DISPOSITION AND DEVELOPMENT AGREEMENT  
(Click or tap here to enter text.)

by and between

The County of San Diego

“COUNTY”

and

Click or tap here to enter text.

“DEVELOPER”

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DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (“Agreement”) is entered into by and between the County of San Diego, a political subdivision of the State of California (“County”), and Click or tap here to enter text. a Click or tap here to enter text. (the “Developer”) as of (“Effective Date”). County and Developer agree as follows:

# PART 1. SUBJECT OF AGREEMENT

## SECTION 101 Purpose of the Agreement

The County is the owner of that certain real property located at Click or tap here to enter text. in Click or tap here to enter text., California, as described more specifically in Section 103 ("Property"). The purpose of this Agreement is to provide for the development and operation of the Property as set forth in the Scope of Development (Attachment No. 3), under a Ground Lease with the County, which development shall be constructed and operated as a rental housing project that is affordable to households of income levels specified in the County Regulatory Agreements ("Development"), substantially consistent with the proposal (“Developers Proposal”) (Attachment No. 11) submitted by the Developer in response to the Request for Proposals issued by the County with respect to development of the Property in accordance with California Government Code section \_\_\_\_\_\_., and as more specifically described in this Agreement. The Developer shall use good faith efforts to implement the Developer’s Local, Small, and Disadvantaged Business and Disabled Veteran Business Participation Plan, which was submitted to County as part of the Developers Proposal. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of San Diego and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

## SECTION 102 Definitions

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

“Acquisition and Development Costs” means the total cost of leasing the Property and developing and constructing the Improvements, as set forth in the Project Budget.

“Affiliate” means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, or any company for which such Person acts in any such capacity. The term “control” as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. It shall also be a presumption that the administrative general partner of a limited partnership controls the limited partnership.

“Affordable Units” means the approximately Click or tap here to enter text. residential apartment units to be constructed on the Property by Developer in accordance with this Agreement, the Ground Lease and the County Regulatory Agreement (excluding the Manager’s Units).

“Approvals” means any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Project on the Property.

“Certificate of Occupancy” is a Certificate of Occupancy as defined in the Uniform Building Code, published by the International Conference of Building Officials, as adopted by the County from time to time.

“Claims” means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys’ fees actually incurred).

“Closing” or “Close of Escrow” means the point in time when the Escrow Agent has filed all of the documents set forth in Section 203(j) with the County for recording in the Official Records in accordance with Section 205 and the County has delivered possession of the Property to Developer.

“Closing Date” means the date mutually agreed upon in writing between the Parties for the Close of Escrow, which shall be no later than Click or tap here to enter text. months following the Effective Date subject to the extensions as set forth in Section 202 below.

Click or tap here to enter text. “Construction Lender” means the maker of any Construction Loan or beneficiary of any Construction Loan Deed of Trust.

“Construction Loan” means, collectively, the Source of Financing in the form of one or more loans made to the Developer at the time of the Closing for construction of the Improvements, secured against the Leasehold by one or more Construction Loan Deeds of Trust.

“Construction Loan Deed of Trust” means the deeds of trust securing the Construction Loan.

“Contingencies” is defined in Section 203.

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of equity interests, by contract, through election of the members of the Board or Directors, or otherwise. It shall be a presumption that Control with respect to a corporation or limited liability company is the right to exercise or Control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the Controlled corporation or limited liability company, and that the administrative general partner of a limited partnership Controls the limited partnership.

“Conversion” means the date upon which the Construction Loan is repaid or converted to the Permanent Loan.

“Contractor” is defined in Section 203(e).

“County” means the County of San Diego, a political subdivision of the State of California and any assignee or successor to County’s rights, powers and responsibilities authorized under this Agreement.

“County Parties” is defined in Section 309(a).

“County Property” means real property described in Section 103 of this Agreement.

“County Regulatory Agreement” means the Memorandum of Restrictive Covenants and Regulatory Agreement to be recorded upon the occurrence of the Closing, substantially in the form attached to this Agreement as Attachment No. 6.

“Covenant Period” means the period commencing upon Closing, during which time the Affordable Units on the Property will be subject to the covenants, conditions, and restrictions in the County Regulatory Agreement which will be a minimum of Click or tap here to enter text. (Click or tap here to enter text.) years but may be longer if required by the funding source for the Project.

“CTCAC” The California Tax Credit Allocation Committee or successor in function.

“Demolition” means the demolition of and removal of the building and improvements existing on the Property as of the Effective Date, with the exception of the slab, which will be left in place.

“Developer” refers to Click or tap here to enter text. and any assignee or other successor to its rights, powers, and responsibilities of Developer authorized under this Agreement.

“Developer Official Action” The official action of the directors, managers, partners or other Persons in Control of Developer in substantially the form attached to this Agreement as Attachment No. 13 authorizing Developer to enter into and perform this Agreement.

“Developer’s Proposal” refers to the proposal submitted by Developer in response to the Request for Proposals issued by the County with respect to development of the Property, which proposal is attached to this Agreement as Attachment No. 11.

“Director” means the County’s Director, Department of General Services.

“Due Diligence Certificate” means that certificate to be executed by Developer pursuant to Section 201, substantially in the form attached to this Agreement as Attachment No. 9.

“Effective Date” means the date set forth in the introductory paragraph of this Agreement, which shall be a date after all of the following have occurred: (a) County has received this Agreement signed by the authorized representative(s) of Developer; (b) this Agreement has been approved by the County Board of Supervisors; (c) the County Board of Supervisors has adopted an ordinance approving this Agreement, and thirty days have passed since the adoption of that ordinance, (d) this Agreement has been signed by the authorized representative of County; and (e) this Agreement has been approved as to form and legality by County Counsel.

“Escrow Agent” means Click or tap here to enter text. or an escrow agent mutually acceptable to County and Developer.

“Exculpation Provisions” is defined in Section 309(b).

“Final Construction Drawings” is defined in Section 305.

“Force Majeure” is defined in Section 602.

“Four Percent Tax Credit(s)” or “4% Tax Credit(s)” shall mean the federal tax credit allocated to the Project by CTCAC. “Four Percent” refers to the applicable percentage of the qualified basis for a building that is not federally subsidized, as provided in Internal Revenue Code Section 42.

“Ground Lease” means the ground lease to be executed by County and Affiliates of Developer substantially in the form as attached to this Agreement as Attachment No. 7.

“Hazardous Materials” is defined in Section 210.1(b).

“Hazardous Materials Indemnity Obligations” is defined in Section 210.2(c).

“Hazardous Material Laws” is defined in Section 210.1(a).

“Health Care Facility” means\_ Click or tap here to enter text. square foot facility to be designated for health care purposes in accordance with the Scope of Development (Attachment No. 3), substantially similar to what was outlined in the Developers Proposal (Attachment No. 11).

“Improvements” means the improvements more particularly described in the Scope of Development (Attachment No. 3), including, more generally, the Affordable Units, the Health Care Facility, the Community Space, and the Parking.

“Initial Rent Payment” is Click or tap here to enter text. dollars ($Click or tap here to enter text.) or lesser amount as required by state HCD regulations.

“Investor Limited Partner Capital Contribution” means funds provided to Developer by the Tax Credit Equity Investor in consideration of the Low-Income Housing Tax Credits.

“Leasehold” means that leasehold estate in the Property created by the execution of the Ground Lease.

“Legal Description” means the legal description of the Property attached to this Agreement as Attachment No. 2.

“Low Income Housing Tax Credit(s)” shall mean the federal tax credit(s) (including both the Four Percent Tax Credits and the Nine Percent Tax Credits) authorized by the Tax Reform Act of 1986 and governed by Internal Revenue Code Section 42, to be allocated by CTCAC toward the Project and to be purchased by the Tax Credit Equity Investor.

“Manager Units” refers collectively to the manager or employee units in the Project anticipated to be designated for on-site residential managers and/or maintenance personnel of the Affordable Units as set forth in the Scope of Development (Attachment No. 3), which shall remain unrestricted in terms of income or affordability levels.

“Memorandum of Ground Lease” means that document substantially in the form attached to the Ground Lease (Attachment No. 7) as Exhibit E.

“Nine Percent Tax Credit(s)” or “9% Tax Credits” shall mean the federal tax credit allocated to the Project by CTCAC. “Nine Percent” refers to the applicable percentage of the qualified basis for a building that is not federally subsidized, as provided in Internal Revenue Code Section 42(b)(2).

“Notice of Completion” shall have the same definition as set forth in California Civil Code section 3093.

“Official Records” means the Official Records of the Office of the County Recorder for San Diego County, California.

“Parking” means the Click or tap here to enter text. parking spaces on the Property as part of the Improvements. The Parking shall comply with the Scope of Development (Attachment No. 3) all applicable parking requirements.

“Permanent Loan” means the Source of Financing in the form of one or more permanent loans to be made to the Developer at Conversion, secured against the Leasehold by the Permanent Loan Deed of Trust.

“Permanent Loan Deed of Trust” means the deed(s) of trust securing the Permanent Loan.

“Permitted Exceptions” means the exceptions listed in the Title Report (Attachment No. 8) and all covenants, conditions, restrictions, and easements arising out of this Agreement.

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

“Plans” is defined in Section 305.

“Pre-Construction Conditions” is defined in Section 202(b).

“Pre-Construction Period” is defined in Section 202.

“Project” is defined in Attachment 3.

“Project Budget” means the schedule of sources and uses attached to this Agreement as Attachment No. 5.

“Property” means the real property described in Section 103.

“Schedule of Performance” means the document attached to this Agreement as Attachment No. 4.

“Scope of Development” means the document attached to this Agreement as Attachment No. 3.

“Silver LEED Certification” means the Silver Leadership in Energy and Environmental Design Certification provided by the U.S. Green Building Council.

“Site Map” means the document which is attached to this Agreement as Attachment No. 1.

“Source of Financing” means a source of financing for the Project identified in this Agreement.

“Tax Credit Equity Investor” means a Person who will be a limited partner in the Development and will contribute equity to Developer in consideration of the Low-Income Housing Tax Credits.

“TCAC” shall mean the California Tax Credit Allocation Committee.

“Title Company” means Click or tap here to enter text. Title Company.

“Title Insurance Policy” means and includes any of the following, as appropriate: (i) a leasehold policy of title insurance in favor of Developer with respect to the Leasehold in an amount as reasonably requested by Developer (the “Leasehold Title Policy”), and (ii) lender’s policies of title insurance in favor of any Project lender.

“Title Report” means the Preliminary Report number Click or tap here to enter text. issued by Click or tap here to enter text., dated Click or tap here to enter text., attached to this Agreement as Attachment No. 8.

## SECTION 103 The Property

The “County Property” is located at 3177 Ocean View Boulevard in San Diego County, California, with Assessor’s Parcel Number 545-611-36, 545-621-22 and 545-532-18, depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the County Property is set forth in the Legal Description attached hereto as Attachment No. 2. In the event that Developer subdivides the Property, each parcel within the subdivision shall be subject to the rights and obligations under this Agreement, and the Legal Description referenced herein for the Property shall be modified to reflect the legal descriptions associated with each parcel.

## SECTION 104 County

The address of the County for purposes of receiving notices pursuant to this Agreement shall be:

County of San Diego, Department of General Services

5560 Overland Ave. #410

San Diego, CA 92123

ATTN: Director

## SECTION 105 Developer

The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Attention: Click or tap here to enter text.

b. “Developer” as used in this Agreement is Click or tap here to enter text. and any assignee or other successor to its rights, powers, and responsibilities, subject to the assignment and transfer restrictions of Section 106 below and the Ground Lease.

## SECTION 106 Assignments and Transfers

a. Developer represents, warrants, and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping the Property and providing affordable rental housing, not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the County, in light of the importance of the development of the Property to the general welfare of the community and the fact that a change in ownership or control of Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer, is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the County is entering into the Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly permitted under this Agreement.

b. Prior to the Close of Escrow, Developer shall not make any Transfer except that Developer is hereby authorized and permitted to assign this Agreement to one or more limited partnerships whose administrative general partner is an Affiliate of Developer. The term “Transfer” includes any of the following, whether voluntary or involuntary, direct or indirect: (i) assignment of all or any part of this Agreement, or any interest in this Agreement, and (ii) any change in Control of Developer.

c. Following or concurrently with the Close of Escrow, Developer may make Transfers as set forth in Article 14 of the Ground Lease.

## SECTION 107 Pre-Construction Insurance Requirements

Prior to the Effective Date, Developer shall have submitted to the County evidence of the insurance policies required for the Pre-Construction Period (defined in Section 202) under this Agreement, as set forth in Attachment No. 10, and the Ground Lease, naming as additional insureds the following: “The County of San Diego, and its officers, employees, contractors and agents.”

# PART 2. PRE-CONSTRUCTION PERIOD AND DISPOSITION OF LEASEHOLD

## SECTION 201 Due Diligence Period

Following the Effective Date, Developer shall commence its due diligence investigations of the physical condition and title condition of the County Property to determine its suitability for development of the Project, including investigation of the environmental and geotechnical suitability of the County Property, as deemed appropriate in the reasonable discretion of Developer, all at the sole cost and expense of Developer (“Due Diligence Investigations”). Within Click or tap here to enter text. (Click or tap here to enter text.) days following the completion of the Demolition (“Due Diligence Period”), Developer will complete its Due Diligence Investigations. The Due Diligence Period is included within the Pre-Construction Period (defined in Section 202 below). Developer shall have access to the County Property, in accordance with the terms in the Right of Entry, to conduct all tests and inspections reasonably required by Developer to evaluate the County Property, including, without limitation, invasive environmental and geotechnical testing. If Developer does not unconditionally accept the condition of the Property by delivery of a fully executed Due Diligence Certificate in the form attached to Agreement as Attachment No. 9 prior to the end of the Due Diligence Period, Developer shall be deemed to have accepted the condition of the Property. If the condition of the Property is rejected by Developer, then either County or Developer shall have the right to terminate this Agreement without liability to the other party, by delivery of a notice of termination to the other party, except that County will be entitled to and will retain all payments required to be made by Developer to County prior to the date of termination. Following Developer’s delivery of a fully executed Due Diligence Certificate, the County will continue to provide reasonable access to the County Property for Developer’s ongoing investigations and pre-construction activities.

SECTION 202 Pre-Construction Period.

The “Pre-Construction Period” shall begin on the Effective Date and, subject to the early termination provisions in this Section 202 and the extension provisions of Section 211, shall expire on the earlier of (a) Click or tap here to enter text. (Click or tap here to enter text.) complete calendar months after the Effective Date, or (b) satisfaction of the Pre-Construction Conditions.

a. Pre-Construction Obligations and Conditions. During the Pre-Construction Period, Developer shall make diligent and good faith efforts to obtain the Approvals and all financing commitments necessary for construction and lease-up of the Project. The following are the “Pre-Construction Conditions” to be satisfied within the timeframes in the Schedule of Performance:

(i) Developer shall have obtained all Approvals.

(ii) Developer shall have obtained all financing commitments, in a form and substance satisfactory to Developer and County, necessary for the construction and lease-up of the Project, and Developer shall have closed on all financing for the Project.

Developer shall provide prompt written Notice to County of the satisfaction of the Pre-Construction Conditions in accordance with Section 601.

b. Failure of Conditions. If, despite Developer’s diligent and good faith efforts, any of the Pre-Construction Conditions are not satisfied within the time period set forth in this Section 202, including any County-approved extension, County or Developer may terminate this Agreement by providing notice in accordance with Section 601, and upon such termination neither County nor Developer shall have any further remedies against the other for termination of this Agreement under this provision. If during the Pre-Construction Period, Developer determines that, despite its diligent and good faith efforts, it will not be able satisfy one or more of the Pre-Construction Conditions, Developer may terminate this Agreement by providing written notice of termination in accordance with Section 601, and in the event of such termination, neither County nor Developer shall have any further remedies against the other for termination of this Agreement under this provision.

## SECTION 203 Conveyance of the Leasehold

At such time as all conditions precedent to the conveyance of the Leasehold have been satisfied, as set forth in this Section, County shall convey the Leasehold to Developer on such terms and conditions as are contained in the Ground Lease. The Director may, in his or her discretion, approve changes to this Agreement and its attachments, including the Ground Lease Schedule of Performance, Scope of Development, and the Regulatory Agreement: (1) to facilitate the Choose an item.-project tax credit financing structure as set forth in Section 212, or (2) as reasonably requested by the Developer to help obtain a Construction Loan or other Project financing, provided that the requested changes do not increase or decrease the term of the Ground Lease, decrease the overall compensation to be paid to County, or otherwise have, in the determination of the Director, a substantial adverse impact to the County’s interests. The Director may approve any such proposed changes administratively, or in his or her discretion, refer any such proposed changes for consideration by County Board of Supervisors.

Upon satisfaction or waiver by the benefitted party (identified below) of the contingencies described below (the “Contingencies”), on a date mutually agreed by County and Developer, in no event more than 30 days after the date of satisfaction of the Contingencies, unless mutually agreed by County and Developer: the Developer shall pay the Initial Rent Payment to County, County and Developer shall execute the Ground Lease, and Developer shall take possession of the leasehold under the Ground Lease. The Contingencies include all of the following:

1. Limited Partnership Agreement(s) (benefits County and Developer). Developer shall have delivered the limited partnership agreement for any tax credit partnership that will own the Project to County for review, which review shall be limited to confirmation that the partnership agreement is consistent with the DDA and Ground Lease requirements.
2. Developer’s Formation Documents (benefits County). Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Developer and its general partner(s) and other constituent entities, including, without limitation and as applicable: limited partnership agreements and any amendments thereto; articles of incorporation; Limited Liability Company Articles of Incorporation (LLC-1); Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of the DDA and related documents; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County.
3. Final Construction Drawings (benefits County and Developer). Developer shall have submitted and County shall have approved Final Construction Drawings (as defined in Section 305).
4. Project Budget (benefits County and Developer). Developer shall have delivered to the County final revisions to the Project Budget, which have been approved by the County, demonstrating to the satisfaction of the County the availability of sufficient funds to pay all Acquisition and Development Costs (“Final Project Budget”).

e. Contract for Construction (benefits County and Developer). Developer shall have delivered to the County one or more general construction contracts between the Developer and Click or tap here to enter text. (“Contractor”), covering all construction required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the Final Project Budget, together with a construction schedule showing a detailed trade by trade breakdown of the estimated periods of commencement and completion of construction and complete fixturization of the Project, demonstrating that construction will be completed within the time provided in the Schedule of Performance. The Contractor must meet all licensing and insurance requirements of the State of California. The items set forth below shall be incorporated into the contract between Developer and Contractor (with a copy of the contract to be furnished to County for County’s reasonable approval prior to the commencement of construction of the Improvements):

(1) Contractor shall be responsible for the repair, replacement and cleanup of any damage done by Contractor to others’ property.

(2) Contractor shall contain its storage of materials and its operations within the Property and other off-site space as Contractor may be assigned by Developer.

(3) All trash and surplus construction materials shall be stored within the Property or other off-site spaces as may be approved by Developer. Trash and surplus construction materials shall be promptly removed from the Property at the sole cost of the Contractor.

(4) Contractor (or Developer at its option) shall provide temporary utilities, portable toilet facilities and potable drinking water as required for its work within the Property or at an off-site construction location staging location approved by Developer.

(5) Contractor shall notify the County’s Lease Administrator (defined in Ground Lease) of any planned work to be performed on weekends or other than regular job hours.

(6) Contractor shall be responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned for all work performed by Contractor, and all applicable safety regulations, and Contractor shall save and hold County harmless for the work as provided in this Agreement.

(7) Any signs posted by Contractor or subcontractors on any part of the Property must comply with all applicable laws and regulations.

f. Guaranty (benefits County). Developer shall have delivered an executed Completion and Payment Guaranty in the form attached as Attachment No. 12.

g. Evidence of Financing (benefits County and Developer). The Developer has met the conditions set forth in Section 213. All documents required to be executed in connection with the Construction Loans shall have been duly executed, acknowledged, and delivered. Developer has provided evidence that the Initial Rent Payment is ready and available for payment to County.

h. Insurance (benefits County and Developer). Developer shall have submitted to the County evidence of the insurance policies required by this Agreement, as set forth in Attachment No. 10, and the Ground Lease, naming as additional insureds the following: “The County of San Diego, and its officers, employees, contractors and agents.”

i. Approvals (benefits County and Developer). Developer shall have demonstrated that all Approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget). For purposes of clarification, this Contingency can be satisfied without issuance of building permits if the City of San Diego provides a letter stating that all necessary permits are ready to be issued.

j. Recording Instructions (benefits County and Developer). Escrow Agent shall have received such supplemental recording instructions as may have been prepared on behalf of the County and Developer that are consistent with and effectuate the intent of this Agreement.

k. Documents (benefits County and Developer). County, Developer and/or other parties, as appropriate, shall have executed, and filed or recorded as appropriate, the following documents:

* 1. County Regulatory Agreement;
  2. Ground Lease;
  3. Memorandum of Ground Lease;
  4. Any Easement or Covenant, Conditions and Restrictions that may be necessary for the operation of the Project, as approved by County and Developer.

## 

l. Title Insurance (benefits Developer). The Title Company is irrevocably committed to issue the Leasehold Title Policy in favor of Developer showing Developer as the insured holder of the leasehold interest in the Ground Lease and subject only to the Permitted Exceptions or as otherwise approved by Developer.

m. Condition of Property (benefits Developer). The Property shall be free and clear of all tenants and other third-party occupancy rights and in a physical condition substantially the same as on the date Developer submitted the Due Diligence Certificate, excluding ordinary wear and tear and any changes caused directly or indirectly by any activities of Developer.

n. Proposition M Approval Letter (benefits County). Developer shall have submitted a written determination from the City of San Diego or the San Diego Housing Commission, approved as to legality by the entity’s attorney and in a form reasonably approved by County, stating that the affordable units to be developed are authorized by Measure M, approved by the voters of the City of San Diego at the November 2016 General Election.

## SECTION 204 Escrow

County and Developer will open an escrow for the conveyance of the Leasehold with Escrow Agent at such time as is appropriate for completion of conveyance of the Leasehold in accordance with this Agreement.

Sections 204 through 208 (inclusive) of this Agreement shall constitute the joint escrow instructions of County and Developer with respect to the conveyance of each Leasehold, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

County and Developer shall provide such additional escrow instructions as shall be necessary to close the escrow with respect to the conveyance of each Leasehold, and consistent with this Agreement. The Escrow Agent is empowered to act under such instructions, and upon indicating its acceptance in writing, delivered to County and to Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent.

Upon receipt by the Escrow Agent of all executed and acknowledged documents listed in Section 204 and upon verbal confirmation of the County and Developer approving the Closing, the Escrow Agent shall record all documents in accordance with Section 205 of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any County insurance policies governing the Property are not to be transferred.

Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the Closing Date for conveyance of the Leasehold from the County to the Developer:

1. Escrow fee;

2. Recording fees;

3. Notary fees;

4. Premiums for the title insurance policy or policies ordered by Developer as set forth in Section 207 of this Agreement.

County shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified County of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the Closing Date for conveyance of the Leasehold from County to Developer:

1. Costs necessary to place the title in the condition required by the provisions of this Agreement;

2. Ad valorem taxes and any other taxes, assessments or impositions of any kind, if any, attributable to County’s ownership of the Property prior to conveyance of the Leasehold.

3. State, County or other documentary stamps and transfer taxes, if any.

County shall timely and properly execute, acknowledge and deliver the Ground Lease evidencing County’s conveyance of the Leasehold to Developer in accordance with the requirements of this Agreement, and if requested by Developer, together with an estoppel certificate certifying that Developer has completed all acts necessary to entitle Developer to acquire the Leasehold, if such be the fact.

The Escrow Agent is authorized to:

1. Pay, and charge County and Developer, respectively, for any fees, charges and costs payable under this Section 205. Before such payments are made, the Escrow Agent shall notify County and Developer of the fees, charges and costs necessary to clear title and convey the Leasehold;

2. Disburse funds and deliver the Ground Lease and other documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by County and Developer; and

3. Record any instruments delivered through the escrow if necessary or proper to vest the applicable interests in Developer and County in accordance with the terms and provisions of this Agreement.

All funds received in the escrow shall be deposited by the Escrow Agent in an interest- bearing account for the benefit of the depositing party as directed by the depositing party.

If escrow is not in condition to close on or before the Closing Date set forth in the Schedule of Performance, either party who has fully performed the acts to be performed before the Closing Date may, in writing, demand the return of its money, papers or documents. No demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the ten (10) day period. If any objections are raised within the ten (10) day period, the Escrow Agent is authorized to hold the money, paper and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction.  Notwithstanding the foregoing, the termination rights of County and Developer and other rights and remedies on default are governed by Sections 501 through 512, inclusive, of this Agreement, and no demand for such return shall affect such rights or remedies. If no such demands are made, the escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both County and Developer, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

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

All communications from the Escrow Agent to County or Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands, and communications between County and Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 204 through 208, inclusive of this Agreement.

## SECTION 205 Recordation of Documents

County and Developer, respectively, agree to perform all acts necessary to achieve recordation and delivery of documents in sufficient time for escrow to be closed in accordance with the foregoing provisions.

a. The following documents shall be recorded in the following order (“Recorded Documents”). Other documents shall be added as determined by County and Developer, however, the County Regulatory Agreement shall not be subordinated to any interest, except as may be required by law (including the published government agency policies or regulations) in connection with Project financing provided by a government agency.

|  |  |
| --- | --- |
| ORDER OF RECORDATION | DOCUMENT NAME |
| 1 | Memorandum of Ground Lease |
| 2 | County Regulatory Agreement |
| 3 | Mortgage security instruments |

b. All documents to be recorded shall be recorded in the Official Records.

c. In the event that Developer subdivides the Property, the Recorded Documents shall be recorded against each parcel that comprises the subdivision in the same order as set forth under subsection (a), above.

d. In the event that it is necessary to record certain agreements against County’s fee interest in order to develop the Project, including without limitation, easements, maintenance agreements, density bonus covenants, or other documents required for building permit approval, County shall agree to recordation of such documents against its fee interest provided that they are in a form acceptable to County. Developer shall provide drafts of any such documents to County with sufficient time for County to review and comment on their terms to ensure that they are acceptable to County.

## SECTION 206 Possession of Leasehold; Condition of Title

Possession of the Leasehold shall be delivered to Developer concurrently with Close of Escrow. Subject to the terms and conditions of this Agreement, the County shall convey to the Developer the Leasehold free and clear of all (1) occupants, parties in possession, and (2) liens, encumbrances, covenants, conditions, restrictions, easements, leases, taxes and other defects, except for any and all Permitted Exceptions.

## SECTION 207 Title Insurance

Concurrently with the recordation of the Memorandum of Ground Lease, Title Company shall provide and deliver to Developer one or more Title Insurance Policies, issued by Title Company insuring that the Leasehold to be conveyed is vested in Developer in the condition required by Section 206 of this Agreement (“Leasehold Title Policy”). The Title Company shall provide County with a copy of the Leasehold Title Policy. The Leasehold Title Policy shall be in the amount specified by Developer.

If Developer elects to secure an A.L.T.A. owner’s policy or to secure an A.L.T.A. lender’s policy for the benefit of any lender for which a mortgage or leasehold mortgage will or is intended to be granted covering the Leasehold as permitted by the terms of this Agreement, County shall cooperate with Developer to obtain such policies by providing existing surveys and engineering studies in its possession which relate to or affect a condition of title or a geological condition. In providing such surveys and engineering studies, County does not warrant the accuracy or sufficiency of such material. The responsibility of County assumed by this paragraph is limited to cooperating in good faith with Developer, and does not require County to create or obtain any new surveys or studies. Notwithstanding the forgoing, if the Title Company is unable or unwilling to deliver said ALTA owner’s or lender’s policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Developer, Developer may terminate this Agreement pursuant to Section 508. County shall have no obligation to incur any cost or liability in connection with any action necessary to help Developer obtain an A.L.T.A. policy. Developer shall pay for all premiums for all Title Insurance Policies and coverage and special endorsements with respect to the Leasehold, except as otherwise set forth in this Agreement.

## SECTION 208 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property

a. Responsibility for Payment of Taxes and Assessments. County shall not pay any taxes or assessments accruing against Developer on the Property or any interest of Developer in the Property commencing upon and during the term of the Ground Lease, and all such tax payments and assessments shall be the sole responsibility of Developer. Developer shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, fixtures or personal property located on the Property, to the extent that the taxes or assessments result from the business or other activities of Developer upon, or in connection with, the Property. Developer shall pay all taxes prior to delinquency, and shall not allow any taxes, assessments or fees to become a lien against the Property or any Improvements on the Property from and after the Closing. Developer shall not be prevented or prohibited from contesting the validity of any tax, assessment or fee in a manner authorized by law and the County shall cooperate with Developer in connection with such contest.

b. Definition of “Taxes”. As used in this Agreement, the term “taxes” means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real property or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Developer’s failure to pay taxes, (v) any increases in taxes attributable to the sale of Developer’s leasehold interest in the Property, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Property.

c. Section 107.6 Statement. Pursuant to California Revenue and Taxation Code Section 107.6, Developer is notified that the terms of this Agreement may result in the creation of a possessory interest, and if a possessory interest is vested in Developer, Developer may be subjected to the payment of real property taxes levied on the possessory interest.

## SECTION 209 Occupants of the Leasehold

The Leasehold shall be conveyed free of any possession or right of possession, except that of Developer, unless waived in writing by Developer.

## SECTION 210 Condition of the Property

### SECTION 210.1 Hazardous Materials

a. Hazardous Materials Laws - Definition. As used in this section, the term “Hazardous Materials Laws” means any and all federal, state or local laws, rules, decrees, orders, regulations or court decisions (including “common law”), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., §5101 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., §6901 et seq.), the California Hazardous Waste Control Act and the Carpenter-Presley-Tanner Hazardous Substance Act, State of California Health and Safety Code Section 25100, et seq., and Section 78000, et seq., the California Environmental Quality Act of 1970, and the Porter-Cologne Water Quality Control Act, Cal. Water Code Section 13000, et seq. relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Property, soil and ground water conditions or other similar substances or conditions.

b. Hazardous Materials - Definition. As used in this Agreement the term “Hazardous Materials” means any chemical, compound, material, substance or other matter that:

(i) Is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

(ii) Is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

(iii) Gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws; or

(iv) Is any other material or substance giving rise to any liability, responsibility or duty upon the County or Developer with respect to any third person under any Hazardous Materials Law. Developer hereby represents and warrants that the development, construction and uses of the Leasehold permitted under this Agreement (i) will comply with all applicable environmental laws; and (ii) do not require the presence of any Hazardous Materials on the Property.

Hazardous Materials do not include any substances customarily used in construction, development, operation, or maintenance of residential real estate, provided such substances are used in accordance with all applicable laws.

c. Within ten (10) days of request by Developer, County shall deliver to Developer, if not previously delivered, all documents relevant to the condition of the Property within the County’s possession or control, including, without limitation, a preliminary title report with underlying exceptions, environmental reports, studies, surveys, and all other relevant documents within the County’s possession or control (collectively referenced as “Documents”). County does not warrant the accuracy of these Documents or that these Documents constitute all documents that may exist regarding the conditions of the Property, and Developer has been cautioned to conduct its own inquiry to determine if more information is available.

### SECTION 210.2 Suitability of the Property

a. Prior to Closing, Developer shall have the right to engage, at its sole cost and expense, its own environmental consultant (“Developer’s Environmental Consultant”), to make such investigations as Developer deems necessary, including without limitation any “Phase 1” and “Phase 2” (if applicable) investigations of the Property or any portion thereof, in accordance with the Right of Entry, and the County shall promptly be provided a copy of all reports and test results provided by Developer’s Environmental Consultant (the “Environmental Reports”). Developer shall execute the Due Diligence Certificate upon Developer’s completion of such investigations, signifying its completion of due diligence with respect to the environmental condition of the Property.

b. The Leasehold shall be delivered from County to Developer in an “as is” physical condition, with no warranty, express or implied by County as to the presence of Hazardous Materials, or the condition of the soil, its geology or the presence of known or unknown faults. From and after the effective date of the Ground Lease, if the condition of the Leasehold is not in all respects entirely suitable for the use or uses to which such Leasehold will be put, then it is the sole responsibility and obligation of Developer to place the Leasehold in all respects in a condition entirely suitable for the development of the Project, solely at Developer’s expense.

c. From and after the Closing, Developer, its successors, and assigns, shall protect, indemnify, defend (with counsel selected by County), reimburse and hold County and its elected officials, officers, employees and agents harmless (collectively, the “Hazardous Materials Indemnity Obligations”) from any Claims (defined in Section 309), judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of Claims), personal injury (including wrongful death), property damage (real or personal) or loss, including any attorneys’ fees, consultant fees, and expert fees (consultants and experts to be selected by County) which arise from and after the Closing from or in connection with the presence or suspected presence of Hazardous Materials, including the soil, ground water, or soil vapor on or under the Property or the Improvements. Without limitation of the preceding sentence, the Hazardous Materials Indemnity Obligations apply to costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any Hazardous Materials Laws because of: (a) the presence of Hazardous Materials in the soil, ground water, or soil vapor on the Property, regardless of the source or original location of such Hazardous Materials, except for any such Hazardous Materials that are present on the Property as a result of activities of County, its employees, contractors, or agents that occurred during the period from the acceptance of the condition of the Property by Developer under Section 201 to the Closing, and (b) any release, discharge, exposure, or displacement, or migration of Hazardous Materials caused by any act or omission of Developer. The Hazardous Materials Indemnity Obligations shall survive the expiration or earlier termination of this Agreement until all Claims involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

d. On and after the Effective Date, Developer hereby waives, releases and discharges the County and its respective members, officers, employees, agents, contractors and consultants, from any and all present and future Claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys’ fees) arising out of or in any way connected with (i) the County’s use, maintenance, ownership or operation of the Property before or during the term of this Agreement; (ii) the Developer’s use of the Property during the term of this Agreement; (iii) any Hazardous Materials on the Property during the term of this Agreement or the existence of Hazardous Materials contamination in any state on the Property, during the term of this Agreement, however the Hazardous Materials came to be placed there and, excepting any Claims, demands, suits, legal and administrative proceedings or liabilities arising out of the County’s Demolition, or the gross negligence or willful misconduct of the County or its employees, officers or agents. 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

To the extent of the release set forth in this Section 210.2, Developer waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

## SECTION 211 Sources of Financing.

The Acquisition and Development Costs shall be financed with a combination of “Sources of Financing” Developer anticipates will likely include some of the following sources: federal and state Low Income Housing Tax Credits and related equity, private (bank) construction and permanent financing (which may include bond financing), Project Based Vouchers, soft loans from the San Diego Housing Commission, funding from the State of California Department of Housing and Community Development (which may include MHP and AHSC financing), Innovative Housing Trust Funds, Affordable Housing Program Funds and other gap financing sources. Developer shall use best efforts to procure the above referenced Sources of Financing or portions thereof needed to allow for a financially feasible development of the Project in accordance with the Schedule of Performance. For purposes of this Section, “best efforts” means Developer has submitted an application for each of the Sources of Financing by each of the deadlines required by (i) those respective Sources of Financing and (ii) the Schedule of Performance, and has used diligent efforts to submit applications that are complete and responsive. Developer shall not have any obligation to apply for any of the Sources of Financing until such time as Developer reasonably determines that the Project meets the threshold criteria for such financing and will be competitive in any application for such financing.

In the event that the Developer is not able to obtain the Sources of Financing, despite its best efforts, or in the event the Developer reasonably determines that the Project is infeasible, despite Developer’s best efforts, Developer may terminate this Agreement pursuant to Section 508, and upon such termination, neither County nor Developer shall have any further remedies against the other for termination of this Agreement. The Sources of Financing listed here and in the Schedule of Performance may be revised from time to time by the Developer, subject to the approval of the County which will not be unreasonably withheld, conditioned, or delayed.

## SECTION 212 Structuring to Facilitate Financial Feasibility.

Developer intends to obtain awards of 4% and/or 9% Low Income Housing Tax Credits to finance the Project. In order to implement this financing, the County will, in its reasonable discretion, make amendments and/or modifications to the DDA, including its attachments, that are reasonably necessary for such financing, including, but not necessarily limited to, (i) amending and duplicating the Ground Lease, so long as such amendments substantially conform in form and substance to the attached form of Ground Lease; (ii) amending and duplicating the Regulatory Agreement so long as such amendments substantially conform in form and substance to the attached form of Regulatory Agreement; (iii) attaching separate Schedules of Performance to the DDA by an amendment to the DDA; (iv) attaching separate Scopes of Development to the DDA by an amendment to the DDA. The Director may administratively approve any proposed changes, modifications, or amendments contemplated under this Section, or in his or her discretion, refer any such proposed changes, modifications, or amendments for consideration by County Board of Supervisors.

## SECTION 213 Evidence of Financing

a. Not later than fifteen (15) days prior to the scheduled Closing Date, and in no event later than as provided in the Schedule of Performance, Developer shall submit to the County evidence satisfactory to the County that Developer has obtained the financing necessary for the acquisition of the Property and development of a Project in accordance with this Agreement. Such evidence of financing shall include the following:

1. Substantially final drafts of all loan documents relating to the Construction Loan, including a final Project Budget approved by the Construction Lender (except that the final Project Budget may be provided any time prior to Closing if it is not yet available fifteen days prior to the schedule Closing Date), certified by Developer to be a true and correct copy or copies;
2. A copy of loan commitments evidencing that Permanent Loan(s) will be available at Project completion, certified by Developer to be a true and correct copy or copies;
3. Documentation of the tax exempt bond allocation for any 4% Low Income Housing Tax Credit component of the Project, and a substantially final draft of the limited partnership agreement or other documentation acceptable to County demonstrating the commitment of the Tax Credit Equity Investor(s) to provide the Investor Limited Partner Capital Contribution(s), to demonstrate that Developer has adequate equity funds committed to provide the amount of Developer equity necessary to finance the Project;
4. A copy of all other financing commitments evidencing that Developer has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement, including without limitation copies of all commitments from all Sources of Financing; and
5. A copy of the contract between Developer and the general contractor for the construction of the Improvements, certified by Developer to be a true and correct copy.

b. The County shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance. Such approval shall not be unreasonably withheld. If the County shall disapprove any such evidence of financing, the County shall do so by written notice to Developer stating the reasons for such disapproval.

c. Final versions of all documents required above shall be provided by Developer to County concurrently with the Closing.

# PART 3. DEVELOPMENT OF THE PROPERTY

## SECTION 301 Land Use Approvals

It is the responsibility of Developer, without cost to County, to ensure that zoning of the Property and all applicable land use requirements will permit development of the Property and construction of the Improvements and the use, operation, and maintenance of such Improvements in accordance with the provisions of this Agreement. The following shall be conditions of the Closing and shall be accomplished by the date set forth in the Schedule of Performance: (A) Developer shall submit and County shall approve complete Final Construction Drawings; (B) Developer shall obtain all Approvals, and (C) Developer shall satisfy all other conditions precedent to the Closing as set forth in this Agreement. Nothing contained herein shall be deemed to entitle Developer to any permit or other County approval necessary for the development of the Property or waive any applicable County requirements. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the County in connection with approval of the Project, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any County laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864. Without cost to County, County shall provide appropriate technical assistance to Developer in connection with Developer’s obtaining all necessary permits and approvals for the construction of the Improvements.

## SECTION 302 Scope of Development

The Property shall be developed in accordance with and within the parameters established in the Scope of Development.

## SECTION 303 Basic Concept and Schematic Drawings

a. Developer shall prepare and submit basic concept and schematic drawings and related documents for the development of the Property to the County for review and written approval within the time established in the Schedule of Performance. Basic concept and schematic drawings shall include a site plan, elevations and sections of the Improvements as they are to be developed and constructed on the Property. The County’s review of the concept and schematic drawings shall be limited to the exterior appearance of the Project and consistency of the basic concept and schematic drawings with this Agreement and Developer’s Proposal. Developer shall make a public presentation of the basic concept and schematic drawings to solicit community input.

b. The Property shall be developed in a manner consistent with the basic concept and schematic drawings and related documents except for (i) changes that do not constitute substantial changes, and (ii) substantial changes may be mutually agreed upon between Developer and County. Any such substantial changes shall be within the limitations of the Scope of Development. For purposes of the foregoing, “substantial change” shall have the same meaning as set forth in Section 306(b) hereinbelow.

## SECTION 304 Landscaping Plans

a. Developer shall prepare and submit to the County for its approval preliminary and final landscaping plans for the Property. These plans shall be prepared and submitted within the times established in the Schedule of Performance.

b. The landscaping plans shall be prepared by a professional landscape architect. Such landscape architect may be the same firm as Developer’s architect. Within the times established in the Schedule of Performance, Developer shall submit to the County for approval the name and qualifications of its landscape architect.

## SECTION 305 Construction Drawings and Related Documents

a. Developer shall prepare and submit construction drawings and related documents (collectively called the “Plans”) to the County for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance. Such construction drawings and related documents shall be submitted as 50% and Final Construction Drawings. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.

b. Approval of progressively more detailed Plans will be promptly granted by the County if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the County shall not be subject to subsequent disapproval. In addition, the County’s review and approval of the Plans will be limited to the portion of the Plans pertaining to the exterior of the Project.

c. During the preparation of all Plans, the County and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents by the County. The County and Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the County can receive prompt and speedy consideration.

d. If any revisions or corrections of Plans approved by the County shall be required by any government official, County, department, or bureau having jurisdiction over the development of the Property, Developer and the County shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

## SECTION 306 County Approval of Plans

a. Subject to the terms of this Agreement including Section 305, the County shall have the right to review (including without limitation architectural review) and approve or disapprove all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by County. Upon receipt of any disapproval, Developer shall revise the Plans, and shall resubmit to the County as soon as possible after receipt of the notice of disapproval. The County shall approve or disapprove the Plans referred to in Sections 303, 304 and 305 of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the County requests to be made. Such reasons and such changes must be consistent with the Scope of Development. Developer, upon receipt of a disapproval based upon powers reserved by the County hereunder, shall revise the Plans, and shall resubmit to the County as soon as possible after receipt of the notice of disapproval, and the process for review and approval of the Plans shall continue until such time as the County has approved the Plans.

b. If Developer desires to make any substantial change in the Final Construction Drawings after their approval, such proposed substantial change shall be submitted to the County for approval. For purposes of this Section, “substantial change” shall mean any material change in the exterior building materials or equipment, exterior specifications, or the exterior structural or exterior architectural design or exterior appearance of the Project. Nothing herein shall be interpreted as altering, modifying, waiving, amending, or reducing any requirements of any governmental permit required by any local, state or federal permitting authority for the Project.

## SECTION 307 Cost of Construction

The cost of developing the Property and constructing the Improvements, including any offsite or onsite improvements required by the County in connection therewith, shall be the responsibility of Developer, without any cost to County, subject to the terms of this Agreement.

## SECTION 308 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance or elsewhere in this Agreement, and if no such time is provided, within a reasonable time. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of County and Developer.

b. After the Closing, Developer shall promptly begin and thereafter diligently pursue completion of the construction of the Improvements.

c. During periods of construction, Developer shall submit to the County a written report of the progress of construction, including the number of trees planted, when, and as reasonably requested by the County, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the County and shall include a reasonable number of construction photographs (if requested) taken since the last report by Developer. Copies of construction draw documents in the forms submitted to the Project lenders and tax credit investor shall be accepted as written reports of the progress of construction. If County utilizes the services of a construction monitor, Developer shall reasonably cooperate with the County’s monitor to coordinate inspections without expense or cost to Developer.

## SECTION 309 Indemnification, Exculpation, and Insurance

a. Definition of “County Parties” and “Developer Parties”. The term “County Parties” refers singularly and collectively to County and its elected officials, officers, directors, affiliated entities, agents, volunteers, and employees. The term “Developer Parties” refers singularly and collectively to Developer and its officers, members, partners, affiliates, agents, employees, contractors, investors, and lenders.

b. Exculpation. The following exculpation provisions (“Exculpation Provisions”) shall apply.

1. Except as otherwise provided in this Agreement and to the fullest extent permitted by law, Developer, on its behalf and on behalf of all Developer Parties knowingly and voluntarily assumes the risk of, waives all Claims (in law, equity, or otherwise) against County Parties arising out of, and agrees that County Parties shall not be liable to Developer Parties for: (a) injury to or death of any person, or (b) loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause in connection with this Agreement, the Ground Lease, the Leasehold, or the Project; provided, however, that the County Parties shall not be exculpated from liabilities arising out of the gross negligence or willful misconduct of any County Party.

2. Intentionally omitted.

3. No County Party, other than the County, shall have any personal liability or responsibility for any of the responsibilities or liabilities of County under this Agreement.

4. These Exculpation Provisions shall survive the expiration or earlier termination of this Agreement until all Claims within the scope of the Exculpation Provisions are fully, finally, and absolutely barred by the applicable statutes of limitations.

5. Developer acknowledges that the Exculpation Provisions of this Agreement were negotiated with County, that the consideration for the Exculpation Provisions is fair and adequate, and that Developer had a fair opportunity to negotiate, accept, reject, modify, or alter the Exculpation Provisions of this Agreement.

6. The Exculpation Provisions of this Agreement may not be interpreted or construed as an attempt by County to be relieved of liability arising out of a non-delegable duty on the part of County.

c. Waiver of Civil Code Section 1542. With respect to the Exculpation Provisions of this Agreement, Developer waives the benefits of State of California Civil Code Section 1542, which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Notwithstanding anything to the contrary here, the release and exculpation in favor of the County Parties hereunder shall not apply to Claims arising from or related to (1) any claim arising from the County’s use of or access to the Property, or (2) County Parties gross negligence or willful misconduct.

d. Indemnification. The following indemnification provisions (“Indemnification Provisions”) shall apply from and after the Effective Date of this Agreement:

1. Developer’s Indemnification of County Parties. To the fullest extent permitted by law, Developer shall, at Developer’s sole expense and with counsel reasonably acceptable to County, indemnify, protect, defend, and hold harmless County Parties (“Developer Indemnification Obligations”) from and against all Claims, from any cause, arising out of or relating (directly or indirectly) to the following; provided Developer shall not be responsible for (and such indemnity shall not apply to) any gross negligence or willful misconduct of any County Party:

(a) Activities of Developer Parties in connection with this Agreement;

(b) Any plans or designs for Improvements prepared by or on behalf of Developer Parties, including without limitation, errors or omissions with respect to such plans or designs;

(c) Any loss or damage to County resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer under this Agreement;

(d) Any accident, personal injury, or casualty on the Property resulting from acts or omissions of Developer Parties arising from Developer’s Due Diligence Investigations or activities by Developer Parties on the Property.

(e) Any Claim based on allegations this Agreement or the Ground Lease violates Article XXXIV of the California Constitution, or its implementing statues and regulations.

For purposes of this Agreement, “Claims” means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys’ fees actually incurred).

The Developer Indemnification Obligations in this section are in addition to any other indemnification and related obligations under this Agreement and the Ground Lease.

2. Type of Injury or Loss. Developer’s Indemnification Obligations extend to and include Claims for:

(a) Injury to any persons (including death at any time resulting from that injury);

(b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction);

(c) Subject to the limitation of Section 309(d)(8), all economic losses and consequential damage of any kind.

3. Active or Passive Negligence; Strict Liability. Except as provided in this section, the Developer Indemnification Obligations shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. Developer Indemnification Obligations shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim was caused solely by the gross negligence or willful misconduct of a County Party.

4. Indemnification Independent of Insurance Obligations. The Developer Indemnification Obligation provisions may not be construed or interpreted as in any way restricting, limiting, or modifying Developer’s insurance or other obligations and is independent of Developer’s insurance and other obligations. Developer’s compliance with the insurance requirements and other obligations of this Agreement shall not in any way restrict, limit, or modify the Developer Indemnification Obligations.

5. Survival of Indemnification. The Developer Indemnification Obligations shall survive the expiration or earlier termination of this Agreement until all Claims against County Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

6. Duty to Defend. Developer’s duty to defend County Parties is separate and independent of Developer’s duty to indemnify County Parties. The duty to defend includes Claims for which County Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Developer Parties have been determined. The duty to defend applies immediately, regardless of whether County Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of County and Developer that County Parties be entitled to obtain summary adjudication or summary judgment regarding Developer’s duty to defend County Parties at any stage of any claim or suit within the scope of the Developer Indemnification Obligations. Notwithstanding the forgoing, the County shall be responsible for defense costs to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim was caused by the gross negligence or willful misconduct of a County Party.

7. Insurance Requirements. Developer shall meet all insurance requirements set forth in Attachment No. 10 to this Agreement.

8. No Punitive or Consequential Damages. Neither County nor Developer shall be entitled to any economic loss, punitive or consequential damage award against the other party in any action or proceeding arising out of or related to this Agreement.

## SECTION 310 Prevailing Wages

Work performed by Developer or its contractor(s) pursuant to this Agreement may be a “public work” for prevailing wage purposes. Developer hereby expressly acknowledges and agrees that County has never previously represented to the Developer or its contractor(s) in writing or otherwise, that any work under this Agreement is not a “public work,” as defined in Section 1720 of the Labor Code. Developer is solely responsible for ensuring prevailing wages are paid when required by California Labor Code § 1720, et seq., Davis-Bacon Act, 40 U.S.C. § 3141, et seq., County of San Diego Ordinance 10771, or any other applicable law. Projects subject to the payment of prevailing wages are subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations, among other requirements. Developer is solely responsible for ensuring all required job site postings and all certified payroll and other reporting applicable to it as an awarding body are completed, and all other requirements are met in accordance with State of California prevailing wage regulations. Information regarding prevailing wage requirements can be obtained from the Director, Department of Industrial Relations at www.dir.ca.gov, State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq.

In connection with the development and construction (as defined by applicable law) of the Improvements, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and compliance with all requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all related statutes, regulations, and policies.

In addition to and without limiting any other indemnification and related provisions of this Agreement, to the fullest extent permitted by law, Developer shall indemnify, protect, defend and hold harmless the County its officers, employees, contractors, agents and attorneys, with counsel reasonably acceptable to County, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including labor costs, penalties, reasonable attorney’s fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from noncompliance with any requirements under State of California Labor Code Section 1720, et seq., and Title 8 of the State of California Code of Regulations, Section 16000, et seq., and all other related statutes, regulations, and policies.

The foregoing indemnity shall survive the termination or expiration of this Agreement.

## SECTION 311 Notice of Non-Responsibility

County shall, at any and all times during the term of this Agreement, have the right to post and maintain on the Property, and record against the Property, as required by law, any notice or notices of non-responsibility provided for by the mechanics’ lien laws of the State of California; provided, however, that Developer shall, on behalf of the County, post and maintain on the Property, and record against the Property, all notices of non-responsibility provided for by the mechanics’ lien laws of the State of California.

## SECTION 312 Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City of San Diego or any other governmental agency affected by such construction, development or work.

## SECTION 313 Disclaimer of Responsibility by County

The County neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the County in connection with such matter is for the public purpose of redeveloping the Property, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. County shall not be responsible for any of the work of construction, improvement or development of the Property.

## SECTION 314 Taxes, Assessments, Encumbrances and Liens

Commencing upon the Closing, Developer shall pay, when due, all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. Developer shall not place, or allow to be placed, against the Leasehold Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement or the Ground Lease. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Leasehold and/or Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder.

# PART 4. USE OF THE PROPERTY

## SECTION 401 Uses

Developer and its successors and assigns shall use the Property only as set forth in the Ground Lease and the County Regulatory Agreement.

## SECTION 402 Effect and Duration of Covenants

The covenants established in this Part 4 shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of and enforceable against the original Developer and successors in interest by the County. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Closing and shall be set forth in the County Regulatory Agreement and shall remain in effect during the Covenant Period.

## SECTION 403 County Regulatory Agreement

Concurrently with each Closing, Developer and County shall execute and cause the recordation of a County Regulatory Agreement, which shall be and remain senior to any security instruments recorded for any Construction Loan or other financing (except as provided in Section 205(a). Prior to Closing, the parties will meet and confer regarding the affordability provisions of the Regulatory Agreement. Based on such meet and confer, the Developer may then request modifications to the income limits and unit mix described in Regulatory Agreement, which the County, through the Director with concurrence from the Director of the Housing and Community Development Services Department, shall approve or disapprove. The County will not unreasonably withhold approval of such changes. Without limiting the forgoing, the County will approve of modifications to the above described unit mix if such modifications are necessary to the financial feasibility to the Project (which shall include facilitating Lessee’s ability to ensure compliance with the true debt test) taking into consideration all Project Expenses (as defined the Ground Lease) and are substantially in accord with Lessee’s proposal attached to the DDA and Ground Lease.

# PART 5. DEFAULTS AND REMEDIES

## SECTION 501 Defaults - General

a. Subject to the extensions of time for Force Majeure as set forth in Section 602, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of ten (10) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days after such notice is received, and the party in default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in any event no more than one hundred and twenty (120) days of receipt of such notice of default from the injured party.

e. After Developer gives written notice to County of the admission to Developer’s limited partnership of the Tax Credit Equity Investor, County shall send to the Tax Credit Equity Investor a copy of all notices of default and all other notices that County sends to Developer, at the address for the Tax Credit Equity Investor as provided by written notice to County by Developer. Any cure of an event of default by Developer hereunder made or tendered by the Tax Credit Equity Investor shall be accepted or rejected on the same basis as if made by Developer. Notices will also be provided to any Project lender in accordance with the Ground Lease.

## SECTION 502 Institution of Legal Actions

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

## SECTION 503 Applicable Law

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

## SECTION 504 Acceptance of Service of Process

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

b. In the event that any legal action is commenced by the County against Developer, service of process on Developer shall be made by personal service upon Developer at its statutory agent for service of process within the State of California, or in such manner as may be provided by law.

## SECTION 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

## SECTION 506 Damages

a. Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Neither the County nor the Developer shall be entitled to, and each hereby waives, any right to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

b. Limitation of Damages Recoverable From County

Any provision to the contrary notwithstanding, any money judgment resulting from any default or other claim arising under this Agreement shall be satisfied only out of the current rents, issues, profits and other income County receives under this Agreement, net of all current operating expenses, liabilities, reserves and debt service associated with the Property (for purposes of this only, “Net Income”), (b) no other assets or real, personal or mixed property of County, wherever located, shall be subject to levy on any judgment obtained against County, (c) if the Net Income is insufficient to satisfy the judgment, Developer will not institute any further action, suit, claim or demand, in law or in equity, against County for or on the account of the deficiency, and (d) the neglect or failure shall not constitute consent by County for Developer to perform or observe the terms, covenants or conditions of this Agreement at County’s expense. Developer waives, to the extent permitted under law, any right to satisfy any money judgment against County except from Net Income.

## SECTION 507 Specific Performance

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

## SECTION 508 No-Fault Termination

Prior to the Closing hereunder, either party shall have the right to terminate this Agreement, by providing written Notice to the other party, in the event of a failure of any Pre-Construction Condition or any of the Contingencies, provided that such condition is outside the reasonable control of the party seeking to terminate this Agreement, whereupon neither County nor Developer shall have any further rights against or liability to the other under this Agreement.

## SECTION 509 Termination by Developer

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

b.

## SECTION 510 Termination by County

a. Subject to the notice and cure provisions of Section 501, County shall have the right, prior to the Closing hereunder, to terminate this Agreement in the event of a default by Developer, including but not limited to the following:

1. Developer fails comply with Section 213; or

2. Developer (or any successor in interest) assigns or attempts to assign the Property or any of Developer’s rights in and to the Property or any portion thereof or interest therein, or this Agreement or any portion of it, except as permitted by this Agreement or the Ground Lease; or

3. There is substantial change in the ownership of Developer, or with respect to the identity of the parties in control of Developer, or the degree thereof contrary to the provisions of Section 106, except as permitted by this Agreement or the Ground Lease;

4. Developer fails to submit any of the plans, drawings and related documents required by this Agreement by the respective dates provided in this Agreement;

5. Developer fails to acquire the Leasehold within the time required by the Schedule of Performance; or

6. There is any other material default by Developer under the terms of this Agreement which is not cured within the time provided.

b. This Agreement shall be subject to termination after Closing in accordance with the termination provisions of the Ground Lease.

## SECTION 511 Debarment

a. The Developer, (including its employees, directors, officers, agents, subcontractors, consultants, and volunteers, and general contractor for the initial construction of the Project, and its property management company) shall not be debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any county, state, or Federal Department or agency. A county, local, state or federal government debarment of the Developer, (including its employees, directors, officers, agents, subcontractors, consultants, and volunteers, and general contractor for the initial construction of the Project, and its property management company), or a determination by a county, local, state or federal government that Developer is ineligible to contract in covered transactions, shall be a default under this Agreement.

b. Developer hereby certifies, to the best of its knowledge, that each of Developer, its employees, directors, officers, agents, general contractor, subcontractors, and consultants:

1. Has not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen Premises;

2. Is not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and

3. Has not within a 3-year period preceding this Agreement had one or more public transaction (Federal, State, or local) terminated for cause or default.

c. During the term of this Agreement, Developer shall disclose to the County any occurrence that would prevent Developer from making the certifications contained in Section 511.bon an ongoing basis. Such disclosure shall be made in writing to the County within five (5) business days of when Developer discovers or reasonably believes there is a likelihood of such occurrence.

# PART 6. GENERAL PROVISIONS

## SECTION 601 Notices

All notices, demands, requests or other communication required or permitted to be given or served under this Agreement (“Notice” or “Notices”) shall be in writing, and (i) delivered in person to an officer or authorized representative of the other party at the addresses shown in Section 104 and 105 (or as updated in writing by the respective party), (ii) sent by United States Postal Service First Class Mail, postage prepaid, (iii) sent by courier delivery service with proof of service, or (iv) delivered by electronic mail, with the original document subsequently delivered by United States Postal Service First Class Mail, postage prepaid to the other party at the addresses specified in ARTICLE 1 of this Agreement. Notices mailed by the United States Postal Services or sent by a courier delivery service shall be deemed to have been given, delivered and received three (3) business days after the date the Notice is postmarked by the United States Postal Service or the date of the proof of delivery by the courier delivery service. All other Notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written Notice delivered pursuant to this section, at any time designate a different address to which Notices shall be sent.

## SECTION 602 Force Majeure

If County or Developer is prevented or delayed from performing any act or discharging any obligation under this Agreement, excluding any monetary obligations, because of any and all causes beyond either party’s reasonable control, including unusual delays in deliveries, pandemics, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, public health emergencies, legal actions attacking the validity of this Agreement or the Developer’s occupancy of the Property, or any other casualties beyond the reasonable control of either party, except casualties directly or indirectly resulting from the acts or omissions the party (“Force Majeure”), performance of the act shall be excused for the period of the delay, and the period for performance of the act shall be extended for a period equivalent to the period of the delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability by Developer.

## SECTION 603 Conflict of Interest

a. No member, official, or employee of County 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

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

SECTION 604 Nonliability of County Officials and Employees

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

## SECTION 605 Inspection of Books and Records

County shall have the right at all reasonable times to inspect and copy the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement upon no less than 24-hour prior written notice. Developer shall also have the right at all reasonable times to inspect and copy books and records of County pertaining to the Property as pertinent to the purposes of this Agreement upon no less than 24-hour prior written notice.

## SECTION 606 Approvals

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

b. Except as otherwise expressly provided in this Agreement, approvals or consent required of County shall be deemed granted by the written approval of the Director in the Director’s discretion. Notwithstanding the foregoing, the Director may, in his or her sole discretion, refer to the governing body of County any item requiring County approval; otherwise, “County approval” or “County consent” means and refers to approval or consent by the Director.

## SECTION 607 Real Estate Commissions; Finder’s Fee

County shall not be liable for any real estate commissions, brokerage fees or finder’s fees which may arise from this Agreement. County and Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

## SECTION 608 Construction and Interpretation of Agreement

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

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

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

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

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

f. To the extent that Developer compromises more than one Person, all obligations of Developer hereunder are joint and several.

## SECTION 609 Time of Essence

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

## SECTION 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause County to be responsible in any way for the debts or obligations of Developer or any other Person.

## SECTION 611 Compliance with Law

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

## SECTION 612 Binding Effect

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

## SECTION 613 No Third-Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of County and Developer, and not for the benefit, directly or indirectly, of any other person or entity.

## SECTION 614 Authority to Sign

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

## SECTION 615 Incorporation by Reference

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

## SECTION 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument. A counterpart may be delivered electronically by facsimile, email, or other agreed upon means of electronic delivery.  For purposes of proving the existence of this Agreement, a party shall be permitted to provide a copy of an electronically delivered counterpart without first being required to prove the unavailability of an original copy.

SECTION 617 Electronic Signatures

The words “execution,” “signed,” “signature,” and words of like import shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall have the same legal effect and enforceability as a manually executed signature or the use of a paper-based record keeping system, to the extent provided for in the Uniform Electronic Transaction Act (“UETA”) Civil Code Section 1633.1 – 1633.17.Notwithstanding the foregoing, original signature(s) of the authorized representative(s) of each Party shall be required for each document to be recorded.

# PART 7 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended hereto, constitutes the entire understanding and agreement of the parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of County or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of County and Developer.

[*Signatures on following page*]

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

COUNTY OF SAN DIEGO

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

MARKO MEDVED, Director

Department of General Services

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Inna Zazulevskaya

Senior Deputy County Counsel

DEVELOPER

Click or tap here to enter text.

Dated: By:

Click or tap here to enter text.