in such form and detail as may reasonably be required by the City and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

Insurance

From and after the Close of Escrow, Developer shall obtain and maintain at no cost or expense to the City, with an insurance company reasonably acceptable to the City, (i) property insurance for the Improvements in an amount not less than the replacement cost of the Improvements (subject to a deductible not to exceed \$10,000) with blanket limits (provided such limits do not limit the amount of property insurance reserved exclusively for the Improvements); (ii) general liability insurance, insuring against claims and liability for bodily injury and property damage arising from the construction, use, occupancy, condition, or operation of the Land, which liability insurance shall provide combined single limit protection of at least \$5,000,000 and shall include contractual liability coverage and products and completed operations coverage, and (iii) commercial automobile liability insurance of at least \$1,000,000 combined single limit. Such liability insurance policies shall name the City and the City and their council members, board members, officers, agents and employees as additional insureds.

Developer shall obtain and maintain in force until completion of the Improvements (i) "all risk" builder's risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the City, and (ii) workers' compensation insurance covering all persons employed by Developer in connection with work on the Project, or any portion thereof. During the construction of Improvements by Developer, such builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.

Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

With respect to each policy of insurance required above, Developer and each of Developer's general contractors shall furnish to the City a certificate on the insurance carrier's form setting forth the general provisions of the insurance coverage promptly after written request by City showing the additional insureds. The certificate shall also be furnished by Developer prior to commencement of construction of any Improvements.

All such policies required by this Section shall contain (i) language to the effect that the policies cannot be cancelled or materially changed except after thirty (30) days' written notice by the insurer to the City; (ii) a waiver of the insurer of all rights of subrogation against the City and the other additional insureds; and (iii) an endorsement that said policy is

primary and non-contributory. All such insurance shall have deductibles that do not exceed \$10,000.

City and Other Governmental City Permits

Before the close of escrow or the commencement of construction or development of any improvements, structures or other work of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all permits that may be required by the City or any other governmental agency affected by such construction, development or work. The City shall provide all assistance deemed appropriate by the City to the Developer in securing these permits.

Construction Bidding/Contract

The Developer shall be permitted to select a general construction contractor (i) has a demonstrated capacity for performing such work contemplated under this Agreement and the Scope of Work, (ii) is prepared to engage in the competitive bidding of all subcontracted work and disclose to the City all such bids received, (iii) will provide performance and labor and materials bonds for any work performed by the general contractor or its subcontractors, and (iv) is willing to enter into a construction contract in form and substance acceptable to the City. The City must approve any general contractor, and the construction contract entered into therewith for construction of the improvements, prior to the close of escrow.

Assignment of Plans and Architect's Contract

Before the close of escrow, the Developer shall, by an instrument substantially in the form attached hereto as Attachment No. 11 (the "Architectural Assignment"), conditionally assign to the City all architectural plans and contracts for the improvements and the project architect's contract. The Developer shall also deliver to the City, in the form included as part of the Architectural Assignment, the written consent of the project architect to said assignment, including, without limitation, to the use by the City of all architectural plans, as well as the ideas, designs, and concepts contained within them. The City acknowledges and agrees that its rights under such assignments shall be subordinate to any such rights assigned to Developer's primary lenders for its Project Financing.

Assignment of Construction Contract

Before the close of escrow, the Developer shall, by an instrument substantially in the form attached hereto as Attachment No. 12 (the "Construction Contract Assignment"), conditionally assign to the City its construction contract. The Developer shall also deliver to the City, in the form included as part of the Construction Contract Assignment, the written consent of the general contractor to said assignment. The City acknowledges and agrees that its rights under such assignments shall be subordinate to any such rights assigned to the Developer's primary lenders for its Project Financing.

Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the City and the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction, upon reasonable prior notice, for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of the City or the City shall be those who are so identified in writing by the Executive Director of the City. The City and the City shall indemnify the Developer and hold it harmless from any damage caused or liability arising out of this right to access.

Local, State and Federal Laws

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

Antidiscrimination During Construction

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment 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.

402. Responsibilities of the City

The City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development for the City to perform within the times specified in the Schedule of Performance.

403. Taxes, Assessments, Encumbrances and Liens

The Developer shall pay prior to delinquency all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title to or delivery of possession of the Site. Prior to the issuance of a Certificate of Completion, the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. The Developer shall remove or have removed any levy or attachment made on the Site (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 Developer from reasonable contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

The Developer understands that under certain conditions, its control of the property or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

404. No Release of Liability

In the absence of specific written agreement by the City, no transfer by Developer of the Site or any portion thereof or interest therein shall relieve the Developer or any other party from any obligations under this Agreement.

405. Security Financing; Rights of Holders

No Encumbrances Except Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development

Notwithstanding Sections 403 and 404 of this Agreement, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the construction of improvements on the Site and any other expenditures necessary and appropriate to develop the Site under this Agreement. The Developer shall notify the City in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Certificate of Completion. The Developer shall not enter into any such conveyance for financing without the prior reasonable written approval of the Executive Director of the City.

Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the Grant Deed to be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any Improvements thereon other than those uses and improvements provided for or authorized by this Agreement.

Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the City therefore. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within 90 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 on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 405.3 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 405.3. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or

continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

Failure of Holder to Complete Improvements

In any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of the Site has vested in the holder, the City, if it so desires, shall be entitled to a conveyance of the Site from the holder to the City 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 holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- b. All expenses with respect to foreclosure;
- c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site;
- d. The costs of any authorized improvements made by such holder; and
- 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 the City.

Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of the Improvements, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be

entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

406. Right of the City to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title and prior to the issuance of a Certificate of Completion for construction and development, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale.

Certificate of Completion

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the City shall furnish the Developer with a “**Certificate of Completion**” upon written request therefore by the Developer. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Official Records.

If, after written request therefore from Developer, City refuses or fails to furnish the applicable Certificate of Completion, City shall, within 30 days after the written request, provide the Developer with a written statement of the reasons City refused or failed to furnish the Certificate of Completion. The statement shall also contain City’s opinion of the action(s) Developer must take to obtain the Certificate of Completion. If the reason for such refusal is confined to either (a) the immediate unavailability of specific items or materials for landscaping, or (b) the need only to complete “punch list” items, the City will issue the Certificate of Completion upon the posting of a bond (or other security acceptable to the City) by Developer with City in an amount representing the fair value of the work not yet completed. If the City shall have failed to provide such written statement within said 30-day period, Developer shall be deemed entitled to the Certificate of Completion.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Improvements. Such Certificate of Completion shall not be notice of completion as referred to in Section 3093 of the California Civil Code.

Prevailing Wages

If improvements which are considered to be public works under State law are constructed by or on behalf of Developer, then: (i) the Developer shall and shall cause the general contractor and all subcontractors to pay prevailing wages in the construction of the improvements as those wages are determined pursuant to Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the

Department of Industrial Relations; and (ii) the Developer shall and shall cause its general contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. Copies of the currently applicable per diem prevailing wages are available from the City of Imperial Public Works Department. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City and the City) the City and the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction of the improvements or any other work undertaken or in connection with the Site.

500. USE OF THE SITE

501. Uses

The Developer shall develop the Site as a senior affordable housing complex (the "Housing Project") consisting of approximately sixty-one (61) rental dwelling units, one of which will be a manager's unit. The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest, that sixty-one (61) of the Units (each an "Affordable Unit" and collectively, the "Affordable Units") shall be rented to Lower Income Households as described in the Affordable Housing Covenant (Attachment No. 6). For purposes hereof, "Lower Income Households" means households whose annual gross income that does not exceed the qualifying limits, adjusted for household size and other factors, for a "low-income family" as defined under the United States Housing Act of 1937 as amended, and as determined from time to time by HUD for the Imperial County Statistical Area. If HUD should cease making such determination, "low income" shall be defined as equal to or less than 60% of Area Median Income, or City in its reasonable discretion may designate another definition of "low income" used by any other federal or state agency.

The Monthly Rent for the Affordable Units to be rented to Lower Income Households shall not exceed the maximum rent allowable under Section 42 of the Internal Revenue Code, and the rules and regulations implementing the foregoing, for a tenant earning sixty percent (60%) of the Imperial County area median income for a household size appropriate to the unit. For purposes of this Agreement, "Monthly Rent" means the total of monthly payments for (a) use and occupancy of each Affordable Unit and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Developer which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Developer. In the event that all utility charges are paid by the landlord rather than the tenant, no utility allowance shall be deducted from the rent.

Rental restrictions establishing the criteria for rental of the Affordable Units to Lower Income Households shall be as set forth in the Affordable Housing Covenant (Attachment

No. 6), which shall be recorded against the Site as a condition to close of escrow. The Affordable Housing Covenant shall provide that each Affordable Unit shall remain affordable for a period of not less than fifty-five (55) years from the date of completion of the Housing Project.

The foregoing covenants shall "run with the land".

The Housing Project shall include approximately 4,000 leasable square feet of ground floor retail space developed as warm shell space (including plumbing, flooring, ceilings, bathrooms, and HVAC). The City shall have the right to master lease the retail space pursuant to the terms of a master lease in a form substantially similar to the form attached hereto as Attachment No. 13 (the "**Master Lease**"). The City and Developer agree that the terms and form of the Master Lease shall be subject to the review and approval Developer's lenders and investors. Without limiting the foregoing, the City and Developer presently contemplate that the Master Lease shall include the following terms: (i) a lease term of least 15 years, (ii) be a triple net lease with a discounted rental rent of \$0.70 per square foot per month, inflated at 2.5% annually, and (iii) City shall have the right to sublet the commercial space, subject to Developer's (and its lenders' and investor's) reasonable consent.

502. Maintenance of the Site; Project Management

For so long as the Affordable Housing Covenant shall remain in effect, Developer covenants that it shall maintain, or cause to be maintained, the Site, in a manner consistent with the provisions set forth therefore in the Imperial Municipal Code, and shall keep the Site reasonably free from any accumulation of debris or waste materials prior to and after completion of the Housing Project. The City shall have the right of access to the Site, without charges or fees, to inspect the Affordable Units during normal business hours, provided that Developer and the occupant(s) are given notice prior to such inspection. If, at any time, Developer fails to maintain and operate the Site in accordance with this Agreement, the City shall have the right to take necessary corrective action pursuant to the provisions set forth in the City Note and the Affordable Housing Covenant. Failure by Developer to maintain, or cause to be maintained, the Site in the condition provided in this Section shall, following expiration of all applicable notice and cure periods, constitute a default hereunder and under the City Note, the City Deed of Trust and the Affordable Housing Covenant; provided, however, that nothing herein or in the City Note, the City Deed of Trust, or the Affordable Housing Covenant shall be deemed to provide Developer with more than one notice and cure period for each event of default

In implementing this Section, the Developer shall maintain (i) a comprehensive management plan for the Housing Project, including a fair housing component; and (ii) a reputable and experienced property manager for management of the Housing Project. The management plan, property manager and property management agreement must be approved by the City prior to the close of escrow. Any changes in the property manager and any modifications or amendments to the management plan or the property management agreement shall be subject to review and approval by the City.

503. Obligation to Refrain From Discrimination

The Developer covenants and agrees by and for itself, its successors and assigns and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of person 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 Site, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land in accordance with Section 33438 of the Health and Safety Code and shall remain in effect in perpetuity.

504. Form of Nondiscrimination and Nonsegregation Clauses

The Developer shall refrain from restricting the rental, sale or lease of any portion of the Site 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. Pursuant to Sections 33337 and 33436 of the Health and Safety Code or any successor statute, all such deeds, leases or contract shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. **In deeds:** (a) "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 land herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
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 as

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 land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land 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, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

505. Effect and Duration of Covenants

The covenants contained in Sections 501 and 502 of this Agreement shall be deemed to run with the land in accordance with Section 33334.3(f) of the Health and Safety Code or any successor statute and shall remain in effect for the longer of: (a) a period of not less than fifty-five (55) years from the date of completion of the Housing Project, or (b) until payment in full of all amounts owed to the City under the City Note and City Deed of Trust. The covenants against discrimination contained in Sections 503 and 504 of this Agreement shall be deemed to run with the land in accordance with Section 33438 of the Health and Safety Code or any successor statute and shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Developer and any successors and assigns to the Site or any part thereof, and the tenants, lessees, sublessees and occupants of the Site, for the benefit of and in favor of the City, the City and their successors and assigns and any successor in interest thereto and may be enforced by the City, the City and their successors and assigns

506. Rights of Access – Public Improvements and Facilities

The City, for itself and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer, and the City shall

indemnify and hold the Developer harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

600. DEFAULTS, REMEDIES AND TERMINATION

601. Defaults – General

Subject to the extensions of time set forth in Section 704, failure or delay by either party to perform any term or provision of this Agreement or the Deed of Trust or any other loan secured in whole or in part by the Site or any portion thereof or interest therein that is not cured within any contractual cure period applicable thereto, constitutes a default under this Agreement; provided that, except for the failure by Developer to meet a deadline in the Schedule of Performance or comply with the Affordable Housing Covenant, or with Section 105.2 hereof, Developer shall not be in default unless Developer shall have failed to cure the default within thirty (30) days after written notice from City or the City's Executive Director.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 604 and 605 of this Agreement, the injured party may not institute proceedings against the party in default until 30 days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. IF WRITTEN REQUEST IS MADE BY DEVELOPER, City SHALL ALSO DELIVER A COPY OF DEFAULT NOTICE TO DEVELOPER'S LIMITED PARTNER. ANY PARTNER OF DEVELOPER SHALL HAVE THE RIGHT TO CURE ANY DEFAULT WITHIN THE APPLICABLE CURE PERIODS SET FORTH HEREINABOVE, WHETHER IN ITS OWN CAPACITY OR ON BEHALF OF DEVELOPER, AND City SHALL ACCEPT SUCH CURE AS IF TENDERED BY DEVELOPER.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

602. Legal Actions

Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, or 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 Imperial, State of California.

Applicable Law; Interpretation

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

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

Acceptance of Service of Process

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

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

603. Rights and Remedies are Cumulative

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

604. Damages

If the Developer or the City defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within 90 days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

605. Specific Performance

If the Developer or the City defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within 45 days of service of the notice of default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

606. Remedies and Rights of Termination Prior to Conveyance of the Site to the

Developer

Financing Conditions; Termination Developer

The parties agree that the following matters ("Feasibility Contingencies") are conditions precedent to the Close of Escrow. Developer shall use good faith and diligent efforts to meet the following Feasibility Contingencies for the Development by the time set forth in the Development Schedule for the Close of Escrow:

- a. The reservation of the Tax Credit Financing;
- b. Having obtained a reservation of Tax Credit Financing for the Housing Project, the balance of the Project Financing on reasonable terms and conditions
- c. City shall have received a final determination letter from the Department of Finance or such other documentation as may be acceptable to the City and the Developer in their sole discretion that the City's source of funds intended to be used for the City Loan is a permissible use under applicable law.

In the event that a Feasibility Contingency does not occur despite Developer's good faith effort, City may terminate this Agreement and, so long as Developer is in full compliance with this Agreement and has used its good faith and diligent efforts to cause it to occur, then Developer may also terminate this Agreement by delivering written notice to City. In the event that this Agreement is so terminated, then provided Developer is not in default under this Agreement, Developer shall not be obligated to repay the Pre-Construction Note, but the assignments of architect, engineer and contractor agreements and plans and specs (and consents thereto) shall remain in effect.

Termination by the City

In the event that Developer defaults hereunder prior to conveyance of title to the Site to the Developer, then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the City, may, at the option of the City, be terminated by the City by written notice thereof to the Developer; provided, however, with respect to any default or failure that does not consist of a failure to meet a deadline in the Schedule of Performance, Developer shall have 30 days after the date of written notice of the default by the City to cure such default.

In the event of termination for any reason other than a default by City or a termination under Section 606.1 above, the Developer shall repay to the City all amounts due to the City under the Pre-Construction Note.

607. Option to Repurchase, Reenter and Repossess

After the Close of Escrow, the City shall have the right at its option to repurchase the Site with all improvements thereon, if prior to the issuance of the Certificate of Completion therefore, the Developer shall:

1. Fail to commence construction of approved improvements on the Site by the applicable date in the Schedule of Performance, for any reason whatsoever; for purposes of this provision, the Developer shall be deemed to “commence construction” when and only when the Developer has commenced vertical construction on the Site pursuant to a permit issued by the City for the construction of the improvements provided for herein; or
2. Once construction has been commenced in accordance with subparagraph 1 above, fail to diligently prosecute construction of the improvements through completion, where such failure has not been cured within one (1) month; or
3. Abandon or substantially suspend construction of the improvements for a period of one (1) month; or
4. Any violation of Section 105.2 above.

This option shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or
2. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

700. GENERAL PROVISIONS

701. Notices, Demands and Communications Between the Parties

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer as set forth in Section 105 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.

702. Conflicts of Interest

The Developer 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.

703. Nonliability of City, City Officials and Employees

No member, official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount that may become due to the Developer or on any obligations under the terms of this Agreement.

Developer acknowledges and agrees that:

1. City neither undertakes nor assumes any responsibility to review, inspect, supervise, approve (other than for aesthetics) or inform Developer of any matter in connection with the Housing Project, including, but not limited to, matters relating to: (i) any drawings or construction plans, (ii) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them, or (iii) the progress of the Housing Project and its conformity with the final approved plans under Section 301.4; and Developer shall rely entirely on its own judgment with respect to such matters and acknowledge that any review, inspection, supervision, approval or information supplied to the Developer by the City in connection with such matters is solely for the protection of the City and that neither the Developer nor any third party is entitled to rely on it;
2. Notwithstanding any other provision of this Agreement: (i) City is not a partner, joint venturer, developer, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer and City does not intend to ever assume any such status; (ii) City shall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer;
3. City shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, any portion of the Site arising from: (i) any defect in any building, grading, landscaping or other onsite or offsite improvement; (ii) any act or omission of the Developer or any of Developer's agents, employees, contractors, licensees or invitees; or (iii) any accident on any portion of the Site or any fire or other casualty or hazard thereon not caused by the Indemnitees; and
4. By accepting or approving anything required to be performed or given to it under this Agreement, including any certificate, financial statement, survey, appraisal or insurance policy, City shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City to anyone.

704. Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; act of

shall bear interest from the date occurring 15 days after City makes written demand to the Developer at the rate of 12% per annum. Such reimbursement obligations shall survive termination of this Agreement and issuance of the Certificate of Completion.

709. Project Sign

If Developer or any project entity places a sign on the Site during construction stating the names of the Housing Project participants, it shall also name "City of Imperial" as a participant in the Housing Project. The City's name on the sign shall be in letters not less than the size of letters used to name any of the other participants. The design, content and dimensions of such sign shall be subject to the prior approval of City, which approval shall not be unreasonably withheld or delayed.

710. Counterparts

This Agreement may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

711. Prior Agreements; Amendments; Consents

This Agreement contains the entire agreement between City and Developer with respect to the Site and the Housing Project, and all prior negotiations, understandings and agreements are superseded by this Agreement. No modification or amendments of this Agreement (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given.

712. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Assuming proper service of process, Developer and City waive any objection regarding personal or in rem jurisdiction and agree that venue shall be proper in the County of Imperial California.

713. Severability of Provisions

No provision of this Agreement that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of this Agreement are hereby declared to be severable.

714. Headings

Article and section headings are included in this Agreement for convenience of reference only and shall not be used in construing this Agreement.

800. SPECIAL PROVISIONS

801. Intentionally Deleted.

802. Submission of Documents to the City for Approval

Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, and there is no time specified herein for such approval, the Developer may submit a letter requiring approval or rejection by the City within 30 days after submission. Except where such approval is expressly reserved to the sole discretion of the approving party, all approvals required hereunder by either party shall be reasonable and not unreasonably withheld, conditioned or delayed.

803. Amendments to this Agreement

The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of the parties hereto, lending institutions, investors, or bond counsel or financial consultants to the City.

The City Manager shall have the authority to approve or grant, on behalf of the City, any approval, consent or waiver required under this Agreement by the City to the extent any such approval, consent or waiver does not constitute a material adverse change to the Housing Project and is consistent with the intent and business terms set forth in this Agreement.

900. ENTIRE AGREEMENT

This Agreement is executed in four duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ____, inclusive, and Attachment Nos. 1 through 13, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

City:

CITY OF IMPERIAL, a public body,
corporate and politic

By: Marlene D. Best

Attest: [Signature]
City Clerk

APPROVED AS TO FORM:

By: Dennis H. Monta

DEVELOPER:

EAH INC., a California nonprofit corporation

By: _____
Matthew Steinle, Assistant Secretary

City:

CITY OF IMPERIAL, a public body,
corporate and politic

By: _____

Attest: _____

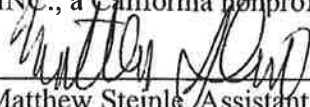
City Clerk

APPROVED AS TO FORM:

By: _____

DEVELOPER:

EAH INC., a California nonprofit corporation

By:  _____ FA
Matthew Steinle, Assistant Secretary

ATTACHMENT NO. 1

MAP OF THE SITE

(attached)

63-23

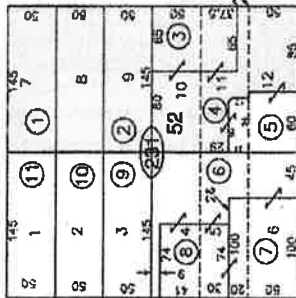
Tax Area Code
6-015



FOR OF TOWNSITE
37 CAL. 1-6 (22)

36

ELEVENTH ST

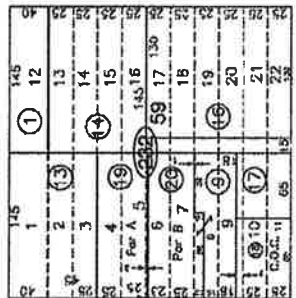


53

I ST

(24)

TENTH ST



58

I ST

(15)

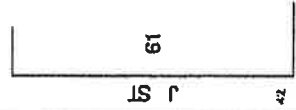
STATE HWY 86 (Rt 26 Sec Imp)
LS 73844

168.04

183.04
175.34



J ST



J ST

REMAP FROM 03-20 2-29-07 MF
05-25-08 PM
4-25-04 PM
1-18-85 PM
7-21-87 LS
10-5-89 LS

DISCLAIMER
THIS IS NOT AN OFFICIAL MAP.
THE CITY OF IMPERIAL, CALIFORNIA, COUNTY ASSESSOR, FOR THE BENEFIT OF THE PUBLIC, HAS CAUSED THE PERFORMANCE OF THE DUTIES OF THE ASSESSOR, ANY OTHER OFFICERS OR AGENTS IN THIS MAP ARE NOT THE RESPONSIBILITY OF THE COUNTY OF IMPERIAL OR THE ASSESSOR. (REV. 8/1/04 CODE SECTION 75)

BK.64
PG.05

74

NINTH ST

73

IMPERIAL AVE

IMPERIAL AVE

CITY OF IMPERIAL
Assessor's Map Bk. 63-Pg. 23
County of Imperial, Calif.

ATTACHMENT NO. 2
LEGAL DESCRIPTION OF THE SITE

(attached)

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 063-231-001-000, 063-231-002-000, 063-231-003-000 and 063-231-004-000

PARCEL 1:

LOTS 7 AND 8, BLOCK 52, TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 883 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

PARCEL 2:

LOT 9, BLOCK 52, TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 883 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

PARCEL 3:

THE EAST 65 FEET OF LOT 10, AND THE EAST 65 FEET OF THE NORTH 37 1/2 FEET OF LOT 11, ALL IN BLOCK 52, TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 883 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

PARCEL 4:

LOTS 10, 11, AND 12, BLOCK 52 OF THE TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, AS PER MAP THEREOF NO. 883 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

EXCEPTING THEREFROM THE EAST 65 FEET OF SAID LOT 10 AND THE EAST 65 FEET OF THE NORTH 37 1/2 FEET OF SAID LOT 11.

ALSO EXCEPTING FROM LOT 11 A PARCEL OF LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 11; THENCE EAST ALONG THE SOUTH LINE OF SAID LOT, 54 FEET; THENCE NORTH AND PARALLEL WITH THE WEST LINE OF SAID LOT 11, 17 FEET; THENCE NORTHWESTERLY IN A STRIAIGHT LINE TO A POINT 50 FEET EAST OF THE WEST LINE OF SAID LOT 11 AND 21 FEET NORTH OF THE SOUTH LINE OF SAID LOT 11; THENCE WEST 50 FEET TO A POINT IN THE WEST LINE OF SAID LOT 11 WHICH IS 21 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 21 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING FROM LOT 12 THE WEST 60 FEET THEREOF.

ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE

(attached)

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

ACTION	DATE
1. <u>Opening of Escrow.</u> The City and Developer shall open an escrow for conveyance of the Site to the Developer. (Section 202)	Within 30 days after City purchases the land.
2. <u>Developer Inspections; Condition of the Site.</u> The Developer shall complete its investigation of the Site; its physical condition, the soils and toxic conditions of the Site and all other matters that may affect the Developer's ability to develop the Site pursuant to this Agreement. (Section 212)	By December 31, 2013
3. <u>Determination Letter from the Department of Finance</u> or such other documentation that the City's source of funds intended to be used for the City Loan is a permissible use under applicable law.	By March 31, 2014, or extended as necessary by the City if delayed by the Department of Finance.
4. <u>Submission – Project Budget and Project Financing.</u> The Developer shall submit to the City for review and approval a revised Project Budget and the proposed Project Financing. (Section 304)	Within 20 days after written request by the City staff from time to time.
5. <u>Applications and Awards for Tax Credit.</u> The Developer shall make application to the California Tax Credit Allocation Committee for 9% tax credits.	Initially, in one of the cycles in 2014; then, if necessary, in 2015, and if necessary, in 2016.
6. <u>Close of Escrow.</u> The Escrow Agent shall close the escrow in accordance with Section 202, and the City shall convey title to the Site to the Developer, and the Developer shall accept such conveyance. (Section 203)	Within 180 days after award of tax credit reservation by TCAC, but in no event later than December 31, 2016.