

**CITY OF HUNTINGTON BEACH
SUPPLEMENTAL COMMUNICATION**

**Joan L. Flynn, City Clerk
Office of the City Clerk**

TO: Honorable Mayor and City Councilmembers

FROM: Joan L. Flynn, City Clerk 

DATE: 11/2/2015

SUBJECT: SUPPLEMENTAL COMMUNICATIONS FOR THE NOVEMBER 2, 2015, REGULAR CITY COUNCIL/PFA MEETING

Attached are the Supplemental Communications to the City Council (received after distribution of the Agenda Packet):

CITY TREASURER'S REPORT

#1. Revised PowerPoint communication received from City Treasurer, Alisa Cutchen, entitled *City of Huntington Beach City Treasurer's Report, Period Ending: September 30, 2015*.

ADMINISTRATIVE ITEMS

#14. Exclusive Negotiation Agreement with Christopher Homes for Redevelopment of the Michael E. Rodgers Seniors' Center Site.



City of Huntington Beach City Treasurer's Report

Period Ending: September 30, 2015

Alisa Cutchen, CCMT, CPFIM
City Treasurer



City Treasurer's Mission: Preservation and Return of Investments

- Portfolio governed by:
 - California State Regulations
 - City's Investment Policy – Certified by California Municipal Treasurers Association

Investment Policy Certification



City Treasurer's Mission: Preservation and Return of Investments

- Goal: Own Legal AND Suitable Investments to meet the objectives:
 - Safety of Principal
 - Adequate Liquidity
 - Market Rate of Return

In this absolute order of priority



City Treasurer's Mission: Preservation and Return of Investments

- Frequently Utilized Investments:
 - U.S. Federal Agency Issues
 - Corporate Notes/Bonds
 - LAIF (CA State Pool)

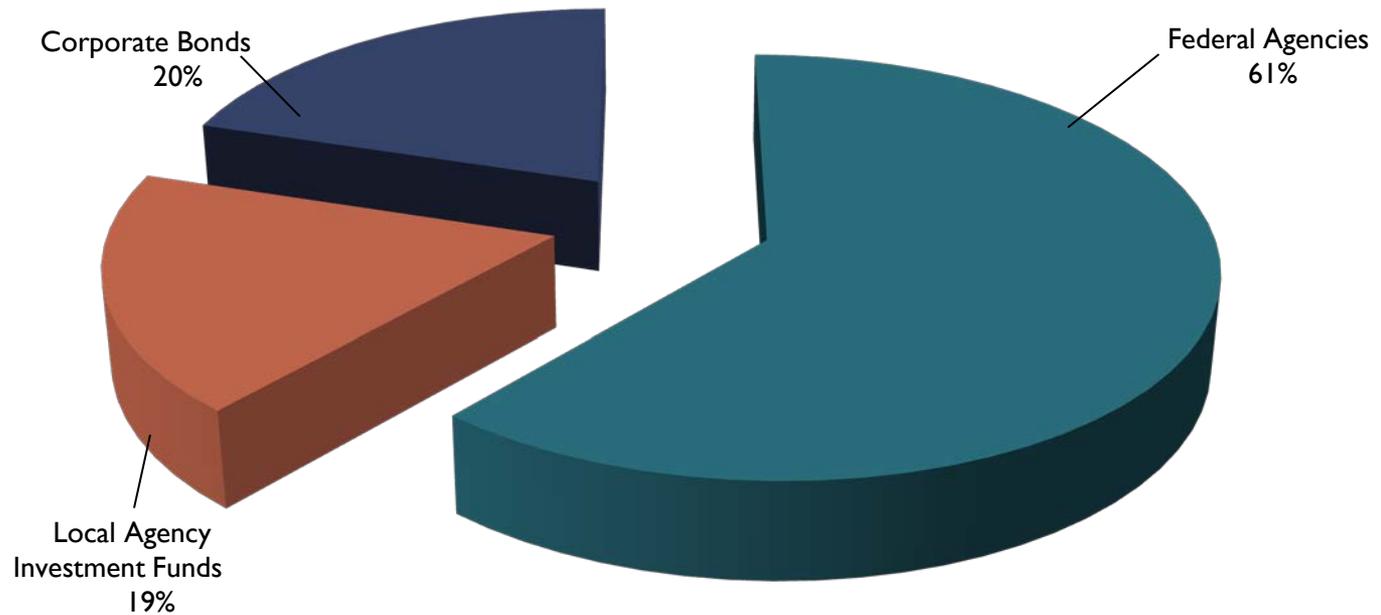
Portfolio Overview: Investment Summary As of September 30, 2015

- \$ in millions

<u>Investment Type</u>	<u>Market Value</u>	<u>Book Value</u>	<u>% of Portfolio</u>	<u>Policy Limit</u>
Federal Agency Issues	\$ 124.22	\$ 124.07	61%	None
Local Agency Investment Fund (LAIF)	\$ 37.34	\$ 37.34	19%	\$50 million
Corporate Bonds	\$ 40.73	\$ 40.72	20%	20%
Total Portfolio	\$ 202.29	\$ 202.13	100%	

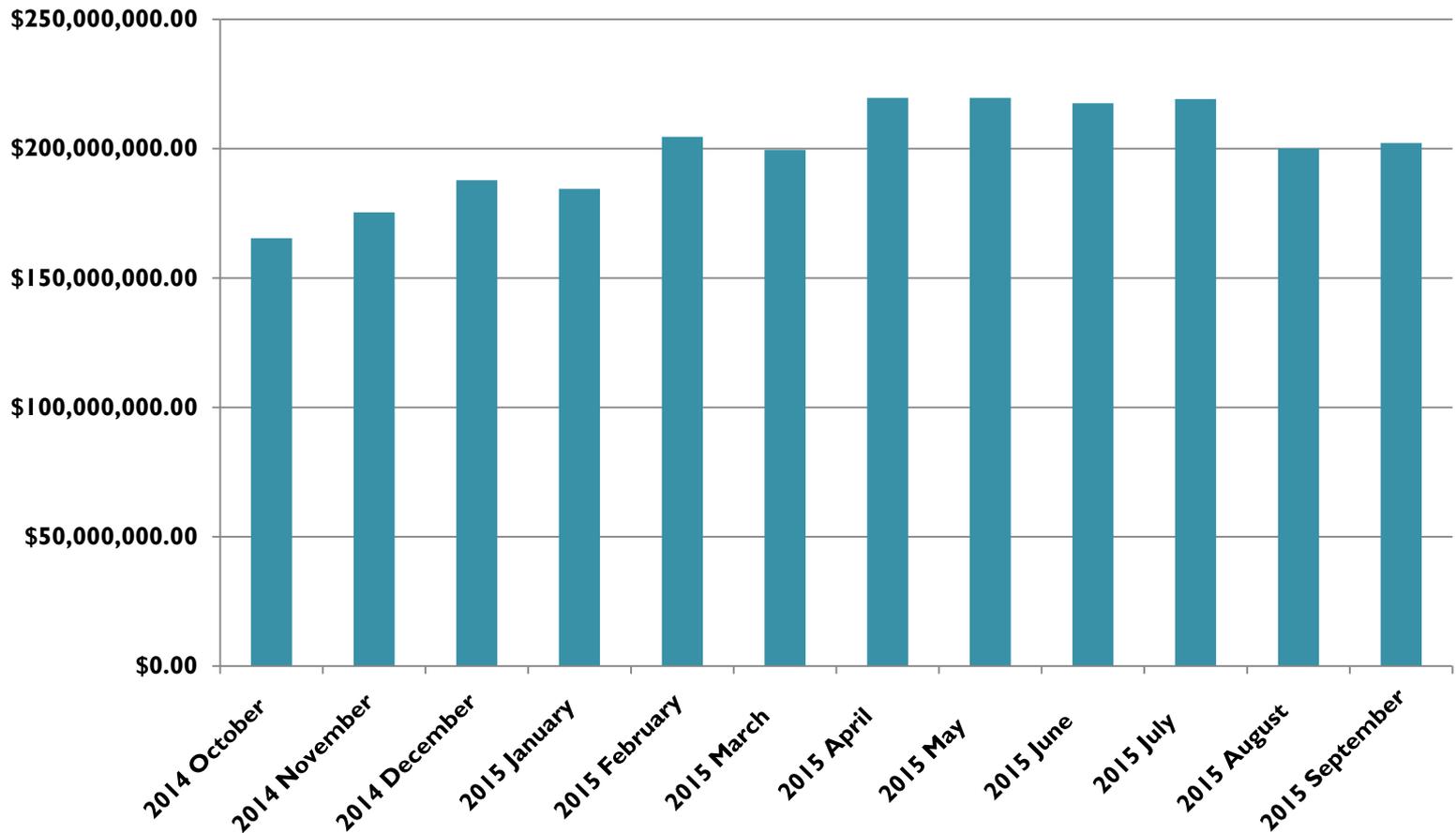
Portfolio Overview: Investments by Type As of September 30, 2015

By Book Value:



Portfolio Overview: Historical Book Value

Book Value as of September 30, 2015



Portfolio Performance

As of September 30, 2015

Monthly Effective Rate of Return 1.09%

Fiscal Year-To-Date

Effective Rate of Return:

Versus FY2013/14:



1.01%

0.90%

Portfolio Performance

Fiscal Year 2014-2015

Earnings:

Current Year: \$1,982,146

Versus FY2013/14 \$1,479,308

Increase:

\$502,838

up 34%





QUESTIONS?

**EXCLUSIVE NEGOTIATION AGREEMENT FOR
REDEVELOPMENT OF MICHAEL E. RODGERS
SENIORS' CENTER SITE**

**By and Between the
CITY OF HUNTINGTON BEACH**

**And
CHRISTOPHER HOMES**

This EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement"), dated for purposes of identification only as of _____, 2015 ("Date of Agreement"), is hereby entered into by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation ("City"), and CHRISTOPHER DEVELOPMENT GROUP, a California Corporation ("Developer").

RECITALS

- A. The City owns certain real property, as described in the legal description attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein (the "Site"). The Site is currently used as the Rodgers Seniors' Center.
- B. Developer desires to develop the Site by demolishing the existing building and constructing a residential project ("Project"). Developer has submitted a proposal ("Development Proposal") in response to the City's RFP/Q. Developer was subsequently identified by the City as the most qualified.
- C. The City and Developer (individually referred to as a "Party" and collectively referred to as the "Parties") desire to enter into this Agreement to negotiate the Sale and Purchase Price as well as the cost and liability for all aspects of the project including environmental review, election challenge and any other legal obligations required to be completed as part of the purchase and sale of the Site. (collectively, the "Terms to be Negotiated")
- D. The primary purpose of this Agreement is to establish a period during which the Parties shall exclusively negotiate the Terms to be Negotiated. As well as establish who will pay for certain upfront cost and liability associated with the project such as environmental review and election challenge. It is *not* the purpose of this Agreement to enter into a binding agreement for the sale of the Site to Developer (the "Definitive Agreement").
- E. Developer acknowledges and understands fully that under Section 612 of the City's Charter, a majority of the vote of the people must be obtained (Measure C Ballot Measure) before the Site can be sold, and/or developed

as well as any land use redesignation, lease, exchange or otherwise transferred or disposed of.

- F. Developer acknowledges and understands fully that under Section 612 of the City's Charter, a CEQA compliant environmental analysis of the Developer's proposed Project for the Site must be conducted, completed, and certified by the City Council prior to the aforesaid vote of the people (Measure C Ballot Measure).
- G. Developer acknowledges and understands fully that the current deed/title on the Site has a reversionary interest to the Huntington Beach Company or its successor-in-interest, Chevron Corporation.. The City has obtained title insurance in the amount of \$11,000,000 from First American Title to support the City's position that pursuant to the California Marketable Title Act, said reversion is inoperable and no longer valid and therefore the entirety of interest in the Site is vested with the City.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- Section 1. Negotiating Period.** The Parties agree to use commercially reasonable best efforts to negotiate diligently and in good faith with one another commencing upon the Effective Date of this Agreement (as hereinafter defined in Section 17) and terminating December 20, 2016 (the "Negotiating Period"), in order to agree upon mutually acceptable Terms to be Negotiated. The term may be extended or terminated as provided in this Agreement, provided that Developer shall have the right, in addition to the right of the City to extend this Agreement for one sixty (60) day period by providing written notice to the City prior to the expiration of the then current term.
- Section 2. Terms to be Negotiated.** The terms to be negotiated will include, but not be limited to, purchase price including a "Purchase Price Adjustment" where the Developer and the City shall share an amount, if any, with the City, over the determined market rate of the individual homes. Please see Exhibit B for Developer's Proposed Purchase Price and other terms.
- Section 3. Developer's Submission of Documents for City Review and Comment.** Within sixty (60) days of the Effective Date of this Agreement, Developer shall use commercially reasonable best efforts to submit the following information to the City with respect to the Project:
 - Project Description
 - Concept drawings and elevations

- Site plan generally describing the Project using schematic drawings
- A proposed construction schedule of development
- Economic analysis for the proposed development, including:
 - An estimate of development costs, including construction and non-construction costs
 - An estimate of project income, a financial statement and pro forma statement of project return adequate to enable the City to evaluate the economic feasibility of the Project
- A description of the proposed method of construction and permanent financing and amounts and sources of equity and debt capital

Developer shall resubmit a revised site plan(s), pro forma(s), financing plan(s) and/or development schedule(s) to the City, as necessary to respond to the City's requirements on the versions of each submission. Developer has previously submitted a deposit of Twenty Thousand Dollars (\$20,000.00) with Developer's Response to the City's RFQ/P. The timing and terms upon which portions of the deposit may become non-refundable, if any, will be negotiated during the ENA period.

The Developer acknowledges and agrees that design and architectural review by the City and its consultants will be required following each submittal, and that sketches, plans, and ultimately working drawings, specifications and similar documents will be required to be submitted for review and approval pursuant to any Definitive Agreement (the City's Design Review"). Developer further acknowledges and agrees that the City, acting under its general police powers as a municipal corporation, may conduct a similar review and that building design, including, but not limited to, the selection of building elevations, construction materials, parking layout and landscaping will not be final until approved by the City. Developer further acknowledges and agrees that the City may exercise the City's Design Review distinct and separate from those additional rights which the City may exercise under its general police powers as a municipal corporation. This review does not include future Zoning Approvals as may be required by the Huntington Beach Municipal/Zoning and Subdivision Code.

Section 4. The City's Evaluation of Developer's Proposal. Upon receipt of the last of Developer's submissions as provided in Section 3 hereof, the City shall use commercially reasonable best efforts to conduct or cause to be conducted a complete economic evaluation of Developer's ENA Final submittals and proposed Project. If the Parties are unable to mutually agree upon the Terms to be Negotiated prior to the expiration of the Negotiating Period, the City may, upon written notice to Developer, elect to extend the Negotiating Period by up to thirty (30) days (the "Extended Negotiating Period") or terminate this Agreement. In either event,

this Agreement shall automatically terminate upon the expiration of the Negotiating Period or the Extended Negotiating Period in accordance with Section 8.3 hereof. Following mutual agreement upon the Terms to be Negotiated, the parties agree to negotiate and execute, in good faith, a Definitive Agreement that incorporates the agreed upon Terms to be Negotiated.

Section 5. Environmental Requirements. Certain State and local environmental requirements (including without limitations, the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.*) are applicable to the Project. Pursuant to such requirements, certain environmental documents may be required to be prepared prior to consideration by the City Council prior to execution of a Definitive Agreement. Developer agrees to cooperate with the City in obtaining information to determine the environmental impacts of the proposed Project and the scope of the environmental documentation necessary to evaluate such environmental impacts. Developer agrees to pay at Developer's sole cost and expense all costs to prepare or cause to be prepared such environmental impact documents as the City may cause to be completed. However, if the City decides not to certify the EIR or approve the project entitlements, all reimbursement costs affiliated with the EIR that were paid by Christopher Homes will be returned to Christopher Homes within 30 days of Developer's request for said reimbursement. This shall not apply if the City decides not to certify the EIR or approve the project entitlements because of litigation, a court order or otherwise because any portion of this agreement is held invalid by a court of competent jurisdiction. The Developer shall not be entitled to any cost other than the cost to prepare the EIR. Any remaining costs shall be paid by Developer within fifteen (15) days after invoice by the City. The City will act as lead agency in regard to the Project.

Section 6. City Charter Section 612 Requirements. Per Section 612(a) of City's Charter, park land may not be sold, leased, exchanged, or otherwise transferred or disposed of unless authorized by a majority vote of the City Council and by a majority of the voting public on such proposition at a general or special election. Therefore, any transfer of the Site will require voter approval from a general election, in order to obtain the people's authorization to the potential transfer as proposed in the RFQ/P.

The Developer understands fully and acknowledges that the City cannot advocate for this project in any way and Developer cannot act as the City's agent or in any way represent that the City is advocating one way or another regarding a "Measure C" Ballot

Measure vote. As such Developer is responsible for the non-governmental process of the election.

Section 7. Indemnity.

Section 7.1 CEQA/Environmental. Developer hereby agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, and volunteers, from and against any and all obligations, liabilities, claims, lawsuits, liens, encumbrances, losses, damages, costs and expenses, including without limitation, attorneys' fees, whether direct, contingent, or consequential, incurred by the City relating to this Agreement and/or arising from acts, occurrences, or matters that take place in furtherance of this Agreement, regardless of the nature of any such claim, act, occurrence or matter including but not limited to any required CEQA-compliant environmental studies, the sufficiency and/or adequacy of any CEQA-related environmental studies, environmental certifications, any environmental-related cause of action, any approval granted by the City Council, Planning Commission, or Design Review Board concerning the Project, any challenge to the City's adherence to any federal, State, or local law with regard to CEQA studies and certification.

Section 7.2 Measure C Ballot Measure. Developer hereby agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, and volunteers, from and against any and all obligations, liabilities, claims, lawsuits, liens, encumbrances, losses, damages, costs and expenses, including without limitation, attorneys' fees, whether direct, contingent, or consequential, incurred by the City relating to this Agreement and/or arising from acts, occurrences, or matters that take place in furtherance of this Agreement, regardless of the nature of any such claim, act, occurrence or matter including but not limited to the City Charter required Election (Measure C Ballot Measure) and/or any related cause of action, and/or any cause of action related to a challenge to the City's adherence to any federal, State, or local law

with regard to the Election (Measure C Ballot Measure).

Section 7.3 Deed/Title. Developer agrees, subordinate to First American Title's indemnification and defense, to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, and volunteers, from and against any and all obligations, liabilities, claims, lawsuits, liens, encumbrances, losses, damages, costs and expenses, including without limitation, attorneys' fees, whether direct, contingent, or consequential, incurred by the City relating to this Agreement and/or arising from acts, occurrences, or matters that take place in furtherance of this Agreement, regardless of the nature of any such claim, act, occurrence or matter including but not limited to any present or future claim by Chevron Corporation, its successors, heirs, affiliates, or any third party, set forth or made during the time of this Agreement, and at, and after, the time of Developer's acquisition of the Site, that the ownership, vesting, and/or interest in real property in the subject Site, or portion thereof, reverted, reverts, or will revert back to the Chevron Corporation according to the terms of the deed/title as currently stated in the deed/title as of the date of this Agreement.

Section 7.4 Breach. Developer agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, and volunteers, from and against any and all obligations, liabilities, claims, lawsuits, liens, encumbrances, losses, damages, costs and expenses, including without limitation, attorneys' fees, whether direct, contingent, or consequential, incurred by the City relating to this Agreement and/or arising from acts, occurrences, or matters that take place in furtherance of this Agreement, regardless of the nature of any such claim, act, occurrence or matter including but not limited to any breach by Developer of any of its Agreement warranties or representations set forth in this Agreement.

Section 7.5 Contamination/Site. In the event Developer acquires the Site from the City, and only then, Developer agrees to indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, and volunteers, from and against any and all obligations, liabilities, claims, lawsuits, liens, encumbrances, losses, damages, costs and expenses, including without limitation, attorneys' fees, whether direct, contingent, or consequential, incurred by the City relating to this Agreement and/or arising from acts, occurrences, or matters that take place in furtherance of this Agreement, regardless of the nature of any such claim, act, occurrence or matter including but not limited to any CERCLA claim, repair to Site, mitigation measures, cleanup, environmental cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any hazardous substance on, under, or about the Site, regardless of whether undertaken due to governmental action.

To the fullest extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract, of the City. The foregoing indemnity is intended to operate as an agreement pursuant to CERCLA Section 107(e), of 42 United States Code Section 9607(E), and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the City from any liability pursuant to such sections. The indemnity against special, consequential and punitive damages shall refer to the damages of third parties brought against the indemnified parties, and not to direct damages experienced by such indemnified parties.

Section 8. Effect of this Agreement; Termination.

Section 8.1 Nature of Agreement. Neither this Agreement nor the Development Proposal is a complete statement of all terms and conditions of the proposed Project nor any possible conveyance or financing of the Site. Neither Party intends, by setting forth herein the provisions of a possible transaction, to create for itself or any other person or entity any legally binding obligation or liability, except as specifically stated herein. No subsequent oral agreement or

conduct of the Parties (including partial performance) will be deemed to impose any such obligation or liability.

This Agreement is not intended to constitute a binding agreement by City to convey all or any portion of the Site, to financially participate with Developer in the assembly or acquisition of land or construction or other costs for the Project or any other endeavor of Developer, or to construct or operate the Project, nor is it intended to constitute a binding agreement to agree on the Terms to be Negotiated or to agree on or enter into a new exclusive negotiation agreement or Definitive Agreement or any other contract. Except as otherwise set forth herein, Developer shall be responsible for all cost and liability, specifically including, but not limited to, all costs associated with any and all Federal, State and local environmental requirements. No Party shall be legally bound to consummate the sale, purchase, construction or operation of the Site or a Project, as outlined herein unless and until a Definitive Agreement or other contract has been executed and delivered by the Parties. Any Definitive Agreement or other document, to be legally binding on the City, must satisfy various conditions of the City, including, without limitation, approval by the City Council, in accordance with all applicable laws.

Section 8.2 Exclusive Nature of Negotiations. The Parties intend that certain aspects of the negotiations conducted pursuant to this Agreement be negotiated exclusively between the Parties. Accordingly, during the Negotiating Period, the City shall negotiate exclusively with Developer with respect to the development of the Site.

Section 8.3 Termination of this Agreement. Prior to the expiration of the Negotiating Period, either Party may terminate this Agreement, with or without cause, upon ten (10) days prior written notice to the other Party.

Developer shall remain liable for any cost associated with the environmental analysis as set

forth in the Agreement between the City and the environmental consultant; provided that such costs shall be limited to those costs incurred up until the date the City receives notice that Developer has elected to terminate this Agreement

The Parties, by their respective execution hereof, knowingly agree, notwithstanding anything herein to the contrary, that neither of them shall have any right to specific performance of this Agreement, nor any other equitable nor damage remedies under the law. Each Party makes such release with full knowledge of Civil Code Section 1542 and hereby waive any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

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

If this Agreement is not sooner terminated pursuant to the foregoing paragraphs, this Agreement shall automatically terminate upon the expiration of the Negotiating Period or Extended Negotiating Period and neither Party shall remain bound hereby. Sections , 5, 7, 8.1, 8.3, 8.4, 9, 10, 11, 12, 13, 14, 15 and 16 shall survive the termination or expiration of this Agreement.

Section 8.4 Mutual Confidentiality. To the extent permitted by applicable law, the Parties shall maintain all information concerning this Agreement and any pending or subsequent negotiations between the Parties as confidential, disclosing information only to those individuals and representatives as designated by the other Party provided that such individuals acknowledge and agree to maintain the confidentiality of such information.

Section 9. Notices. Any notices, requests or approvals given under this Agreement from one Party to another may be personally delivered, or deposited with the United States Postal Service for mailing.

postage prepaid, to the address of the other Party as stated in this paragraph, and shall be deemed to have been given at the time of personal delivery or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent as follows:

If to City: The City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attn: City Manager

With Copies to: City Attorney
2000 Main Street, 4th Floor
Huntington Beach, California 92648

If to Developer: Christopher Homes
23 Corporate Plaza Drive, Suite 246
Newport Beach, CA 92660
Attn: Daniel O'Bannon

Section 10. Governing Law. This Agreement shall be governed by the laws of the State of California. To the extent permitted by law, any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California in an appropriate court in that county, or in the Federal District Court in the Central District of California.

Section 11. Attorneys' Fees. If any legal action is brought to enforce, construe, interpret or invalidate the terms of this Agreement, each Party shall bear its own costs and attorneys' fees, except as provided for in Section 7 of this Agreement. The prevailing party shall not be entitled to recover any costs and expenses incurred in any such action, including court costs and reasonable attorneys' fees, from the non-prevailing party.

Section 12. Interpretation. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each Party participated equally in its drafting. Captions are for reference only and are not to be used in construing meaning. The recitals are deemed incorporated into this Agreement.

Section 13. Real Estate Commissions. Each of the Parties represents and warrants to the other Party that no real estate commission, broker's fees, or finder's fees which may accrue by means of the acquisition of any interest in the Site is due to any person, firm or entity except as set forth herein. Each Party agrees to indemnify and hold the

other Party harmless with respect to any judgment, damages, legal fees, court costs, and any and all liabilities of any nature whatsoever arising from a breach of such representation.

Section 14. Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by each of the Parties.

Section 15. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning this subject. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the Parties concerning all or any part of the subject matter of this Agreement.

Section 16. Implementation of Agreement. The City shall maintain authority to implement this Agreement through the City Manager. The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development contemplated hereunder, or add to the costs incurred or to be incurred by the City as specified herein, and such interpretations, waivers and/or amendments may include extensions of time to perform. All other materials and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

Section 17. Effective Date. This Agreement shall take effect immediately upon the execution of this Agreement by the City (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their authorized officers as of the respective dates set forth below.

Dated: _____, 2015

CITY:
THE CITY OF HUNTINGTON BEACH
A California municipal corporation

Mayor

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney *NW 10-29-15*

Dated: _____, 2015

"DEVELOPER"
CHRISTOPHER DEVELOPMENT
GROUP, INC.

A California Corporation

By: *Dave O'Barra*
Its: *CFO*

EXHIBIT A

Property Description

Real property in the City of Huntington Beach, County of Orange, State of California, described as follows:

ALL OF BLOCK 417, HUNTINGTON BEACH, SEVENTEENTH STREET SECTION, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGE 10 OF MISCELLANEOUS MAPS, ORANGE COUNTY, CALIFORNIA.

APN: 023-152-01

EXHIBIT B

Proposed Purchase Price and Other Terms

- (1) PURCHASE PRICE - The purchase price shall be Eleven Million Dollars (\$11,000,000). This purchase price is based on approval of 22 residential lots.
- (2) CLOSE OF ESCROW - The close of escrow shall occur 60 days following the certification of the election approving the Measure C campaign in favor of the project.
- (3) PAYMENT OF PURCHASE PRICE – The Purchase Price will be paid as follows:
 - (a) Initial Deposit of \$20,000, already received by City
 - (b) Land Sale Balance of \$10,980,000 to be paid at closing
- (4) ADDITIONAL PURCHASE PRICE – There shall be no Additional Purchase Price paid to City.
- (5) APPLICATION OF THE INITIAL DEPOSIT – Developer’s Initial Deposit shall be applied towards it’s first \$20,000 of EIR Reimbursement Costs or City Fees, which occurs first.
- (6) DEVELOPER PAYMENT OF CITY EIR REVIEW FEES – Developer requests that the \$99,922 in projected EIR Review fees be paid in equal monthly installments to match the actual work load by City Staff.