

**City of Garden Grove**

**INTER-DEPARTMENT MEMORANDUM**

***Garden Grove City Council  
and  
Garden Grove Agency for Community Development***

To:	Matthew Fertal	From:	Economic Development
Dept:	Director	Dept:	
Subject:	DISPOSITION AND DEVELOPMENT AGREEMENT WITH SWEET HOMES DEVELOPMENT, LLC FOR PROPERTY LOCATED AT 12061 - 12081 GARDEN GROVE BOULEVARD		
		Date:	June 28, 2011

**OBJECTIVE**

The purpose of this report is to request the Garden Grove City Council (the "City") and the Garden Grove Agency for Community Development (the "Agency") to conduct a joint Public Hearing and consider a Disposition and Development Agreement (the "Agreement") between the Agency and Sweet Homes Development, LLC (the "Developer") for the development of fifty-three (53) residential condominiums and twenty-six (26) commercial condominiums with a four-story parking garage, with one level of subterranean parking on 12061, 12071, and 12081 Garden Grove Boulevard, west of Dungan Street and east of West Street (the "Site").

**BACKGROUND/DISCUSSION**

In 2005, the Developer acquired properties on 12071 and 12081 Garden Grove Boulevard for a mixed-use project. Since that time, Developer has attempted to acquire a third parcel, 12061 Garden Grove Boulevard owned by Heid Partners (the "Third Party Parcel") because of its relationship to the project site (Attachment 1). Although Developer has made several attempts to acquire the Third Party Parcel, these attempts have been unsuccessful. Therefore, Developer came to the Agency for assistance with acquiring the parcel. If acquired, the Agency will convey the Third Party Parcel to Developer at fair market value as determined by an appraisal.

**Summary of the Agreement Deal Points**

The Agreement (Attachment 5) contains the business terms for implementing the project. It establishes the obligations, responsibilities, and benefits between the Agency and Developer. In summary, the deal points of the Agreement are as follows:

1. Acquisition of the Site:

- Developer shall deposit with the Agency the sum of \$525,000 (Five Hundred Twenty-Five Thousand Dollars), the fair market value of the Third Party Parcel to be used for acquisition of the parcel.
- The Agency will be responsible for attempting to acquire the 5,700 square feet Third Party Parcel.
- If the Agency is unable to negotiate a purchase, the Agency will schedule a hearing to consider whether the Agency will acquire the Third Party Parcel using eminent domain. This Agreement does not obligate the Agency to use eminent domain, or acquire the property.

2. Disposition and Condition of Property Conveyed:

- If acquired, the Agency will convey the Third Party Parcel as soon as is practical, but no later than ten (10) days after all conditions precedent to the conveyance are met.
- If acquired, the Agency will convey the Third Party Parcel in an "as is" condition.

3. Tenant Relocation:

- If the Third Party Parcel is acquired, the Agency will be responsible for compliance with State law regarding potential relocation of the tenant occupying the Third Party Parcel.

State law requires that prior to the disposition of property by a redevelopment agency, the legislative body must first consent to the sale by Resolution (Attachment 4) after a Public Hearing. Notice of the time and place of the Public Hearing must be published in a newspaper of general circulation at least once a week for at least two successive weeks, 15 days prior to the Public Hearing. Notice for this Public Hearing was published in the Garden Grove Journal newspaper on June 9, 2011 and June 16, 2011.

As is also required by State law, a Summary Report (Attachment 6) has been prepared, which provides, among other items, an explanation of why the sale of this property will assist in the elimination of blight.

FINANCIAL IMPACT

It is estimated that this project, once constructed, will generate new Agency revenue of \$300,000 to \$400,000 annually. The Agency will be responsible for potential costs if the price of acquiring the Third Party Parcel exceeds the fair

market value of \$525,000. In addition, the Agency will be responsible for the costs associated with compliance with State relocation laws relating to the tenant occupying the Third Party Parcel.

RECOMMENDATION

Staff recommends that the City Council:

- Conduct the joint Public Hearing; and
- Adopt a Resolution consenting to the approval by the Agency of the Disposition and Development Agreement by and between the Agency and Sweet Homes Development, LLC.

Staff recommends the Agency:

- Adopt a Resolution approving the attached Disposition and Development Agreement with Sweet Homes Development, LLC for the development of the 1.77-acre site in the city of Garden Grove, located on the north side of Garden Grove Boulevard between West Street and Dungan Street at 12061 and 12081 Garden Grove Boulevard; and
- Authorize the Agency Director to execute the Agreement and any pertinent documents to effectuate the Agreement.



JIM DELLALONGA  
Sr. Project Manager/Administrative Officer

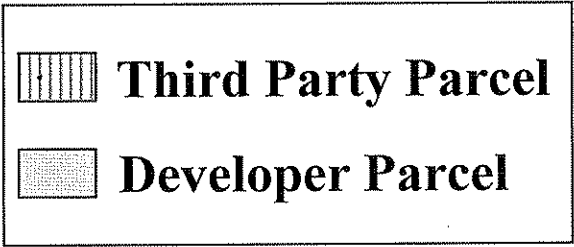
Attachment 1: Site Map  
Attachment 2: Conceptual Plan  
Attachment 3: Agency Resolution  
Attachment 4: City Resolution  
Attachment 5: Disposition and Development Agreement  
Attachment 6: Summary Report 33433

mm(h:Staff/JD/Sweet Homes Development LLC sr 062811v1.doc)

Approved for Agenda Listing



Matthew Ferial  
Director



4-Story Parking Structure  
1 Level Subterranean

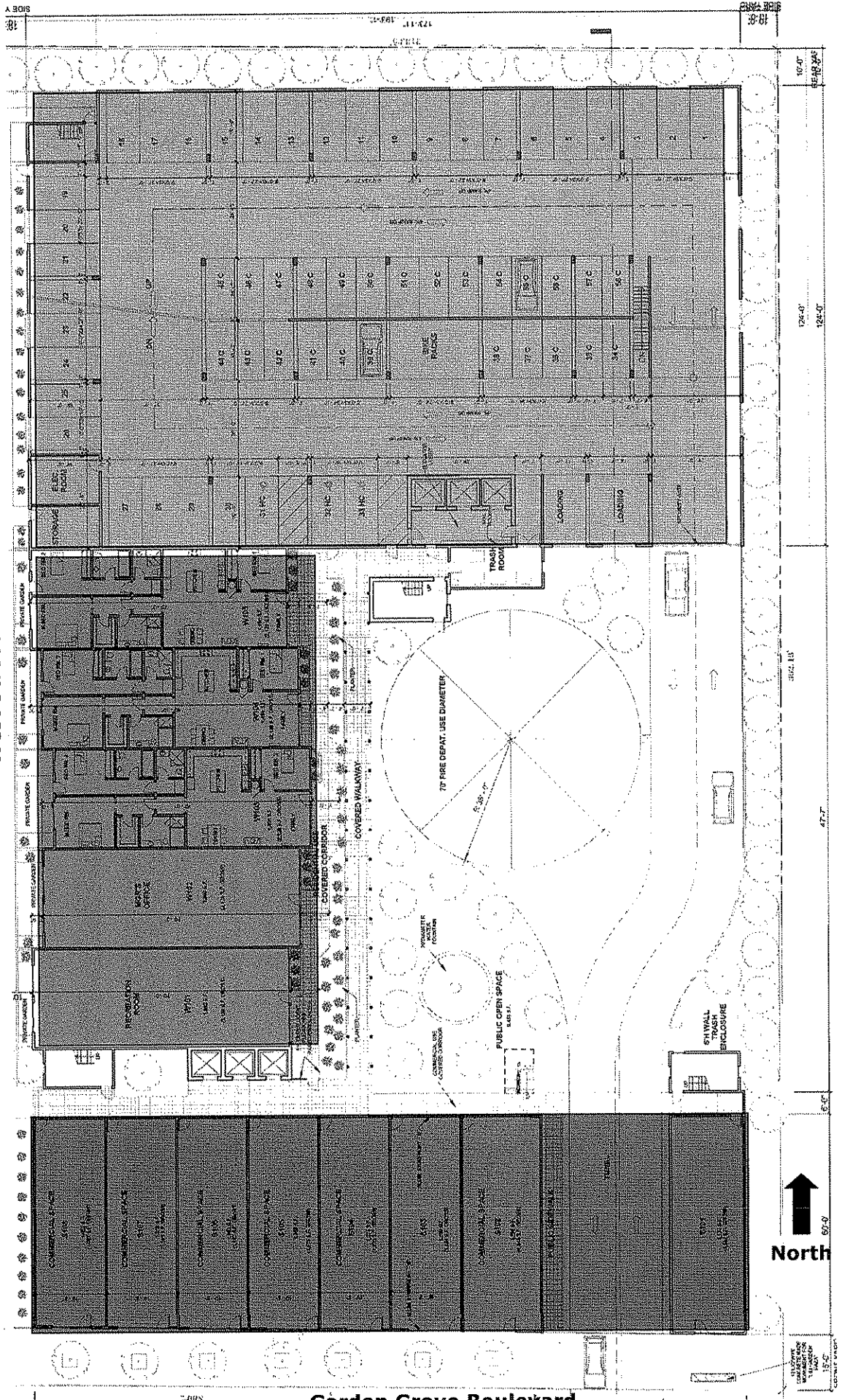
7-Story West Tower  
Floors 1—7 Residential Condos

7-Story North Tower  
Floors 1-3 Commercial Condos  
Floors 4—7 Residential Condos

West Street

Garden Grove Boulevard

North



**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE GARDEN GROVE AGENCY FOR COMMUNITY  
DEVELOPMENT APPROVING A DISPOSITION AND DEVELOPMENT  
AGREEMENT BETWEEN THE AGENCY AND SWEET HOMES DEVELOPMENT,  
LLC AND MAKING CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, the Garden Grove Agency for Community Development (“Agency”) is a community redevelopment agency duly organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* (“CRL”), and has been authorized to transact business and exercise the power of a redevelopment agency pursuant to action of the City Council (“City Council”) of the City of Garden Grove (“City”);

**WHEREAS**, the existing Garden Grove Community Project and the boundaries of the Community Project Area (“Project Area”) were duly established by various ordinances of the City Council, which ordinances approved a redevelopment plan for the Garden Grove Community Project, as amended (“Redevelopment Plan”);

**WHEREAS**, the Agency is vested with the power to implement the Redevelopment Plan and to carry out the goals and objectives of the Garden Grove Community Project including, without limitation, the goals and objectives adopted by the Agency’s implementation plan (the “Implementation Plan”) pursuant to the CRL;

**WHEREAS**, the Agency is authorized and empowered by the CRL to enter into agreements for the acquisition, disposition, and development of real property and otherwise to assist in the redevelopment of real property within a redevelopment project area in conformity with a redevelopment plan adopted for such area, to acquire real and personal property in redevelopment project areas, to receive consideration for the provision by the Agency of redevelopment assistance, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to incur indebtedness to finance or refinance redevelopment projects;

**WHEREAS**, Sweet Homes Development, LLC (“Developer”) is a limited liability company duly organized under the laws of the State of California and experienced in the acquisition, construction, and development of for-sale residential mixed-use communities;

**WHEREAS**, the Agency and Developer desire to provide for the development of a mixed-use project on a parcel consisting of approximately 1.77 acres, a portion of which is owned by the Developer (the “Developer Parcel”), and a portion of which is owned by a third party (the “Third Party Parcel”), collectively referred to herein as the “Site” and as shown on the Site Map attached hereto as Exhibit A and incorporated herein by reference;

**WHEREAS**, the Agency proposes to attempt to acquire the Third Party Parcel and convey the Site to Developer;

**WHEREAS**, the Agency desires to enter into that certain Disposition and Development Agreement (“DDA”) with Developer relating to the disposition of the Site and development thereon of a 53 residential unit mixed-use community as more fully described in the DDA (the “Project”);

**WHEREAS**, the Agency is authorized to convey an interest in its real property to the Developer pursuant to the CRL;

**WHEREAS**, the Agency has adopted an Implementation Plan pursuant to CRL Section 33490, which sets forth the objective of increasing the community’s economic base by encouraging new investment in the community, insuring the optimum generation of local revenues by facilitating the redevelopment and reuse of land, maximizing the use of property to achieve the highest and best use and a feasible economic return, and promoting new investment;

**WHEREAS**, by providing for the development of the Project on the Site, the DDA will assist the Agency in meeting the development policies and objectives set forth in the Implementation Plan, specifically the goal of reducing blighting economic conditions and increasing housing opportunities by encouraging new investment in the community through facilitating the development and consolidation of small and underutilized parcels;

**WHEREAS**, pursuant to Sections 33430 and 33431 of the CRL, the Agency is authorized, after a duly noticed Public Hearing, to convey the Site for development pursuant to the Redevelopment Plan;

**WHEREAS**, the proposed Agreement, and a summary report meeting the requirements of Section 33433 of the CRL, were available for public inspection prior to the joint Public Hearing of the Agency and the City Council consistent with the requirements of Sections 33433;

**WHEREAS**, on June 28, 2011, the Agency and the City Council held a duly noticed joint Public Hearing on the proposed DDA in accordance with Sections 33430 and 33431 of the CRL, at which time the Agency reviewed and evaluated all of the information, testimony, and evidence presented during the public hearing;

**WHEREAS**, notice of the Public Hearing was published in the Garden Grove Journal newspaper, and the proposed DDA was available for public inspection prior to the Public Hearing as stated in the published notice of Public Hearing;

**WHEREAS**, the Agency has reviewed the summary report required pursuant to Section 33433 of the CRL and evaluated other information provided to it pertaining to the findings required pursuant to Section 33433 of the CRL;

**WHEREAS**, all actions required by all applicable law with respect to the proposed DDA have been taken in an appropriate and timely manner;

**WHEREAS**, the City Council has previously determined, in its adoption of the Ordinance approving the Redevelopment Plan, that the Site was blighted;

**WHEREAS**, the DDA will assist in the elimination of blight by providing for the development and operation of the Project on the Site;

**WHEREAS**, the DDA is contingent on the issuance of entitlements by the City, which may be granted or withheld in the City's sole discretion, and compliance with the California Environmental Quality Act, California Public Resources Code Section 21000, et. seq. ("CEQA");

**WHEREAS**, the City Council has determined approval of the DDA is exempt from CEQA pursuant to California Code of Regulations, Title 14, Section 15332; and

**WHEREAS**, the Agency and the City Council have duly considered all terms and conditions of the proposed DDA and believes that the Project is in the best interests of the City of Garden Grove and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** by the Garden Grove Agency for Community Development as follows:

1. Each of the foregoing recitals is true and correct.
2. The Agency finds and determines that, based upon substantial evidence provided in the record before it, the consideration for the Agency's conveyance of the Site pursuant to the terms and conditions of the DDA is not less than the fair market value of the Site.
3. The Agency hereby finds and determines that the conveyance of the Site, construction and operation of the Project, pursuant to the DDA will eliminate blight within the Project Area by providing for the proper reuse and redevelopment of a portion of the Project Area, which was previously declared blighted.
4. The Agency hereby finds and determines that the DDA is consistent with the provisions and goals of the Implementation Plan.
5. The Agency hereby finds and determines that the approval of the Agreement does not constitute an "approval" subject to CEQA because it does not commit the Agency to a definite course of action pursuant to California Public Resources Code Sections 21061 and 20165; California Code of Regulations, Title 14, Section 15352(a); and *Save Tara v. City of West Hollywood*, (2008) 45 Cal.4<sup>th</sup> 116. The City Council further finds and determines that the DDA is exempt from CEQA pursuant to California Code of Regulations, Title 14, Section 15322.
6. The Agency hereby approves the DDA between the Agency and Developer, in the form of the DDA, which has been submitted herewith.
7. The Agency Director and the Agency Secretary are hereby authorized to execute and attest the DDA, including any related attachments, on behalf of the Agency. Copies of the final form of the DDA, when duly executed and attested, shall be placed on file in the City Clerk Office.
8. The Agency Director (or his/her duly authorized representative) is further authorized to implement the DDA and take all further actions and execute all documents referenced therein and/or necessary and appropriate to carry out the DDA. The Agency Director (or his/her duly



authorized representative) is hereby authorized to the extent necessary during the implementation of the DDA to make technical or minor changes thereto after execution, as necessary to properly implement and carry out the DDA, provided the changes shall not in any manner materially affect the rights and obligations of the Agency.

9. The Agency Secretary shall certify to the adoption of this Resolution.

EXHIBIT A

SITE MAP

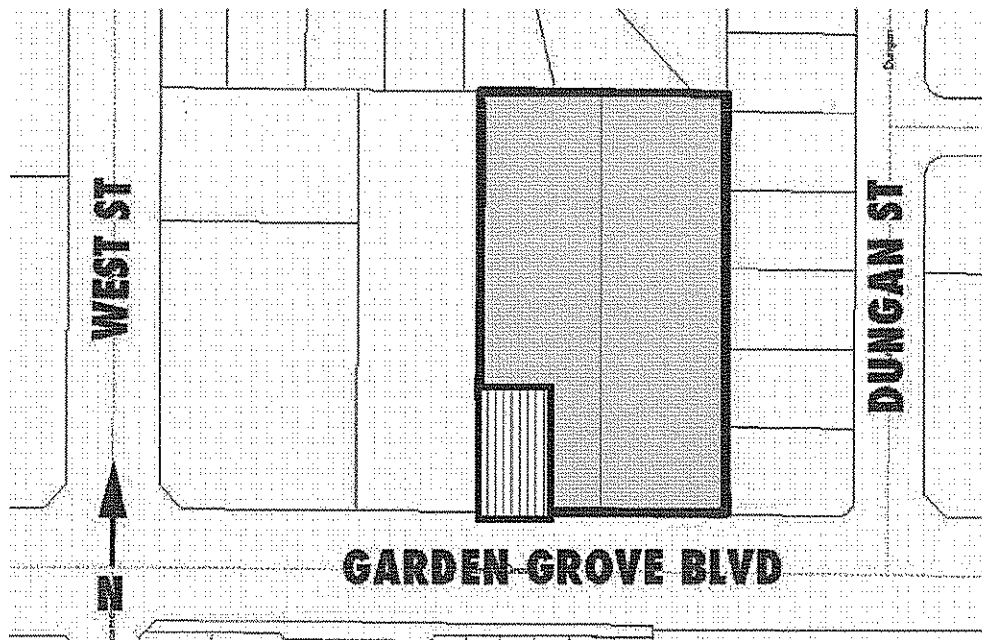
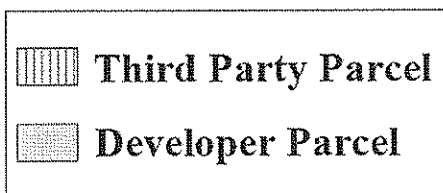
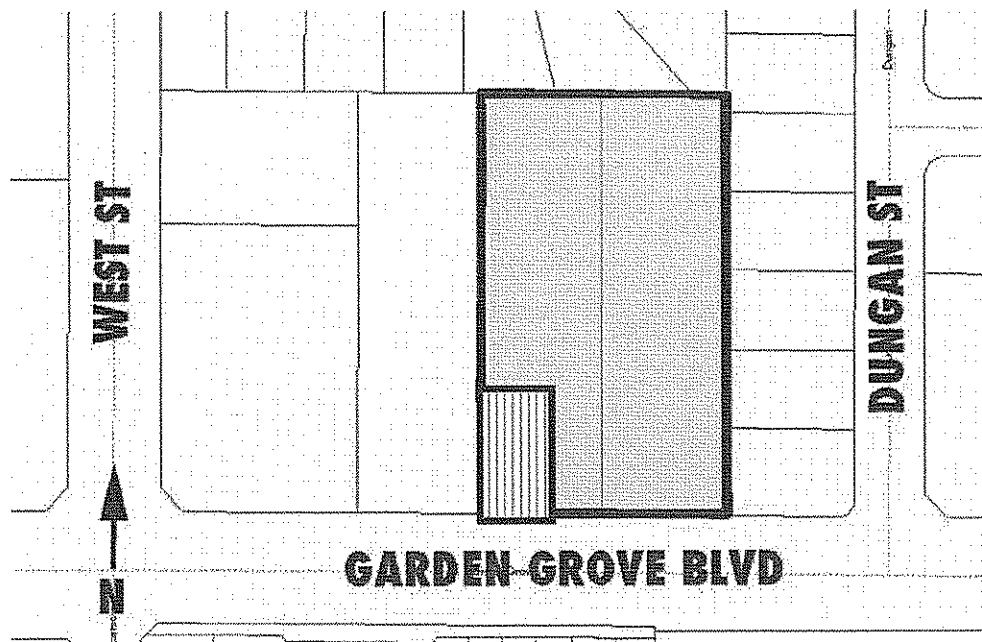


EXHIBIT A

SITE MAP



## RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
GARDEN GROVE CONSENTING TO THE APPROVAL BY  
THE GARDEN GROVE AGENCY FOR  
COMMUNITY DEVELOPMENT OF A DISPOSITION AND  
DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
AGENCY AND SWEET HOMES DEVELOPMENT, LLC**

**WHEREAS**, the Garden Grove Agency for Community Development (the "Agency") is charged with implementing the Redevelopment Plan (the "Redevelopment Plan") as adopted for the Garden Grove Community Project;

**WHEREAS**, the Agency has adopted an implementation plan ("Implementation Plan") in the course of implementing the Redevelopment Plan;

**WHEREAS**, the Agency is authorized to convey land under Sections 33431 and 33433 of the Health and Safety Code in furtherance of the implementation of the Redevelopment Plan;

**WHEREAS**, the Agency and Sweet Homes Development, LLC, (the "Developer") desire to provide for the development of a mixed-use project on a parcel consisting of approximately 1.77 acres, a portion of which is owned by the Developer (the "Developer Parcel") and a portion of which is owned by a third party (the "Third Party Parcel"), collectively referred to herein as the "Site" and as shown on the Site Map attached hereto as Exhibit A and incorporated herein by reference;

**WHEREAS**, the Agency proposes to attempt to acquire the Third Party Parcel and convey the Site to Developer subject to the conditions more particularly described in the Disposition and Development Agreement (the "DDA") on file with the Agency Secretary;

**WHEREAS**, in order to carry out and implement the Redevelopment Plan for the Agency's redevelopment project, the Agency proposes to enter into the DDA with the Developer, pursuant to which the Agency would attempt to acquire the Third Party Parcel and convey the Site to the Developer, and the Developer would construct and operate the Project described in the DDA; and

**WHEREAS**, the Project is located within the project area of the Garden Grove Community Project (the "Project Area" and the "Redevelopment Project", respectively) and the acquisition, construction, and operation of the Project pursuant to the DDA would benefit the Project Area by implementing the consolidation of a relatively small piece with a larger, existing parcel and by providing for improvements within the Project Area as well as housing opportunities within the Project Area;

**WHEREAS**, the Agency has duly considered all terms and conditions of the proposed DDA and believes that the DDA is in the best interests of the Agency and the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements;

**WHEREAS**, under the DDA, the Developer shall receive conveyance of the Site from the Agency in accordance with the DDA as more particularly described in the summary report made in accordance with Section 33433 of the California Health and Safety Code (the "Report"). The value

of the Site, is based upon a fair market value appraisal of the Site, as more fully described in the Report;

**WHEREAS**, the Developer has submitted to the Agency and the City Council of the City of Garden Grove (the "City Council") copies of the DDA substantially in the form submitted herewith;

**WHEREAS**, the value to be received by the Agency under the DDA for the Site is referenced in the Report and is the fair market value as reflected by the appraisal of an independent appraiser referenced in the Report and which is on file with the Agency;

**WHEREAS**, pursuant to Section 33433 of the Community Redevelopment Law (California Health and Safety Code Section 33000, et seq.), the Agency is authorized, with the approval of the City Council after a duly noticed Public Hearing, to sell the Site pursuant to the Redevelopment Plan upon a determination by the City Council that such sale of the Site will assist in the elimination of blight, that the consideration for such sale is not less than the fair market value of the Site, and that the sale under the terms and conditions set forth in the DDA is consistent with the implementation plan, which has been adopted by the Agency for the Redevelopment Project (the "Implementation Plan");

**WHEREAS**, a joint Public Hearing of the Agency and City Council on the proposed DDA was duly noticed in accordance with the requirements of Health and Safety Code Sections 33431 and 33433;

**WHEREAS**, the proposed DDA, and a summary report meeting the requirements of Health and Safety Code Section 33433, were available for public inspection prior to the joint Public Hearing consistent with the requirements of Health and Safety Code Section 33433;

**WHEREAS**, on June 28, 2011, the Agency and City Council held a joint Public Hearing on the proposed DDA, at which time the City Council and the Agency reviewed and evaluated all of the information, testimony, and evidence presented during the joint Public Hearing;

**WHEREAS**, all actions required by all applicable law with respect to the proposed DDA have been taken in an appropriate and timely manner;

**WHEREAS**, the Agency has reviewed the summary report required pursuant to Health and Safety Code Section 33433 and evaluated other information provided to it pertaining to the findings required pursuant to Health and Safety Code Section 33433;

**WHEREAS**, the City Council has previously determined, in its adoption of the Ordinance approving the Redevelopment Project, that the Site is a portion of a blighted area and is underutilized, as further set forth in the Implementation Plan as previously adopted and amended by the Agency;

**WHEREAS**, the DDA would assist in the alleviation or removal of blighting conditions and would further the goals of the Implementation Plan by providing for the provision of improvements and the operation of certain uses as provided in the DDA;

**WHEREAS**, the DDA is contingent on the issuance of entitlements by the City, which may be granted or withheld in the City's sole discretion, and compliance with the California Environmental Quality Act, California Public Resources Code Section 21000, et. seq. ("CEQA");

**WHEREAS**, the City Council has determined approval of the DDA is exempt from CEQA pursuant to California Code of Regulations, Title 14, Section 15332; and

**WHEREAS**, the Agency and the City Council have duly considered all of the terms and conditions of the proposed DDA and believes that the redevelopment of the Site pursuant to the DDA is in the best interests of the City of Garden Grove and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES RESOLVE AS FOLLOWS:**

Section 1. The City Council finds and determines that, based upon substantial evidence provided in the record before it, the consideration for the Agency's disposition of the Site, and other items set forth in the DDA, present not less than the fair market value.

Section 2. The City Council hereby finds and determines that the DDA does not constitute an "approval" subject to CEQA pursuant to California Public Resources Code Sections 21061 and 20165; California Code of Regulations, Title 14, Section 15352(a); and *Save Tara v. City of West Hollywood*, (2008) 45 Cal.4<sup>th</sup> 116. The City Council further finds and determines that the DDA is exempt from CEQA pursuant to California Code of Regulations, Title 14, Section 15322.

Section 3. The City Council hereby finds and determines that the disposition of the Site by the Agency pursuant to the DDA will eliminate blight within the Project Area by contributing to consolidation of relatively small parcels with a larger parcel, promoting improvements, and expanding the housing opportunities available within the community, as well as providing for the proper reuse and redevelopment of a portion of the Project Area that was declared blighted.

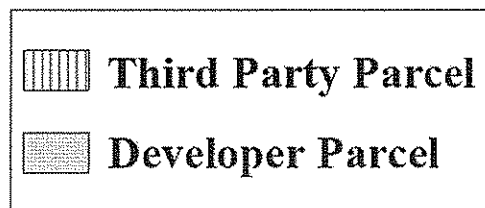
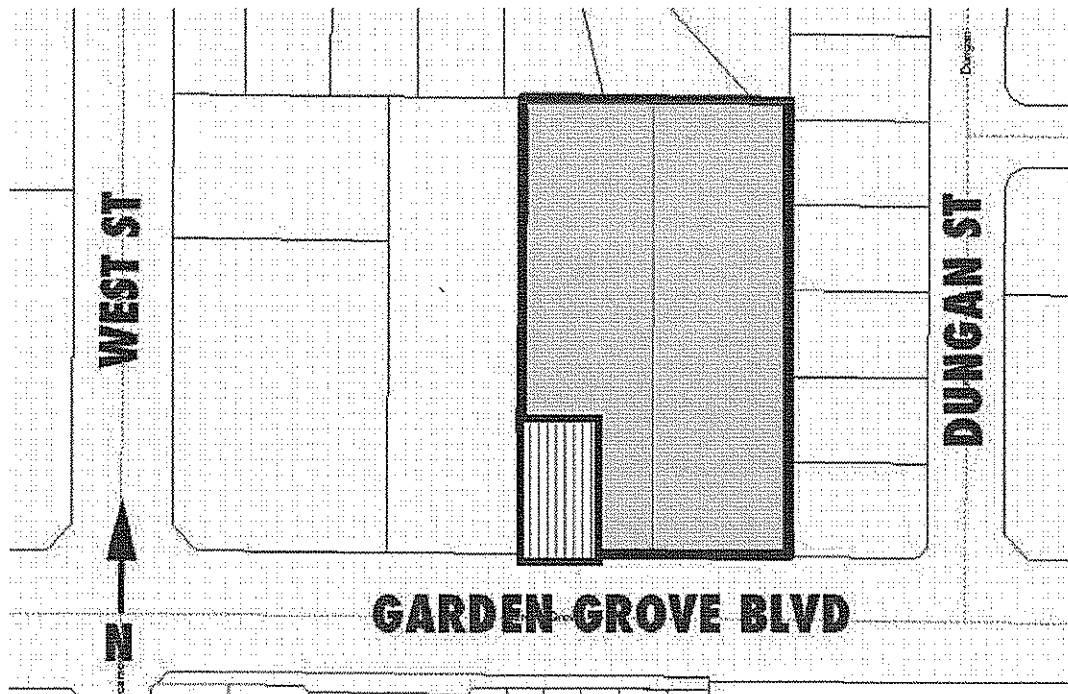
Section 4. The City Council hereby finds and determines that the DDA is consistent with the provisions and goals of the Implementation Plan.

Section 5. The City Council hereby consents to and approves the Disposition and Development Agreement. The City Council consents that the Agency Director (or his designee) is hereby authorized, on behalf of the Agency, to make revisions to the DDA that do not materially or substantially increase the Agency's obligations thereunder or materially or substantially change the uses or development permitted on the Site, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the DDA and to administer the Agency's obligations, responsibilities, and duties to be performed under the DDA and related documents.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

**EXHIBIT A**

**SITE MAP**



**DISPOSITION AND DEVELOPMENT AGREEMENT**

**By and Between**

**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

**and**

**SWEET HOMES DEVELOPMENT, LLC**



## Table of Contents

	<u>Page</u>
100. DEFINITIONS.....	1
200. CONVEYANCE OF THE SITE.....	5
201. Purchase and Sale of Site.....	5
201.1 Purchase Price of Site.....	5
201.2 Acquisition of Site.....	5
201.3 Developer's Advance of Purchase Price .....	5
201.4 Conveyance of Possession .....	6
201.5 Assignment of Purchase Agreements.....	6
202. Escrow .....	6
202.1 Costs of Escrow .....	6
202.2 Escrow Instructions .....	7
202.3 Authority of Escrow Agent .....	7
202.4 Closing .....	7
202.5 Termination.....	8
202.6 Closing Procedure.....	8
203. Review of Title .....	8
204. Title Insurance.....	9
205. Conditions Precedent.....	9
205.1 Agency Conditions Precedent to Acquisition .....	9
205.2 Conditions Precedent to Conveyance.....	10
206. Representations and Warranties. ....	10
206.1 Agency Representations .....	10
206.2 Developer's Representations.....	11
207. Studies and Reports .....	11
208. Condition of the Site; Release of Agency as to Third Party Parcel. ....	11
208.1 Investigation of Site .....	12
208.2 Approval of Environmental Condition of Site .....	12
208.3 No Further Warranties As To the Third Party Parcel; Delivery of Site "As Is"; Release of Agency Re Third Party Parcel.....	12
208.4 Developer Precautions After Closing.....	12
208.5 Required Disclosures After Closing .....	13
208.6 Developer Indemnity .....	13
300. DEVELOPMENT OF THE SITE.....	13
301. Scope of Development .....	13
302. Design Review.....	13
302.1 Basic Concept Drawings .....	13
302.2 Precise Plan Drawings.....	13
302.3 Construction Drawings and Related Documents.....	14
302.4 Standards for Disapproval.....	14
302.5 Consultation and Coordination .....	14
302.6 Revisions.....	15
302.7 Defects in Plans .....	15
302.8 Use of Architectural Plans .....	15

Table of Contents  
(Continued)

	<u>Page</u>
303. Land Use Approvals.....	15
304. Schedule of Performance.....	16
305. Cost of Construction .....	16
306. Insurance Requirements.....	16
307. Indemnification .....	17
308. Rights of Access .....	17
309. Financing of the Project.....	17
309.1 Approval of Financing.....	17
309.2 Holder Not Obligated to Construct Project .....	18
309.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.....	18
310. Release of Construction Covenants .....	18
311. Compliance With Laws.....	19
312. Taxes and Assessments .....	19
313. Relocation .....	19
314. Leasehold Interest .....	19
315. Prevailing Wages.....	19
<b>400. COVENANTS AND RESTRICTIONS .....</b>	<b>20</b>
401. Use in Accordance with Redevelopment Plan and Agreement.....	20
402. Maintenance Covenants.....	20
403. Nondiscrimination Covenants.....	20
404. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.....	21
<b>500. DEFAULTS AND REMEDIES .....</b>	<b>21</b>
501. Default Remedies.....	21
502. Institution of Legal Actions .....	22
503. Termination by Developer.....	22
504. Termination by Agency .....	22
505. Reentry and Revesting of Title in the Agency After the Closing and Before Completion of Construction .....	22
506. Acceptance of Service of Process .....	24
507. Rights and Remedies Are Cumulative .....	24
508. Inaction Not a Waiver of Default.....	24
509. Applicable Law.....	24
510. Attorneys' Fees.....	24
<b>600. GENERAL PROVISIONS.....</b>	<b>24</b>
601. Notices, Demands and Communications Between the Parties .....	24
602. Enforced Delay; Extension of Times of Performance.....	25
603. Transfers of Interest in Site or Agreement. ....	25
603.1 Prohibition.....	25
603.2 Permitted Transfers .....	25
603.3 Agency Consideration of Requested Transfer .....	26

Table of Contents  
(Continued)

	<u>Page</u>
603.4 Successors and Assigns.....	26
603.5 Assignment by Agency .....	26
604. Non-Liability of Officials and Employees of Agency .....	26
605. Relationship Between Agency and Developer .....	26
606. Agency Approvals and Actions .....	26
607. Counterparts.....	27
608. Integration .....	27
609. Real Estate Brokerage Commission .....	27
610. Titles and Captions .....	27
611. Interpretation .....	27
612. No Waiver .....	27
613. Modifications .....	27
614. Severability .....	27
615. Computation of Time.....	27
616. Legal Advice .....	28
617. Time of Essence .....	28
618. Cooperation .....	28
619. Conflicts of Interest.....	28
620. Survival of this Agreement.....	28

**ATTACHMENTS**

Attachment No. 1	Site Map
Attachment No. 2	Legal Description
Attachment No. 3	Grant Deed
Attachment No. 4	Scope of Development
Attachment No. 5	Schedule of Performance
Attachment No. 6	Release of Construction Covenants

## DISPOSITION AND DEVELOPMENT AGREEMENT

This **DISPOSITION AND DEVELOPMENT AGREEMENT** (this "Agreement") is entered into as of \_\_\_\_\_, 2011 by and between the **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "Agency"), and **SWEET HOMES DEVELOPMENT, LLC**, a California limited liability company (the "Developer").

### RECITALS

A. The Redevelopment Plan for the Garden Grove Community Project was approved and adopted by the City Council of the City of Garden Grove by Ordinance No. 1339, as amended by Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 2035 and 2232; said ordinances and the Redevelopment Plan as so approved and amended (the "Redevelopment Plan") are incorporated herein by reference.

B. The Agency and the Developer desire to provide for the development of a mixed-use project on a parcel consisting of approximately 1.77 acres a portion of which is owned by the Developer (the "Developer Parcel") and a portion of which is owned by a third party (the "Third Party Parcel"). The Developer Parcel and third party are collectively referred to herein as the "Site" and are more particularly described in the Legal Description attached hereto as Attachment No. 1 and depicted on the Site Map attached hereto as Attachment No. 2. The Site is located within the Project Area (as hereinafter defined) for the Redevelopment Plan, and has been previously developed for urban use.

C. The Agency and the Developer wish to enter into this Agreement in order to set forth the terms and conditions relating to the Agency's acquisition of the Third Party Parcel, the Agency's sale of the Third Party Parcel to the Developer for fair market value as determined by an appraisal, and the Developer's development of a mixed-use project as described more specifically in the Scope of Development (the "Project") on the Site.

D. The Developer's acquisition of the Third Party Parcel from the Agency and the development of the Project on the Site, as provided for in this Agreement, is in furtherance of redevelopment purpose in that, among other things, such actions will remove blighting conditions and is also in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Developer hereby agree as follows:

### 100. DEFINITIONS

**"Agency"** means the Garden Grove Agency for Community Development, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

**"Agency's Conditions Precedent to Acquisition"** is defined in Section 205.1.

**"Agency Director"** means the director of the Agency.

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

***“Basic Concept Drawings”*** means the plans and drawings to be submitted and approved by the Agency, as set forth in Section 302.1 hereof.

***“City”*** means the City of Garden Grove, California.

***“Closing”*** means the close of escrow for the Developer’s acquisition of the Site.

***“Conditions Precedent to Conveyance”*** means the conditions precedent to the Conveyance of the Site to the Developer.

***“Construction Drawings”*** means the construction plans and drawings to be submitted and approved by the Agency Director and City, as set forth in Section 302.3 hereof.

***“Conveyance”*** means the conveyance of the Third Party Parcel from the Agency to the Developer.

***“County”*** means the County of Orange, California.

***“Date of Agreement”*** means the date set forth in the first paragraph hereof which shall be the date on which the Agency approves this Agreement.

***“Default”*** means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

***“Design Development Drawings”*** means those plans and drawings to be submitted to the Agency Director and the City with respect to the development of the Project, as set forth in Section 302 hereof.

***“Developer”*** means Sweet Homes Development, a California limited liability company, and its successors and assigns.

***“Developer’s Advance”*** means the funds paid by Developer to the Agency for the purchase of the Third Party Parcel, as set forth in Section 201.3 hereof.

***“Escrow”*** means the escrow for the Developer’s acquisition of the Site.

***“Escrow Agent”*** is defined in Section 202 hereof.

***“Exceptions”*** is defined in Section 203 hereof.

***“Governmental Requirements”*** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Agency, Developer or the Site.

***“Grant Deed”*** means the grant deed conveying title to the Site to the Developer, substantially in the form attached hereto as Attachment No. 3 and incorporated herein.

***“Hazardous Materials”*** means any substance, material or waste which is or becomes, prior to the Closing, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “acutely hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. Section 9601), (xii) Methyl-Tertiary Butyl Ether, or (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment.

***“Land Use Approvals”*** is defined in Section 303 hereof.

***“Leasehold Interests”*** means the lessee’s interest in the Third Party Parcel, including all rights with respect to the Agency Relocation Obligations.

***“Legal Description”*** means the description of the Site separately describing the Developer Parcel and the Third Party Parcel which is attached hereto as Attachment No. 1 and incorporated herein.

***“Notice”*** means a notice in the form prescribed by Section 601 hereof.

***“Outside Closing Date”*** is defined in Section 202.4 hereof.

***“Precise Plan Drawings”*** means the plans and drawings to be submitted and approved by the Agency, Director and City as set forth in Section 302.2 hereof.

***“Project”*** means the mixed-use residential/retail project and associated landscaping, parking and other onsite and offsite improvements, which Developer is required to construct on the Site as described in more detail in the Scope of Development. The residential portion of the Project shall be offered for sale only and may not be rented except by purchasers of individual units.

***“Project Area”*** means the geographical boundaries of the Redevelopment Plan.

***“Purchase Agreement”*** is defined in Section 201.2.

***“Purchase Price”*** means the purchase price payable by Developer for the Third Party Parcel pursuant to Section 201.1 hereof.

**"RAP"** means a remedial action plan for the remediation of Hazardous Materials from the Site, pursuant to Section 208.3 hereof.

**"Redevelopment Plan"** is defined in Recital A.

**"Redevelopment Law"** means California Health and Safety Code Section 33000, *et seq.*, as the same now exists or may hereafter be amended.

**"Release of Construction Covenants"** is defined in Section 310 hereof and means that certain Release of Construction Covenants substantially in the form attached hereto as Attachment No. 6 and incorporated herein.

**"Relocation Obligation"** is defined in Section 313.

**"Request for Acquisition"** means written notice to the Agency accompanied by a cash or its equivalent in the amount of Four Hundred Thousand Dollars (\$400,000) requesting that the Agency commence acquisition, which request shall occur no sooner than February 1, 2012, but in no event later than September 30, 2012.

**"Schedule of Performance"** means that certain Schedule of Performance attached hereto as Attachment No. 5 and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and Agency's Director, and the Director is authorized to make such revisions as the Director deems reasonably necessary.

**"Scope of Development"** means the Scope of Development attached hereto as Attachment No. 4 and incorporated herein, which describes the scope, amount and quality of development of the Project to be constructed by the Developer pursuant to the terms and conditions of this Agreement.

**"Site"** means the approximately 1.77 acres of real property as described in the Legal Description and depicted on the Site Map.

**"Site Map"** means the map of the Site which is attached hereto as Attachment No. 2 and incorporated herein.

**"Third Party Parcel"** means that certain real property described in the Legal Description and depicted on the Site Map.

**"Title Company"** is defined in Section 203 hereof.

**"Title Policy"** is defined in Section 204 hereof.

**"Title Report"** is defined in Section 203 hereof.

**"Transfer"** means a transfer of the Site or the Project, and/or Developer's interest in this Agreement, as set forth in Section 603 hereof.

## **200. CONVEYANCE OF THE SITE**

### **201. Purchase and Sale of Site.**

**201.1 Purchase Price of Site.** Subject to all of the applicable terms and conditions of this Agreement, Agency agrees to sell the Third Party Parcel to Developer and Developer shall purchase the Third Party Parcel from Agency (the "Conveyance") for the purchase price of Five Hundred Twenty-Five Thousand Dollars (\$525,000), which was determined to be the fair market value pursuant to an appraisal by Kurt J. Goepfner dated April 5, 2011 (the "Purchase Price"). Developer shall pay the Purchase Price by delivering into Escrow cash in an amount equal to the full amount of the Purchase Price, less the amount of the Advance paid pursuant to Section 201.3 hereof. The Conveyance shall be made by grant deed from Agency to Developer (the "Grant Deed").

**201.2 Acquisition of Site.** The Agency agrees to attempt to acquire the Third Party Parcel by negotiation. If, after and despite Agency's attempt, the Agency is unsuccessful in negotiating the acquisition of the Third Party Parcel at a price and on terms consistent with this Agreement, the Agency shall schedule and conduct a hearing or hearings to consider whether the Agency will acquire the Third Party Parcel using the Agency's power of eminent domain within ninety (90) days following the date on which Developer provides Agency with a Request for Acquisition. In no event, however, shall the Agency's decision to not adopt a resolution of necessity to acquire the Third Party Parcel be a Default of the Agency's obligations set forth in this Agreement, it being understood and acknowledged that the Agency retains full and complete discretion with respect to the adoption of any such resolution. If the Agency in its discretion adopts a resolution of necessity to acquire the Third Party Parcel and upon fulfillment of the Agency's Conditions Precedent to Acquisition, the Agency shall file an eminent domain action or actions to acquire the Third Party Parcels and shall use good faith efforts to obtain and serve on all persons and entities entitled to receive such service an order or orders of prejudgment possession giving the Agency the right of possession of such parcels within not longer than one hundred twenty (120) days, the Agency shall take such other actions as are reasonably required to effectuate such order(s) of possession (including without limitation compliance with any relocation obligations the Agency may have, opposing any applications to stay or extend the effective date(s) of the order(s) of prejudgment possession, enforcement of said order(s) or filing of unlawful detainer action or actions as may be required to obtain possession of the premises, and taking the actions set forth in the second paragraph of Section 204 hereof), and the Agency shall diligently pursue to completion the acquisition of such portions of the Site through eminent domain. In the event that the Agency is unsuccessful in acquiring the entire Site by negotiated purchase by the time set forth in the Schedule of Performance and thereafter fails to adopt a resolution of necessity as provided above, the Agency may terminate this Agreement in the manner set forth in Section 504 hereof, and the Developer may terminate this Agreement in the manner set forth in Section 503 hereof. Notwithstanding anything herein to the contrary, the Agency shall comply with the California Environmental Quality Act in connection with a hearing, if any, on the resolution of necessity. Once the Agency has entered into an agreement to acquire the Third Party Parcel and Leasehold Interests ("Purchase Agreement") or has adopted its resolution of necessity with respect thereto, neither party shall have the right to terminate this Agreement except in the event the Purchase Agreements are terminated or a court determines that the Agency does not have the right to acquire the Third Party Parcel and/or the Leasehold Interests.

**201.3 Developer's Advance of Purchase Price.** On or before the date hereof, Developer has deposited with the Agency the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000) (the "Initial Advance") and shall advance an additional Four Hundred Thousand Dollars (\$400,000) ("Second Advance") together with the submittal by Developer to the Agency of the Request for Acquisition which shall occur, if at all, on or after February 1, 2012 but in no event later than March 31, 2012. The Initial Advance and Second Advance are sometimes collectively referred to herein as the



“Advance.” In the event that the Agency is able to acquire the Third Party Parcel without the necessity of eminent domain, then the Developer shall pay the Purchase Price, less any portion of the Advance already deposited with the Agency, prior to closing on the Third Party Parcel. The Agency shall be authorized to use the Advance only for the payment of cost of acquiring the Third Party Parcel whether by negotiation or the exercise of the power of eminent domain. The Advance shall be credited in full against the Purchase Price hereunder, and the Agency and Developer agree to cooperate and execute such documents as may be reasonably required to inform the Escrow Agent regarding the portion of the Purchase Price that has been paid outside of Escrow and the remaining portion, if any, required to be paid through Escrow. In the event that the Escrow does not close by reason of Default by the Agency, the Advance shall be repaid forthwith. Other than Default by the Agency, once the Advance is made and the Agency has committed to acquire the Third Party Property either by the exercise of the power of eminent domain or by negotiated purchase, the Advance on the Third Party Parcel, as applicable, shall remain the property of Agency without offset or deduction.

**201.4 Conveyance of Possession.** Notwithstanding any other provision of this Agreement to the contrary, so long as the Conditions Precedent to Closing have been satisfied, if at any time prior to the Agency’s acquisition of title to the Third Party Parcel in the condition for Conveyance as required herein, the Agency provides to the Developer a copy of one or more effective orders of prejudgment possession as to the Third Party Parcel for which fee title has not yet been acquired, and:

(a) the Agency delivers exclusive possession of and the right to any subsequently acquired title or claim or title to the Third Party Parcel, and the Title Company issues to the Developer the title policy which is provided for in Section 204 hereof; and

(b) the Agency is diligently proceeding with the eminent domain action or actions seeking the rendering of a final judgment and order as to the Third Party Parcel for which title has not yet been acquired, which judgment and order would authorize the taking; and

(c) the right of possession and subsequently acquired title conveyed by the Agency to the Developer is sufficient to enable the Developer to obtain a title insurance policy in accordance with the requirements of Section 204 hereof, to record a parcel map for the Third Party Parcel, and to close its financing for the acquisition of the Third Party Parcel and the construction of the Project on the Third Party Parcel; then the Agency shall convey and the Developer shall accept possession of the Third Party Parcel, and the Developer shall proceed with the development of the Third Party Parcel, with the date of transfer of possession from the Agency to the Developer treated the same as the date for the close of Escrow for purposes of the Developer’s obligation to proceed with and complete construction of the Project on the Third Party Parcel.

**201.5 Assignment of Purchase Agreements.** Developer acknowledges that the Agency may enter into Purchase Agreements. In such event rather than the Agency taking title to such Third Party Parcel and concurrently conveying same to the Developer, the Agency may, at its option, assign the Purchase Agreements to the Developer hereunder to fulfill its obligation to convey the Third Party Parcel, provided that Developer’s obligation thereunder shall not exceed the Purchase Price.

**202. Escrow.** Within ten (10) days after the date of the Request for Acquisition, the parties shall open escrow for the Conveyance of the Site (the “Escrow”) with First American Title Company or another escrow company mutually satisfactory to both parties (the “Escrow Agent”).

**202.1 Costs of Escrow.** Agency shall pay the premium for the Title Policy as set forth in Section 204 hereof, all recording fees and documentary transfer taxes due with respect to the

conveyance of the Site, and all other fees, charges, and costs which arise from Escrow, shall be split one-half (1/2) each.

**202.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of Developer and Agency, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and Agency will cancel its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any state or national Bank doing business in the State of California. All disbursements shall be made by check from such account.

If in the opinion of either party it is necessary or convenient in order to accomplish the Closing of this transaction, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control, unless the supplemental escrow instructions expressly state the intent to amend this Agreement. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place within thirty (30) days after the date when the Conditions Precedent as set forth in Section 205 have been satisfied or waived by the respective parties. Escrow Agent is instructed to release Agency's escrow closing and Developer's escrow closing statements to the respective parties.

**202.3 Authority of Escrow Agent.** Escrow Agent is authorized to, and shall:

(a) Pay and charge Developer for the premium with respect to any endorsements to the Title Policy, if any, as set forth in Section 204 and any amount necessary to place title in the condition necessary to satisfy Section 203 of this Agreement.

(b) Pay and charge Developer for any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.

(c) Disburse funds, deliver the Purchase Price to the Agency, and record the Grant Deed, upon Closing (which shall occur not later than 30 days after the date when the Conditions Precedent have been fulfilled or waived by the respective parties).

(d) Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations under this Agreement.

(e) Within the discretion of Escrow Agent, direct Agency and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent.

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

**202.4 Closing.** This transaction shall close (the "Closing") within ten (10) days of the parties' satisfaction of all of the Conditions Precedent to Closing as set forth in Section 205 hereof, on or

after February 1, 2012 but in no event later than September 30, 2012 (the "Outside Closing Date") provided however that if the Agency adopts a resolution of necessity condemning the Third Party Parcel and Leasehold Interests and in that event the Outside Closing Date shall be extended until either (i) a court determines that the Agency does not have the power to condemn Third Party Parcel or the Leasehold Interests or (ii) the Closing occurs. The Outside Closing Date may be extended by the mutual written agreement of the Developer and the Director of the Agency. The Closing shall occur at a location within Orange County at a time and place reasonably agreed on by the parties.

**202.5 Termination.** If Escrow is not in condition to close by the Outside Closing Date, then either party which is not in material default under this Agreement may, in writing, demand the return of money or property and terminate this Agreement. If either party makes a written demand for return of documents or properties, this Agreement shall not terminate until five (5) days after Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Developer, however, shall have the sole option to withdraw any money deposited by it with Escrow Holder or Agency less Developer's share of costs of Escrow. Termination of this Agreement shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If any or all of the Conditions Precedent set forth in Section 205 fail to occur for any reason other than Developer's material and uncured default, Developer shall have the right to terminate this Agreement and the Escrow. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

**202.6 Closing Procedure.** Escrow Agent shall close Escrow for the Site as follows:

- (a) Record the Grant Deed with instructions for the Recorder of Orange County, California to deliver the Grant Deed to Developer;
- (b) Deliver the Purchase Price proceeds to the Agency;
- (c) Instruct the Title Company to deliver the Title Policy to Developer;
- (d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements; and
- (e) Forward to both Developer and Agency a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

**203. Review of Title.** The Agency shall be responsible for obtaining a preliminary title report (the "Title Report") from First American Title Company or another title insurance company reasonably acceptable to Developer (the "Title Company"), with respect to the title to the Third Party Parcel. The Developer shall have the right to reasonably approve or disapprove the exceptions to title set forth in the Title Report (the "Exceptions"); provided, however, that the Developer hereby approves the following Exceptions:

- (a) The Redevelopment Plan;
- (b) The lien of any non-delinquent property taxes and assessments (to be prorated at close of Escrow); and

(c) The provisions set forth in the Grant Deed.

Developer shall have thirty (30) days from the date of its receipt of the Title Report and copies of all recorded documents listed as Exceptions therein to give written notice to Agency and Escrow Holder of Developer's approval or disapproval of any of such Exceptions; provided, however, that if following Developer's review of the Title Report, the Title Company adds additional exceptions to coverage for matters not caused by Developer, Developer shall have the right to approve or disapprove any such exceptions (such new exceptions shall likewise be included within the definition of the term "Exceptions"). Agency shall not voluntarily create any new exceptions to title following the Date of Agreement. Agency and Developer shall use good faith efforts to attempt to remove or modify any Exceptions which are unacceptable to the Developer. If any Exceptions disapproved by Developer are not removed or insured over by the Title Company, Developer shall have the option to either proceed to Closing and accept title in its existing condition, or to terminate this Agreement. Developer may at its own expense cause a current land survey of the Third Party Parcel to be undertaken. Developer shall have the right to reasonably approve or disapprove of the survey and shall notify the Agency of its disapproval of any specific defect to the survey within thirty (30) days from the date of its receipt of the survey. The survey defects shall be treated in the same manner as title defects are treated under this Agreement.

**204. Title Insurance.** Concurrently with recordation of the Grant Deed conveying title to the Third Party Parcel to Developer, there shall be issued to Developer a CLTA or ALTA owner's policy of title insurance together with any endorsement necessitated by defects of title and/or any endorsement reasonably requested by the Developer (collectively, the "Title Policy"), issued by the Title Company insuring that the title to the Third Party Parcel is vested in Developer in the condition required by Section 203 of this Agreement in an amount not to exceed the Fair Market Value. The Title Policy shall be for the amount reasonably requested by the Developer. The Agency shall pay the premium for the Title Policy and Developer shall pay for the cost of any endorsements requested by Developer.

Upon the request of the Title Company, and provided that no one has challenged the Agency's right to take the Third Party Parcel, the Agency shall execute a mutually acceptable indemnification agreement by which the Agency shall agree to prosecute any currently filed eminent domain proceedings to completion, and to indemnify the Title Company for any losses, damages and expenses incurred by the Title Company in the event of the Agency's abandonment of the acquisition of the Third Party Parcel. Nothing herein shall be deemed to obligate the Agency or Developer to pay for any additional premium or other additional charge necessary for the issuance of said title policy. In the event that the Title Company declines to issue a title insurance policy with respect to the Third Party Parcel on or before the date set for the Conveyance in the Schedule of Performance, subject to the opportunity to cure as set forth in Section 501 hereof, the Closing and conveyance of the Third Party Parcel shall not occur until the Agency is able to acquire fee title to the Third Party Parcel.

**205. Conditions Precedent.**

**205.1 Agency Conditions Precedent to Acquisition.** The Agency's obligation to acquire the Third Party Parcel is conditioned upon satisfaction of the following terms and conditions within the time set forth in the Schedule of Performance:

(a) **Advance.** The Developer shall have provided Agency with the Advance or Purchase Price, as applicable.

(b) **Land Use Approvals.** The Developer shall have received Land Use Approvals.

**205.2 Conditions Precedent to Conveyance.** The Conveyance is conditioned upon the satisfaction of the following terms and conditions within the time set forth in the Schedule of Performance:

(a) **Execution of Documents.** The Developer shall have executed and acknowledged the Grant Deed and any other documents required hereunder and delivered such documents into Escrow.

(b) **Payment of Funds by Developer.** The Developer has deposited into Escrow all required costs of Closing and the costs of endorsements, if any, to the Title Policy.

(c) **Payment by Agency.** The Agency has deposited into Escrow the premium for the Title Policy and required costs of Closing.

(d) **Agency Acquisition of Third Party Parcel.** The Agency shall have acquired fee title to all of the Third Party Parcel, or shall be acquiring fee title to the Third Party Parcel concurrently with the Conveyance of the Third Party Parcel.

(e) **Review and Approval of Title.** Developer shall have reviewed and approved the condition of title of the Third Party Parcel, as provided in Section 203 hereof.

(f) **Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Third Party Parcel upon the Close of Escrow, in accordance with Section 204 hereof.

(g) **Condition of Third Party Parcel.** Developer shall have approved of the physical and environmental condition of the Third Party Parcel, and the Remedial Work shall have been completed in accordance with Section 208.3 hereof.

(h) **Insurance.** The Developer shall have provided to the Agency proof of insurance as required by Section 306 hereof.

(i) **Land Use Approvals.** The Developer shall have received all Land Use Approvals required to construct the Project.

(j) **No Default.** Prior to the Close of Escrow, Developer shall not be in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

## **206. Representations and Warranties.**

**206.1 Agency Representations.** Agency represents and warrants to Developer as follows:

(a) Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000, *et seq.*), which has been authorized to transact business pursuant to action of the City.

(b) The execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.

(c) Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.

Until the Closing, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of such date, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by Agency hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove. If, following the disclosure of such information, the Developer elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

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

(a) **Experience.** Developer is an experienced developer and operator of developments such as the Project.

(b) **Authority.** Developer has full right, power and lawful authority to purchase the Site, develop the Project and undertake all obligations as provided herein. The execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer.

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

(d) **No Developer Bankruptcy.** To the best of Developer's knowledge, Developer is not the subject of a current or threatened bankruptcy proceeding.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of the Closing, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove. If, following the disclosure of such information, the Agency elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.2 shall survive the Closing.

**207. Studies and Reports.** Prior to the Closing, the Developer may obtain data and make surveys and tests necessary to carry out this Agreement, including the investigation of the environmental condition of the Third Party Parcel pursuant to Section 208 hereof (collectively, the "Studies"). Any Studies of the Third Party Parcel by Developer prior to the Closing shall be done at the sole expense of the Developer, subject to any rights the Agency may have to investigate such parcels. Upon the request of the Developer, the Agency shall use good faith efforts to attempt to obtain rights for the Developer to investigate the Third Party Parcel prior to the Closing.

**208. Condition of the Site; Release of Agency as to Third Party Parcel.**

**208.1 Investigation of Site.** The Developer shall have the right, upon satisfaction of the requirements of Section 207 hereof, and at its sole cost and expense, to engage its own environmental consultant to make such investigations of the Third Party Parcel as Developer deems necessary, including any "Phase 1" and/or "Phase 2" investigations of the Third Party Parcel, and the Agency shall promptly be provided a copy of all reports and test results provided by Developer's Environmental Consultant (the "Developer's Environmental Reports").

**208.2 Approval of Environmental Condition of Site.** The Developer shall have the right to approve the environmental condition of the Third Party Parcel prior to and as a condition of Agency's obligation to acquire the Third Party Parcel. The Developer shall approve or disapprove of the environmental condition of the Third Party Parcel within the time set forth in the Schedule of Performance. The Developer's approval of the environmental condition of the Third Party Parcel shall be a Condition Precedent to the Closing, as set forth in Section 205 hereof. If the Developer, based upon the above environmental reports, disapproves the environmental condition of the Third Party Parcel, then the Developer may terminate this Agreement by written Notice to the Agency pursuant to Section 503 hereof.

**208.3 No Further Warranties As To the Third Party Parcel; Delivery of Site "As Is"; Release of Agency Re Third Party Parcel.** Developer acknowledges that the Agency is not familiar with the condition of the Third Party Parcel, and agrees that the Agency is under no obligation hereunder to perform any tests, studies or other investigation of the Third Party Parcel prior to the Closing. Except as otherwise provided herein, including this Section 208.4 below, the physical condition of the Third Party Parcel is and shall be delivered from Agency to Developer in an "as-is" condition, with no warranty expressed or implied by Agency, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Third Party Parcel for the development purposes intended hereunder. To the extent authorized by contract or law, the Agency shall assign to the Developer all warranties and guaranties with respect to the environmental condition of the Third Party Parcel, if any, that the Agency has received from prior owners of the Third Party Parcel.

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

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

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

As such relates to this Section 208.4, the Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

**208.4 Developer Precautions After Closing.** Following the Closing, the Developer shall use commercially reasonable efforts to prevent the release of any Hazardous Materials onto the Site.

Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

**208.5 Required Disclosures After Closing.** After the Closing, the Developer shall notify the Agency, and provide to the Agency a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Upon request, the Developer shall furnish to the Agency a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

**208.6 Developer Indemnity.** Following the Closing, and except as provided in Section 208.4 above, Developer agrees to indemnify, defend and hold Agency and the City and their respective officers, employees, agents, representatives and volunteers harmless from and against any claim, action, suit, proceeding, damage, liability, deficiency, fine, penalty, or punitive damage (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site which occurs after the Closing and is not caused by Agency, City or their employees, officers, agents or representatives, or (ii) the violation, or alleged violation by anyone other than Agency, City or their employees, officers, agents or representatives, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site which occurs after the Closing. At the request of the Developer, the Agency shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the Agency shall not be obligated to incur any expense in connection with such cooperation or assistance.

### **300. DEVELOPMENT OF THE SITE**

**301. Scope of Development.** Subject to the Land Use Approvals which may be granted or withheld by the City acting in its sole and absolute discretion, independent of the terms of the Agreement, Developer shall construct the Project on the Site substantially in accordance with the Scope of Development and the plans, drawings and documents submitted by Developer and approved by the Agency and the City as set forth herein.

#### **302. Design Review.**

**302.1 Basic Concept Drawings.** Within the time set forth in the Schedule of Performance, the Developer shall submit conceptual drawings for the Project to the Agency, including materials, color board, elevations of all four sides of the Project, preliminary landscape plans, a traffic and circulation plan as applicable or as may be required, and a rendered perspective (collectively, the "Basic Concept Drawings"). The Agency shall approve or disapprove the Basic Concept Drawings, as further described in Section 302.4.

**302.2 Precise Plan Drawings.** After the Agency's approval of the Basic Concept Drawings, and within the time set forth in the Schedule of Performance, the Developer shall submit to the Agency Director the following plans and drawings with respect to the Project (the "Precise Plan Drawings"), which must include the following:



(a) A fully dimensioned Site Plan which complies with the City's site plan submittal process for review by the City Planning Commission, which includes a landscape plan, with hardscape plans, sections and elevations, including lighting, equipment, furnishings and planting schedules.

(b) Floor plans.

(c) Roof plans.

(d) Elevations and project sections.

(e) Tabulation of areas/uses.

(f) Elevations of major public spaces.

(g) Graphics and signage plans, together with schedules and samples or manufacturer's literature.

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

**302.3 Construction Drawings and Related Documents.** After the Agency Director's approval of the Precise Plan Drawings and within the time set forth therefor in the Schedule of Performance, the Developer shall prepare or cause to be prepared and submit to the City detailed construction plans with respect to the Project, including without limitation a grading plan, which shall have been prepared by a registered civil engineer (the "Construction Drawings").

**302.4 Standards for Disapproval.** The Agency shall have the right to disapprove the Basic Concept Drawings in its sole discretion. The Agency Director shall have the right to disapprove in his reasonable discretion any of the Precise Plan Drawings if (a) the Precise Plan Drawings do not conform to the approved Basic Concept Drawings, or (b) the Precise Plan Drawings do not conform to this Agreement, or (c) the Precise Plan Drawings are incomplete. The Agency Director shall state in writing the specific reasons for disapproval within fifteen (15) days of such disapproval as stated herein. The Developer, upon receipt of any such a disapproval, shall revise such portions and resubmit the disapproved Basic Concept Drawings, Precise Plan Drawings, or Construction Drawings, as the case may be, disapproved thereby by the time established therefor in the Schedule of Performance.

The Developer acknowledges and agrees that the Agency is entitled to approve or disapprove the Basic Concept Drawings in order to satisfy the Agency's obligation to promote the sound development and redevelopment of land within the Project, to promote a high level of design which will impact the surrounding development, and to provide an environment for the social, economic and psychological growth and well-being of the citizens of the City and the Project.

**302.5 Consultation and Coordination.** During the preparation of the Precise Plan Drawings, staff of the Agency and the Developer shall hold joint progress meetings with City staff to coordinate the preparation of, submission to, and review of the Precise Plan Drawings by the Agency Director and the City. The staff of the Agency and the Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the Agency and City can receive prompt and thorough consideration. The Agency shall designate an Agency

employee to serve as the project manager who is responsible for the coordination of the Agency's activities under this Agreement and for coordinating the land use approval and permitting process.

**302.6 Revisions.** If the Developer desires to propose any substantial exterior revisions to the approved Basic Concept Drawings or Precise Plan Drawings, it shall submit such proposed changes, and shall also proceed in accordance with any and all state and local laws and regulations regarding such revisions, within the time frame set forth in the Schedule of Performance for the submittal of the Basic Concept Drawings and Precise Plan Drawings. Any change proposed in the approved Basic Concept Drawings may be disapproved by the Agency in its sole and absolute discretion. Any and all change orders or revisions required by the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Basic Concept Drawings, the Precise Plan Drawings, or the Construction Drawings and completed during the construction of the Project.

**302.7 Defects in Plans.** The Agency shall not be responsible either to the Developer or to third parties in any way for any defects in the Basic Concept Drawings, the Precise Plan Drawings, or the Construction Drawings nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Precise Plan Drawings, or Construction Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 302. The Developer shall hold harmless, indemnify and defend the Agency, the City and their officers, employees, agents and representatives from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Basic Concept Drawings, the Precise Plan Drawings, and the Construction Drawings, including without limitation the violation of any laws, or arising out of or in any way relating to any defects in any work done according to the approved Basic Concept Drawings, Precise Plan Drawings or Construction Drawings.

**302.8 Use of Architectural Plans.** In the event that this Agreement is terminated pursuant to Sections 503 or 504 hereof, or the Agency reenters the Site pursuant to Section 505 hereof, at the option of the Agency the Developer shall deliver to the Agency an executed assignment in a form reasonably acceptable to the Agency of the Developer's right to use all plans, blueprints, drawings, sketches, specifications, tentative or final subdivision maps, landscape plans, utilities plans, soils reports, noise studies, environmental assessment reports, grading plans and any other materials relating to the construction of the Project on the Site (the "Plans"), together with copies of all of the Plans. Such assignment shall not affect the Developer's obligations or duties concerning any of the Plans, including without limitation any obligation to pay for any work done on the Plans. The Plans shall be free of liens and encumbrances, and the Developer shall use good faith, commercially reasonable efforts to deliver to the Agency an estoppel certificate in a form reasonably acceptable to the Agency from each person or entity which prepared such Plans, authorizing the Agency to use such Plans for the Site, and releasing the Agency from any responsibility or liability for paying any costs or fees for such Plans. In consideration thereof, the Agency shall thereupon reimburse the Developer for its actual costs incurred for such Plans, in accordance with documentation of such costs which is submitted by the Developer to the Agency for its review and approval.

**303. Land Use Approvals.** Prior to the Agency's acquisition of the Third Party Parcel, Developer shall, at its own expense, secure, or cause to be secured, any and all discretionary land use approvals required for the Project by the City or any other governmental agency affected by such construction or work (the "Land Use Approvals"), including compliance with the California Environmental Quality Act, California Public Resources Code Sections 21100 *et seq.* In addition, before commencement of construction, the Developer shall apply for and secure all building, grading and other

permits required by the City, the County, and other governmental agencies with jurisdiction over the Project with respect to the Improvements:

Agency staff will work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all necessary permits, entitlements and approvals. The execution of this Agreement does not constitute the grant of any required land use permits, entitlements or approvals.

**304. Schedule of Performance.** Developer shall submit all required plans and drawings, commence and complete all renovation and construction of the Project, and satisfy all other obligations and conditions of Developer under this Agreement within the times established therefor in the Schedule of Performance. Agency shall satisfy all obligations and conditions of Agency under this Agreement within the times established therefor in the Schedule of Performance; provided however, in the event construction of the Project has not commenced within four (4) years following Land Use Approvals by virtue of the applicability of Section 602, then this Agreement shall terminate and neither party shall have any rights or obligations with respect to the other.

**305. Cost of Construction.** All of the cost of the planning, designing, renovating, developing and constructing all of the Project, including all applicable offsite improvements imposed in connection with the City's approval of the Project, shall be borne solely by Developer.

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

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

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

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

The Developer shall also file with the Agency the following signed certification:

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

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

**307. Indemnification.** The Developer shall defend, indemnify, assume all responsibility for, and hold the Agency and the City, and their officers, employees, agents, representatives and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the validity, applicability, interpretation or implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury to the extent occasioned by the negligence or willful misconduct of the Agency or City or their agents or employees. The Developer shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that Developer determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, in which case Developer shall compromise or settle such action in a way that fully protects Agency and City from any liability or obligation. In this regard, Developer's obligation and right to defend shall include the right to hire (subject to written approval by the Agency and City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Developer, Agency, or City. If Developer defends any such action, as set forth above, (i) Developer shall indemnify and hold harmless Agency and City and their officers, employees, representatives, agents and volunteers from and against any claims, losses, liabilities, or damages assessed or awarded against either of them by way of judgment, settlement, or stipulation and (ii) Agency shall be entitled to settle any such claim only with the written consent of the Developer and any settlement without Developer's consent shall release Developer's obligations under this Section 307 with respect to such settled claim.

**308. Rights of Access.** Representatives of Agency shall have the right of access to the Site, without charges or fees, at normal construction hours upon reasonable prior notice during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Project so long as Agency representatives comply with all safety rules and do not interfere with, delay or interrupt Developer's construction activities.

**309. Financing of the Project.**

**309.1 Approval of Financing.** Prior to commencement of construction, Developer shall submit to Agency evidence that Developer has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing necessary to undertake the development of the Site and the construction of the Project in accordance with this Agreement, and a letter of intent for permanent financing therefore ("Financing Commitment"). The Agency shall approve or disapprove such

evidence of financing commitments within fifteen (15) days of receipt of a complete submission. Approval shall not be unreasonably withheld, delayed or conditioned. If Agency shall disapprove any such evidence of financing, Agency shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall use commercially reasonable efforts to promptly obtain and submit to Agency new evidence of financing. Agency shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 309.1 for the approval or disapproval of the evidence of financing as initially submitted to Agency. Developer shall close the approved construction financing prior to or concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of a loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for construction financing for the Project, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) evidence reasonably acceptable to the Agency that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to the Agency as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the acquisition of the Site and construction and completion of the Project, less financing authorized by those loans set forth in subparagraph (a) above.

**309.2 Holder Not Obligated to Construct Project.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Project or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

**309.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the Agency may deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Project, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the Agency are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project, or any portion thereof (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 Agency by written agreement reasonably satisfactory to the Agency. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants.

**310. Release of Construction Covenants.** Promptly after completion of the Project, in conformity with this Agreement, the Agency shall furnish Developer with the Release of Construction Covenants upon written request therefor by Developer. The Agency shall not unreasonably withhold such Release of Construction Covenants. Such Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site and the Release of Construction Covenants shall so state. The Release of Construction Covenants shall be in

such form as to permit it to be recorded in the Recorder's Office of Orange County. If the Agency refuses or fails to furnish a Release of Construction Covenants for the Site after written request from the Developer, the Agency shall, within ten (10) days of written request therefor, provide Developer with a written statement of the reasons the Agency refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Agency's opinion of the actions that Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items of materials for landscaping, the Agency will issue its Release of Construction Covenants upon the posting of a bond or other security reasonably acceptable to Agency by Developer with the Agency in an amount representing the fair value of the work not yet completed. Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any part thereof. Such Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code Section 3093.

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

**312. Taxes and Assessments.** Prior to conveyance of the Houses, the Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site, subject to the Developer's right to contest in good faith any such taxes. The Developer shall remove or have removed any levy or attachment made on any of the Site or any part thereof, or assure the satisfaction thereof within a reasonable time.

**313. Relocation.** The Agency shall be responsible for complying and/or causing compliance with all applicable federal, state and local laws and regulations concerning the displacement and/or relocation of, prior to the date of this Agreement, all eligible persons and/or businesses from the Third Party Parcel, if any, including without limitation, compliance with the California Relocation Assistance Law, California Government Code Section 7260, *et seq.*, all state and local regulations implementing such laws, and all other applicable federal, state, and local laws and regulation relating to such persons ("Relocation Obligation"). The Developer shall defend, indemnify and hold Agency harmless with respect to Relocation Obligations associated with the Developer Parcel.

**314. Leasehold Interest.** Agency shall be responsible for the acquisition of the Leasehold Interests and shall compensate holder of such Leasehold Interests in accordance with all applicable laws regarding the termination of any such Leasehold Interests.

**315. Prevailing Wages.** The Developer shall carry out the construction of the Project in conformity with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages referred to herein as the "Prevailing Wage Laws"), if applicable. Developer and Agency believe that the work to be covered by this Agreement is not a "public work," as defined in Section 1720 of the Labor Code. Developer shall indemnify, protect, defend and hold harmless the Agency, City and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development or construction (as defined by applicable law) of the Project, including, without limitation, any and all public works (as defined by

applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages); (2) the implementation of Senate Bill 966 of 2003; (3) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (4) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with the development and construction (as defined by applicable law) of the Project, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Senate Bill 966 and/or Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased Costs," as used in this Section 409.3, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project until the statute of limitations has run with respect to the issues addressed hereinabove.

#### **400. COVENANTS AND RESTRICTIONS**

**401. Use in Accordance with Redevelopment Plan and Agreement.** The Developer covenants and agrees to devote, use, operate, and maintain the Site in accordance with the Redevelopment Plan, and this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to the Redevelopment Plan, all applicable provisions of the City Municipal Code.

**402. Maintenance Covenants.** The Developer shall maintain the Site and all improvements thereon, including all landscaping, in good condition, in compliance with the terms of the Redevelopment Plan and with all applicable provisions of the City Municipal Code, during the period of the Developer's ownership of the Site or portions thereof.

**403. Nondiscrimination Covenants.** The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

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

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

tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

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

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

**404. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.** The covenants established in this Agreement and the deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Agreement shall remain in effect for the periods of time specified therein. The covenants against discrimination shall remain in effect in perpetuity. The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Agency, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Redevelopment Project Area. The Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. After issuance of a Release of Construction Covenants for the Project, all of the terms, covenants, agreements and conditions set forth in this Agreement relating to the construction and development of the Site shall cease and terminate.

## **500. DEFAULTS AND REMEDIES**

**501. Default Remedies.** Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within thirty (30) days from receipt of such notice,



or if the nature of such default is that it cannot reasonably be expected to be cured within such thirty (30) day period, if such party, with due diligence, commences to cure, correct or remedy such failure or delay within thirty (30) days from receipt of such notice, and shall complete such cure, correction or remedy with diligence, but in no event longer than ninety (90) days from the date of written notice.

**502. Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California.

**503. Termination by Developer.** Provided that Developer is not in Default under this Agreement, if the Purchase Agreements have not been entered into and the Agency has not adopted its resolution of necessity, Developer may determine, acting in its reasonable discretion, it would not be commercially reasonable to proceed with the Project, in which case this Agreement may, at the option of Developer, be terminated by written notice thereof to Agency. The Agency shall return the Advance to the Developer within thirty (30) days of such notice of termination. From the date of the written notice of termination of this Agreement by Developer to Agency and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties.

Provided Developer is not in Default under this Agreement, and Agency has adopted its resolution of necessity and commenced an eminent domain action but has not achieved an order of pre-judgment possession within one hundred eighty (180) days after filing the eminent domain action then, in that event, the Agency may terminate this Agreement in which case the Agency shall return the Advance less any amounts paid to the owners or the tenants of the Third Party Property in connection with the abandonment of the eminent domain proceeding. Thereafter neither party shall have any rights or obligations with respect to the other hereunder.

**504. Termination by Agency.** In the event that Agency is not in Default under this Agreement and prior to the Closing: (i) One or more of the Conditions Precedent to the Closing has not been satisfied on or before the Outside Closing Date; or (ii) Developer is in Default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof; then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of Agency, be terminated by Agency by written notice thereof to Developer. The Agency shall return the Advance to the Developer within thirty (30) days of such notice of termination. From the date of the written notice of termination of this Agreement by Agency to Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties.

**505. Reentry and Revesting of Title in the Agency After the Closing and Before Completion of Construction.** The Agency has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the Agency the estate conveyed to the Developer if after the Closing and before the issuance of the Certificate of Completion, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Project as required by this Agreement for a period of ninety (90) days after written notice thereof from the Agency; or

(b) abandon or substantially suspend construction of the Project required by this Agreement for a period of ninety (90) days after written notice thereof from the Agency; or

(c) contrary to the provisions of Section 603 Transfer or suffer any involuntary Transfer in violation of this Agreement, and such Transfer has not been approved by the Agency or rescinded within thirty (30) days of notice thereof from Agency to Developer.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by this Agreement; or
2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right as set forth in this Section 505, under specified circumstances before recordation of the Certificate of Completion, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in the Agency the estate conveyed to the Developer. Upon the revesting in the Agency of title to the Site as provided in this Section 505, the Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the Project, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Site or part thereof in the Redevelopment Plan. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

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

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

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have conveyed the

Site to the Developer for redevelopment purposes, particularly for development of the Project, and not for speculation in undeveloped land.

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

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

**508. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

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

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

## **600. GENERAL PROVISIONS**

**601. Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency:                      Garden Grove Agency for Community Development  
   11222 Acacia Parkway  
   Garden Grove, California 92840  
   Attention: Agency Director

with a copy to:                Stradling, Yocca, Carlson & Rauth  
   660 Newport Center Drive, Suite 1600  
   Newport Beach, California 92660  
   Attention: Thomas P. Clark, Jr., Esq.

To Developer:                 Sweet Homes Development  
   P.O. Box 630  
   Rosemead, California 91770  
   Attention: Brian Lam

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

**602. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to events beyond the reasonable control of the parties, including without limitation the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; inability to secure a Financing Commitment following best efforts; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of Agency or the City which shall not excuse performance by Agency). Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer.

**603. Transfers of Interest in Site or Agreement.**

**603.1 Prohibition.** The qualifications and identity of the Developer is of particular concern to the Agency. Furthermore, the parties acknowledge that the Agency has negotiated the terms of this Agreement in contemplation of the construction of the Project and the property tax increment to be generated by the operation of the Project on the Site. Accordingly, for the period commencing upon the date of this Agreement and until the issuance of the Release of Construction Covenants for the Project, except as expressly set forth herein, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, conveyance, assignment, or other transfer of the Project being operated upon the Site (collectively referred to herein as a "Transfer"), without the prior written approval of the Agency, which approval shall not be unreasonably withheld, delayed or conditioned.

**603.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment of this Agreement or conveyance of the Site or Project, or any part thereof, or a transfer of the Project, shall not be required in connection with any of the following:

(a) Any transfers to an entity or entities in which Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

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

(c) Any requested assignment for financing purposes, including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Project, which is approved by the Agency pursuant to Section 309 hereof.

(d) Any lease of retail space to retail tenants in the ordinary course of business.

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

**603.3 Agency Consideration of Requested Transfer.** The Agency agrees that it will consider approval of a request for approval of a Transfer made pursuant to this Section 603, provided the Developer delivers written notice to the Agency requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed transferee's development qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603 and as determined by the Agency. An assignment and assumption agreement in form satisfactory to the Agency's legal counsel shall also be required for all proposed Transfers which require Agency approval. Within thirty (30) days after the receipt of the Developer's written notice requesting Agency approval of a Transfer pursuant to this Section 603, the Agency shall either approve or disapprove such proposed Transfer or shall respond in writing by stating what further information, if any, the Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be requested.

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

**603.5 Assignment by Agency.** Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld; provided, however, that Agency may assign or transfer any of its interests hereunder to the City at any time without the consent of Developer upon thirty days written notice to Developer; provided further that any such assignee of Agency shall assume all of the obligations of Agency hereunder.

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

**605. Relationship Between Agency and Developer.** It is hereby acknowledged that the relationship between Agency and Developer is not that of a partnership or joint venture and that Agency and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Project.

**606. Agency Approvals and Actions.** The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Agency's Director (or his duly authorized representative). The Director shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into certain amendments of this

Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses or development permitted on the Site, or materially or substantially add to the costs incurred or to be incurred by the Agency as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 6, which together with the Agreement constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

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

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

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

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

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

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

**615. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the

last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

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

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

**618. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements. Except as provided otherwise herein, any requests for a party's approval of any matters with respect to the subject matter of this Agreement shall not be unreasonably withheld or delayed.

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

**620. Survival of this Agreement.** The terms of this Agreement shall survive the Closing.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date set forth above.

**AGENCY:**

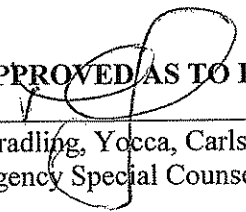
**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic

\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

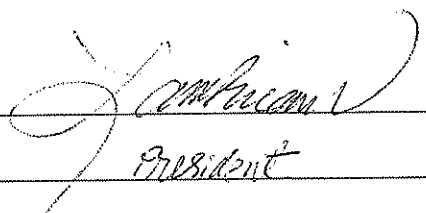
  
\_\_\_\_\_  
Stradling, Yocca, Carlson & Rauth,  
Agency Special Counsel

**DEVELOPER:**

**SWEET HOMES DEVELOPMENT**,  
a California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

  
President



**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION**

**DEVELOPER PARCEL**

**PARCEL 1:**

THE EAST 104.04 FEET OF THE WEST 421.42 FEET OF THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP FOUR SOUTH; RANGE TEN WEST, SAN BERNARDINO BASE & MERIDIAN, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 2, PAGES 332 AND 333 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPT THEREFROM THAT PORTION DESCRIBED IN DEED TO TROY E. ELDER AND DOROTHY J. ELDER RECORDED JULY 18, 1955 RECORDED IN BOOK 3142 PAGE 474 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

**PARCEL 2:**

THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP FOUR SOUTH, RANGE TEN WEST, SAN BERNARDINO BASE & MERIDIAN, AS SHOWN ON A MAP RECORDED IN BOOK 2, PAGES 332 AND 333 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE WEST 421.42 FEET.

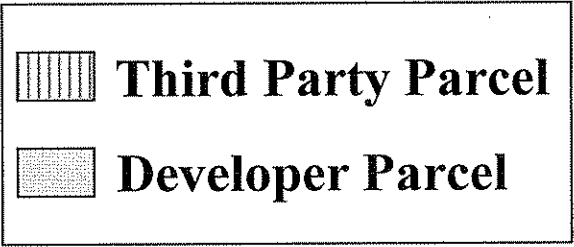
ALSO EXCEPTING THEREFROM AN UNDIVIDED ONE-TENTH INTEREST IN AND TO THE WELL AND PUMPING PLANT LOCATED ON SAID LAND, AS EXCEPTED IN DEED FROM HARRY K. HOLLOWAY AND BURTIS W. HOLLOWAY, HUSBAND AND WIFE, RECORDED NOVEMBER 26, 1952 IN BOOK 2416, PAGE 193 OF OFFICIAL RECORDS.

**THIRD PARTY PARCEL**

THE WEST 57 FEET OF THE SOUTH 150 FEET OF THE EAST 104.94 FEET OF THE WEST 421.42 FEET OF THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA.

ATTACHMENT NO. 2

SITE MAP



ATTACHMENT NO. 3

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
)  
)  
)  
)  
)  
)

---

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

Documentary Transfer Tax: \$ \_\_\_\_\_  
Based on Full Value of Real Property Conveyed

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged,

The **GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic (the "Agency"), acting to carry out the Redevelopment Plan ("Redevelopment Plan") for the \_\_\_\_\_ Redevelopment Project under the Community Redevelopment Law of California, hereby grants to **SWEET HOMES DEVELOPMENT**, a California limited liability company ("Developer"), the real property hereinafter referred to as the "Third Party Parcel", described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

**1. Agency Reservation.** Agency excepts and reserves from the conveyance herein described all interest of Agency in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through and to use and occupy all parts of the Third Party Parcel lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Third Party Parcel or other lands, but without, however, any right to use either the surface of the Third Party Parcel or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Third Party Parcel in such a manner as to create a disturbance to the use or enjoyment of the Third Party Parcel.

**2. Subject to DDA.** The Third Party Parcel is conveyed in accordance with and subject to the Disposition and Development Agreement entered into between Agency and Developer dated \_\_\_\_\_, 2011 (the "DDA"), a copy of which is on file with Agency at its offices located at 11222 Acacia Parkway, Garden Grove, California 92842 as a public record and which is incorporated herein by reference. The DDA generally requires Developer to construct the Project on the Site and other requirements as set forth therein. All terms used herein shall have the same meaning as those used in the DDA. The terms of the DDA shall survive the Closing.

**3. Nondiscrimination.** Developer herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall Developer 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 conveyed. The foregoing covenants shall run with the land and remain in effect in perpetuity.

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

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

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

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

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

The foregoing covenants regarding discrimination shall run with the land and shall remain in effect in perpetuity.

**4. Revesting of Title.** Agency has the right, at its election, to reenter and take possession of the Third Party Parcel, with all improvements thereon, and terminate and revest in Agency the estate conveyed to Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, Developer (or its successors in interest) shall:

(a) fail to start the construction of the Project as required by the DDA for a period of ninety (90) days after written notice thereof from Agency; or

(b) abandon or substantially suspend construction of the Project required by the DDA for a period of ninety (90) days after written notice thereof from Agency; or

(c) contrary to the provisions of Section 603 of the DDA transfer or suffer any involuntary transfer of the Third Party Parcel or any part thereof in violation of the DDA.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by the DDA; or

2. Any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

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

i. First, to reimburse Agency, all costs and expenses incurred by Agency, excluding Agency staff costs, but specifically, including, but not limited to, any expenditures by Agency in connection with the recapture, management and resale of the Third Party Parcel or part thereof (but less any income derived by Agency from the Third Party Parcel or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Third Party Parcel or part thereof which Developer has not paid (or, in the event that Third Party Parcel is exempt from taxation or assessment of such charges during the period of ownership thereof by Agency, an amount, if paid, equal to such taxes, assessments or charges as would have been payable if the Third Party Parcel were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Third Party Parcel or part thereof at the time of revesting of title thereto in Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Third Party Parcel, or part thereof; and any amounts otherwise owing Agency, and in the event additional proceeds are thereafter available, then

ii. Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Third Party Parcel and for the improvements existing on the Third Party Parcel at the time of the reentry and possession, less

(b) any gains or income withdrawn or made by Developer from the Third Party Parcel or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Agency as its property. The rights established in this Section 4 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Agency will have conveyed the Third Party Parcel to Developer for redevelopment purposes, particularly for development and operating of the Project, and not for speculation in undeveloped land.

**5. Rights of Lienholders.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by Section 4 of this Grant Deed; provided, however, that any subsequent owner of the Third Party Parcel shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

**6. Termination of Covenants.** All covenants contained in this Grant Deed shall be covenants running with the land. All of Developer's obligations hereunder shall terminate and shall become null and void \_\_\_\_\_. Every covenant contained in this Grant Deed against discrimination contained in paragraph 3 of this Grant Deed shall remain in effect in perpetuity.

**7. Covenants to Benefit Agency.** All covenants without regard to technical classification or designation shall be binding for the benefit of Agency, and such covenants shall run in favor of Agency for the entire period during which such covenants shall be in force and effect, without regard to whether Agency is or remains an owner of any land or interest therein to which such covenants relate. Agency, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

**8. Amendments.** Both Agency, its successors and assigns, and Developer and the successors and assigns of Developer in and to all or any part of the fee title to the Third Party Parcel shall have the right with the mutual consent of Agency to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Third Party Parcel. However, Developer and Agency are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed. The covenants contained in this Grant Deed, without regard to technical classification, shall not benefit or be enforceable by any owner of any other real property within or outside the Facility Area, or any person or entity having any interest in any other such realty. Any amendment to the Redevelopment Plan which proposes to change the uses or development permitted on the Third Party Parcel, or otherwise proposes a change of any of the restrictions or controls that apply to the Third Party Parcel, shall require the written consent of the first mortgagee and Developer or the successors and assigns of Developer in and to all or any part of the fee title to the Third Party Parcel, but any such amendment which proposes a change affecting the Third Party Parcel shall not require the consent of any tenant, lessee, easement holder, licensee, mortgagee (other than the first mortgagee), trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Third Party Parcel.

**IN WITNESS WHEREOF**, the parties hereto have executed this Grant Deed on the respective dates set forth below.

**AGENCY:**

**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic

\_\_\_\_\_  
Director

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stradling, Yocca, Carlson & Rauth,  
Agency Special Counsel

**DEVELOPER:**

**SWEET HOMES DEVELOPMENT**,  
a California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A" TO ATTACHMENT NO. 3**

**LEGAL DESCRIPTION OF SITE**

ASSESSOR'S PARCEL NUMBER 231-392-25

THE WEST 57 FEET OF THE SOUTH 150 FEET OF THE EAST 104.94 FEET OF THE WEST 421.42 FEET OF THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA.

Exhibit A to Attachment No. 3



STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited  
                         ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- ☐ Partner(s)      ☐ Limited  
                                 ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

## ATTACHMENT NO. 4

### SCOPE OF DEVELOPMENT

Unless otherwise specified herein, all capitalized terms in this Scope of Development shall have the meaning(s) set forth for the same Disposition and Development Agreement to which this Scope of Development is attached (DDA).

#### I. PROJECT DESCRIPTION

Subject to final Land Use Approvals, including compliance with the California Environmental Quality Act, the Project will consist of fifty-eight (58) residential condos and approximately twenty (20) commercial condos with, two-level subterranean parking garage, as well as surface parking spaces, as generally shown on the Site Plan attached hereto as Exhibit A and incorporated herein by reference.

#### II. ARCHITECTURE AND DESIGN

##### A. BUILDING DESIGN

The design and architecture of the Developer Improvements shall follow the City's General Plan, the Redevelopment Plan, and the Harbor Corridor Specific Plan, as applicable. Particular attention shall be paid to massing, scale, color and materials. The architecture is expected to create a distinct and unique identity with a cohesive, integrated architectural style that complements the existing developments.

##### B. BUILDING SERVICE, PROJECT TRAFFIC AND MANAGEMENT

The Declaration shall include the following:

A service plan that includes general times for trash collection and the agreed upon routing for such service-vehicles. This plan shall also include routing and stopping for patron drop-off and small service-vehicles including mail, overnight delivery and messengers.

A traffic plan that includes the ingress and egress for the project.

A maintenance and management plan that includes cleaning and refuse policing, degreasing and deodorizing (particularly for the service, trash and garbage areas), graffiti management and security.

The Common Area portion of the Project, and maintenance thereof shall be consistent with Section 301.1 of the DDA.

##### C. ON-SITE SECURITY

The Project shall provide security that meet the following minimum standards:

1. The developer shall consider the installation of a closed circuit video surveillance system throughout the Project property including the perimeter. As a security measure, the Project shall provide repeaters so Police radio will function in all subterranean areas.

### III. DEVELOPER OBLIGATION

#### A. CONSTRUCTION OF PROJECT

Developer shall construct or cause to be constructed the Improvements on the Site.

#### B. LANDSCAPING

All areas of the Site that are not used for buildings, sidewalks, driveways or other hardscape improvements shall be landscaped in accordance with a landscaping plan to be approved by the Agency. Landscaping shall consist of ground covers, trees, potted plants, fountains, pools, and other water features. A permanent water sprinkler system shall be provided in all landscaped areas as required for adequate maintenance.

#### C. REFUSE

Refuse areas shall be provided in accordance with the requirements of the Land Use Approvals.

#### D. SIGNS

The Project shall have a comprehensive graphics and sign program that shall govern the entire Project; all signs shall conform as to location, size, color and type, with the sign program to be approved by the Agency. Given the unique mixed-use nature of the Project, the sign program shall include guidelines for a wide range of signs and sign types and apply to all tenant signage.

#### E. UTILITIES

The Developer shall be responsible for utility installations for the Project and hookups to public utility lines. All utility service for the Project shall be installed underground or concealed within buildings and any mechanical, electrical, fire sprinkler or plumbing equipment that may be at ground level shall be aesthetically screened except where not permitted by the Garden Grove Municipal Code.

#### F. EXISTING BUILDING USE

The Developer shall be permitted to use the structure/building and property on the Third Party Parcel for a construction office and construction staging for the construction of the Project (and not for leasing or any other use) provided that within ten (10) days after the Closing (i) all signage be removed from the Third Party Parcel, (ii) the building on the Third Party Parcel is painted a neutral color that is approved by the City of Garden Grove's Planning Department, and (iii) a screen gated fence is installed on the perimeter of the Third Party Parcel which shall be locked at all times except during normal construction hours.

## SITE PLAN



## ATTACHMENT NO. 5

### SCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE
<b>1. Consideration of Agreement by the Agency.</b> The Agency shall consider this Agreement and, if approved, shall deliver one (1) fully executed copy thereof to the Developer.	Within ninety (90) days after Developer's delivery to the Agency of three (3) executed copies of this Agreement
<b>2. Developer's Advance.</b>	Developer shall pay the <b>Initial Advance</b> of \$125,000 on or before the date this Agreement is approved by the Agency.  Developer shall pay <b>Second Advance</b> together with the Request for Acquisition no later than one hundred twenty (120) days after City Council consideration and approval of the Land Use Approvals.
<b>3. Land Use Approvals.</b> Consideration by City Council.	Within one hundred eighty (180) days after approval of this Agreement
<b>3.1 Basic Concept Drawings.</b> Developer shall submit Basic Concept Drawings to the Agency.	Within thirty (30) days after Agency approval of evidence of financing.
<b>3.2 Precise Plan Drawings.</b> Developer shall submit to the Agency Director and the City the Precise Plan Drawings.	Within thirty (30) days after Agency approval of the Basic Concept Drawings.
<b>3.3 Submittal of Construction Drawings and Related Documents.</b> Developer submits the Construction Drawings to the Agency Director and the City.	Within thirty (30) days after approval by the Agency of the Precise Plan Drawings.
<b>3.4 Completion of Initial Plan Check.</b> City to complete first plan check of the Construction Drawings.	Within forty-five (45) days after receipt of Developer's complete submittal.
<b>3.5 Re-submittal of Plan Check Corrections.</b> Developer completes plan check corrections and resubmits final Construction Drawings to City.	Within thirty (30) days after receipt of City's initial and any future plan check corrections.

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE
<b>4. Approval of Condition of Title.</b>	
<b>4.1 Agency Obtains Preliminary Title Report.</b> Agency causes Title Company to deliver the Report and Exceptions. (Section 203)	Within thirty (30) days after Planning Commission consideration and approval of the Land Use Approvals.
<b>4.2 Developer Approves or Disapproves Exceptions.</b> Developer delivers written notice to Agency approving or disapproving the Exceptions in the Report. (Section 203)	Within thirty (30) days of the date of receipt of the Title Report.
<b>5. Evidence of Financing.</b>	
<b>5.1 Submittal of Evidence of Financing.</b> Developer submits its evidence of financing to Agency Director for approval. (Section 309.1)	Within eleven (11) months after Closing.
<b>5.2 Agency Approval or Disapproval of Evidence of Financing.</b> Agency Director approves or disapproves Developer's evidence of financing. (Section 310.1)	Within fifteen (15) days after receipt of completed submittal (pursuant to Item 4.1), and within fifteen (15) days after each subsequent submittal of evidence of financing if the first submittal is not approved by the Agency.
<b>6. Escrow.</b>	
<b>6.1 Request for Acquisition.</b> Written notice to Agency requesting the Agency begin acquisition process.	Within one hundred twenty (120) days after Land Use Approvals.
<b>6.2 Opening of Escrow.</b> Agency and Developer open Escrow for Conveyance of the Site. (Section 202)	Within ten (10) days after the date of Request for Acquisition.
<b>6.3 Acquisition of Site.</b> The scheduling of a hearing to consider whether the Agency will acquire site using eminent domain. (Section 201.2)	Within ninety (90) days following the date on which Developer provides Agency with a Request for Acquisition.
<b>6.4 Order of Prejudgment Possession.</b> If the Agency exercises its discretion and adopts a resolution of necessity, Agency attempts to obtain orders of prejudgment possession.	Within one hundred twenty (120) days following the date on which Agency approves a Resolution of Necessity.

**ITEM OF PERFORMANCE**  
**6.5 Existing Building / Site Clean-Up.**

**TIME FOR PERFORMANCE**

Developer will commence clean up as described in the Scope of Development within ten (10) days after Closing. Clean up to be complete within forty-five (45) days after Closing.

**7. Construction of Improvements.**

**7.1 Commencement of Construction.** Developer commences construction of on and offsite improvements.

Construction of improvements to be commenced within twelve (12) months after Closing.

**7.2 Completion of Construction.** Developer completes construction of all on and offsite improvements required by the Agreement and the conditions of approval.

Within eighteen (18) months after commencement of construction. In the event of delays beyond Developer's control not rising to the level of force majeure, the Agency shall, in its reasonable discretion, grant such extensions of the time for completion of construction as are appropriate given the circumstances of such delay.

**7.3 Certificate of Completion.** Agency furnishes Developer with Certificate of Completion for the Site.

Upon written request by developer when all construction and development required by the Agreement has been completed.

**7.4 Conveyance; Close of Escrow.** Agency conveys Site to Developer, Grant Deed is recorded if property owner accepts Agency's offer.

Within ten (10) days of the parties' satisfaction of all conditions precedent to Closing as set forth in Section 205.

**NOTES:**

1. Deadlines set forth in this Schedule of Performance as subject to the enforced delay provisions of Section 602 of the Agreement.
2. The City is not a party to the Agreement and is not bound by any of the time requirements set forth in the Schedule of Performance; however in the event the City or Agency does not perform any of its review and/or approval/disapproval actions set forth in this Schedule of Performance within the time periods set forth herein, the Outside Closing Date shall be extended by one day for each additional day required by the City or Agency to perform such action beyond the deadlines set forth herein.
3. The Agency Director has authority under Sections 602 and 606 of the Agreement to approve extensions of time on behalf of the Agency.



## ATTACHMENT NO. 6

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

)  
)  
)  
)  
)  
)  
)

(Space above for Recorder's Use.)

## RELEASE OF CONSTRUCTION COVENANTS

THIS RELEASE OF CONSTRUCTION COVENANTS (the "Certificate") is made as of \_\_\_\_\_, 200\_, by the GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic (the "Agency"), in favor of SWEET HOMES DEVELOPMENT, a California limited liability company (the "Developer"), as of the date set forth below.

## RECITALS

A. The Agency and the Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated \_\_\_\_\_, 2011, concerning the redevelopment of certain real property situated in the City of Garden Grove, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

B. As referenced in Section 310 of the DDA, the Agency is required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the Project (as defined in Section 100 of the DDA), which Certificate is required to be in such form as to permit it to be recorded in the Recorder's office of Orange County. This Certificate is conclusive determination of satisfactory completion of the construction and development of the Project required by the DDA.

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

**NOW THEREFORE:**

1. As provided in the DDA, the Agency does hereby certify that the construction of the Project has been satisfactorily performed and completed, and that such development and construction work complies with the DDA.

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

IN WITNESS WHEREOF, the Agency has executed this Certificate as of the date set forth above.

**AGENCY:**

**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**, a public body, corporate and politic

\_\_\_\_\_  
Director

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stradling, Yocca, Carlson & Rauth,  
Agency Special Counsel

**DEVELOPER:**

**SWEET HOMES DEVELOPMENT**,  
a California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT "A" TO ATTACHMENT NO. 6

LEGAL DESCRIPTION OF SITE

DEVELOPER PARCEL

PARCEL 1:

THE EAST 104.04 FEET OF THE WEST 421.42 FEET OF THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP FOUR SOUTH; RANGE TEN WEST, SAN BERNARDINO BASE & MERIDIAN, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 2, PAGES 332 AND 333 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPT THEREFROM THAT PORTION DESCRIBED IN DEED TO TROY E. ELDER AND DOROTHY J. ELDER RECORDED JULY 18, 1955 RECORDED IN BOOK 3142 PAGE 474 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL 2:

THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP FOUR SOUTH, RANGE TEN WEST, SAN BERNARDINO BASE & MERIDIAN, AS SHOWN ON A MAP RECORDED IN BOOK 2, PAGES 332 AND 333 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE WEST 421.42 FEET.

ALSO EXCEPTING THEREFROM AN UNDIVIDED ONE-TENTH INTEREST IN AND TO THE WELL AND PUMPING PLANT LOCATED ON SAID LAND, AS EXCEPTED IN DEED FROM HARRY K. HOLLOWAY AND BURTIS W. HOLLOWAY, HUSBAND AND WIFE, RECORDED NOVEMBER 26, 1952 IN BOOK 2416, PAGE 193 OF OFFICIAL RECORDS.

THIRD PARTY PARCEL

THE WEST 57 FEET OF THE SOUTH 150 FEET OF THE EAST 104.94 FEET OF THE WEST 421.42 FEET OF THE SOUTH 5 ACRES OF THE WEST 10 ACRES OF THE SOUTH 25 ACRES OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, BEING A PORTION OF LOT 40 IN TOWNSHIP 4 SOUTH, RANGE 10 WEST, IN THE RANCHO LAS BOLSAS, IN THE CITY OF GARDEN GROVE, COUNTY OF ORANGE, STATE OF CALIFORNIA.

STATE OF CALIFORNIA

)

) ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited  
                                 ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited  
                                 ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

STATE OF CALIFORNIA

)  
) ss.  
)

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

#### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s)      ☐ Limited  
                         ☐ General  
☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

**GARDEN GROVE REDEVELOPMENT PROJECT**

**GARDEN GROVE, CALIFORNIA**

**SUMMARY REPORT PERTAINING TO THE PROPOSED SALE  
OF CERTAIN PROPERTY WITHIN THE  
GARDEN GROVE COMMUNITY  
PROJECT AREA**

**California Community Redevelopment Law  
Section 33433**

**PURSUANT TO PROPOSED DISPOSITION AND  
DEVELOPMENT AGREEMENT  
BETWEEN  
GARDEN GROVE AGENCY FOR  
COMMUNITY DEVELOPMENT  
AND  
SWEET HOMES DEVELOPMENT, LLC**

**Garden Grove Agency for Community Development  
Garden Grove, California**

**June 2011**

## TABLE OF CONTENTS

	<u>Page</u>
I. Introduction .....	1
II. Costs of the DDA to the Agency .....	4
III. Estimated Value of the Interest to be Conveyed at the Highest and Best Use Permitted Under the Redevelopment Plan .....	5
IV. Estimated Value of the Interest to be Conveyed at the Use and with the Conditions, Covenants, and Development Costs Required by the Sale of the Third Party Parcel .....	6
V. Compensation which Purchaser will be Required to Pay .....	8
VI. Explanation of the Difference, if any, between the Compensation to be Paid to the Agency by the Proposed Transaction and the Fair Market Value of the Interest to be Conveyed at the Highest and Best Use Consistent with the Redevelopment Plan .....	9
VII. Explanation of why the Sale of the Third Party Parcel will Assist with the Elimination of Blight .....	10
VIII. Limiting Conditions .....	11



## **I. INTRODUCTION**

### **A. Purpose of Report**

This Summary Report was prepared in accordance with Section 33433 of the California Community Redevelopment Law in order to inform the Garden Grove Agency for Community Development (Agency) and the public about the proposed transaction between the Agency and Sweet Homes Development, LLC (Developer). The Report describes and specifies:

1. The costs to be incurred by the Agency under the Disposition and Development Agreement (DDA);
2. Estimated value of the interest to be conveyed at the highest and best use permitted under the Redevelopment Plan;
3. The estimated value of the interest to be conveyed at the proposed use and with the conditions, covenants, and development costs required by the sale of the Third Party Parcel;
4. The compensation to be paid to the Agency pursuant to the proposed transaction;
5. An explanation of the difference, if any, between the compensation to be paid to the Agency under the proposed transaction, and the fair market value at the highest and best use consistent with the Redevelopment Plan; and
6. An explanation of why the sale of the Third Party Parcel will assist with the elimination of blight.

### **B. Summary of Findings**

The Agency engaged its economic consultant, Keyser Marston Associates, Inc. (KMA), to analyze the proposed financial terms. KMA reviewed the DDA between the Agency and the Developer as of June 3, 2011. The KMA conclusions are summarized as follows:

- The estimated costs of the DDA to the Agency total \$50,000.
- The estimated fair market value of the interest to be conveyed at its highest and best use is \$525,000.

- The estimated fair re-use value of the interest to be conveyed is *negative* \$910,000.
- The estimated value of the compensation to be received by the Agency is \$525,000.

### **C. Description of Area and Proposed Project**

#### Community Overview

The Developer intends to develop a mixed-use project consisting of 53 residential condominiums, 26 commercial condominiums, and a five (5) level above-grade parking structure with one (1) partial below-grade level (Project). The Project will be constructed on an approximately 1.77-acre site (Site) on the north side of Garden Grove Boulevard, east of West Street in the City of Garden Grove. The Site is comprised of the following properties:

Properties	Site Size
Third Party Parcel	0.13 Acres
Developer Parcel	1.64 Acres
Total	1.77 Acres

The Third Party Parcel is rectangular in shape and currently improved with one (1) retail building originally constructed in 1955 and renovated periodically. The Third Party Parcel is currently privately owned. The Agency intends to acquire the Third Party Parcel and convey it to the Developer.

#### Proposed Development

Table 1 describes the physical characteristics of the proposed development. The Project will consist of two seven-story buildings containing a total of 79 residential and commercial condominiums. The residential units will be comprised of 33 three bedroom units and 20 four bedroom units with an overall average of size of 1,947 SF. The 26 commercial condominiums will average 1,100 SF. There will be 315 parking spaces provided in a five-level above-grade parking structure, of which 24 spaces will be located on a partial subterranean level.

### **C. Proposed Transaction Terms**

This section summarizes the salient aspects contained in the Disposition and Development Agreement (DDA) between the Agency and Developer.

- The Agency will attempt to purchase the Third Party Parcel for \$525,000. If the Agency is unsuccessful in negotiating a purchase price of \$525,000, the Agency will conduct hearings to determine if the use of eminent domain will be used to acquire the Third Party Parcel.
- The Agency will convey the Third Party Parcel to the Developer for \$525,000 (Purchase Price).
- The Developer will accept the Third Party Parcel in an "as is" condition.
- The Developer will acquire the necessary land use approvals for construction and operation of the Project.
- The Developer will construct 53 market-rate residential condominiums and 26 commercial condominiums on the Site.

## II. COSTS OF THE DDA TO THE AGENCY

The estimated net costs of the DDA to the Agency total \$50,000 and include the following items:

Agency Costs (1)	Amount
Acquisition Costs – Third Party Parcel	\$525,000
Other Agency Third Party Soft Costs (2)	\$50,000
<b>Total Agency Costs</b>	<b>\$575,000</b>
(Less) Developer Purchase Price	(\$525,000)
<b>Net Agency Costs</b>	<b>\$50,000</b>

(1) Per Agency.

(2) Reflects costs such as relocation, legal and economic consultants, and appraisals.

### **III. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE HIGHEST AND BEST USE PERMITTED UNDER THE REDEVELOPMENT PLAN**

This section presents an analysis of the fair market value of the Third Party Parcel at its highest and best use.

In appraisal terminology, the highest and best use is that use of the Third Party Parcel that generates the highest property value and is physically possible, financially feasible, and legally permitted. Therefore, value at highest and best use is based solely on the value created and not on whether or not that use carries out the redevelopment goals and policies for the City of Garden Grove. By definition, the highest and best use is that use which is physically possible, financially feasible, and legally permitted. The Third Party Parcel is located within the Transition Zone West land use district of the Harbor Corridor Specific Plan. The base underlying zone classifications include R-3 (multi-family residential) and C-1 (limited commercial). The primary permitted use is residential; commercial development is a secondary permitted use.

KMA undertook a review of available appraisals and comparable land sales in order to determine the fair market value of the Third Party Parcel. KMA first reviewed the appraisal undertaken for the Agency by Kurt J. Goepfner, ASA, CCIM (Goepfner) with a date of value of April 5, 2011. The appraisal states that the Third Party Parcel's optimal utility is in its current condition, as a commercial development. Goepfner relied on the comparable sales approach to value, with a conclusion of value for the Third Party Parcel of \$525,000, or \$214 per SF of gross building area (GBA).

In addition, KMA undertook its own review of selected sales of commercial buildings in the City of Garden Grove. Table 2 summarizes the KMA review of freestanding commercial building sales. The KMA survey focused on sales of buildings for the time period from January 2008 to the present. As shown in the table, sales prices ranged from \$157 to \$393 per SF GBA. The average and median sales prices were \$299 and \$306 per SF GBA, respectively. The appraised value determined by Goepfner falls below the average sales prices of the comparables. In general, KMA finds the comparable sales to be superior to the Third Party Parcel in terms of location, age of building, and timing of sale. On this basis, then, KMA concurs with the Goepfner appraisal finding of value for the Third Party Parcel.

KMA concludes that the fair market value of the Third Party Parcel at its highest and best use is \$525,000.

#### **IV. ESTIMATED VALUE OF THE INTEREST TO BE CONVEYED AT THE USE AND WITH THE CONDITIONS, COVENANTS, AND DEVELOPMENT COSTS REQUIRED BY THE SALE OF THE THIRD PARTY PARCEL**

Re-use value is defined as the highest price in terms of cash or its equivalent, which a property or development right is expected to bring for a specified use in a competitive open market, subject to the conditions, covenants, and development costs imposed by the DDA.

KMA analyzed the financial pro forma submitted by the Developer for the Project and modified pro forma inputs and assumptions based on our experience with comparable projects in Southern California.

Tables 3 to 5 present KMA's residual value analysis for the Project.

##### *Estimated Development Costs*

Table 3 summarizes the estimate of development costs for the Project. The Developer provided cost estimates for the construction of the Project. KMA reviewed these estimates in light of KMA's experience with comparable projects in Southern California. KMA has determined the cost estimates, as described below, to be reflective of today's marketplace. Total development costs, excluding acquisition are estimated to be \$40,279,000, or \$276 per SF of gross building area (GBA). These include the following:

- Direct construction costs, such as site preparation, parking structure, shell construction, tenant improvements, and contingency, are estimated to be \$30,099,000, or \$206 per SF GBA.
- Indirect costs, such as architecture and engineering, permits and fees, legal and accounting, taxes and insurance, developer fee, marketing and sales, and contingency, are projected to be \$7,366,000, or 24.5% of direct costs.
- Financing costs, consisting of loan fees, interest during construction, interest during sales, and homeowner association dues on unsold units, are estimated to be \$2,814,000 or 9.3% of direct costs.

##### *Gross Sales Proceeds*

Table 4 presents an estimate of the gross sales proceeds for the residential and commercial condominiums.

- Residential Condominiums: Sales proceeds for the residential units are projected to total \$26,193,000, with an average unit price of \$494,000.
- Commercial Condominiums: Sales proceeds for the commercial condominiums are projected to total \$6,708,000.

Total gross sales proceeds are shown below:

Total Gross Sales Proceeds	Amount
Residential Sales Proceeds	\$26,193,000
Commercial Sales Proceeds	\$6,708,000
<b>Total Gross Sales Proceeds</b>	<b>\$32,901,000</b>

#### Residual Land Value

The KMA methodology for the estimated residual land value is presented in Table 5. As shown, the estimated maximum warranted investment that could be supported by the Project is \$27,966,000. This figure represents the estimated gross sales proceeds from the condominiums, less a cost of sale of 3.0% of value and an allowance for developer profit of 12.0% of value.

The residual land value can be estimated as the difference between warranted investment (\$27,966,000) and total development costs (\$40,279,000). This difference is projected to yield a residual land value of *negative* \$12,313,000, or *negative* \$160 per SF land. Therefore, the Site, if offered on the open market, could yield a land value of *negative* \$160 per SF. The allocated portion for the 0.13-acre Third Party Parcel translates to a land value of *negative* \$910,000.

On this basis, then, KMA concludes that the fair re-use value of the Third Party Parcel is *negative* \$910,000.

## **V. THE COMPENSATION WHICH THE DEVELOPER WILL BE REQUIRED TO PAY**

The estimated value of the compensation to be received by the Agency for the Third Party Parcel is \$525,000.



**VI. EXPLANATION OF THE DIFFERENCE, IF ANY, BETWEEN THE  
COMPENSATION TO BE PAID TO THE AGENCY BY THE PROPOSED  
TRANSACTION AND THE FAIR MARKET VALUE OF THE INTEREST TO BE  
CONVEYED AT THE HIGHEST AND BEST USE CONSISTENT WITH THE  
REDEVELOPMENT PLAN**

The fair market value of the interest to be conveyed at its highest and best use is estimated by KMA to be \$525,000.

The value of the compensation to be received by the Agency is \$525,000.

The compensation to be paid to the Agency is equal to the fair market value of the interest to be conveyed at its highest and best use.

## **VII. EXPLANATION OF WHY THE SALE OF THE THIRD PARTY PARCEL WILL ASSIST WITH THE ELIMINATION OF BLIGHT**

The Redevelopment Plan (Plan) for the Garden Grove Community Project Area governs the Site. In accordance with Section 33490 of the California Community Redevelopment Law, the Plan contains the goals and objectives and the projects and expenditures proposed to eliminate blight within the Project Area. These blighting factors include:

- Buildings with deterioration, obsolescence, mixed character, and shifting uses.
- Subdivision and sale of lots of irregular form and shape for proper usefulness and development.
- Laying out lots in disregard of physical characteristics of the ground and surrounding conditions.

Implementation of the DDA can be expected to assist in the alleviation of blighting conditions through the following:

- Eliminate blighting influences including deteriorating buildings, uneconomic land uses, obsolete structures, and other environmental, economic and social deficiencies.
- Encourage private sector investment in development in the Project Area.
- Provide housing to satisfy the needs and desires of various age, income and ethnic groups of the community, maximizing the opportunity for individual choice.

## VIII. LIMITING CONDITIONS

1. There are no known soil or subsoil problems, including toxic or hazardous conditions on the Site that need to be remediated in order to develop the Site.
2. The ultimate development will not vary significantly from that assumed in this Report.
3. The title of the property is good and marketable; no title search has been made, nor have we attempted to determine the ownership of the property. The value estimates are given without regard to any questions of title, boundaries, encumbrances, liens or encroachments. It is assumed that all assessments, if any are paid.
4. The Site will be in conformance with the applicable zoning and building ordinances.
5. Information provided by such local sources as governmental agencies, financial institutions, realtors, buyers, sellers, and others was considered in light of its source, and checked by secondary means.
6. If an unforeseen change occurs in the economy, the conclusions herein may no longer be valid.
7. The Project will adhere to the schedule of performance described in the DDA.
8. Both parties are well informed and well advised and each is acting prudently in what he/she considers his/her own best interest.

attachments

TABLE 1

**PROJECT DESCRIPTION**  
**LILI GARDEN PLAZA**  
**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

---

<b>I. Location</b>	12077 Garden Grove Boulevard	
<b>II. Site Area</b>		
Developer Parcel	1.64 Acres	
Third Party Parcel	<u>0.13</u> Acres	
Total Site Area	1.77 Acres	
<b>III. Gross Building Area (GBA)</b>		
<b>A. Residential</b>		
Net Residential Area	103,176 SF	89%
Manager's Suite + Rec. Room	3,780 SF	3%
Common Areas/Circulation	<u>9,463</u> SF	<u>8%</u>
Total Residential GBA	116,419	100%
<b>B. Commercial</b>		
Net Commercial Area	28,585 SF	97%
Common Areas/Circulation	<u>941</u> SF	<u>3%</u>
Total Commercial GBA	29,526 SF	100%
<b>C. Total Gross Building Area</b>	145,945 SF	
<b>IV. Unit Mix</b>		
	<u>Number of Units</u>	<u>Average Unit Size</u>
Three Bedroom	33 Units	1,890 SF
Four Bedroom	<u>20</u> Units	<u>2,040</u> SF
Total/Average	53 Units	1,947 SF
<b>V. Number of Stories</b>	7 Stories	
<b>VI. Construction Type</b>	Type One B	
<b>VII. Residential Density</b>	30 Units/Acre	
<b>VIII. Parking</b>	5-Level Above-Grade Parking Garage (1 partial level below-grade)	
Parking Spaces	315 Spaces	
Parking Area	119,000 SF	378 SF/Space
Residential Parking Spaces	159 Spaces	3.0 Spaces/Unit
Commercial Parking Spaces	<u>156</u> Spaces	5.3 Spaces/1,000 SF Commercial
Total Parking Spaces	315 Spaces	

TABLE 2

**RETAIL BUILDINGS SALES COMPARABLES IN GARDEN GROVE, JANUARY 2008 TO PRESENT  
LILI GARDEN PLAZA  
GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

<u>Sale Date</u>	<u>Address</u>	<u>Sale Price</u>	<u>Acres</u>	<u>Building Area</u>		<u>Year Built</u>	<u>Property Description</u>
				<u>SF</u>	<u>\$/SF</u>		
04/09/10	12692 Brookhurst Street	\$570,000	0.24	1,772	\$322	1954	Freestanding retail
08/20/09	12341 Harbor Blvd.	\$500,000	0.29	1,272	\$393	1977	Freestanding retail
11/11/08	12692 Garden Grove Blvd.	\$1,100,000	1.10	3,797	\$290	1951	Freestanding retail
09/17/08	10782 Garden Grove Blvd.	\$650,000	0.11	1,683	\$386	1907	Freestanding retail
07/01/08	12781 Josephine St.	\$1,125,000	0.19	4,542	\$248	1996	Freestanding retail
06/26/08	10681 Garden Grove Blvd.	\$850,000	0.26	5,415	\$157	1920	Freestanding retail
<hr/>							
	Minimum	\$500,000	0.11	1,272	\$157	1907	
	Maximum	\$1,125,000	1.10	5,415	\$393	1996	
	Median	\$750,000	0.25	2,785	\$306	1953	
	Average	\$799,167	0.36	3,080	\$299	1951	

TABLE 3

**ESTIMATED DEVELOPMENT COSTS**  
**LILI GARDEN PLAZA**  
**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

	<u>Totals</u>	<u>Per Unit</u> (2)	<u>Comments</u>
<b>I. Direct Costs</b>			
Off-Site Costs (1)	\$0	\$0	\$0 Per SF Site
Demolition/Site Preparation	\$925,000	\$11,709	\$12 Per SF Site
Parking	\$6,300,000	\$79,747	\$20,000 Per Space
Shell Construction - Residential	\$17,463,000	\$221,051	\$150 Per SF GBA - Residential
Shell Construction - Commercial	\$3,248,000	\$41,114	\$110 Per SF GBA - Commercial
Tenant Improvements	\$572,000	\$7,241	\$20 Per SF - Commercial
FF&E/Amenities	\$158,000	\$2,000	Allowance
Contingency	<u>\$1,433,000</u>	<u>\$18,139</u>	5.0% of Directs
Total Direct Costs	\$30,099,000	\$381,000	\$206 Per SF GBA
<b>II. Indirect Costs</b>			
Architecture/Engineering	\$1,505,000	\$19,051	5.0% of Directs
Permits & Fees (1)	\$2,189,000	\$27,709	\$15 Per SF GBA
Legal & Accounting	\$301,000	\$3,810	1.0% of Directs
Taxes & Insurance	\$987,000	\$12,494	3.0% of Value
Developer Fee	\$903,000	\$11,430	3.0% of Directs
Marketing/Sales - Residential	\$987,000	\$12,494	3.0% of Value
Marketing/Sales - Commercial	\$143,000	\$1,810	\$5 Per SF - Commercial
Contingency	<u>\$351,000</u>	<u>\$4,443</u>	5.0% of Indirects
Total Indirect Costs	\$7,366,000	\$93,241	24.5% of Directs
<b>III. Financing Costs</b>			
Loan Fees	\$604,000	\$7,646	2.0% of Directs
Interest During Construction	\$1,903,000	\$24,089	6.3% of Directs
Interest During Sales	\$282,000	\$3,570	0.9% of Directs
HOA Dues on Unsold Units	<u>\$25,000</u>	<u>\$316</u>	0.1% of Directs
Total Financing Costs	\$2,814,000	\$35,620	9.3% of Directs
<b>IV. Total Costs Excluding Land</b>	<b>\$40,279,000</b>	<b>\$509,861</b>	<b>\$276 Per SF GBA</b>

(1) Estimate; not verified by KMA or City.

(2) Reflects residential units (53) and commercial units (26) for a total of 79 units.

TABLE 4

**GROSS SALES PROCEEDS**  
**LILI GARDEN PLAZA**  
**GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

---

	<u>Unit Size</u>	<u># of Units</u>	<u>\$/SF</u>	<u>Purchase Price</u>	<u>Total Sales</u>
<b><u>I. Residential Sales Proceeds</u></b>					
Three Bedroom Units	1,890 SF	33	\$250	\$472,500	\$15,593,000
Four Bedroom Units	<u>2,040 SF</u>	<u>20</u>	<u>\$260</u>	<u>\$530,000</u>	<u>\$10,600,000</u>
Total/Average	1,947 SF	53	\$254	\$494,200	\$26,193,000
<b><u>II. Commercial Sales Proceeds</u></b>					
Commercial Condominiums	1,099 SF	26	\$235	\$258,000	\$6,708,000
<b>III. Total Gross Sales Proceeds</b>					<b>\$32,901,000</b>

TABLE 5

**RESIDUAL LAND VALUE  
LILI GARDEN PLAZA  
GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT**

---

**I. Gross Sales Proceeds**

Residential Sales Proceeds		\$26,193,000
Commercial Sales Proceeds		<u>\$6,708,000</u>
Total Gross Sales Proceeds		\$32,901,000
(Less) Cost of Sale	3.0% of Value	(\$987,000)
(Less) Developer Profit	12.0% of Value	<u>(\$3,948,000)</u>
Net Sales Proceeds		\$27,966,000

**II. Warranted Investment**

Net Sales Proceeds	\$27,966,000
(Less) Development Costs - Excluding Land	<u>(\$40,279,000)</u>

<b>III. Residual Land Value</b>	<b>(\$12,313,000)</b>
Per Unit	<b>(\$156,000) <sup>(1)</sup></b>
Per SF Site	<b>(\$160)</b>

---

**IV. Residual Land Value of Third Party Parcel**

Residual Land Value	(\$160) /SF
Third Party Parcel	5,700 SF

<b>Residual Land Value - Third Party Parcel</b>	<b>(\$910,000)</b>
---	--------------------

(1) Reflects residential units (53) and commercial units (26) for a total of 79 units.