



City of Huntington Beach Planning and Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Jane James, Senior Planner *of*
DATE: July 24, 2012

SUBJECT: ENTITLEMENT PLAN AMENDMENT NO. 12-005 AND DEVELOPMENT AGREEMENT NO. 12-001, (PACIFIC CITY AMENDMENT TO EXISTING CONDITIONS OF APPROVAL AND PROPOSED DEVELOPMENT AGREEMENT)

**APPLICANT/
PROPERTY**

OWNER: Sharon Christenbury 21002 HB, LLC, 2200 Biscayne Boulevard, Miami, FL 33137

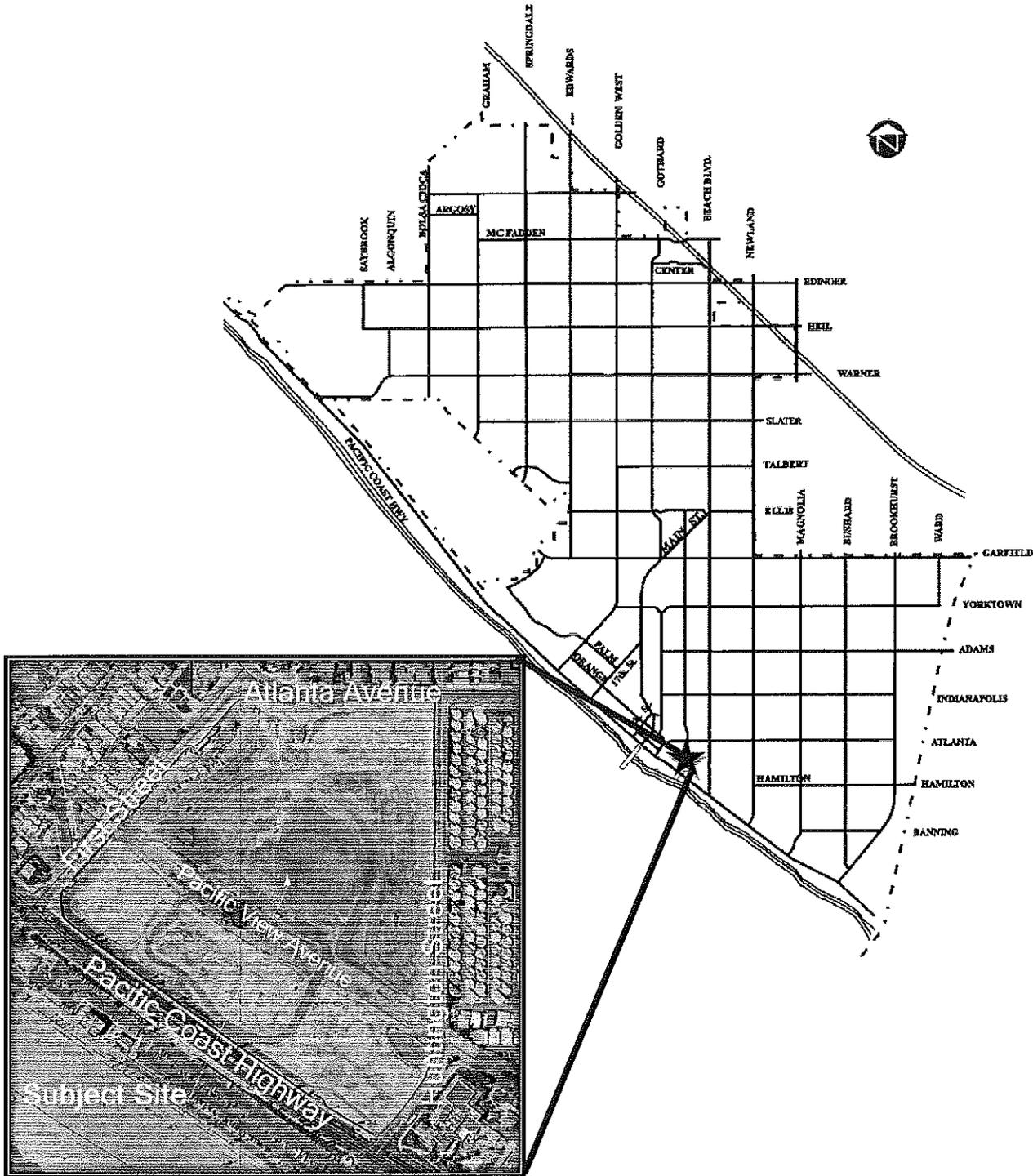
LOCATION: 21002 Pacific Coast Highway, 92648 (bounded by Pacific Coast Highway, First Street, Atlanta Avenue, and Huntington Street)

STATEMENT OF ISSUE:

- ◆ Entitlement Plan Amendment No. 12-005 represents a request to amend previously approved conditions of approval for the Pacific City project for the following:
 - Establish a new Affordable Housing Plan requiring 10% moderate income level (less than 120% of County median) on-site and 5% very low off-site by City Housing Authority instead of 15% in a combination of on-site and off-site;
 - Delete condition of approval regarding developing an agreement with school districts to mitigate impacts of the project so that project is subject to current State law;
 - Require Park Land In-Lieu Fees to be due at final inspection instead of at Final Tract Map approval;
 - Reflect that the project will be subject to new Development Impact Fees, including Park Land In-Lieu Fees, that are in effect at the time of building permit final inspection instead of basing fees on land value;
 - Bifurcate the phasing of the retail and hotel construction in junction with the residential construction instead of requiring the commercial construction prior to or simultaneously with the residential development and establish a "time extension" fee to the City through a separate Development Agreement; and
 - Solidify description of the public open space amenities as passive uses

- ◆ Development Agreement No. 12-001 represents a request for the following:
 - To enter into a Development Agreement between the City of Huntington Beach and 21002 HB, LLC (property owner) to vest the current land use designations and standards at the site, establish development impact fees, future condominium sale provisions, retail and hotel "time extension" fees, and affordable housing provisions.

- ◆ Staff recommends approval of Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001 based upon the following:
 - Consistency with the General Plan and Downtown Specific Plan (DTSP);
 - Conforms to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO);
 - Ensure development of the Pacific City project consistent with the conditions approved for Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, Conceptual Master Plan, applicable mitigation measures adopted for Environmental Impact Report No. 02-01, and any future entitlement plan amendments that may be approved by the City;
 - Establish current Development Impact Fees and future condominium sale provisions;
 - Establish a “time extension fee” should the retail and hotel development lag behind the residential construction; and
 - Ensures the mutually beneficial development of the approved project and serves the affordable housing needs of the community by providing 51 on-site affordable housing units and 26 off-site affordable units.



**VICINITY MAP
 ENTITLEMENT PLAN AMENDMENT NO. 12-005 AND
 DEVELOPMENT AGREEMENT NO. 12-001**

RECOMMENDATION:

Motion to:

“Approve Entitlement Plan Amendment No. 12-005 with findings and suggested conditions of approval and approve Development Agreement No. 12-001 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001 with findings for denial.”
- B. “Continue Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001 and direct staff accordingly.”

PROJECT PROPOSAL:

Entitlement Plan Amendment No. 12-005 represents a request to amend existing conditions of approval pursuant to Section 241.18 of the Huntington Beach Zoning and Subdivision Ordinance (ZSO). The proposed modifications to the conditions of approval are related to affordable housing, agreement with school districts, park land in-lieu fees, phasing of the project development, and type of amenities within the Village Green park area. Specifically, the proposed amendments are as follows:

- Amend Tentative Tract Map No. 16338 (TTM) Condition of Approval (COA) No. 2.b. to establish a new Affordable Housing Plan requiring 10% moderate income level (less than 110% of County median) on-site and 5% very low off-site by City Housing Authority instead of 15% in a combination of on-site and off-site;
- Delete TTM COA No. 3.g. regarding developing an agreement with school districts to mitigate impacts of the project so that project is subject to current State law;
- Amend TTM COA No. 11 to require Park Land In-Lieu Fees to be due at final inspection instead of at Final Tract Map approval;
- Amend Code Requirement No. 8 to reflect that the project will be subject to new Development Impact Fees, including Park Land In-Lieu Fees, that are in effect at the time of building permit final inspection instead of basing fees on land value;
- Amend Conditional Use Permit (CUP) No. 02-20 COA No. 3 to bifurcate the phasing of the retail and hotel construction in junction with the residential construction instead of requiring the commercial construction prior to or simultaneously with the residential development and establish a “time extension” fee to the City through a separate Development Agreement; and
- Amend CUP COA No. 6.c to solidify description of the public open space amenities as passive uses.

A matrix comparing the complete current and proposed conditions of approval is included as Attachment No. 4.

Development Agreement No. 12-001 represents a request to enter into a Development Agreement between the City of Huntington Beach and 21002 HB, LLC (property owner) pursuant to Chapter 246 of

the ZSO. The proposed development agreement is intended to vest the current land use designations and standards at the site, establish development impact fees, future condominium sale provisions, retail and hotel “time extension” fees, and affordable housing provisions.

Background:

On June 7, 2004, the City Council approved Environmental Impact Report No. 02-01, Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, and Conceptual Master Plan for the Pacific City project. The approved Pacific City mixed use project allowed subdivision of the approximately 31 acre site into three parcels and permitted development of 516 condominiums, an eight story, 400 room hotel, spa and health club, and 191,100 square feet of visitor-serving commercial uses with retail, office, restaurant, cultural, and entertainment uses. The approved project was subsequently reduced through an entitlement plan amendment in 2008 to a 250 room hotel and a corresponding reduction in the parking through a revised shared parking analysis.

On October 16, 2006, the City Council approved EPA No. 06-02, along with an Owner Participation Agreement (OPA), to amend the Affordable Housing Plan and City Park Land In-Lieu Fee requirements. Approval of EPA No. 06-02 included language that if the OPA was not implemented then the project should comply with the original conditions of approval and park and recreation in-lieu fees should be paid prior to recordation of the map. The map was recorded on August 30, 2007. However, with the recent bankruptcy of the former property owner, the OPA will be dissolved. Thus, the conditions of approval revert to their original form and are the subject of the current request for amendment through EPA No. 12-005.

The project started construction on two thirds of the subterranean parking structure along Pacific Coast Highway but ceased construction in approximately 2008 due to the downturn in the economy and market conditions. The site has since been acquired by a new property owner, 21002 HB, LLC.

ISSUES:

Subject Property Land Use, Zoning, and General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	CV-F7-sp (Commercial Visitor - 3.0 floor area ratio - specific plan overlay) and RH-30-sp (High Density Residential - 30 du/gac - specific plan overlay)	Downtown Specific Plan (SP 5) – District 2 (Visitor Serving Mixed Use) and District 5 (Multi-Family Residential)	Partially completed subterranean parking structure/Vacant
North of Subject Property (across Atlanta Ave.):	RMH-25-d (Residential Medium High Density – 25 du/ac-design overlay)	RMH-A (Residential Medium High Density-Small Lot)	Multi-family units
East of Subject Property (across Huntington St.):	RM-15 (Residential Medium Density – 15 du/ac) and CV-F7-sp (Commercial Visitor - 3.0 floor area ratio - specific plan overlay)	RMP (Manufactured Home Park) and SP 5 – District 3 (Visitor-Serving Recreation)	Mobilehome park and Waterfront Hilton Hotel

LOCATION	GENERAL PLAN	ZONING	LAND USE
South of Subject Property (across PCH):	OS-S (Open Space-Shore)	SP 5 – District 7 (Beach)	South Beach Parking Lot, Beach and Beach Improvements
West of Subject Property (across 1 st St.):	M->30-d-sp-pd (Mixed Use – 30 du/ac - design overlay – specific plan overlay – pedestrian overlay)	SP 5 – District 1 (Downtown Core Mixed Use)	Commercial, Oil-Related and Residential

General Plan Conformance:

The project site is located within the Visitor Serving Mixed Use and Multi-Family Residential segments of the Downtown Specific Plan. The General Plan land use designations are Commercial Visitor - Specific Plan Overlay and Residential High Density – Specific Plan Overlay (CV-F7-sp and RH-30-sp). The entitlement plan amendment and development agreement are consistent with the following General Plan goals, policies and objectives:

A. Economic Element

Policy – ED 2.4.2: Seek to capture the “new growth” businesses such entertainment-commercial developments.

Policy– ED 2.4.3: Encourage the expansion of the range of goods and services provided in Huntington Beach to accommodate the needs of all residents in Huntington Beach and the market place.

B. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

C. Land Use Element

Objective – LU 7.1: Accommodate the development of a balance of land uses that provides for commercial, employment, entertainment, and recreation needs of existing and future residents, and provides employment opportunities for residents of the City and the surrounding region and captures visitor and tourist activity.

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable

- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Objective – LU 10.1: Provide for the continuation of existing and the development of a diversity of retail and service commercial uses that are oriented to the needs of local residents, serve the surrounding region, and capitalize on Huntington Beach's recreational resources.

Policy – 10.1.8: Require that entertainment, drinking establishments, and other similar uses provide adequate physical and safety measures prevent negative impacts on adjacent properties.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

The entitlement plan amendment and development agreement would ensure that the project is developed in accordance with current standards and regulations and the approved development plans, which provide a housing choice adjacent to an existing public transit route and provides an alternative for residents seeking to be within walking distance of work, services or commercial uses and reduce dependency on their automobile. The entitlement plan amendment and development agreement would guarantee that the project is subject to current Development Impact Fees and that the project provides 51 on-site affordable housing units and 26 off-site units. These units would help the City to satisfy its affordable housing obligations while providing housing for moderate income households (51 units) and very low income households (26 units). The development agreement specifies a delay fee if the retail and hotel construction lags behind the residential construction, thus encouraging the orderly development of the mixed use master plan. The proposed project will modify conditions of approval and allow development to proceed to provide a wide arrange and diversity of commercial uses and cater to the needs of local residents and residents in the surrounding region. The project will provide additional entertainment uses that will encourage tourism to the site and the surrounding area. The project will facilitate employment opportunities and will not impact the subject site and surrounding area.

Zoning Compliance:

The Pacific City project, as approved pursuant to Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, Conceptual Master Plan and as amended by EPA 12-005, is consistent with the development standards and regulations of the Downtown Specific Plan. Entitlement Plan Amendment No. 12-005 brings the project up to current development standards and regulations regarding park and recreation in-lieu fees, school impact fees, and affordable housing. Development Agreement No. 12-001 references the approved project and would

ensure implementation of the project in accordance with the conditions of approval and mitigation measures adopted for the project.

Urban Design Guidelines Conformance: Not Applicable.

Environmental Status:

Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001 are covered under Environmental Impact Report (EIR) No. 02-01, prepared by EIP Associates and certified by the City Council on June 7, 2004, pursuant to the provisions of the California Environmental Quality Act.

Environmental Board: Not Applicable.

Coastal Status:

The Pacific City project site is located in the non-appealable jurisdiction of the Coastal Zone and includes an entitlement plan amendment to Coastal Development Permit No. 02-12 approved by the City Council on June 7, 2004. The proposed amendments and development agreement are consistent with the Coastal Element.

Redevelopment Status: No Longer Applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

Development Agreement No. 12-001 was drafted by counsel for the applicant and outside counsel for the City Attorney's office in coordination with the Planning Division and Economic Development Department. In addition, Development Agreement No. 12-001 is consistent with conditions approved for Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, Conceptual Master Plan, and as amended by EPA 12-005, and applicable mitigation measures adopted for Environmental Impact Report No. 02-01, which was reviewed by the Building Division and Fire, Police, Public Works, Community Services and Economic Development Departments.

Public Notification:

Legal notice was published in the Huntington Beach Independent on July 12, 2012, and notices were sent to property owners of record and occupants within a 500 ft. radius of the project site, interested parties, and individuals/organizations that commented on the environmental document. As of July 17, 2012, one communication on Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001 has been received and is included as Attachment No. 5.

Application Processing Dates:

<u>DATE OF COMPLETE APPLICATION:</u>	<u>MANDATORY PROCESSING DATE(S):</u>
DA 12-001: June 4, 2012	Not Applicable
EPA 12-005: April 18, 2012	June 18, 2012 *

*The applicant elected to process both EPA 12-005 and DA 12-001 simultaneously for one study session and public hearing before the Planning Commission. The DA application was filed in complete form on June 4, 2012 but was not completed as a mutually acceptable document by both applicant and staff until July 6, 2012. The Study Session was held on July 10, 2012 and this staff report is for the July 24, 2012 public hearing.

ANALYSIS:

Entitlement Plan Amendment No. 12-005

A matrix comparing the existing conditions of approval and the proposed amendments can be found in Attachment No. 4. A discussion of the overall amendments is included here.

Affordable Housing

The proposed amendments regarding affordable housing bring the project up to date with the current status of Redevelopment. When the project was approved in 2004, the site was located in a Redevelopment Project Area and required a minimum of 15% of the total units to be provided as affordable units. The conditions of approval stated that a minimum of 50% of the required number of affordable housing units shall be on-site and the remaining number of units can be on-site or off-site. An option to the minimum 50% on-site was that the applicant may elect to build the units off-site, provided that the number of units is increased on a 2:1 basis and located within a redevelopment area. Subsequently, the property owner entered into an Owner Participation Agreement with the Redevelopment Agency in which the Agency was to construct the affordable units off-site with funding from the applicant. The State of California recently dismantled Redevelopment Agencies. According to the Economic Development Department, there is some debate among legal circles, however, about whether the Redevelopment Project Area (and the 15% requirement) is still in effect. A project of this size outside of a Redevelopment Project Area would require 10% of the units to be provided as affordable.

The applicant's proposed amendments to the conditions result in an obligation to provide 15% of the residential units as affordable units, with the applicant providing 10% (51 units) on-site in the form of moderate income level (less than 120% of Orange County median) units for a period of 55 years to be dispersed among the market rate units and the City of Huntington Beach Housing Authority ("City HA") providing 5% (26 units) off-site in the form of very low income units. The City HA is the successor housing agency to the Redevelopment Agency. The proposed amendments also provide flexibility in the timing of providing the affordable units. As written, one half of the overall market rate units may be constructed without providing any affordable units. Prior to completing 75% of the total units, the applicant must provide half of the affordable units (25 units). Then, prior to completing 100% of the overall units, the applicant must provide the other half of the affordable units (26 units).

Staff supports these proposed amendments because the preference is to provide on-site units integrated into the entire project, an overall 15% is still maintained even though the current requirement would be 10%, and a mix of moderate (on-site) and very-low (off-site) income units will be provided. The proposed amendment regarding phasing timing and allowing construction of 75% of the total units to proceed gives flexibility to the property owner in today's difficult housing conditions and creates a favorable project description to obtain bank financing. Ultimately, all of the affordable units will be provided and staff supports flexibility to allow the long delayed construction to proceed.

School Districts

The previous condition of approval, crafted in 2004, required the applicant to meet with and negotiate an agreement with local school districts to mitigate potential impacts of the project. The applicant's proposal to delete the condition results in the project being subject to current State law governing payment of school impact fees. Staff supports deletion of this condition to bring the project in-line with current regulations.

Park and Recreation Fees

When the project was approved in 2004, the conditions of approval required payment of park and recreation in-lieu fees at the time of Final Map approval. The project design also included a 2.03 acre open space area to be open and available for public use but not to be credited towards park and recreation requirements of the project. After approval of the entitlements, the Agency entered into an OPA with the property owner requiring the property owner to fund construction of the Senior Center at an off-site location. Entitlement Plan Amendment No. 06-02 was simultaneously approved, allowing the park and recreation fees to be subject to the terms of the OPA. EPA No. 06-02 contained language that should the OPA not be implemented, then the conditions would revert to their original form. With that separate agreement in place, the Final Map was approved and recorded without collection of any park and recreation fees. A small portion of the overall park and recreation funds were then collected and spent on construction drawings for the Senior Center.

Subsequently, the former property owner filed for bankruptcy and the Redevelopment Agency was dismantled, therefore, the prior OPA will also be dissolved. In order to address the terms of the OPA, the property owner proposes to amend the conditions of approval and require payment of Park and Recreation In-Lieu fees in accordance with the amounts and procedures currently required for all development projects. The City Council adopted new Development Impact Fees last month that require payment of impact fees at final inspection rather than at final map or initiation of building permits. The proposed amendments by the applicant are intended to match the recently adopted fee requirements and staff supports the request. In this scenario, park and recreation funds collected for the project would not be earmarked for any particular project and it would be up to the City Council to determine how the funds are spent.

Project Phasing

When the original project was approved, the housing market was strong, financing was readily available, and developers were motivated to construct quickly. The City wanted to ensure that the retail and hotel components of the overall project were constructed simultaneously so that the master plan was implemented all at once. A thriving successful mixed use project includes both retail and residential and the City benefits from increased retail sales tax revenue, transient oriented taxes from the hotel, and

increased property values of the overall development. The conditions of approval included restrictions on phasing of the development to ensure that the residential could not progress unless the retail and hotel components were also simultaneously progressing.

Today, the new property owner finds that financing and marketing of the project is hindered by the conditions of approval tying the phasing of construction together. The applicant proposes to “de-link” the phasing by allowing the residential construction to proceed without the associated retail and hotel construction. The new conditions of approval require any portion of the project that is not under construction to be enclosed by a decorative scrim with both a public art element and leasing information for that property. The condition further states that if 50% of the residential units have completed construction and the retail and/or hotel construction has not commenced, then the property will be subject to a “time extension” fee as established in Development Agreement No. 12-001.

Staff supports this proposed amendment to the conditions of approval because the retail and/or hotel sites will be decoratively treated if they remain vacant and the Development Agreement includes incentives to motivate construction of the retail and hotel portions in accordance with the master plan. If construction of the commercial portion lags behind the residential, then the City will receive funds to off-set the loss of revenue from the completed project.

Village Green

The applicant requests to amend the subject condition to specify that the applicant designs the public open space area and that the uses are passive in keeping with the residential character of the park. Staff supports these amendments to solidify the passive uses while still ensuring that ultimate approval is subject to the Community Services Commission, Community Services Director, and Public Works Director.

Development Agreement No. 12-001

Consistency with the DTSP and General Plan

The City is authorized pursuant to California Government Code Section 65864 et.seq. and Chapter 246 of the HBZSO to enter into binding development agreements with persons or entities owning legal interests in real property located within the City. The objective of a development agreement is to provide assurances that an applicant may proceed with a project in accordance with existing policies and standards in place at the time of project approval. The City and developer desire to enter into a development agreement for the subject site in order to achieve the mutually beneficial development of the property and ensure that the project is developed in accordance with the approved project pursuant to Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, Conceptual Master Plan, the Downtown Specific Plan, and any future entitlement plan amendments that may be approved by the City.

The development agreement would be effective for ten years and vests the developer’s right to construct the project pursuant to the terms of the agreement. Development Agreement No. 12-001 references the approved project and any future projects that may be approved by the City. In addition, the development agreement is consistent with the General Plan land use designation for the site insofar as the approved project is consistent with the General Plan land use designation. As discussed in the General Plan

Conformance Section of this report, the development agreement would conform to applicable goals and policies of the General Plan.

Other Provisions

Development Agreement No. 12-001 also includes provisions to establish current development impact fees, retail and hotel “time extension” fees, and affordable housing provisions as described above. Additionally, the development agreement includes provisions should the rental units be sold as condominiums in the future. The original tract map approval was for a condominium project and the final map has been recorded as condominiums although the current property owner intends to develop and rent the project as apartments. If the units are sold at any time in the future, the property owner will be required to submit CC&Rs for City review, provide a 90-day notification to the renters, and provide the tenants with a first right of refusal to purchase the units.

The development agreement also includes language specifying that the developer’s future sale or transfer of the property is subject to the City’s prior written approval regarding the new assignee. It should be noted that DJM Acquisition Group, LLC (or DJM’s affiliate) is pre-approved to acquire the Retail Parcel and Hotel Parcel.

Staff supports the provisions of the proposed development agreement because it is consistent with the General Plan, brings the project up to current Development Impact Fees, encourages the simultaneous development of the retail and hotel along with the residential and protects the City’s interest if the commercial components lag behind the residential, vests the development approvals, and includes future condominium sale provisions. Benefits to the City also include the provision of affordable housing and the “time extension” fees due to the City if more than half of the residential units are completed without the corresponding start of construction on the retail and hotel parcels.

SUMMARY:

Staff recommends approval of Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001 because they would:

- Conform to applicable goals and policies of the General Plan and the provisions of the Downtown Specific Plan No. 5;
- Conform to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance;
- Ensure development of the Pacific City project consistent with the conditions approved for Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, Conceptual Master Plan, applicable mitigation measures adopted for Environmental Impact Report No. 02-01, and any future entitlement plan amendments that may be approved by the City;
- Establish current Development Impact Fees and future condominium sale provisions; Establish a “time extension fee” should the retail and hotel development lag behind the residential construction; and
- Ensures the mutually beneficial development of the approved project and serves the affordable housing needs of the community by providing 51 on-site affordable housing units and 26 off-site affordable units.

ATTACHMENTS:

1. Suggested Findings and Conditions of Approval for Entitlement Plan Amendment No. 12-005 and Development Agreement No. 12-001
2. Draft Ordinance – Pacific City Development Agreement
3. City Council approved Conditions of Approval dated June 14, 2004 and Development and Use Requirements letter dated June 9, 2004 – **Not Attached; Previously Distributed with Study Session Staff Report and Available at Planning Division, City Hall, City of Huntington Beach**
4. Pacific City Proposed Amendments to Conditions of Approval Matrix
5. Letter from Karen Jackle, received and dated July 9, 2012

SH:HF:MBB:jj

ATTACHMENT NO. 1

SUGGESTED FINDINGS AND CONDITIONS FOR APPROVAL

ENTITLEMENT PLAN AMENDMENT NO. 12-005 AND DEVELOPMENT AGREEMENT NO. 12-001

SUGGESTED FINDINGS FOR CEQA:

The Planning Commission finds that the development agreement was included in the scope of the Pacific City Environmental Impact Report No. 02-01, certified by the City Council on June 7, 2004 and is exempt from further environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines.

SUGGESTED FINDINGS FOR APPROVAL -- ENTITLEMENT PLAN AMENDMENT NO. 12-005 AND DEVELOPMENT AGREEMENT NO. 12-001:

1. Entitlement Plan Amendment No. 12-005 is a request to permit modifications to the conditions of approval for the approved Pacific City project to: a) Amend Tentative Tract Map No. 16338 (TTM) Condition of Approval (COA) No. 2.b. to establish a new Affordable Housing Plan requiring 10% moderate income level (less than 120% of County median) on-site and 5% very low off-site by City Housing Authority instead of 15% in a combination of on-site and off-site; b) Delete TTM COA No. 3.g. regarding developing an agreement with school districts to mitigate impacts of the project so that project is subject to current State law; c) Amend TTM COA No. 11 to require Park Land In-Lieu Fees to be due at final inspection instead of at Final Tract Map approval; d) Amend Code Requirement No. 8 to reflect that the project will be subject to new Development Impact Fees, including Park Land In-Lieu Fees, that are in effect at the time of building permit final inspection instead of basing fees on land value; e) Amend Conditional Use Permit (CUP) No. 02-20 COA No. 3 to bifurcate the phasing of the retail and hotel construction in junction with the residential construction instead of requiring the commercial construction prior to or simultaneously with the residential development and establish a "time extension" fee to the City through a separate Development Agreement; and f) Amend CUP COA No. 6.c to solidify description of the public open space amenities as passive uses.

The proposed amendments will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The project modifications will update the 2004 project entitlements for consistency with current standards regarding payment of development impact fees but will maintain compatibility with the surrounding area. The modifications to amend the phasing of the project development also maintain compatibility with the surrounding area by requiring installation and maintenance of a decorative scrim around any portion of the project not under construction. The modifications to conditions of approval will not result in physical changes to the approved project entitlements (although pending applications to amend the residential site plan, floor plans, and building elevations are underway). The proposed amendments will not generate significant traffic, air quality, noise, odors, or other detrimental impacts onto surrounding properties.

2. The entitlement plan amendment will be compatible with surrounding uses because the modifications to the existing conditions of approval will only modify payment of Development Impact Fees and

phasing of construction. The entitlement plan amendment does not amend the approved Pacific City mixed use project consisting of the subdivision of the approximately 31 acre site into three parcels and development of 516 condominiums, an eight story, 400 room hotel, spa and health club, and 191,100 square feet of visitor-serving commercial uses with retail, office, restaurant, cultural, and entertainment uses. The approved project was subsequently reduced through an entitlement plan amendment in 2008 to a 250 room hotel and a corresponding reduction in the parking through a revised shared parking analysis. The approved project remains compatible with other residential, commercial, and beach open space uses in the surrounding area.

3. The proposed entitlement plan amendment will comply with the provisions of the base district and other applicable provisions in SP 5 (Downtown Specific Plan), Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance, and any specific condition required for the proposed use in the district in which it is located. The project modifications will update the 2004 project entitlements for consistency with current standards regarding payment of development impact fees and phasing of construction.
4. The granting of the entitlement plan amendment and the development agreement will not adversely affect the General Plan. They are consistent with the Land Use Element designation of CV-F7-sp (Commercial Visitor - 3.0 floor area ratio - specific plan overlay) and RH-30-sp (High Density Residential - 30 du/gac - specific plan overlay) on the subject property. In addition, they are consistent with the following goals and policies of the General Plan:

A. Economic Element

Policy – ED 2.4.2: Seek to capture the “new growth” businesses such entertainment-commercial developments.

Policy– ED 2.4.3: Encourage the expansion of the range of goods and services provided in Huntington Beach to accommodate the needs of all residents in Huntington Beach and the market place.

B. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

C. Land Use Element

Objective – LU 7.1: Accommodate the development of a balance of land uses that provides for commercial, employment, entertainment, and recreation needs of existing and future residents, and provides employment opportunities for residents of the City and the surrounding region and captures visitor and tourist activity.

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Objective – LU 10.1: Provide for the continuation of existing and the development of a diversity of retail and service commercial uses that are oriented to the needs of local residents, serve the surrounding region, and capitalize on Huntington Beach's recreational resources.

Policy – 10.1.8: Require that entertainment, drinking establishments, and other similar uses provide adequate physical and safety measures prevent negative impacts on adjacent properties.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

The entitlement plan amendment and development agreement would ensure that the project is developed in accordance with current standards and regulations and the approved development plans, which provide a housing choice adjacent to an existing public transit route and provides an alternative for residents seeking to be within walking distance of work, services or commercial uses and reduce dependency on their automobile. The entitlement plan amendment and development agreement would guarantee that the project is subject to current Development Impact Fees and that the project provides 51 on-site affordable housing units and 26 off-site units. These units would help the City to satisfy its affordable housing obligations while providing housing for moderate income households (51 units) and very low income households (26 units). The development agreement specifies a delay fee if the retail and hotel construction lags behind the residential construction, thus encouraging the orderly development of the mixed use master plan. The proposed project will modify conditions of approval and allow development to proceed to provide a wide arrange and diversity of commercial uses and cater to the needs of local residents and residents in the surrounding region. The project will provide additional entertainment uses that will encourage tourism to the site and the surrounding area. The project will facilitate employment opportunities and will not impact the subject site and surrounding area.

SUGGESTED CONDITIONS OF APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 12-03:

1. The conditions of approval shall be amended as follows:

New Tentative Tract Map No. 16338 Condition of Approval No. 2.b.:

"An Affordable Housing Plan (the "Plan"), which reflects the requirements described below, shall be prepared by Applicant and submitted to the Planning and Building Department for review and approval prior to issuance of the first residential building permit. The contents of the Plan shall include the following:

(1) An obligation to provide 15% of the residential units as affordable units, with applicant providing 10% (51 units) on-site in the form of moderate income level (less than 110% of Orange County median) units for a period of 55 years to be dispersed among the market rate units and the City of Huntington Beach Housing Authority ("City HA") providing 5% (26 units) off-site in the form of very low income units.

(2) The affordable units provided by the applicant shall be on-site and the affordable units provided by the City HA shall be off-site.

(3) A detailed description of the type, size, location and phasing of the affordable units, on-site and off-site.

(4) A detailed description of the disbursement of the affordable housing units and, at full build-out, dispersal of the units throughout the Project, consistent with the disbursement plan. The applicant shall prepare an annual monitoring report that demonstrates: (i) the location of these and future affordable units are consistent with the disbursement plan; and (ii) the applicable rents are being charged for the affordable units.

(5) The first 50% (258) of the market rate residential units may be constructed and occupied prior to the construction and occupancy of any affordable units. Prior to final inspection of 75% (387) of the market rate residential units, 25 of the on-site affordable units must be entitled, approved and building permits obtained (and/or restrictive covenants recorded). The remaining 26 on-site affordable units must be entitled, approved and building permits obtained (and/or restrictive covenants recorded) prior to final inspection of 100% of the market rate residential units. The trigger points of 50% and 75% may vary by up to 5% to account for phasing or building types. If construction is completed and units receive final inspection for up to the first 50% of market rate units and no further construction of market rate residential units is commenced for a period of five (5) years following completion of construction of the units occupied, applicant shall designate and establish 10% of the existing market rate units as moderate affordable units.

Delete Tentative Tract Map No. 16338 Condition of Approval No. 3.g in its entirety

~~"Agreement with appropriate school district intending to mitigate the impact on school facilities shall be executed. The Planning Department shall be provided with a copy of the agreement prior to recordation of the final tract map."~~

New Tentative Tract Map No. 16338 Condition of Approval No. 11.:

"City Park Land In-Lieu fees shall be due on a building by building basis at the time a certificate of occupancy or final building inspection approval is issued for that building and shall be in the amount applicable at the time the fees are paid or become due, whichever comes first."

New CUP No. 02-20 with Special Permits/CDP No. 02-12 Condition of Approval No. 3.:

"If construction on either the retail or the hotel site has not commenced prior to the commencement of construction of the market rate residential units, a decorative scrim shall immediately be placed around the site not under construction with both a public art component and leasing information for that property. The owner/developer of the site, whether the retail or the hotel, shall be responsible for installation and maintenance of the scrim. If the applicable owner/developer fails to commence construction or install and maintain the scrim prior to the time the residential owner/developer commences construction, then the residential owner/ developer shall be responsible for installing and maintaining the scrim. Prior to occupancy of more than 50% of the market rate residential units the owner/developers of the retail and hotel sites shall become subject to construction and completion obligations detailed in a Development Agreement for the Project."

New CUP No. 02-20 with Special Permits/CDP No. 02-12 Condition of Approval No. 6.c.:

"The Village Green park area, pocket park, and entry corridor shall be designed by the applicant and a detailed park improvement plan, prepared by the applicant, shall include typical neighborhood amenities including, but not limited to, tot lot play equipment, open turf play area and picnic tables and benches, while also insuring that the public use is in keeping with the residential character of the park. In part this shall be accomplished by a design that focuses on passive activities consistent with residential use. All amenities must conform to current Consumer Product Safety Guidelines with certain amenities in compliance with the Americans with Disabilities Act. The entry corridor to the park (from Pacific View Ave.) and all other corridors must incorporate an architectural feature that properly identifies the area as public space. The plan shall identify play equipment, architectural features, plant material, ground cover, sidewalks, lighting, etc. and shall be reviewed and approved by the Community Services Commission, Community Services Director, and Public Works Director prior to installation."

2. All conditions of approval and mitigation measure required under Environmental Impact Report No. 02-01, Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12, and Conceptual Master Plan for the Pacific City project shall remain valid, with exception of the conditions of approval identified in No. 1 above, as modified herein.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

ORDINANCE NO. _____

DRAFT

**AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADOPTING A
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON
BEACH AND 21002 HB, LLC (PROPERTY OWNER)
(DEVELOPMENT AGREEMENT NO. 12-001)**

WHEREAS, the City Council approved Environmental Impact Report No. 02-01, Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, Coastal Development Permit No. 02-12 and Conceptual Master Plan for the Pacific City Project to develop an approximately 31-acre property located at 21002 Pacific Coast Highway (Property) with a mixed use project consisting of 516 condominiums, a 400 room hotel (subsequently reduced to 250 rooms) with spa and health club, and 191,100 feet of visitor serving commercial uses with retail, office, restaurant, cultural, and entertainment uses with a shared use of parking (Project) pursuant to Downtown Specific Plan No. 5 (SP 5); and

The City and Property Owner each mutually desire to enter into a Development Agreement with one another to permit and ensure that the Property is developed in accordance with the approved entitlements to achieve the mutually beneficial development of the Property.

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That the City Council hereby finds that Development Agreement No. 12-001 conforms to Government Code Section 65864 et. seq. and that:

- a. Development Agreement No. 12-001 is consistent with the Huntington Beach General Plan and the applicable provisions of SP 13; and
- b. Development Agreement No. 12-001 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and the Huntington Beach Municipal Code; and
- c. Development Agreement No. 12-001 will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of the property because it is consistent with applicable land use regulations of SP 13, mitigation measures adopted for the Project in accordance with EIR No. 02-01, and conditions approved for Tentative Tract Map No. 16338, Conditional Use Permit No. 02-20, Special Permit No. 02-04, and Coastal Development Permit No. 02-12; and
- d. The City Council has considered the fiscal effect of Development Agreement No. 12-001 on the City and the effect on the housing needs of the region in which the City is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.

SECTION 2. Based on the above findings, the City Council of the City of Huntington Beach hereby approves Development Agreement No. 12-001 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

SECTION 3. This ordinance shall take effect 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2012.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

Director of Planning and Building

Exhibit A: Development Agreement No. 12-001

EXHIBIT A

ATTACHMENT NO. 2.3

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: Director of Planning and Building

Space Above this Line Reserved for Recorder's Use

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made in Orange County, California, as of _____, 2012, by and between the CITY OF HUNTINGTON BEACH, a charter city (the "City"), and 21002 HB, LLC, a Delaware limited liability company (the "Developer").

RECITALS

A. The City is authorized pursuant to Government Code sections 65864 through 65869.5 and Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Chapter 246 to enter into binding development agreements with persons or entities owning legal interests in real property located within the City.

B. Developer is the owner of that certain real property more particularly described and shown in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"). Developer intends to develop the Project (as defined below).

C. The City and Developer each desire to enter into this Agreement affecting the Property in conformance with Government Code section 65864 *et seq.* and HBZSO 246 in order to achieve the mutually beneficial development of the Property in accordance with this Agreement.

D. The Developer seeks to develop a project on the Property consisting of 516 attached dwelling units on a 17.23 acre site ("Residential Parcel"), 191,100 square feet of retail/commercial on a 6.07 acres site ("Retail Parcel"), and a 250-room hotel on a 4.41 acre site ("Hotel Parcel"), as more particularly set forth in the development plan (attached as Exhibit "B"), as may be amended from time to time with any necessary approval from the City and subsequently on file with the City Planning Department (the "Development Plan"), and incorporated herein (collectively, the "Project"). Since it is possible that one or more lot line adjustments may be processed with the City subsequent to the recordation of this Agreement, any references to the Residential Parcel, Retail Parcel and Hotel Parcel shall be deemed to refer to those parcels as

modified by any such lot line adjustments (the Residential Parcel, the Retail Parcel and the Hotel Parcel are hereinafter referred to collectively as the "Parcels" and, individually, as a "Parcel").

E. The City Council of the City (the "City Council") certified an environmental impact report (the "EIR") for the Project on June 7, 2004 and, on that same date, approved Tentative Tract Map 16338, Conditional Use Permit No. 02-20 ("CUP"), Coastal Development Permit No. 02-12 ("CDP"), and Special Permit No. 02-04 ("SP"), collectively, the "Project Entitlements". "Project Entitlements" shall also include Entitlement Plan Amendment No. 06-02 approved by the City Council on October 16, 2006 and Entitlement Plan Amendment No. 08-01 approved by the Director of Planning and Building on March 25, 2008. Final Map No. 16338 was recorded August 20, 2007.

F. The City and the Developer each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in accordance with the provisions of this Agreement.

G. This Agreement will benefit the Developer and the City by eliminating uncertainty in planning and providing for the orderly development of the Project. Specifically, this Agreement (1) eliminates uncertainty about the validity of exactions to be imposed by the City, (2) provides for the construction on the Property of needed affordable housing, (3) ensures that development of the Property occurs within a timeframe generally consistent with that analyzed in the EIR, and (4) generally serves the public interest within the City and the surrounding region.

H. The Planning Commission and City Council have each given notice of their intention to consider this Agreement, and have each conducted public hearings thereon pursuant to the relevant provisions of the Government Code. The City Council has found that the provisions of this Agreement are consistent with the City's 1996 General Plan for development within the City, as amended (the "General Plan"), City zoning ordinances, as amended, and the Project Entitlements, as amended. The Planning Commission and City Council have also specifically considered the impacts and benefits of the Project upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Agreement is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region.

I. On _____, 2012, the Planning Commission approved Entitlement Plan Amendment _____ and recommended approval of Development Agreement No. _____ to the City Council.

J. On _____, the Planning Commission held a duly noticed public hearing on this Agreement.

K. On _____, the City Council held a duly noticed public hearing on this Agreement.

L. The former Redevelopment Agency of the City of Huntington Beach, the City, and Makallon Atlanta Huntington Beach, LLC, a Delaware limited liability company, entered into that certain Owner Participation Agreement executed and delivered pursuant to Agency Resolution No. 364 and City Resolution No. 2006-67 approved and adopted at the October 16, 2006 City Council meeting, as supplemented by letter dated February 1, 2008 and that certain Implementation

Agreement entered into as of December 15, 2008 (collectively, the "OPA"). The parties acknowledge and agree that the OPA has been terminated and is no longer in force and effect.

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

1. Definitions.

1.1 "Affordable Dwelling Units" shall mean a Dwelling Unit restricted for rental or sale to and occupancy by qualifying Moderate Income Households, in accordance with the Affordable Housing Agreement.

1.2 "Affordable Housing Agreement" shall collectively mean that certain Affordable Housing Agreement by and between the City and the Developer together with all attachments thereto, which is attached hereto as Exhibit "D". The term "Affordable Housing Agreement" shall also include any and all amendments or modifications thereto.

1.3 "Affordable Housing Cost" means the term defined in California Health and Safety Code section 50052.5(b)(4).

1.4 "Affordable Rent" means rent that meets the requirements of California Health and Safety Code section 50053(b)(4).

1.5 "Applicable Rules" means the rules, regulations, ordinances and official policies of the City which were in force as of the Effective Date (as defined below), including, but not limited to, the General Plan, the Specific Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, grading requirements, and provisions related to density, growth management, environmental considerations, and design criteria applicable to the Project. Applicable Rules shall also include development conditions and standards, mitigation measures, and/or other standards, obligations, regulations, design criteria, or requirements contained in any subsequent Entitlement Plan Amendment duly approved by the City. Applicable Rules shall not include building standards adopted by the City pursuant to Health and Safety Code sections 17922 and 17958.5.

1.6 "Area Median Income" means the most recently published area median income for the County of Orange as published in title 25, section 6932 of the California Code of Regulations, as amended from time to time.

1.7 "City Council" shall mean the City Council of the City.

1.8 "City Manager" shall mean the City Manager of the City.

1.9 "Commencement of Construction" means building permits have been issued and the placement of piles or foundations has physically begun in accordance with the building permits.

1.10 "County" shall mean Orange County.

1.11 “Developer” shall mean 21002 HB, LLC and any of its successors and assigns to the Property or portion thereof which becomes a Developer pursuant to this Agreement.

1.12 “Development Impact Fees” mean and includes all fees charged by the City in connection with the application, processing and approval or issuance of permits for the development of the Project, including, without limitation: application fees; permit processing fees; inspection fees; utility capacity fees; service or connection fees; library/cultural enrichment fees, traffic impact fees; development impact or major facilities fees; park fees; flood control fees; environmental impact mitigation fees; and any similar governmental fees, charges and exactions required for the development of the Project.

1.13 “Diligently Pursuing Construction” means the development is progressing under active building permits in accordance with those permits and routine inspections are occurring at least every one hundred twenty (120) days, subject to any Force Majeure Delays pursuant to Sections 8 and 17(j) below.

1.14 “Discretionary Actions” and “Discretionary Approvals” means those actions and approvals which require the exercise of judgment, or imposition of a condition or obligation, by any officer, employee, review board, commission or department of the City. Discretionary Actions and Discretionary Approvals are distinguished from activities or approvals which merely require any officer, employee, review board, commission or department of the City to determine whether or not there has been compliance with applicable statutes, ordinances, regulations or conditions of approval.

1.15 “Dwelling Unit” means each residential dwelling unit constructed on the Residential Parcel which is legally available to be rented or purchased by a person or family, including the Affordable Dwelling Units and the Market Rate Units.

1.16 “Effective Date” means the date on which the ordinance approving this Agreement has been adopted by the City.

1.17 “Final Inspection” means (i) in the case of the Hotel Parcel, that final building permits have been signed, utilities have been released, and an unconditional Certificate of Occupancy has been issued, (ii) in the case of the Residential Parcel that final building permits have been signed and utilities have been released, and (iii) in the case of the Retail Parcel, that final building permits have been signed for the shell improvements to be constructed by Developer (excluding tenant improvements within any shell), for all improvements shown on Exhibit “B”, as may be amended from time to time.

1.18 “Market Rate Dwelling Unit” shall mean, subject to Paragraph 6 below, those Dwelling Units in the Project that are not Affordable Dwelling Units.

1.19 “Moderate Income Household” means persons and families whose income does not exceed 120 percent (120%) of the Area Median Income, adjusted for family size by the California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

1.20 "Periodic Review" shall have the meaning assigned to such term in Paragraph 10(a).

1.21 "Planning Commission" means the Planning Commission of the City.

1.22 "Subsequent Rules" means the rules, regulations, ordinances and official policies of the City, adopted and becoming operative after the Effective Date, including, but not limited to, the General Plan, the Specific Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, grading requirements, and other provisions related to density, growth management, environmental considerations, and design criteria. Subsequent Rules shall not include development conditions and standards, mitigation measures, and/or other standards, obligations, regulations, design criteria, or requirements contained in any subsequent Entitlement Plan Amendment duly approved by the City.

2. **Term of Agreement.** Subject to termination provisions set forth in this Agreement, this Agreement shall become operative and commence upon the Effective Date and remain in effect for a term of ten (10) years or such lesser time for a Parcel that is released from any further obligations under this Agreement pursuant to the terms of Section 17(f)(5) below. Except for (a) continuing obligations regarding affordable housing covenants and requirements for the Residential Parcel; (b) indemnity obligations; and (c) obligations to pay any Delay Fees (defined below) which may be due and payable at the expiration or termination of this Agreement, upon the expiration or termination of the term, this Agreement shall be deemed terminated and have no further force and effect.

3. **Vested Right to Develop the Project.** Subject to Paragraphs 3.3 through 3.8, below, and the Applicable Rules, the City hereby grants to the Developer the vested right to develop the Project on the Property to the extent and in the manner provided in this Agreement. Subject to Paragraphs 3.3 through 3.8, below, any change in the Applicable Rules adopted or becoming effective after the Effective Date (Subsequent Rules) shall not be applicable to or binding upon the Project or the Property. Subject to Paragraphs 3.3 through 3.8, below, this Agreement will bind the City to the terms and obligations specified in this Agreement and will limit, to the degree specified in this Agreement and under state law, the future exercise of the City's ability to regulate development of the Project.

3.1 **No Conflicting Enactments.** Subject to Paragraphs 3.3 through 3.8, below, neither the City Council nor any department of the City shall enact rules, regulations, ordinances or other measures which relate to the rate, timing, sequencing, density, intensity or configuration of the development of any part of the Project which is inconsistent or in conflict with this Agreement during the term of this Development Agreement.

3.2 **Initiative Measures.** Subject to Paragraphs 3.3 through 3.8, below, the Developer and City intend that no moratorium or other limitation (whether relating to the rate, timing or sequence of the development of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, certificates of occupancy or other entitlements shall apply to the Project to the extent such moratorium or other limitation is inconsistent or conflicts with this Agreement.

3.3 Federal or State Laws. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to modify any of the Applicable Rules to the extent necessary to comply with applicable federal or state laws, codes or regulations which preempt local jurisdiction including, by way of example, and without limiting the generality of the foregoing, the California Environmental Quality Act, all building codes, and any safety regulations, but such modifications shall be made only to the extent required thereunder.

3.4 Emergency. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to apply to the Project any development moratorium, limitation on the delivery of City-provided utility services, or other generally applicable emergency rule, regulation, law or ordinance affecting land use: (1) which is based on genuine health, safety and general welfare concerns (other than general growth management issues); (2) which arises out of a documented emergency situation, as declared by the President of the United States, Governor of California, or the Mayor, City Council or City Manager of the City; and (3) which based upon its terms or its effect as applied, does not apply exclusively, primarily or disproportionately to the Project or the Property.

3.5 Scope of Agreement. This Agreement is effective with respect to the current Project consisting of up to 465 Market Rate Dwelling Units, 51 Affordable Dwelling Units, up to 191,100 square feet of commercial/retail space, and up to a 250-room hotel and any modifications thereto that may be requested by Developer and approved by the City.

3.6 Public Health Concerns. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to apply to the Project any generally applicable rule, regulation, law or ordinance which does not affect the land use or development of the Project and which is based on concerns for the public health, safety or general welfare, including, but not limited to, building codes not otherwise preempted by State law.

3.7 New Engineering and Construction Standards. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to modify any of the Applicable Rules if the City adopts new and/or amended regulations governing engineering and construction and grading standards and specifications including, without limitation, any and all uniform codes (including, without limitation, the City's Uniform Housing Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code and Fire Code) adopted by the City, including local amendments to these codes pursuant to state law allowing for such amendments; provided that (i) such codes are uniformly applied to all new development projects of similar type as the Project within the City, (ii) any such modifications to grading standards can only be imposed prior to grading and any such modifications to engineering or construction standards can only be applied prior to the initiation of construction, and (iii) any such modifications to local code provisions can only be imposed prior to submittal for plan check as long as the submittal for plan check results in issuance of one or more building permits.

3.8 Cooperation and Indemnification. City agrees to cooperate with the Developer in all reasonable manners in order to keep this Agreement in full force and effect. Notwithstanding the preceding sentence, in the event any legal actions instituted by a third party or other government entity or governmental official challenging the validity of this Agreement, the City and Developer agree to cooperate in defending such action, with the Developer to indemnify the City pursuant to Paragraph 17 of this Agreement. In the event of any litigation challenging the effectiveness of this Agreement or any portion thereof, this Agreement shall remain in full force

and effect while such litigation, including any appellate review, is pending, unless a court of competent jurisdiction orders otherwise.

4. Development of the Property.

(a) **Standards.** The Retail Parcel shall be developed as a first class commercial and retail facility. No portion of the Retail Parcel may be used for tattoo parlors, massage parlors, adult entertainment venues or the sale or exhibition of obscene or pornographic items. This shall not exclude a use for massage treatments at a spa, health club or other similar facility. No portion of the Retail Parcel shall be used for any second hand or thrift stores, flea markets, vehicle body or fender repair workshops, or industrial operations. The Hotel Parcel shall be developed as a hotel which, at a minimum, meets the standards of a Three (3) Star hotel as measured by the Forbes Travel Guide.

(b) **Permitted Uses.** The Developer agrees that the Parcels shall only be developed in accordance with (i) any conditions and mitigation measures imposed on the Project through final approval of the Project, (ii) the Development Plan, (iii) the Applicable Rules, and (iv) the provisions of this Agreement, as any of these may be modified from time to time upon request of Developer and the approval of the City. Except as otherwise provide herein, a Developer of a Parcel, unless that Developer proceeds with development of the Parcel, is not obligated by the terms of this Agreement to affirmatively act to develop all or any portion of the Parcel or to otherwise meet or perform any obligation with respect to the Parcel, except and only as a condition of development of any portion of the Parcel.

(c) **Development Standards.** All development and design requirements and standards applicable to the Project shall conform to the Huntington Beach Municipal Code and any Applicable Rules, except as otherwise provided by this Agreement.

(d) **Development Impact Fees.** In addition to the obligations set forth elsewhere in this Agreement, Developer shall be responsible for paying when due all Development Impact Fees in connection with development of the Project that are in effect on the Effective Date, including the recently adopted Ordinance Nos. 3942 through 3947. The rate of any applicable Development Impact Fee for an improvement(s) shall be the lower of (i) that rate in effect at the time of plan check submittal for the improvement(s) so long as the plan check submittal results in issuance of one or more building permits for such improvement(s) or (ii) the rate in effect at the time of issuance of building permits for the improvement(s).

5. Condominium Sale Provisions. Without limiting Section 2.d. of the Agreement Containing Covenants Affecting Real Property attached to the Affordable Housing Agreement as Attachment No. 3, in the event Developer decides to change any Dwelling Unit from a rental unit to a for-sale unit, all of the following Developer requirements shall apply:

(a) No less than ninety (90) days prior to the sale of the first Dwelling Unit Developer shall first submit a draft declaration of the covenants, conditions, and restrictions and rules and regulations which would pertain to the for-sale units ("CC&Rs") to the City for the City Manager's and City Attorney's prior written approval as to compliance with the Project's conditions of approval, which shall not be unreasonably withheld, conditioned or delayed. Within forty-five (45) days of submittal, City Attorney shall provide to Developer a written response approving the CC&Rs or indicating any requested modifications. If modifications are requested

and Developer and City agree to modify the CC&Rs, City Attorney shall provide written approval, disapproval or conditional approval to the modified CC&Rs within ten (10) days of submittal of the modified CC&Rs to the City. The contents of the CC&Rs shall conform to the requirements set forth in California Civil Code Section 1353 *et seq.* The City-approved CC&Rs shall be recorded against the Residential Parcel. The City's approval rights of the CC&Rs shall survive expiration or termination of this Agreement; and

(b) Developer shall give each tenant of a rental Dwelling Unit which will change to a for-sale Dwelling Unit at least 90 days' prior written notice of the Developer's intention to sell the rental Dwelling Unit to the general public; and

(c) Developer shall give each tenant of a rental Dwelling Unit which will change to a for-sale Dwelling Unit a right of first refusal for the purchase of his or her rental Dwelling Unit upon the same terms and conditions that the Dwelling Unit will be initially offered to the general public or terms and conditions more favorable to the tenant. This right of first refusal to purchase shall run for a period of 90 days from the date of the notice, unless the tenant gives written notice within the 90-day period of his or her intention not to exercise that right.

6. Affordable Housing. As a result of the development of the residential portion of the Project, the Project is subject to the requirement of providing a minimum of 10% of the Dwelling Units on the Residential Parcel as Affordable Dwelling Units, all of which must remain Affordable Dwelling Units for at least fifty-five (55) years from Final Inspection, as set forth in more detail in the Affordable Housing Agreement. The City and Developer agree that, as a condition precedent to Commencement of Construction on the Residential Parcel, the Affordable Housing Agreement and the Agreement Containing Covenants shall be duly executed by the City and Developer and the Agreement Containing Covenants shall be recorded against the Residential Parcel. The Agreement Containing Covenants shall have priority over any deed of trust encumbering the Residential Parcel and, if necessary, the Developer of the Residential Parcel shall cause the holder of any deed of trust encumbering the Residential Parcel at the time of the recording of the Agreement Containing Covenants to acknowledge in writing that the lien of its deed of trust on the Residential Parcel is subordinate to the Affordable Housing Agreement and the Agreement Containing Covenants. The form and content of any such writing shall be subject to the reasonable approval of the City Attorney. The Developer of the Residential Parcel agrees to comply with all terms and provisions of the Affordable Housing Agreement and acknowledges that any default thereunder by the Developer, subject to any applicable cure period, shall also constitute a default by such Developer under this Agreement.

Prior to Final Inspection of the 387th Market Rate Dwelling Unit on the Residential Parcel, Developer shall have completed construction and shall have received all required Final Inspections for 25 rental Affordable Dwelling Units on the Residential Parcel, provided however, if the 386th Market Rate Unit is part of a phase or building that results in no more than 406 Market Rate Dwelling Units completing Final Inspection, the trigger for requiring Final Inspection of the 25 Affordable Dwelling Units shall be changed to prior to Final Inspection of the 407th Market Rate Dwelling Unit. Concurrent with issuance of a Final Inspection for the 465th Market Rate Dwelling Unit on the Residential Parcel, Developer shall have completed construction and shall have received required Final Inspection for all 51 Affordable Dwelling Units on the Residential Parcel.

If at least 232 Dwelling Units have received Final Inspection and Commencement of Construction of any additional Market Rate Dwelling Units has not occurred for a period of five (5) years following Final Inspection of the 232nd Dwelling Unit, the Developer of the Residential Site shall designate and convert Market Rate Dwelling Units, as necessary, to insure that at least 10% of the existing Dwelling Units are Affordable Dwelling Units in accordance with the Affordable Housing Agreement.

7. **Extension of Project Approvals.** Unless a longer term would result under otherwise applicable state law, the term of all permits approved as part of the Project approvals shall be automatically extended for the term of this Agreement.

8. **Delay Fee Obligations.** If Commencement of Construction has not occurred on the Retail Parcel and more than 232 of the Market Rate Dwelling Units have received Final Inspection, the Developer of the Retail Parcel shall be subject to a delay fee ("Retail Delay Fee"). Similarly, if Commencement of Construction has not occurred on the Hotel Parcel and more than 232 of the Market Rate Dwelling Units have received Final Inspection, the Developer of the Hotel Parcel shall be subject to a delay fee ("Hotel Delay Fee"). The Retail Delay Fee and the Hotel Delay Fee, calculated on an annual basis, are set forth in Exhibit "C" attached hereto and incorporated by this reference. The Retail Delay Fee or the Hotel Delay Fee, as applicable, shall be prorated on a monthly basis and charged to the Developer of the Retail Parcel or the Hotel Parcel, as applicable, for each month, or portion thereof, that development of the Retail Parcel or Hotel Parcel, as applicable, is in violation of the terms of this Section 8. Payment of any Delay Fee shall be due within fifteen (15) business days following the occurrence of a triggering event on a month by month basis. The collection of any of the above-referenced Delay Fees may be waived by the City through a majority vote of the City Council supporting such waiver. This obligation shall run with the land and shall be binding upon and be the sole responsibility of the Developer of the Retail Parcel or Hotel Parcel, as applicable, at the time the event, triggering the obligation to pay the Delay Fee, actually occurs.

The Retail Delay Fee shall be an annual fee due and payable on a prorated basis if Final Inspection on anything in excess of the 232nd Market Rate Dwelling Unit has occurred and either (a) Commencement of Construction on the Retail Parcel has not occurred or (b) Commencement of Construction on the Retail Parcel has occurred but the Developer is not Diligently Pursuing Construction of the improvements to be constructed on the Retail Parcel consistent with the Development Plan.

The Hotel Delay Fee shall be an annual fee due and payable on a prorated basis if Final Inspection on anything in excess of the 232nd Market Rate Dwelling Unit has occurred and either (a) Commencement of Construction on the Hotel Parcel has not occurred or (b) Commencement of Construction on the Hotel Parcel has occurred but the Developer is not Diligently Pursuing Construction.

The obligation of the Developer of the Retail Parcel or the Hotel Parcel, as applicable, to commence and diligently prosecute construction as provided herein shall be extended on a day-for-day basis by (i) Force Majeure Delays as defined in Paragraph 17(j) and (ii) the failure of the City to issue necessary permits and approvals for the development and improvement of the Retail Parcel or the Hotel Parcel, as applicable, within a time period consistent with customary City practices.

The terms of this Section 8 shall terminate and be of no further force or effect (i) as to the Retail Parcel when the Final Inspection for the last shell on the Retail Parcel has been completed and (ii) as to the Hotel Parcel when the Final Inspection has been completed.

9. Subsequent Discretionary Action and Approval. The City agrees not to unreasonably withhold, condition or delay any Discretionary Action or Discretionary Approval or other action or approval by the City which may be required by the Project subsequent to the execution of this Agreement. Upon the filing of a complete application and payment of appropriate processing fees by Developer, the City shall promptly commence and diligently schedule and convene all required public hearings in an expeditious manner consistent with the law and process all Discretionary Actions and Discretionary Approvals in an expeditious manner.

10. Compliance Review.

(a) **Periodic Review.** Pursuant to Government Code section 65865.1, the City Manager or his or her designee shall, not less than once in every twelve (12) months, review the Project and this Agreement to ascertain whether or not the Developer is in full compliance with the terms of the Agreement (the "Periodic Review"). To the extent that portions of the Property have been conveyed to other parties such annual compliance review shall be conducted on an owner by owner basis.

(b) **Review Procedure.** During a Periodic Review, Developer shall provide information reasonably requested by the City Manager or his or her designee that the Project is being developed in good faith compliance with the terms of this Agreement. If, as a result of a Periodic Review, the City finds and determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City shall issue a written "Notice of Non-Compliance" to the Developer specifying the grounds therefore and all facts demonstrating such non-compliance. The Developer's failure to cure the alleged non-compliance within sixty (60) days after receipt of the notice, or, if such non-compliance is not capable of being cured within sixty (60) days, the Developer's failure to initiate all actions required to cure such non-compliance within sixty (60) days after receipt of the notice and completion of the cure of such non-compliance within one hundred twenty (120) days, shall constitute a default under this Agreement on the part of the Developer and shall constitute grounds for the termination of this Agreement by the City as provided for below with respect to that portion of the Property (the "Parcel") owned by the non-compliant Developer. If requested by Developer, City agrees to provide to Developer a certificate that Developer is in compliance with the terms of this Agreement, provided Developer reimburses City for all reasonable and direct costs and fees incurred by City with respect thereto.

(c) **Termination or Modification for Non-Compliance.** Pursuant to Government Code section 65865.1, if the City Council finds and determines, on the basis of substantial evidence, that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City Council may modify or terminate this Agreement. Any action by the City with respect to the termination or modification of this Agreement shall comply with the notice and public hearing requirements of Government Code section 65867 in addition to any other notice required by law. Additionally, the City shall give the Developer written notice of its intention to terminate or modify this Agreement and shall grant the Developer a reasonable opportunity to be heard on the matter and to oppose such termination or modification by the City.

11. Modification, Amendment, Cancellation or Termination.

11.1 Amendment and Cancellation. Pursuant to Government Code section 65868, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and the Developer (or if there be more than one party constituting the Developer, the Developer(s) which would be directly affected thereby). Public notice of the parties' intention to amend or cancel any portion of this Agreement shall be given in the manner provided by Government code section 65867. Any amendment to the Agreement shall be subject to the provisions of Government Code section 65867.5.

11.2 Modification. The City Planning and Building Director, with the consent of the Developer, may make minor modifications to the Agreement without the need for formal action by the City's Planning Commission or City Council as long as such modifications do not alter the term of this Development Agreement, the permitted uses, density or intensity of uses, the maximum height or size of buildings, provisions for reservations or dedication of land, conditions, terms, restrictions and requirements relating to Subsequent Discretionary Actions and Approvals, and monetary contributions by Developer.

11.3 Amendment By Qualified Transferees. This Development Agreement may also be amended, subject to the provisions of Government Code section 65868 and Section 11.1 above, between a Qualified Transferee who has acquired a Parcel from Developer, and the City, as to the transferred property.

12. Defaults, Notice and Cure Periods. Events of Default and Remedies.

12.1 Default By the Developer.

12.1.1 Default. If the Developer does not perform its obligations with respect to a Parcel under this Agreement in a timely manner, the City shall have all rights and remedies provided herein or by applicable law, provided the City shall have first given written notice to the Developer as provided in Paragraph 17(a) hereof. A default by a Developer with respect to one Parcel shall not constitute a default with respect to any other Parcel.

12.1.2 Notice of Default. If the Developer does not perform its obligations, with respect to a Parcel, under this Agreement in a timely manner, the City through the City Manager may submit to the Developer a written notice of default in the manner prescribed in Paragraph 17(a) identifying with specificity those obligations of the Developer under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall, subject to the following sentence regarding the cure period for the non-payment of money, complete the cure of any such default(s) no later than sixty (60) days after receipt of any such written notice of default, or if such default(s) is not capable of being cured within sixty (60) days, no later than one hundred twenty (120) days after receipt of any such written notice of default, provided the Developer commences the cure of any such default(s) within such sixty (60) day period and thereafter diligently pursues such cure at all times until any such default(s) is cured. Notwithstanding the foregoing sentence, the cure period for any nonpayment of money shall be no later than fifteen (15) days after receipt of any written notice of default.

12.1.3 Failure to Cure Default Procedure. If after the cure period provided in Paragraph 12.1.2 has elapsed, the City Manager finds and determines the Developer remains in default with respect to a Parcel and that the City intends to terminate or modify this Agreement with respect to that Parcel, the City's Planning and Building Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that the Developer has not cured a default under this Agreement with respect to that Parcel pursuant to this Paragraph 12, and that the City shall terminate or modify this Agreement, with respect to that Parcel, the Developer shall be entitled to appeal that finding and determination to the City Council. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends as a result of a default of the Developer to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Paragraph 12 or this Agreement shall be construed as modifying or abrogating the City Council's review of Planning Commission actions or limiting the City's rights and remedies available at law or in equity, which shall include (without limitation) compelling the specific performance of the Developer's obligations under this Agreement.

12.1.4 Termination or Modification of Agreements. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, with respect to a Parcel, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the applicable appeal periods described herein. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code sections 65967.5 and 65868, irrespective of whether an appeal is taken as provided herein.

12.1.5 Lender Protection Provisions.

12.1.5.1 Encumbrances on the Property. Entering into or a breach of this Development Agreement shall not defeat, render invalid, diminish, or impair the lien of any Qualified Lender (as defined below), unless otherwise required by law. No lender shall have an obligation or duty under this Development Agreement to perform Developer's obligations, or to guarantee such performance prior to taking title to any portion of the Property.

12.1.5.2 Notice of Default. In addition to the notice provisions set forth in Paragraph 12.1.2, the City shall send a copy of any notice of default sent to the Developer or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against a Parcel, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Paragraph 17(a) of such lender's election to receive a copy of any such written notice of default, and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Parcel, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Paragraph 12.1.5.1 is herein referred to as a "Qualified Lender."

12.1.5.3 Right of a Qualified Lender to Cure a Default. The City shall send a written notice of any Developer default to each Qualified Lender of such Developer. From and after receipt of any such written notice of default, such Qualified Lender(s) shall have the right to cure any such default within the same cure periods as provided to the Developer

hereunder. If the nature of any such default is such that the Qualified Lender cannot reasonably cure any such default without being the owner of the Parcel, or the applicable portion thereof, (as reasonably determined by the City), then so long as the Qualified Lender(s) is (are) diligently proceeding (as reasonably determined by the City) to foreclose the lien of its deed of trust against the owner of the Parcel, or the applicable portion thereof, and after completing any such foreclosure promptly commences the cure of any such default and thereafter diligently pursues the cure of such default to completion, then such Qualified Lender shall have an additional sixty (60) days following such foreclosure to cure any such default.

12.1.5.4 Exercise of City's Remedies. Notwithstanding any other provision of this Agreement, the City shall not exercise any right or remedy to cancel or amend this Agreement during any cure period.

12.1.5.5 Qualified Lender As Developer. In the event that a Qualified Lender (or its designee) becomes the owner of a Parcel or any portion thereof (the "Foreclosed Parcel"), whether as a result of a foreclosure or transfer of title in lieu thereof, such Qualified Lender (or its designee) shall be deemed a Developer and a Qualified Transferee (as hereinafter defined) under this Agreement with respect to the Foreclosed Parcel, and shall be entitled to all of the rights granted to such Developer under this Agreement. In such event, the party from whom the Qualified Lender obtained title to the Foreclosed Parcel shall be released from its obligations as Developer under this Agreement with respect to the Foreclosed Parcel.

12.2 Default by the City.

12.2.1 Default. If the City defaults under the provisions of this Agreement, subject to Paragraph 12.3, the Developer shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided the Developer has first complied with the procedures in Paragraph 12.2.2.

12.2.2 Notice of Default. Prior to the exercise of any right or remedy arising out of a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured.

12.3 Monetary Damages. The Developer and City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Developer agree that neither shall be liable for monetary damages under or with respect to this Agreement or the

application thereof and the City and the Developer covenant not to sue for or claim any monetary damages for the breach of any provision of this agreement. This foregoing waiver shall not be deemed to apply to any fees or other monetary amounts required to be paid by the Developer, including, but not limited to, payment of any Development Impact Fees, amounts due pursuant to any indemnifications, payment of any City-required fees, payment of any Hotel Delay Fees or Retail Delay Fees, and/or amounts due pursuant to Paragraphs 17(g) and 17(m).

13. Administration of Agreement and Resolution of Disputes. The Developer shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final.

14. Recordation of this Agreement. Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Agreement in the Official Records of the County within ten (10) days after the mutual execution of this Agreement. The holder of any deed of trust encumbering the Property, or any portion thereof, at the time of such recording shall agree in writing that the lien of its deed of trust is subordinate to this Agreement so that this Agreement is senior to the lien of such deed of trust. The form and content of any such writing shall be subject to the reasonable approval of the City Attorney.

15. Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is, and shall be, conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

16. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City, the Huntington Beach Housing Authority as to the Affordable Housing Agreement and all affordability provisions herein and therein, the Developer and their respective permitted successors and assigns. No other person or entity shall have any right of action based upon any provision of this Agreement.

17. Miscellaneous.

(a) **Notices.** All notices which are allowed or required to be given hereunder shall be in writing and (1) shall be deemed given and received when personally delivered or (2) shall be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to City: City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager
Tel. No.: (714) 536-5575
Fax No.: (714) 536-5233

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Attorney
Tel. No.: (714) 536-5555
Fax No.: (714) 374-1590

If to Developer: 21002 HB, LLC
2200 Biscayne Blvd.
Miami, FL 33137
Attn: Sharon Christenbury
Tel. No. (305) 374-5700
Fax. No. (786) 437-5070

With a copy to: Allen Matkins
1900 Main Street, 5th Floor
Irvine, CA 92614
Attn: William R. Devine
Tel. No. (949) 553-1313
Fax. No. (949) 553-8354

In the event of multiple Developers under this Agreement, each such Developer, by providing written notice to the other parties, shall be entitled to receive notices at its specified address.

(b) **Severability.** If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement unless the invalid provision is a material part of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. In the event any material provision of this Agreement is determined to be invalid, void or voidable, City or Developer may terminate this Agreement.

(c) **Entire Agreement; Conflicts.** This Agreement represents the entire agreement between the City and the Developer with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the City and the Developer with respect to the matters contained in this Agreement, including, without limitation, the OPA. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Rules or the Subsequent Applicable Rules, then the provisions of this Agreement shall govern and prevail.

(d) **Further Assurances.** The City and the Developer agree to perform, from time to time, such further acts and to execute and deliver such further instruments reasonably to effect the

intents and purposes of this Agreement, provided that the intended obligations of the City and the Developer are not thereby modified.

(e) **Inurement and Assignment**. This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the successors and assigns of Developer expressly permitted by this Agreement. This Agreement may be assigned by the Developer to any party or parties purchasing all or any part of the Property, or any interest therein pursuant to the provisions of this Paragraph 17(e). The specific rights and obligations of this Agreement shall be deemed covenants running with the land that concern and affect Developer's interest in the Property.

Developer's assignment or transfer of any rights, duties or obligations under this Agreement, shall be subject to the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Prior to any assignment, or transfer of any rights, duties or obligations by Developer under this Agreement, to any party or parties to whom all or any portion of the Property, or interest therein, is conveyed, the Developer shall present such information to the City as shall reasonably be necessary to demonstrate to the City's reasonable satisfaction that the proposed assignee has the financial ability and experience to fulfill those specific rights, duties and obligations under this Agreement that the transferee will assume. Within five (5) business days of receipt of written notice from Developer of its intention to assign rights under this Agreement to a designated third party, City shall provide Developer with a written description of the information the City needs to review. Upon receipt of the required information, City shall have thirty (30) business days to respond and approve or disapprove the proposed assignee, provided that the City's approval may not be unreasonably withheld, conditioned or delayed (an assignee so approved by the City is hereinafter referred to as a "Qualified Transferee"). Failure of the City to respond within the 30 business day period shall be deemed an approval provided that Developer also provides the City with a written notice in at least 14 point, bold font which contains the following statement:

"FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN THIRTY (30) BUSINESS DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED AN APPROVAL OF THE SAME PURSUANT TO SECTION 17(E) OF THE DEVELOPMENT AGREEMENT"

Following any such sale, assignment, or transfer Developer shall not be relieved of any obligations under this Agreement except as provided in Paragraph 17(f), below.

All costs incurred by the City to review any proposed sale, assignment or transfer, up to a maximum of Five Thousand Dollars (\$5,000) for consultants, shall be paid by Developer. With respect to each proposed sale, assignment, or transfer Developer shall deliver to the City the sum of Five Thousand Dollars (\$5,000), to be applied to the payment of City's costs. The administrative costs of the City shall be charged at the hourly rate of Fifty Dollars (\$50.00). The costs of the City for consultants or legal services, at standard billing rates, required for providing such assistance shall be the actual sums billed to the City for such consulting or legal services, at standard billing rates. If such costs incurred by the City for a proposed assignment is less than Five Thousand Dollars (\$5,000), the balance shall be refunded promptly.

Developer is under contract with DJM Acquisition Group, LLC ("DJM") to sell the Retail Parcel and the Hotel Parcel. DJM will acquire the Retail Parcel and the Hotel Parcel through its affiliate, PC Group Retail, LLC. The City approves PC Group Retail, LLC, or any other DJM

affiliate that is designated by DJM as a project specific entity acquiring the Retail Parcel and/or Hotel Parcel, as a Qualified Transferee under the terms of this Section 17(e) and shall not require payment of any transfer or review fee. The City also agrees that upon assignment by Developer of its rights and obligations under this Agreement to such party, the assigning Developer shall be released from its obligations under this Agreement, as described in subparagraph 17(f) below. Any Qualified Transferee shall have all of the same rights, benefits and obligations of Developer under this Agreement with respect to the portion of the Property which it owns and the term "Developer" as used in this Agreement shall be deemed to include reference to such Qualified Transferee with respect to such portion of the Property.

(f) **Release Upon Transfer.**

(1) The Property is already subdivided into three Parcels and could be further subdivided following the Effective Date. One or more of such Parcels (or subdivided Parcels) may be conveyed to third parties for development by them in accordance with the provisions of this Agreement.

(2) Upon any conveyance of Developer's rights and interests under this Agreement in accordance with Section 17(e) above, Developer shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so conveyed if and only if all of the following conditions precedent have been satisfied: (a) Developer is not then in default under this Agreement; (b) Developer has provided to City the notice of such conveyance specified in Section 17(e) above and the City has provided its written approval of the conveyance as required by Section 17(e); (c) the successor/transferee executes and delivers to City a written agreement duly executed in recordable form in form and content reasonably acceptable to the City Attorney in which (i) the name and address of the successor/transferee is set forth and (ii) the successor/transferee expressly and unconditionally assumes all the obligations of Developer under this Agreement and the Project approvals with respect to the Property, or portion thereof, so conveyed and such agreement has been recorded against the Property, or portion thereof, so conveyed; and (d) the successor/transferee provides City with security equivalent to any security provided by Developer to secure performance of its obligations under this Agreement or the Project approvals. The City agrees to confirm in writing, in a document in recordable form, each instance in which the foregoing conditions are satisfied, with respect to the Property or portion thereof so conveyed.

(3) If, in accordance with subsection (2), above, Developer is released from its obligations under this Development Agreement with respect to the Property, or portion thereof, then non-compliance of the terms and conditions of this Agreement by any successor/transferee shall not be deemed a default hereunder by the assigning Developer which is not itself otherwise in default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against such assigning Developer. Likewise, following such a conveyance and assignment, non-compliance by the assigning Developer with the terms and conditions of this Agreement shall not be deemed a default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder.

(4) Upon completion of construction in accordance with all of the terms and conditions of this Agreement for the improvements on a Parcel and issuance by the City of a Final Inspection for such improvements and satisfaction of all other obligations under this Agreement

for such improvements, such Parcel and the improvements thereon shall be released from any further obligations under this Agreement and this Agreement shall terminate as to such Parcel except for those obligations which survive termination.

(g) **Negation of Agency.** The City and the Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer a joint venture, partners, or employer/employee.

(h) **Attorney's Fees.** In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses.

(i) **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(j) **Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation commenced by a third party that causes delays, or unusually severe weather. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

(k) **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(l) **Time of Essence.** Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed as a material breach of this Agreement.

(m) **Counterparts.** This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(n) **Indemnification.**

(1) The Developer agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless at the Developer's expense, the City, the City Council, and the City's agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of this Agreement to determine the reasonableness, legality or validity of any provision hereof or obligation contained herein. Developer of the Residential Parcel agrees to indemnify the City, the City Council, and the City's officials, agents and employees for any claims, acts or proceedings relating to the Project's affordable housing requirements, including, but not limited to, any challenge to the City's Housing Element arising from such requirements. The City shall promptly notify the Developer of any such claim, action or proceeding of which the City receives notice, and the City will cooperate fully with the Developer in the defense thereof. The Developer shall provide a defense to the City with counsel reasonably selected by City to defend the City, and shall reimburse the City for any court costs which the City may be required to pay as a result of any such claim, action or proceeding. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding at its own expense, but such participation shall not relieve the Developer of the obligations of this Paragraph.

(2) As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Developer shall indemnify, protect, defend and hold harmless the City, and its officers, employees, agents, and representatives (collectively, the "City Indemnitees"), with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected to this Agreement.

(3) To the maximum extent permitted by law, City shall indemnify, protect, defend and hold harmless the Developer, and its boards, directors, officers, employees, agents, and representatives (collectively, the "Developer Indemnitees"), from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from the City's employees' gross negligence or willful misconduct.

(o) **Intentionally Omitted.**

(p) **Reference of California Law.** Unless expressly stated to the contrary, all references to statutes herein are to the California codes.

(q) **Interpretation.** 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 independently reviewed 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.

IN WITNESS WHEREOF, the City and the Developer hereto have each executed this Agreement as of the date first written above.

Developer: 21002 HB, LLC, a Delaware limited liability company

Print: _____
Its: _____

City: CITY OF HUNTINGTON BEACH, a charter city

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Kane, Ballmer & Berkman, City Special Counsel

EXHIBIT "A"
to Development Agreement

LEGAL DESCRIPTION AND MAP OF PROPERTY

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

LOTS 1, 2 AND 3 OF TRACT NO. 16338, AS SHOWN ON A MAP FILED IN BOOK 893, PAGES 7 TO 12, INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING FROM THAT PORTION THEREOF INCLUDED WITHIN THE LAND DESCRIBED AS PARCELS 1 AND 2 IN DEED FROM PACIFIC ELECTRIC RAILWAY COMPANY, RECORDED SEPTEMBER 13, 1960 IN BOOK 5413, PAGE 449 OF OFFICIAL RECORDS, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER, OCCURRING 500 FEET BENEATH THE SURFACE THEREOF, NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN, OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE, AND REMOVE THE SAME, AND TO MAKE SUCH USE OF SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH; AND OTHER USE THEREOF; WHICH USES MAY INCLUDE LATERAL OR SLANT DRILLING, DIGGING, BORING, OR SINKING OF WELLS, SHAFTS, OR TUNNELS TO OTHER LANDS NOT SUBJECT TO THOSE RESERVATION AND EASEMENTS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON OR REMOVE OR IMPAIR THE LATERAL AND SUBJACENT SUPPORT OF SAID LAND OR ANY IMPROVEMENTS THEREON, AND SHALL CONDUCT NO OPERATIONS WITHIN 500 FEET OF THE SURFACE OF SAID LAND.

ALSO EXCEPTING THEREFROM THE SUBSURFACE BELOW 500 FEET MEASURED VERTICALLY FROM THE SURFACE.

ALSO EXCEPTING THEREFROM ALL MINERALS, PETROLEUM, ASPHALT, BREA, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, UPON, OR UNDER, OR THAT MAY BE PRODUCED FROM, SAID LAND, TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT TO DRILL SLANTED WELLS FROM LOCATIONS ON OTHER LANDS INTO AND THROUGH, AND TO CONSTRUCT OR DEVELOP MINES, TUNNELS, SHAFTS, OR OTHER WORKS IN AND THROUGH THE SUBSURFACE OF SAID LAND FOR THE PURPOSES OF RECOVERING SAID RESERVED SUBSTANCES FROM SAID LAND OR RECOVERING LIKE SUBSTANCES FROM OTHER LANDS; PROVIDED, HOWEVER, THAT THE SURFACE OF SAID LAND SHALL NOT BE USED FOR THE EXPLORATION, DEVELOPMENT, EXTRACTION, OR REMOVAL OF SAID MINERALS OR SUBSTANCES FROM SAID LAND OR OTHER LANDS, AS RESERVED IN THE DEED FROM CITY OF HUNTINGTON BEACH, RECORDED JANUARY 13, 1960 IN BOOK 5051, PAGE 383 OF OFFICIAL RECORDS.

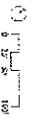
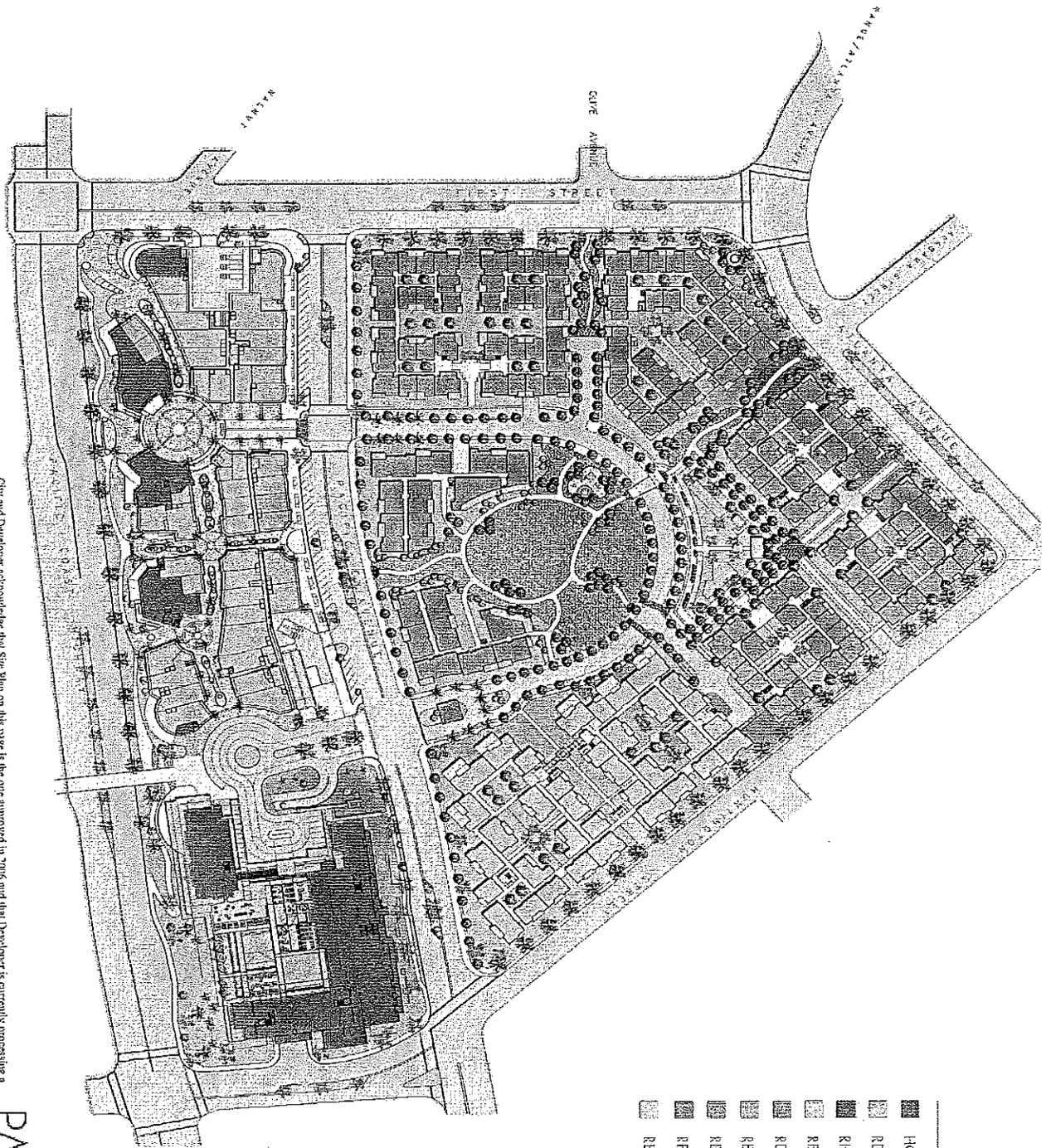
ALSO EXCEPTING THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND AND CHARACTER OCCURRING 500 FEET BENEATH THE SURFACE THEREOF, NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING WITHOUT

LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OF INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME AND TO MAKE SUCH USE OF SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH; AND OTHER USE THEREOF; WHICH USES MAY INCLUDE LATERAL OR SLANT DRILLING, DIGGING, BORING OR SINKING OF WELLS, SHAFTS OR TUNNELS TO OTHER LANDS NOT SUBJECT TO THOSE RESERVATION AND EASEMENTS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY OF SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON OR REMOVE OR IMPAIR THE LATERAL OR SUBJACENT SUPPORT OF SAID LAND OR ANY IMPROVEMENTS THEREON, AND SHALL CONDUCT NO OPERATIONS WITHIN 500 FEET OF THE SURFACE OF SAID LAND, AS RESERVED IN THE DEED FOR PARCEL 2 FROM PACIFIC ELECTRIC RAILWAY COMPANY RECORDED SEPTEMBER 13, 1960 IN BOOK 5413, PAGE 446 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE SUBSURFACE BELOW A DEPTH OF 500 FEET VERTICALLY BELOW THE SURFACE OF THAT PORTION OF SAID LAND INCLUDED WITHIN THAT CERTAIN PARCEL OF LAND DESCRIBED AS "THIRD" IN THE DEED FROM THE HUNTINGTON BEACH COMPANY TO LOS ANGELES INTER-URBAN RAILWAY COMPANY RECORDED APRIL 9, 1907 IN BOOK 155, PAGE 260 OF DEEDS, RECORDS OF SAID ORANGE COUNTY.

APN: 024-271-06 and 024-272-01 and 024-272-02

EXHIBIT "B"
to Development Agreement
DEPICTION OF PROJECT
(Development Plan)



City and Developer acknowledge that Site Plan on this page is the one approved in 2006 and that Developer is currently processing a revised site plan approval with the City. The applicable Development Plan or Site Plan at any time will be the most current approved one on file with the City Planning & Building Department and will not necessarily be the same as or consistent with this Exhibit.

- LEGEND
- HOTEL
 - RETAIL
 - RESTAURANT
 - RESIDENTIAL - PHASE I
 - RESIDENTIAL - PHASE II
 - RESIDENTIAL - PHASE III
 - RESIDENTIAL - PHASE IV
 - RESIDENTIAL - GATEHOUSE
 - RECREATION BUILDING

PACIFIC CITY
HUNTINGTON BEACH

EXHIBIT "C"
to Development Agreement

DELAY FEE SCHEDULE

<u>Year</u>	<u>Retail Delay Fee</u>	<u>Hotel Delay Fee</u>
1	\$150,150	\$346,750
2	\$159,978	\$369,200
3	\$170,181	\$392,850
4	\$180,796	\$417,480
5	\$191,835	\$442,830
6	\$200,310	\$469,200
7	\$215,171	\$496,899
8	\$227,520	\$525,440
9	\$240,339	\$555,093
10	\$253,674	\$585,854

EXHIBIT "D"
to Development Agreement
AFFORDABLE HOUSING AGREEMENT

AFFORDABLE HOUSING AGREEMENT

by and between

CITY OF HUNTINGTON BEACH,
“CITY”
and

21002 HB, LLC, a Delaware limited liability company,
“DEVELOPER”

ATTACHMENTS

- ATTACHMENT NO. 1 - LEGAL DESCRIPTION AND MAP
- ATTACHMENT NO. 2 - DEVELOPMENT PLAN
- ATTACHMENT NO. 3 - AGREEMENT CONTAINING COVENANTS

AFFORDABLE HOUSING AGREEMENT

This AFFORDABLE HOUSING AGREEMENT (this "Agreement") is entered into as of _____, 2012 ("Effective Date"), by and between the CITY OF HUNTINGTON BEACH, a charter city ("City"), and 21002 HB, LLC, a Delaware limited liability company ("Developer"). The City and Developer hereby covenant and agree as follows:

ARTICLE 1. SUBJECT OF AGREEMENT

The Developer seeks to develop a project upon certain real property located at 21002 Pacific Coast Highway consisting of up to 516 attached Dwelling Units, of which a minimum of ten percent (10%) shall be Affordable Dwelling Units restricted for rental and/or sale to and occupancy by Moderate Income Households. The Developer also seeks to develop approximately 191,100 square feet of retail/commercial and a 250-room hotel, on adjacent parcels of the real property. The 516 Dwelling Units, 191,100 square feet of retail/commercial and 250-room hotel may collectively be referred to herein as the "Project." The Project is more particularly set forth in a development plan (attached hereto as Attachment No. 2 and incorporated herein) as may be amended from time to time with any necessary approval from the City and subsequently on file with the City Planning Department (the "Development Plan").

The City Council of the City certified an environmental impact report for the Project on June 7, 2004 and, on that same date, approved Tentative Tract Map 16338, Conditional Use Permit No. 02-20, Coastal Development Permit No. 02-12, and Special Permit No. 02-04, collectively, the "Project Entitlements." "Project Entitlements" shall also include Entitlement Plan Amendment No. 06-02 approved by the City Council on October 16, 2006 and Entitlement Plan Amendment No. 08-01 approved by the Director of Planning and Building on March 25, 2008. The Project shall be completed in accordance with the Project Entitlements, as amended. Among the Project Entitlements is Final Tract Map No. 16338. This Map subdivides the real property into three separate lots. Parcel 1, consisting of approximately 17.23 acres will be the location of the 516 Dwelling Units (the "Residential Parcel"). The Residential Parcel is more particularly described and shown in the Legal Description, which is attached hereto as Attachment No. 1 and incorporated herein by this reference.

The City imposed conditions of approval on the Project, in part requiring that Developer provide affordable housing. As part of the plan to provide affordable housing, the City and Developer entered into a Development Agreement which requires as a condition that an Affordable Housing Agreement be executed requiring Developer to provide affordable units for a certain period of time ("Development Agreement"). Specifically, the Developer shall provide a minimum of 51 Affordable Dwelling Units within the Project available for use and occupancy to Moderate Income Households for a period of 55 years as further described herein. The Huntington Beach Housing Authority shall be an express third party beneficiary of this Agreement and its attachments.

1.1 Definitions

“Affordable Dwelling Unit” means each Dwelling Unit restricted for rental and/or sale to and occupancy by qualifying Moderate Income Households, in accordance with the Agreement Containing Covenants.

“Affordable Housing Cost” means the term defined in California Health and Safety Code Section 50052.5(b)(4).

“Affordable Rent” means rent that meets the requirements of California Health and Safety Code Section 50053(b)(4).

“Agreement Containing Covenants” means the Agreement Containing Covenants Affecting Real Residential Parcel (Including Affordable Rental and/or Sale Restrictions), in substantially the form attached hereto as Attachment No. 3 and incorporated herein by reference, to be entered into by and between the City and the Developer.

“Area Median Income” means the area median income for the County of Orange (“County”) as published annually by the California Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development criteria then in effect and published from time to time. The Area Median Income is defined by California Health and Safety Code Section 50093(c) and set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified during the term of this Agreement so that such regulations do not specify the area median income for the County, the City and Developer shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.

“City” means the City of Huntington Beach.

“City Manager” means the City Manager of the City. Unless otherwise provided herein or unless the City otherwise notifies the Developer, any matter to be approved (or disapproved) by the City or any action to be taken by the City pursuant to this Agreement, shall be approved (or disapproved) or shall be taken, as the case may be, by the City Manager or designee.

“Commencement of Construction” means building permits have been issued and the placement of piles or foundations has physically begun in accordance with the building permits.

“Developer” means 21002 HB, LLC, a Delaware limited liability company, and any of its successors and assigns to the Residential Parcel or portion thereof which becomes a Developer pursuant to this Agreement.

“Dwelling Unit” means each residential dwelling unit constructed on the Residential Parcel that is legally available to be rented or purchased by a person or household, including the Affordable Dwelling Units and the Market Rate Units.

“Final Inspection” shall mean final building permits have been signed and utilities have been released.

“Market Rate Units” shall mean, subject to Section 3.1.2 below, those Dwelling Units on the Residential Parcel that are not Affordable Dwelling Units.

“Moderate Income Household” means persons and families whose income conforms to the qualifying limits defined by California Health and Safety Code Section 50093(b) and set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. Generally, Moderate Income Household means household income that exceeds eighty percent (80%) of the Area Median Income but does not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for family size by the California Department of Housing and Community Development (“HCD”) in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to Section 8 of the United States Housing Act of 1937.

1.2 Parties to the Agreement.

1.2.1 The City

The addresses of the City for purposes of receiving notices pursuant to this Agreement are:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager
Tel. No.: (714) 536-5575
Fax No.: (714) 536-5233

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Attorney
Tel. No.: (714) 536-5555
Fax No.: (714) 374-1590

“City” as used in this Agreement includes the City of Huntington Beach and any assignee of or successor to its rights, powers and responsibilities.

1.2.2 Developer

Developer executing this Agreement is a Delaware limited liability company. The addresses of Developer for purposes of receiving notices pursuant to this Agreement are:

21002 HB, LLC
2200 Biscayne Blvd.
Miami, FL 33137
Attn: Sharon Christenbury
Tel. No. (305) 374-5700
Fax. No. (786) 437-5070

Allen Matkins
1900 Main Street, 5th Floor
Irvine, CA 92614
Attn: William R. Devine
Tel. No. (949) 553-1313
Fax. No. (949) 553-8354

“Developer” as used in this Agreement includes Developer and any assignee of or successor to its rights, powers and responsibilities with regard to the Residential Parcel under this Agreement as expressly permitted by this Agreement.

1.3 Assignments and Transfers

1.3.1 Developer’s assignment or transfer of any rights, duties or obligations under this Agreement, shall be subject to the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Prior to any assignment, or transfer of any rights, duties or obligations by Developer under this Agreement, to any party or parties to whom all or any portion of the Residential Parcel, or interest therein, is conveyed, the Developer shall present such information to the City as shall reasonably be necessary to demonstrate to the City’s reasonable satisfaction that the proposed assignee has the financial ability and experience to fulfill those specific rights, duties and obligations under this Agreement that the transferee will assume taking into account the experience of any third party manager the assignee intends to employ. Within five (5) business days of receipt of written notice from Developer of its intention to assign rights under this Agreement to a designated third party, City shall provide Developer with a written description of the information the City needs to review. Upon receipt of the required information, City shall have thirty (30) business days to respond and approve or disapprove the proposed assignee, provided that the City’s approval may not be unreasonably withheld, conditioned or delayed. Failure of the City to respond within the 30 business day period shall be deemed an approval provided that Developer also provides the City with a written notice in at least 14 point, bold font which contains the following statement:

“FAILURE TO APPROVE OR DISAPPROVE THE REQUESTED MATTER WITHIN THIRTY (30) BUSINESS DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED AN APPROVAL OF THE SAME PURSUANT TO SECTION 1.3 OF THE AFFORDABLE HOUSING AGREEMENT”

Following any such sale, assignment, or transfer Developer shall not be relieved of any obligations under this Agreement except as provided in Section 1.3.3, below.

1.3.2 All costs incurred by the City to review any proposed sale, assignment or transfer, up to a maximum of Five Thousand Dollars (\$5,000) for consultant's, shall be paid by Developer. With respect to each proposed sale, assignment, or transfer Developer shall deliver to the City the sum of Five Thousand Dollars (\$5,000) to be applied to the payment of City's costs. The administrative costs of the City shall be charged at the hourly rate of Fifty Dollars (\$50.00). The costs of the City for consultants or legal services, at standard billing rates, required for providing such assistance shall be the actual sums billed to the City for such consulting or legal services, at standard billing rates. If such costs incurred by the City for a proposed assignment is less than Five Thousand Dollars (\$5,000) the balance shall be refunded promptly. This provision is duplicative of a provision in the Development Agreement and shall not be additive to such provision.

1.3.3 Upon any conveyance of Developer's rights and interests under this Agreement in accordance with Section 1.3.1 above, Developer shall be released from its obligations under this Agreement with respect to the Residential Parcel, or portion thereof so conveyed if and only if all of the following conditions precedent have been satisfied: (a) Developer is not then in default under this Agreement; (b) Developer has provided to City the notice of such conveyance specified in Section 1.3.1 above and the City has provided its written approval of the conveyance as required by Section 1.3.1; and (c) the successor/transferee executes and delivers to City a written agreement duly executed in recordable form in form and content reasonably acceptable to the City Attorney in which (i) the name and address of the successor/transferee is set forth and (ii) the successor/transferee expressly and unconditionally assumes all the obligations of Developer under this Agreement and its attachments with respect to the Residential Parcel, or portion thereof, so conveyed and such agreement has been recorded against the Residential Parcel, or portion thereof, so conveyed. The City agrees to confirm in writing, in a document in recordable form, each instance in which the foregoing conditions are satisfied, with respect to the Residential Parcel or portion thereof so conveyed.

ARTICLE 2. DEVELOPMENT

2.1 Entitlements

Developer shall develop the Dwelling Units on the Residential Parcel in accordance with the Project Entitlements.

2.2 Indemnification and Insurance

2.2.1 As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Developer shall indemnify, protect, defend and hold harmless the City, and its officers, employees, agents, and representatives (collectively, the "Indemnitees"), with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from or in any way connected to this Agreement including, provided, however, Developer shall not be responsible for (and such indemnity shall not apply to) any loss, liability, damage, claim, cost or expense arising to the extent of the gross negligence or willful misconduct of the Indemnitees.

2.2.2 To the maximum extent permitted by law, City shall indemnify, protect, defend and hold harmless the Developer, and its boards, directors, officers, employees, agents, and representatives (collectively, the "Developer Indemnitees"), from and against any and all loss, liability, damage, claim, cost and expense (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from the City's employees' gross negligence or willful misconduct.

2.2.3 Prior to any commencement of any construction on the Residential Parcel, Developer shall furnish or cause to be furnished to the City Risk Manager evidence of the following policies of insurance, naming Developer as insured and the City as an additional insured. The insurance shall be kept in force until the completion of construction of the Affordable Dwelling Units:

a. Builder's Risk/Fire Policies: Developer shall maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Residential Parcel or the improvements and all property of an insurable nature located upon the Residential Parcel, resulting from fire, lightning, vandalism, malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the improvements, as defined herein.

b. Liability Insurance: Developer shall maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Residential Parcel and the business of Developer on the Residential Parcel, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer or its lessees, or any person acting for Developer, or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Residential Parcel, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect the City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be in a general aggregate amount of not less than Two Million Dollars (\$2,000,000) combined single limits and shall be written on a per occurrence basis. It is the mutual intent of the parties that the levels of insurance coverage described herein shall be and remain comparable to the level of insurance coverage that is customary with comparable operations in Orange County. From time to time, either party may provide notice to the other party that the level of insurance being maintained by Developer is no longer comparable to the level of insurance coverage that is customary with comparable operations in Orange County, and request that the minimum limit hereinabove designated shall be changed (either increased or decreased) accordingly. The party receiving such request shall not unreasonably withhold its consent to such change. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of City or the payment of

damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible.

c. Automobile Insurance: To the extent applicable, Developer shall maintain or cause to be maintained automobile insurance, maintained in full force and effect in an amount of not less than one million dollars (\$1,000,000) per accident.

d. Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Developer in connection with the Residential Parcel and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Residential Parcel or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event shall deliver to City evidence that such self-insurance has been approved by the appropriate State authorities.

e. All policies hereunder shall not be subject to cancellation, reduction in coverage, or non renewal except after notice in writing shall have been sent by registered mail addressed to City, to the extent practicable within thirty (30) days but in any event prior to the effective date thereof. All policies required hereunder shall name the City and Developer as insureds, additional insured, and/or loss payable parties as their interests may appear.

f. The term "full insurable value" as used in this Section means the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the improvements on the Residential Parcel immediately before such casualty or other loss, including the cost of construction, architectural and engineering fees, and inspection and supervision.

g. All insurance provided under this Section shall be for the benefit of Developer, City, and Lenders. Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit policies of all insurance required by this Section, or certificates evidencing the existence thereof, to City within ten (10) days prior to commencement of any construction on the Residential Parcel, indicating full coverage of the contractual liability imposed hereby. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to City. All insurance herein provided for under this Section shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California and reasonably approved by City.

h. If Developer fails or refuses to procure or maintain insurance as required by this Agreement, City shall have the right, at its election, and upon five (5) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by the City shall be treated as a loan, due from Developer, to be paid on the first day of the month following the date on which the premiums were paid. The City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

i. Coverage provided hereunder by Developer shall be primary insurance and not contributing with any insurance maintained by the City, and the policy shall contain such an endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City.

j. Developer shall also furnish or cause to be furnished to the City Manager evidence satisfactory to the City Manager that any contractor, with whom Developer has contracted for the performance of the development of the Dwelling Units, or any of them, carries the insurance required by this Section.

ARTICLE 3. USE OF THE RESIDENTIAL PARCEL

3.1 Uses

3.1.1 Generally

Developer covenants and agrees that Developer shall:

a. Develop the Residential Parcel in accordance with the Project Entitlements and devote the Residential Parcel to the uses specified in this Agreement and the Agreement Containing Covenants;

b. Comply with all of Developer's obligations set forth in the Agreement Containing Covenants with respect to the Affordable Dwelling Units. The Agreement Containing Covenants; and

c. Maintain the Affordable Dwelling Units in accordance with Section 3.2 of this Agreement.

3.1.2 Affordability Covenants

a. Developer covenants and agrees (for itself, its successors, assigns, and every successor in interest to the Residential Parcel or any part thereof) that, for a period of not less than fifty-five (55) years, beginning from the date of the City's Final Inspection of an Affordable Dwelling Unit a minimum of ten percent (10%) of the Dwelling Units constructed on the Residential Parcel (51, based on the currently anticipated total of 516 Dwelling Units) shall be rented or sold exclusively to and occupied by qualifying Moderate Income Households at an Affordable Rent or Affordable Housing Cost, in accordance with the Agreement Containing Covenants.

b. Prior to Final Inspection of the 387th Market Rate Unit on the Residential Parcel, Developer shall have completed construction and shall have received all required Final Inspections for 25 rental Affordable Dwelling Units on the Residential Parcel, provided however, if the 386th Market Rate Unit is part of a phase or building that results in no more than 406 Market Rate Units completing Final Inspection, the trigger for requiring Final Inspection of the 25 Affordable Dwelling Units shall be changed to prior to Final Inspection of the 407th Market Rate Unit. Concurrent with issuance of a Final Inspection for the 465th Market Rate Unit on the Residential Parcel, Developer shall have completed construction and shall have received required Final Inspection for all 51 Affordable Dwelling Units on the Residential Parcel.

c. Without limiting the affordability requirements set forth above in subsections a. and b., if at least 232 Dwelling Units have received Final Inspection and no Commencement of Construction has occurred on any additional Market Rate Units for a period of five (5) years following Final Inspection of the 232nd Dwelling Unit, Developer shall designate and convert existing Market Rate Units, as necessary, to insure that at least ten percent (10%) of the existing Dwelling Units are Affordable Dwelling Units and such converted Affordable Dwelling Units shall be rented or sold exclusively to and occupied by qualifying Moderate Income Households at an Affordable Rent or Affordable Housing Cost, in accordance with the Agreement Containing Covenants. Which Market Rate Units may be converted to Affordable Dwelling Units shall be subject to the reasonable approval of the City Manager. The converted Affordable Dwelling Units shall remain Affordable Dwelling Units for at least fifty-five (55) years from the date both of the following have occurred: (a) the City Manager has approved which Market Rate Units will be converted to Affordable Dwelling Units; and (b) such City-approved Affordable Dwelling Units are first occupied by a qualified Moderate Income Household approved by the City at an Affordable Rent or at an Affordable Housing Cost, as applicable.

d. Nothing in this Section is intended to or does negate, limit, modify or change any covenants set forth in the Agreement Containing Covenants.

3.1.3 Monitoring

a. The parties acknowledge that this Agreement is subject to the provisions of Section 33418 of the California Health and Safety Code, which provides that:

City shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, City shall require Developer or managers of the housing to submit an annual report to the City. The annual reports shall include for each Affordable Dwelling Unit the rental and/or housing costs and the income and household size of the occupants. The income information required by this Section shall be supplied by the tenant in a certified statement of a form provided by the City.

b. Developer shall submit an annual report to the City that includes whether there was a change in rental/ownership of the Affordable Dwelling Unit from the prior

year and, if so, the income and household size of the new household. The income information required by this subsection shall be supplied by Developer in a certified statement in a form provided by the City.

3.2 Maintenance of Affordable Dwelling Units

Developer shall maintain the Affordable Dwelling Units in accordance with applicable City requirements and the Agreement Containing Covenants. The Agreement Containing Covenants shall contain appropriate provisions implementing this Section.

3.3 Obligation to Refrain from Discrimination

There shall be no discrimination against or segregation of any person, or groups of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Dwelling Units, and Developer itself (for any person claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Dwelling Units.

3.4 Form of Nondiscrimination and Nonsegregation Clauses

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

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

Notwithstanding the paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the above paragraph.

3.4.2 In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

Notwithstanding the above paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph. "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

3.4.3 In contracts: The foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under this Agreement.

3.5 Agreement Containing Covenants and Notice of Affordability Restrictions

The City and the Developer agree that the Agreement Containing Covenants shall be duly executed in recordable form in substantially the form attached to this Agreement as Attachment No. 3, and recorded prior to Commencement of Construction of the Residential Parcel. The Agreement Containing Covenants shall have priority over any deed of trust encumbering the Residential Parcel and, if necessary, the Developer of the Residential Parcel shall cause the holder of any deed of trust encumbering the Residential Parcel at the time of the recording of the Agreement Containing Covenants to acknowledge in writing that the lien of its deed of trust on the Residential Parcel is subordinate to the Affordable Housing Agreement and the Agreement Containing Covenants. The form and content of any such writing shall be subject to the reasonable approval of the City Attorney. The affordability covenants shall run with the land and remain in effect for the affordability period and shall be recorded only against the Residential Parcel.

3.6 Effect and Duration of Covenants

The covenants established in this Agreement and its attachments shall, without regard to technical classification and designation, be binding on Developer with regard to the

Residential Parcel, or any part thereof, for the benefit and in favor of the City and the Huntington Beach Housing Authority, and their respective successors and assigns. The City and the Huntington Beach Housing Authority shall each be the beneficiary of the covenants contained in this Agreement and its attachments.

ARTICLE 4. DEFAULTS AND REMEDIES

4.1 Defaults - General

4.1.1 Subject to the extensions of time set forth in Section 5.4, failure or delay by City or Developer to perform any term or provision of this Agreement to be performed by such party constitutes a default under this Agreement. The party in default must immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

4.1.2 The complaining party shall give written notice of default to the party in default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. 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.

4.1.3 If a monetary event of default occurs, prior to exercising any remedies hereunder, the aggrieved party shall give the party in default written notice of such default. The party in default shall have a period of fifteen (15) days after such notice is given within which to cure the default.

4.1.4 If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the aggrieved party shall give the party in default notice of such default. If the default is reasonably capable of being cured within sixty (60) days, the party in default shall have such period to effect a cure prior to exercise of remedies by the aggrieved party. If the default is such that it is not reasonably capable of being cured within sixty (60) days, and the party in default (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default, not to exceed one hundred and twenty (120) days.

4.2 Institution of Legal Actions

Subject to the notice and cure provisions of Section 4.1, in addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to obtain the specific performance of obligations hereunder to enjoin, abate or prevent any further violation or default, to appoint a receiver to operate the Residential Parcel, to recover damages for any default, or to obtain any other remedy allowed at law or equity consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the

County of Orange, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California.

4.3 Applicable Law

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

4.4 Rights and Remedies Are Cumulative

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.

4.5 Damages

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 4.1, 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.

4.6 Specific Performance

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 4.1, 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.

4.7 Attorney's Fees and Costs

If any action or proceeding is brought by either party against the other under this Agreement, whether for interpretation, enforcement or otherwise, each party shall pay for its own costs and expenses, including the fees of its attorney and any expert witnesses in such action or proceeding. This provision shall also apply to any post judgment action by either party, including without limitation efforts to enforce a judgment.

ARTICLE 5. GENERAL PROVISIONS

5.1 Notices

Formal notices, demands and communications between the City and Developer shall be sufficiently given if delivered personally, or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the respective addresses of the City and Developer,

as provided in Section 1.5 hereof. Such notices, demands and communications, if given in person, shall be deemed given when delivered, and, if given by mail, shall be deemed given three (3) business days after deposit in the mail. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 5.1.

5.2 Conflicts of Interest

5.2.1 No member, official or employee of the City 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 this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

5.2.2 Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement, other than normal fees paid to Developer's independent contractors, attorneys, and consultants.

5.3 Non-liability of City/City Officials and Employees

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

5.4 Force Majeure

Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation commenced by a third party that causes delays, or unusually severe weather. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party

written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

5.5 Inspection of Books and Records

The City has the right at all reasonable times to inspect the books and records of Developer pertaining to compliance with the affordability covenants applicable to the Residential Parcel as pertinent to the purposes of this Agreement.

5.6 Consents and Approvals

Except where this Agreement expressly provides that a party may withhold its approval in its sole and absolute discretion, approvals required of the City or the Developer shall not be unreasonably withheld or delayed.

Except as otherwise expressly provided in this Agreement, approvals or consents required of the City shall be deemed granted by the written approval of the City Manager or designee. Notwithstanding the foregoing, the City Manager or designee may, in his or her sole and absolute discretion, refer to the governing board of the City any item requiring City approval.

ARTICLE 6. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer. This Agreement and any provisions hereof may be amended by mutual written agreement by Developer and City and such amendment shall not require the consent of any other fee owner, tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having an interest in the Residential Parcel, except as otherwise expressly provided in this Agreement.

This Agreement may be executed in counterparts and when so executed, each such counterpart will constitute an original document and such counterparts will constitute one and the same agreement.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the date first set forth hereinabove.

CITY OF HUNTINGTON BEACH

Date: _____

By: _____
Mayor

ATTEST:

City Clerk

REVIEWED AND
APPROVED AS TO FORM:
City Attorney

By: _____
Jennifer McGrath

APPROVED AS TO FORM:
KANE, BALLMER & BERKMAN

By: _____
City Special Counsel

21002 HB, LLC, a Delaware limited liability
company

Date: _____

By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

ATTACHMENT NO. 1
LEGAL DESCRIPTION AND MAP

ATTACHMENT NO. 1

ATTACHMENT NO. 2.48

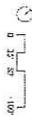
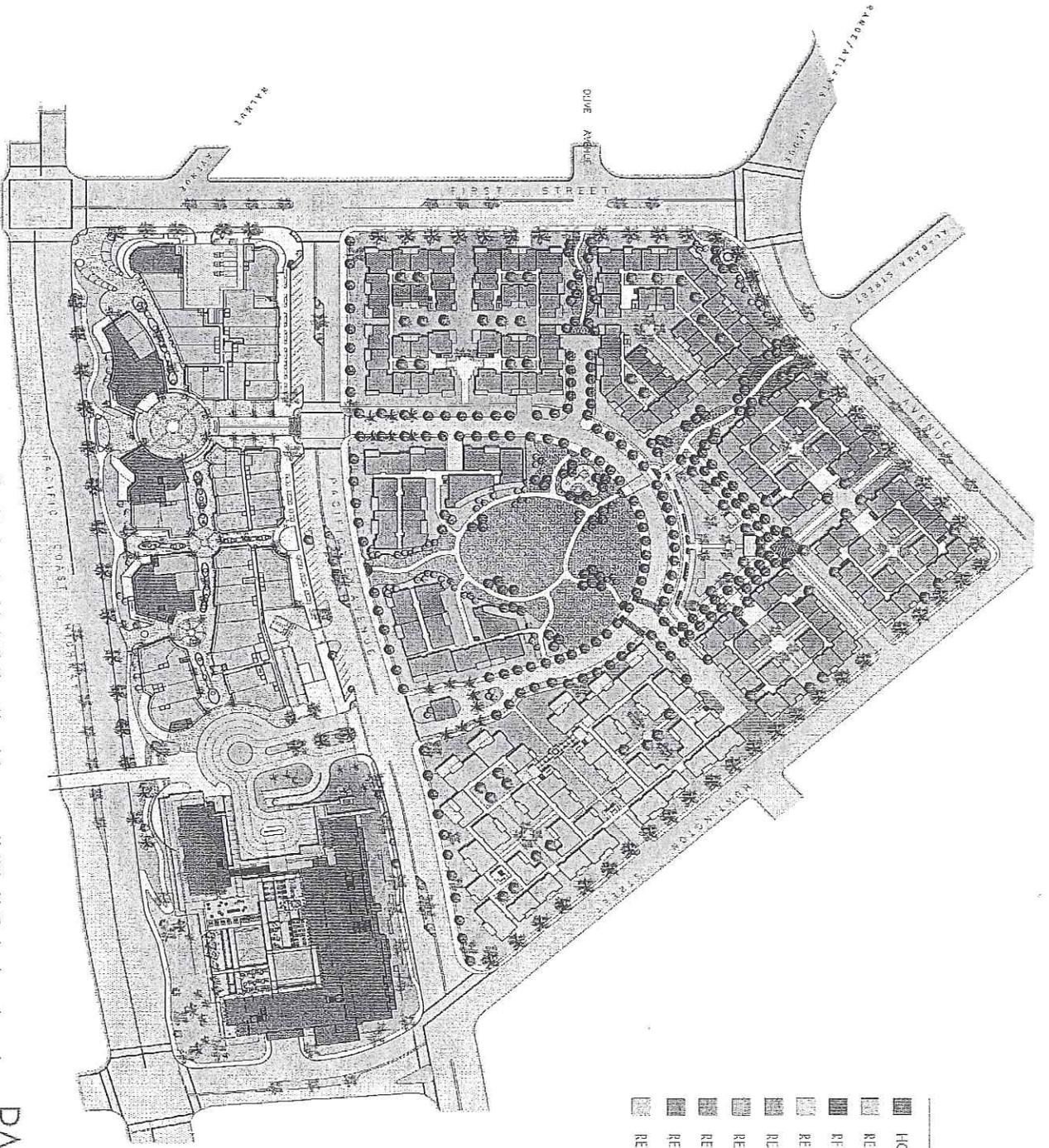
ATTACHMENT NO. 2

DEVELOPMENT PLAN

ATTACHMENT NO. 2

-1-

ATTACHMENT NO. 2.49



City and Developer acknowledge that the site plan on this page is the one approved in 2006 and that Developer is currently processing a revised site plan approval with the City. The applicable Development Plan or Site Plan at any time will be the most current, approved one on file with the City Planning & Building Department and will not necessarily be the same as or consistent with this Exhibit.

- LEGEND
- HOTEL
 - RETAIL
 - RESTAURANT
 - RESIDENTIAL - PHASE I
 - RESIDENTIAL - PHASE II
 - RESIDENTIAL - PHASE III
 - RESIDENTIAL - PHASE IV
 - RESIDENTIAL - GATEHOUSE
 - RECREATION BUILDING

PACIFIC CITY
HUNTINGTON BEACH

ATTACHMENT NO. 3

AGREEMENT CONTAINING COVENANTS

ATTACHMENT NO. 3

ATTACHMENT NO. 2.51

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: Economic Development City Manager

Space Above this Line Reserved for Recorder's Use

**AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY
(INCLUDING AFFORDABLE RENTAL AND/OR SALE RESTRICTIONS)**

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY ("Agreement") is entered into as of _____, 2012, by and between the CITY OF HUNTINGTON BEACH, a charter city ("City"), and 21002 HB, LLC, a Delaware limited liability company ("Developer").

RECITALS

A. Developer is the owner of record of that certain real property located at 21002 Pacific Coast Highway (the "Residential Parcel"), in the City of Huntington Beach, County of Orange, State of California legally described and shown in the attached Exhibit "A".

B. The City and Developer entered into that certain Affordable Housing Agreement dated _____, 2012 ("AHA"), for the purpose of providing affordable dwelling units, in accordance with the AHA. AHA as used herein shall mean, refer to and include the AHA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the AHA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the AHA.

C. This Agreement is entered into and recorded in accordance with the AHA.

NOW, THEREFORE, CITY AND DEVELOPER COVENANT AND AGREE AS FOLLOWS:

1. Definitions.

“Affordable Dwelling Unit” means each Dwelling Unit restricted for rental and/or sale to and occupancy by qualifying Moderate Income Households, in accordance with this Agreement.

“Affordable Housing Cost” means the term defined in California Health and Safety Code Section 50052.5(b)(4).

“Affordable Rent” means rent that meets the requirements of California Health and Safety Code Section 50053(b)(4).

“Area Median Income” means the area median income for the County of Orange (“County”) as published annually by the California Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development criteria then in effect and published from time to time. The Area Median Income is defined by California Health and Safety Code Section 50093(c) and set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified during the term of this Agreement so that such regulations do not specify the area median income for the County, the City and Developer shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.

“Commencement of Construction” means building permits have been issued and the placement of piles or foundations has physically begun in accordance with the building permits.

“Covenant Period” means fifty-five (55) years beginning from the date of the City’s Final Inspection of the Affordable Dwelling Unit, except in the event that in accordance with Section 2.c., below, Market Rate Units are converted to Affordable Dwelling Units, then, in such case, Covenant Period means fifty-five (55) years from the date both of the following have occurred: (a) the City Manager has approved which Market Rate Units will be converted to Affordable Dwelling Units; and (b) such City-approved Affordable Dwelling Units are first occupied by a qualified renter approved by the City at an Affordable Rent or by a qualified buyer approved by the City at an Affordable Housing Cost, as applicable.

“Developer” means 21002 HB, LLC, a Delaware limited liability company, and any of its successors and assigns to the Residential Parcel or portion thereof which becomes a Developer pursuant to the AHA.

“Dwelling Unit” means each residential dwelling unit constructed on the Residential Parcel that is legally available to be rented or purchased by a person or household, including the Affordable Dwelling Units and the Market Rate Units.

“Final Inspection” means final building permits have been signed and utilities have been released.

“Market Rate Units” shall mean subject to Section 2.c., below, those Dwelling Units on the Residential Parcel that are not Affordable Dwelling Units nor governed by this Agreement. In accordance with Section 2.c., below, up to ten percent (10%) of the Market Rate Units may convert to Affordable Dwelling Units.

“Moderate Income Household” means persons and families whose income conforms to the qualifying limits defined by California Health and Safety Code Section 50093(b) and set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. Generally, Moderate Income Household means household income that exceeds eighty percent (80%) of the Area Median Income but does not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for family size by the California Department of Housing and Community Development (“HCD”) in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to Section 8 of the United States Housing Act of 1937. As used in this Agreement, the term “Moderate Income Household” shall mean one or more persons, whether or not related, living together in an Affordable Dwelling Unit.

2. Affordability Covenants. Developer and each successor in interest to Developer’s interest in the Residential Parcel or any part thereof, hereby covenants and agrees as follows:

a. During the Covenant Period, Developer agrees to make available, restrict occupancy to, and to lease or sell (as provided below) a minimum of ten percent (10%) of the Dwelling Units constructed on the Residential Parcel (51, based on the currently anticipated total of 516 Dwelling Units) exclusively to qualifying Moderate Income Households at an Affordable Rent or Affordable Housing Cost, in accordance with this Agreement.

b. Prior to Final Inspection of the 387th Market Rate Unit on the Residential Parcel, Developer shall have completed construction and shall have received all required Final Inspections for 25 rental Affordable Dwelling Units on the Residential Parcel, provided however, if the 386th Market Rate Unit is part of a phase or building that results in no more than 406 Market Rate Units completing Final Inspection, the trigger for requiring Final Inspection of the 25 Affordable Dwelling Units shall be changed to prior to Final Inspection of the 407th Market Rate Unit. Concurrent with issuance of a Final Inspection for the 465th Market Rate Unit on the Residential Parcel, Developer shall have completed construction and shall have received required Final Inspection for all 51 Affordable Dwelling Units on the Residential Parcel.

c. Without limiting the affordability requirements set forth above in subsections a. and b., if at least 232 Dwelling Units have received Final Inspection and no

Commencement of Construction has occurred on any additional Market Rate Units for a period of five (5) years following Final Inspection of the 232nd Dwelling Unit, Developer shall designate and convert existing Market Rate Units, as necessary, to insure that at least ten percent (10%) of the existing Dwelling Units are Affordable Dwelling Units and such converted Affordable Dwelling Units shall be rented or sold exclusively to and occupied by qualifying Moderate Income Households at an Affordable Rent or Affordable Housing Cost, in accordance with this Agreement. Which Market Rate Units may be converted to Affordable Dwelling Units shall be subject to the reasonable approval of the City Manager. The converted Affordable Dwelling Units shall remain Affordable Dwelling Units for the Covenant Period.

d. During the Covenant Period, Developer shall not change an Affordable Dwelling Unit from a rental unit to a for-sale unit without the prior written approval of the City Manager, which approval the City Manager shall be required to give if Developer satisfies each of the following conditions precedent:

(1) an Affordable Dwelling Unit that is restricted for rental to and occupancy by a Moderate Income Household shall first be offered for sale to the tenant occupying that unit at an Affordable Housing Cost for a Moderate Income Household, in accordance with Health and Safety Code Section 50052.5(b) (herein, the "Right of First Refusal"). Said offer shall be in writing and have a heading at or near the top of the first page in bold type not less than 12-point font substantially in the following form: **"This Document Contains a Written Offer to Sell To You the Residential Unit in Which You Are a Tenant. Please Review Carefully. If You Wish to Accept This Offer, You Must Do So Within Thirty (30) Days After This Offer Is Delivered To You By Signing and Dating This Offer Where Indicated Below and Delivering This Accepted Offer to the Owner at the Owner's Address. If You Do Not Do So, Your Right to Purchase This Residential Unit Will Terminate and Expire."** The offer shall contain a complete statement of the terms of the proposed sale, shall clearly state the applicable purchase price and closing date (which in no case shall be less than thirty (30) days after the date the offer is accepted) and shall comply with all applicable provisions of law pertaining to the sale of residential condominium units in the State of California, City of Huntington Beach. If the tenant does not timely accept Developer's offer, the tenant's Right of First Refusal shall expire and be of no further force or effect and thereafter Developer shall be free to market and sell that Affordable Dwelling Unit to any other Moderate Income Household ("Qualified Purchaser") at an Affordable Housing Cost. Alternatively, if the tenant does timely accept the offer but thereafter the tenant fails to timely perform any of its obligations to complete the purchase of the Affordable Dwelling Unit pursuant to the contract entered into between Developer and the tenant, subject to whatever default, notice, and cure rights may be set forth in said contract, Developer shall have the right hereunder to terminate said contract, in which event the tenant's Right of First Refusal shall expire and be of no further force or effect and thereafter Developer shall be free to market and sell that Affordable Dwelling Unit to any other Qualified Purchaser at an Affordable Housing Cost, in accordance with Health and Safety Code Section 50052.5(b)(4);

(2) the Developer shall notify the City, in writing, of its request for City approval to change any Affordable Dwelling Unit from a rental unit to a for-sale unit no later than ninety (90) days prior to offering an Affordable Dwelling Unit for sale to any person ("Notice of Change Request"). The Notice of Change Request shall be accompanied by the following information: (a) the form(s) of purchase contract(s) Developer intends to use (consistent with the requirements of paragraph 2.d.(1) with respect to the Right of First Refusal for each existing tenant); (b) a form of grant deed to be used for each such sale which sets forth the applicable restrictions upon resale and use of each for-sale Affordable Dwelling Unit consistent with this Agreement; and (c) written evidence documenting Developer's compliance with all applicable laws and regulations governing the sale of condominium units. The City Manager shall approve or disapprove the Notice of Change Request, including the form of the documents submitted therewith, within thirty (30) days after receipt, with approval not to be unreasonably conditioned or withheld. Any disapproval shall be in writing and shall state the reasons therefor and the actions that Developer must take or the changes Developer must make to the applicable documents in order to obtain City's approval. If the City Manager fails to timely approve or disapprove Developer's Notice of Change Request within said time, Developer's Notice of Change Request and the form of the accompanying documents shall be deemed approved;

(3) concurrently with the close of escrow for the conveyance of any Affordable Dwelling Unit to a Qualified Purchaser, Developer and City shall fill in the blanks in the "Agreement and Covenants Concerning Use and Resale of Residential Unit" in the form attached hereto as Exhibit "B" and incorporated herein by this reference and the "Right of First Refusal" in favor of the City in the form attached hereto as Exhibit "C" and incorporated herein by this reference and Developer shall record such instruments or cause them to be recorded in the Official Records of the Orange County Recorder; and

(4) Developer hereby forever knowingly, intelligently and voluntarily waives, disclaims and releases the City, and its principals, officers, employees, agents and contractors, from any claims for Relocation Benefits and agrees to indemnify, protect, defend and hold City and the City and their principals, officers, employees, agents and contractors harmless against any such claims for such Relocation Benefits; provided, however, that nothing in this Agreement is intended or shall be interpreted as an acknowledgement or admission by Developer that the sale of any of the residential units within the Residential Parcel, including without limitation the Affordable Dwelling Units, and the displacement or eviction of tenants in conjunction therewith gives rise to an obligation to provide or pay any Relocation Benefits. For purposes of this Agreement, the term "Relocation Benefits" shall mean: costs for relocation assistance and benefits pursuant to all applicable state and local relocation laws, including without limitation, the California Relocation Assistance Law (Government Code § 7260 *et seq.*) and the implementing regulations thereto and local implementing regulations thereto, and all applicable federal relocation laws, including, without limitation, the Uniform Relocation Assistance and Real Residential Parcel Acquisition Policies Act of 1970 (42 U.S.C. § 4201-4655, and 49 CFR part 24).

e. During the Covenant Period, all Affordable Dwelling Units shall be occupied at all times only by qualified renters or, subject to paragraph 3.d. above, by Qualified Purchasers, as applicable. The Developer covenants to cooperate with the City in taking all steps necessary to implement and monitor this requirement with respect to all qualified renters.

f. During the Covenant Period, Developer shall provide the City with a quarterly report with respect to Affordable Dwelling Units under lease and/or contract (as applicable), closed sales (as applicable), and such other information as the City may reasonably request.

g. During the Covenant Period, as long as the Affordable Dwelling Units are required to be rented to and occupied by qualified renters and for each proposed sale of a Affordable Dwelling Unit by Developer to a Qualified Purchaser, Developer shall require the prospective renter or purchaser, as applicable, to complete and execute an application form verifying the identity of each individual person who intends to occupy the Affordable Dwelling Unit and the income of the household. The application form shall be subject to the prior approval of the City Manager, which approval shall not be unreasonably withheld, conditioned, or delayed. Without limiting the foregoing, the City Manager may require that Developer's verification process require the prospective renter or purchaser to submit, without limitation, income tax returns and/or paycheck stubs to verify income.

Without limiting the generality of the foregoing, prior to the lease of an Affordable Dwelling Unit, Developer shall submit to the City a completed income computation and certification form, in such form as is generally used by City in administering its affordable housing program as may be amended from time to time. Developer shall certify that, based upon verification and documentation in Developer's files, each tenant is a Moderate Income Household that meets the eligibility requirements established for the particular Affordable Dwelling Unit. Developer shall obtain an income certification from each adult member of the Moderate Income Household and shall certify that, based upon verification and documentation in Developer's files, the income of the Moderate Income Household is truthfully set forth in the income certification form. Furthermore, the Developer shall, on renewal of the annual lease for the particular Affordable Dwelling Unit, again obtain income certification from each adult member of the Moderate Income Household and submit to the City a recertification form that shall certify, based upon verification and documentation in Developer's files, each Moderate Income Household is a Moderate Income Household that meets the eligibility requirements established for the particular Affordable Dwelling Unit occupied. Developer shall verify the income certification of the Moderate Income Household in one or more of the following methods as specifically requested by City:

(1) Obtain two (2) paycheck stubs from two (2) most recent pay periods for each adult member of the Moderate Income Household.

(2) Obtain a copy of an income tax return certified to be true and complete for the most recent tax year in which a return was filed, for each adult member of the Moderate Income Household.

(3) Obtain an income verification certification from the employer of each adult member of the Moderate Income Household.

(4) Obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the Moderate Income Household receives assistance from such agencies.

(5) Obtain an alternate form of income verification reasonably requested by City, if none of the above forms of verification is available to Developer.

h. Over-Income Tenants. During the Covenant Period, Developer shall comply with the following rule: any tenant in a Affordable Dwelling Unit who initially qualified as a Moderate Income Household and who no longer qualifies as a Moderate Income Household shall pay as rent an amount equal to 30 percent of the household income, and shall be given one (1) year to relocate from the Affordable Dwelling Unit for which such tenant initially qualified.

i. Within sixty (60) days after the end of each calendar year during the Covenant Period, Developer shall submit to City a report verifying Developer's compliance with the provisions of this Agreement ("Annual Report"). Developer's final Annual Report shall be submitted to City within sixty (60) days after the end of the Covenant Period. Each Annual Report shall identify the location of the Affordable Dwelling Units for the applicable reporting period, the identity of each Moderate Income Household member occupying an Affordable Dwelling Unit during any portion of such period, the income and household size of each such Moderate Income Household, the Affordable Rent for each of the Affordable Dwelling Units, and the rent actually charged pursuant to the lease or rental agreement. If City prescribes a particular form to be utilized by Developer in preparing the Annual Report, Developer shall utilize said form, provided that it complies substantially with the foregoing requirements.

Developer shall submit an annual report to the City that includes whether there was a change in rental/ownership of the Affordable Dwelling Unit from the prior year and, if so, the income and household size of the new household. The income information required by this subsection shall be supplied by Developer in a certified statement in a form provided by the City.

Developer shall provide all information on a timely basis that is required by the City for monitoring purposes and shall pay any generally applicable monitoring fees established by the City from time to time to cover the cost to the City of such monitoring. The Developer shall comply with all generally applicable affordability certification procedures of the City, and shall complete or cause the completion of all sample forms provided by the City to verify the required affordability on an annual basis.

j. Upon the close of each escrow for Developer's transfer of a Affordable Dwelling Unit to a Qualified Purchaser, City shall cooperate with Developer in executing and causing to be recorded an instrument terminating this Agreement such that, after the closing, Developer's obligations with respect to that Affordable Dwelling Unit shall terminate and, thereafter, the rights and obligations of the City and the Qualified Purchaser (and its successors and transferees) shall be as set forth in the Agreement and Covenants Concerning Use and Resale of Residential Units (Exhibit "B" hereto) and the Right of First Refusal (Exhibit "C" hereto) recorded at the closing.

k. During the Covenant Period, Developer shall be required to take all reasonable steps necessary to ensure that each Moderate Income Household renting an Affordable Dwelling Unit has knowledge of all terms and conditions of this Agreement by including in each and every lease and rental agreement a clause which incorporates this Agreement by reference and makes this Agreement a part of an attachment to such lease or rental agreement. In addition, during the Covenant Period, each lease or rental agreement for any of the Affordable Dwelling Units shall contain provisions that the Affordable Dwelling Unit shall be occupied, used, and maintained as follows:

(1) The Affordable Dwelling Unit shall be used only for private dwelling purposes, with appurtenant facilities, and for no other purposes;

(2) Household Size. The maximum number of persons that may occupy an Affordable Dwelling Unit shall be based on unit size:

<u>Unit Size</u>	<u>Household Size</u>
0 bedroom (studio)	2 persons
1 bedroom	3 persons
2 bedrooms	5 persons

(3) The Moderate Income Household shall not permit or suffer anything to be done or kept upon the premises which will increase the rate of insurance on any building, or on the contents thereof, and shall not impair the structural integrity thereof obstruct or interfere with the rights of other occupants, or annoy such occupants by reasonable noises or otherwise, nor shall any Moderate Income Household commit or permit any nuisance on the premises or fail to keep the premises free of rubbish, clippings, and trash or commit or suffer any illegal act to be committed thereon;

(4) The Moderate Income Household shall not sublease any or all parts of the Affordable Dwelling Unit without prior written approval from the City Manager;

(5) The Moderate Income Household shall comply with all of the lawful requirements of all governmental authorities with respect to the premises;

(6) No person shall be permitted to occupy the premises for transient or hotel purposes; and

(7) The Moderate Income Household shall comply in all respects with this Agreement and any failure by the Moderate Income Household to comply with the terms of this Agreement shall be a default under the lease or rental agreement.

1. The Affordable Rent for each Affordable Dwelling Unit shall be adjusted annually by the formula established by California Health and Safety Code Section 50053 upon the publication of revised Area Median Income. This methodology currently sets the moderate income rent at 1/12th of 30% of 110% of the Area Median Income adjusted for family size appropriate to the Affordable Dwelling Unit. As used herein, for the purposes of calculating the Affordable Rent, "adjusted for family size appropriate to the Affordable Dwelling Unit" shall mean a household of 1 person in the case of a studio Affordable Dwelling Unit, a household of 2 persons in the case of a one-bedroom Affordable Dwelling Unit, and a household of 3 persons in the case of a two-bedroom Affordable Dwelling Unit.

Rental rates for the Affordable Dwelling Units must be set at an Affordable Rent for Moderate Income Households as set forth in this Agreement. Each year, after the income standards are published by the California Department of Housing and Community Development, the City will calculate the allowable rental rates. This rent schedule will then be transmitted to the Developer. Exhibit "D" provides an example of the rents that would be applicable in 2012.

Purchase prices for the Affordable Dwelling Units must be set at an Affordable Housing Cost for Moderate Income Households as set forth in this Agreement.

DEVELOPER UNDERSTANDS AND KNOWINGLY AGREES THAT THE MAXIMUM RENTAL PAYMENTS OR SALES PRICES TO BE ESTABLISHED BY THIS AGREEMENT FOR THE AFFORDABLE DWELLING UNITS ARE NOT NECESSARILY EQUAL TO THE FAIR MARKET RENT OR FAIR MARKET VALUE, AND MAY BE ESTABLISHED AT A LEVEL SUBSTANTIALLY BELOW THE FAIR MARKET RENT OR FAIR MARKET VALUE LEVELS.

DEVELOPER HEREBY AGREES TO RESTRICT THE AFFORDABLE DWELLING UNITS ACCORDINGLY.

DEVELOPER'S INITIALS

3. Management; Maintenance of the Affordable Dwelling Units.

a. Management. Developer covenants and agrees that Developer shall manage and operate the rental Affordable Dwelling Units in accordance with a management

plan prepared by Developer and submitted to and approved in writing by the City Manager as provided herein (the "Management Plan"). The Management Plan shall include, at a minimum, the following components:

(1) Management Agent. Developer shall submit to the City Manager for review and approval in writing the name and qualifications of the proposed management agent, unless such management agent will be the Developer or an affiliate of the Developer. If the management agent will be the Developer or an affiliate of the Developer, the Developer need only submit that information to the City and no City approval is required. If the management agent will be some individual or entity other than Developer or an affiliate of the Developer, then the City Manager shall approve or disapprove the proposed management agent in writing based on the experience and qualifications of the management agent; and

(2) Management Plan. Developer shall submit to the City Manager for review and approval in writing a copy of the proposed Management Plan specifying the relationship and division of responsibilities between Developer and management agent.

Developer covenants and agrees that if at any time the City Manager reasonably determine(s) that the Affordable Dwelling Units are not being managed or maintained in accordance with the approved Management Plan, City Manager shall notify Developer in writing identifying with specificity those management and/or maintenance obligations of the Developer that are not being performed in accordance with the Management Plan. Upon receipt of any such written notice, the Developer shall promptly commence to correct the identified practices at the earliest reasonable time after receipt of any such written notice and shall complete the correction of any such practices no later than sixty (60) days after receipt of any such written notice or, to the extent the management agent is in violation of the management contract, shall terminate the management contract and designate and retain a different management agent, to be approved by the City Manager. Any management contract shall provide that it is subject to termination by Developer, upon sixty (60) days' prior written notice. Within 45 days following the receipt of notice from the City Manager, Developer shall identify another management agent or make other arrangements satisfactory to the City Manager for continuing management of the Affordable Dwelling Units.

b. During the Covenant Period and as long as the Affordable Dwelling Units are required to be rented to and occupied by qualified renters, Developer shall maintain the Affordable Dwelling Units in the same aesthetic and sound condition (or better) as the condition of the Affordable Dwelling Units at the time City completed the Final Inspection, reasonable wear and tear excepted. This standard for the quality of maintenance of the Affordable Dwelling Units shall be met whether or not a specific item of maintenance is listed below. However, representative items of maintenance shall include customary inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of public sidewalks adjacent to the Affordable Dwelling Units, on-site walks and paved areas and washing-down as necessary to maintain clean surfaces;

maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; cleaning windows on a regular basis; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; maintaining the roof in a leak-free and weather-tight condition; maintaining security devices in good working order. In the event Developer fails to maintain the Affordable Dwelling Units in accordance with the standard for the quality of maintenance, City Manager shall notify Developer in writing identifying with specificity any violations by Developer to maintain the Affordable Dwelling Units in accordance with the standard for the quality of maintenance describe above. Upon receipt of any such written notice, the Developer shall promptly commence to correct the identified violations at the earliest reasonable time after receipt of any such written notice and shall complete the correction of any such violations no later than sixty (60) days after receipt of any such written notice. If Developer fails to diligently proceed with correcting such violations, City or its designee shall have the right but not the obligation to enter the Residential Parcel and Affordable Dwelling Units upon reasonable notice to Developer, correct any violation, and hold Developer responsible for the cost thereof, and such cost, until paid, shall constitute a lien on the Residential Parcel.

4. Obligation to Refrain from Discrimination. Developer covenants and agrees, that, with regard to the Affordable Housing Units, there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land. The covenants in this Section shall remain in effect in perpetuity.

5. Form of Nondiscrimination and Nonsegregation Clauses. Developer shall refrain from restricting the rental, sale or lease of the Affordable Dwelling Units on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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

the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

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

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

The covenants in this Section shall remain in effect in perpetuity.

6. Covenants Running with the Land. All conditions, covenants and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by City, the Huntington Beach Housing Authority, and their respective successors and assigns, against Developer, its successors and assigns, to or of the Residential Parcel or any portion thereof or any interest therein, and any party in possession or occupancy of said Residential Parcel or portion thereof. City and the Huntington Beach Housing Authority shall be deemed the beneficiaries of the covenants, conditions and restrictions of this Agreement both for and in their own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the City and the Huntington Beach Housing Authority, without regard to whether the City or Huntington Beach Housing Authority has an interest therein in the Residential Parcel. The Huntington Beach Housing Authority is an express third party beneficiary of this Agreement.

7. Enforcement. Upon a violation of any of the covenants or provisions of this Agreement, City, Huntington Beach Housing Authority and their respective successors and assigns, without regard to whether City, Huntington Beach Housing Authority or their respective successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by Developer of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

8. Force Majeure. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under the AHA and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation commenced by a third party that causes delays, or unusually severe weather. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

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

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the date first set forth hereinabove.

CITY OF HUNTINGTON BEACH

Date: _____

By: _____

REVIEWED AND
APPROVED AS TO FORM:

CITY ATTORNEY

By: _____
Jennifer McGrath

KANE, BALLMER & BERKMAN

By: _____
City Special Counsel

21002 HB, LLC, a Delaware limited
liability company

Date: _____

By: _____
Name: _____
Its: _____

Date: _____

By: _____
Name: _____
Its: _____

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California

County of _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION AND MAP

EXHIBIT "B"

AGREEMENT AND COVENANTS CONCERNING USE AND RESALE OF RESIDENTIAL
UNITS

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Recording Requested By and
When Recorded Mail to:

City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Economic Development Director

Space above this line for Recorder's use only

**AGREEMENT AND COVENANT CONCERNING USE
AND RESALE OF RESIDENTIAL UNITS
MODERATE INCOME HOUSEHOLD**

This AGREEMENT AND COVENANT CONCERNING USE AND RESALE OF RESIDENTIAL UNITS (this "**Agreement**") is dated for identification purposes as of _____, 20____ and is entered into by and between the CITY OF HUNTINGTON BEACH, a charter city (the "**City**") and (list all owners)

_____ (the "**Owner**") upon the terms and subject to the conditions set forth herein. As used herein, the term the "**Owner**" shall be deemed to include: (i) the foregoing listed individual or individuals and (ii) the successors and assigns of such individual or individuals during the time the successors and/or assigns own or hold an interest in the Unit. The City and the Owner are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**". This Agreement is made with reference to the following facts:

RECITALS

A. Prior to or concurrently with the execution of this Agreement, the Owner has executed and entered into an agreement which entitles the Owner, subject to the terms and conditions thereof, to acquire a residential unit (the "**Unit**") located at _____ in the City of Huntington Beach, which unit is legally described in Exhibit "1" attached hereto and incorporated herein by this reference, at an "**Affordable Housing Cost**" with respect to a Moderate Income Household, as defined in California Health and Safety Code Section 50093(b), whose annual household income exceeds eighty percent (80%), but does not exceed one hundred twenty percent (120%) of area median income for Orange County, adjusted for applicable household size (the "**Income Restriction Level**"). "**Affordable Housing Cost**" shall have the meaning provided by California Health and Safety Code Section 50052.5(b)(4), and shall be

computed in accordance with the Community Redevelopment Law of the State of California (California Health & Safety Code Section 33000 *et seq.*) and the regulations promulgated pursuant thereto or incorporated therein, including, without limitation, all regulations promulgated pursuant to California Health and Safety Code Section 50093, or any successor statute.

B. The City desires to ensure, for the benefit of the City, all future residents of the Unit, and the community at large, that the Unit remains available at an Affordable Housing Cost to a household whose income does not exceed the Income Restriction Level from the date the Owner first acquires title to the Unit until _____, 20__ (the fifty-fifth (55th) anniversary of the date the City issued a final inspection for the Unit (such period being referred to herein as the “**Term**”), in accordance with the terms and conditions of this Agreement. When used herein “final inspection” shall mean final building permits have been signed and utilities have been released.

DECLARATION AND AGREEMENT

NOW, THEREFORE, BASED UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE AND FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HEREBY DECLARE AND AGREE TO THE FOLLOWING:

1. **Warranty of Qualifications.** The Owner covenants, represents and warrants that the applications and information previously submitted to the seller of the Unit by the Owner are true, complete, and not misleading, and that the Owner meets all of the following criteria:

(a) During the Term, the Owner (and, if there is more than one (1) individual owner, then each such person individually) shall occupy the Unit as his or her primary residence for so long as he or she shall have an ownership interest in the Unit;

(b) The Owner does not own any other residential real property other than an existing residence being sold concurrently with the Owner’s purchase of the Unit; and

(c) The household which will occupy the Unit did not during the preceding calendar year and will not during the current calendar year have a combined “gross income” (as defined in Section 6914 of Title 25 of the California Code of Regulations) in excess of the Income Restriction Level set forth above. The City agrees that future changes in income after the current calendar year shall not affect the income qualification of the Owner and that such future changes in income are not within the scope of the representation and warranty set forth above.

2. **Continuing Affordability.** The Owner agrees and covenants on behalf of itself and its successors and assigns, that during the Term of this Agreement, and except as expressly provided in Section 3(b):

(a) neither the Unit nor any interest therein (including, without limitation, any right to use or occupy the Unit) shall be sold, granted, leased, pledged, encumbered, mortgaged, assigned or otherwise conveyed or transferred, whether voluntarily or involuntarily (any such transfer being referred to below as a “**Transfer**”), except at an Affordable Housing Cost (as defined by California Health and Safety Code Section 50052.5(b)(4) and determined by the City, in its good-faith discretion, based upon a reasonable downpayment, which for the purposes of calculating the Affordable Housing Cost is set at ten percent (10%) of the Affordable Housing Cost of the Unit, to a household of the Income Restriction Level and meeting the other qualifications set forth in Section 1; and

(b) the Unit shall at all times remain Owner-Occupied. For purposes of this Section 2(b), the term “Owner-Occupied” means the Unit is regularly and continuously occupied as a primary residence by the Owner and the members of the Owner’s household.

The Owner specifically acknowledges, covenants and agrees that any Transfer or use of the Unit in violation of Section 2(a) or 2(b), respectively, may be enjoined by the City and the City shall have the right to void any Transfer, attempted Transfer or use in violation thereof. The City acknowledges that the downpayment limitation set forth in Section 2(a) is only for purposes of determining compliance with the Affordable Housing Cost requirements, and shall not be construed or understood to limit or restrict an otherwise qualifying owner from paying a permitted purchase price in cash or with a downpayment in excess of ten percent (10%).

(c) Owner shall submit an annual report to the City that includes whether there was a change in ownership of the Unit from the prior year and, if so, the income and family size of the new owners. The income information required by this subsection (c) shall be supplied by Owner in a certified statement on a form provided by the City.

3. **Subordination; Exempt Transfer.**

(a) **Subordination.** Notwithstanding any other provisions hereof, the provisions of this Agreement shall be subordinate to the lien of that certain first deed of trust (the “**First Deed of Trust**”) on the Unit, executed by the Owner, as trustor, in favor of _____, as trustee, for the benefit of _____, as beneficiary, and its assignees or successors in interest (the “**First Lienholder**”) and recorded concurrently with this Agreement, and to any refinancing of that loan (the “**Acquisition Loan**”) constituting an Exempt Transfer (as defined below), provided, that the First Lienholder (and any successor lender refinancing the Acquisition Loan), pursuant to a Subordination Agreement in recordable form executed by City and reasonably acceptable by First Lienholder, shall agree to provide the City with written notice of any default under the First Deed of Trust (or any such successor loan) and provide the City with not less than forty five (45) days thereafter in which to

cure such default before proceeding with any foreclosure or deed in lieu of foreclosure with respect to the Unit. Any notice delivered to the City under this paragraph shall be delivered in the manner specified in Section 15 for delivery of notices to the City. The Subordination Agreement shall provide that, upon timely cure of the default under the First Deed of Trust and the City's acquisition, at its election, of the Owner's interest in the Unit, the City shall have the right to assume the loan secured by the First Deed of Trust so long as the City maintains ownership of the Unit, and, so long as the City continues as the Owner, the First Lienholder shall not exercise any due on sale clause contained in the First Deed of Trust.

(b) Exempt Transfer. Notwithstanding any other provision of this Agreement, the following Transfers of an interest in the Unit (an "**Exempt Transfer**") shall be exempt from the requirements of Section 2(a), provided, however, that Section 2(a) shall apply to any and all Transfers subsequent to an Exempt Transfer (other than another Exempt Transfer):

(i) execution of a deed of trust in favor of an institutional lender to secure repayment of a loan, the proceeds of which are used solely to repay the Acquisition Loan, or any successor loan executed in connection with refinancing of the Acquisition Loan and whose proceeds are similarly limited to the amount of the loan refinanced, provided that the lien is being created in good faith and not for the purpose in whole or in part of circumventing the Transfer restrictions contained in this Agreement;

(ii) a transfer of title by an Owner, meeting all of the requirements of and otherwise in compliance with this Agreement, to a revocable living trust established by such Owner for estate planning purposes, provided that such Owner shall continue occupancy of the Unit notwithstanding such Transfer, that advance written notice of such Transfer shall be given to the City, and that any further Transfer of the Unit by the trust shall be subject to and in accordance with the requirements of this Agreement; and

(iii) a transfer of title or an interest therein occurring by will, bequest, or inheritance upon the death of an Owner or a transfer of title or an interest therein as a result of a conservatorship or similar event based upon the mental or physical incapacity of an Owner.

4. Transfer Review. During the Term of this Agreement, no Owner shall cause or permit a Transfer of the Unit or of an interest therein to occur without prior written confirmation from the City that the City has determined that the proposed Transfer will meet the criteria specified in Section 2 or constitutes an Exempt Transfer under Section 3(b). The City shall not be obligated to approve a Transfer until and unless the proposed transferee has submitted to the City such information and completed such forms and certifications as the City shall request in connection with insuring compliance with this Agreement, which may include, but shall not be limited to, certifications as to the proposed transferee's intent with respect to its residency of the Unit, its gross income, the proposed purchase price, the proposed transferee's agreement to abide by the terms and conditions of this Agreement, disclosure of the proposed transferee's interest, if any, in other residential property, the composition of the members of the proposed transferee's household, and a "Purchaser Disclosure and Acknowledgment" form in the same form as

executed by the proposed transferee's predecessor in interest. In addition, prior to conveyance of the Unit at any time during the Term and as a condition to the effectiveness thereof, each proposed purchaser shall, if requested by the City, submit to the City an executed disclosure statement which certifies that the purchaser is aware that the purchaser may only sell the Unit at an Affordable Housing Cost to a household of the Income Restriction Level, that the maximum permitted sales price may be less than the fair market value, and that at all times during the Term the Unit must remain Owner-Occupied and cannot be rented or leased. Each Owner shall cooperate with the City in providing such forms to proposed purchasers, and acknowledges and agrees that its right to Transfer the Unit during the Term is subject to and conditioned upon its compliance with the requirements of the City applicable to implementation of the foregoing provisions.

THE OWNER AND EACH SUCCESSOR, HEIR OR ASSIGN OF THE OWNER UNDERSTANDS THAT THE DETERMINATION OF AFFORDABLE HOUSING COST CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER, TAKING INTO CONSIDERATION INTEREST RATES, CHANGES IN COUNTYWIDE MEDIAN INCOME, THE TERMS OFFERED TO AND THE ECONOMIC CIRCUMSTANCES OF THE PROPOSED PURCHASER AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED, AND THAT THE TRANSFER PRICE PERMITTED HEREUNDER MAY BE LESS THAN THE FAIR MARKET VALUE OF THE UNIT AND MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY TRANSFER RESTRICTIONS. THE OWNER AND EACH SUCCESSOR, HEIR OR ASSIGN OF THE OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE TRANSFER PRICE THE PRIMARY OBJECTIVE OF THE AGENCY AND THIS AGREEMENT IS TO PROVIDE HOUSING TO MODERATE-INCOME HOUSEHOLDS AT AN AFFORDABLE HOUSING COST.

5. **Nondiscrimination.** The Owner covenants by and for itself, its successors and assigns and all persons claiming under or through them that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Unit, nor shall the Owner itself or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Unit or any portion thereof.

The Owner, its successors and assigns, shall refrain from restricting the sale of the Unit on the basis of the race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All deeds, leases or contracts with respect to the Unit shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the

Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

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

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

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

Nothing in this Section 5 shall be construed to authorize a Transfer of the Unit if such sale, rental, lease, assignment, encumbrance or other Transfer is not otherwise permitted by this Agreement.

The covenants in this Section 5 shall remain in effect in perpetuity.

6. **Remedies; Attorneys’ Fees and Costs.** Breach of the covenants contained in this Agreement may be enjoined, abated or remedied by appropriate legal proceeding. If the City or the Huntington Beach Housing Authority incurs any attorneys’ fees, court costs or any other costs or expenses in investigating compliance with or enforcing this Agreement or investigating or defending claims brought by the Owner under this Agreement, then the City and the Huntington Beach Housing Authority shall each be entitled to recover any such fees, costs and expenses from the Owner.

7. **Rights of the City and Housing Authority.** The City and the Huntington Beach Housing Authority, as express third party beneficiaries of this Agreement, each have the right, but not the obligation, to enforce all of the provisions of this Agreement. Any amendment to this Agreement shall require the written consent of the City.

8. **Notice of Inspection.** The Owner agrees and acknowledges that the City and its employees and agents shall have the right to enter upon the Unit during normal business hours (Monday through Friday, between 9:00 a.m. and 5:00 p.m.) to ensure compliance with this Agreement and other applicable federal, state and local laws and regulations. The City agrees to notify the Owner not less than twenty-four (24) hours prior to the City's proposed time of inspection of the Unit, and agrees to reasonably attempt to obtain the Owner's consent to the timing of such inspection. Upon receipt of such notice, the Owner agrees to cooperate with the City in making the Unit available for inspection by the City. The Owner agrees to cooperate with the City and provide the City with such information regarding occupancy of the Unit as the City may request in writing from time to time, in order to enable the City to monitor the Owner's compliance with the occupancy restrictions set forth in Section 2(a) and (b) of this Agreement.

9. **Construction.** The provisions of this Agreement shall be liberally construed for the purpose of maintaining the availability and affordability of the Unit to persons meeting the criteria set forth in Sections 1 and 2.

10. **Cure Rights.** The Owner shall notify the City in writing within three (3) days after receiving any notice of default, delinquency or foreclosure with respect to any lien or agreement (including, without limitation, any defaults under the covenants, conditions and restrictions applicable to the condominium development of which the Unit is a part or any default under the Acquisition Loan) which could potentially affect the Owner's right, title and interest in the Unit. The City shall have the option, but not the obligation, to advance any sums due or take any other actions necessary to stay or cure the default, delinquency or foreclosure, and the City shall thereafter be entitled to recover immediately from the Owner and the Owner shall immediately pay to the City any payments, costs and expenses incurred in connection with the stay and/or cure, including, without limitation, attorneys' fees and court costs, together with interest thereon at the rate of ten percent (10%) per annum from the date advanced or incurred until the date repaid.

11. **Transfer Voidable If Procedure Not Followed.** Any Transfer of the Unit by the Owner without full compliance with the terms and procedures set forth above and in the Right of First Refusal executed in connection herewith shall be voidable by the City at the City's election in its sole, absolute and unfettered discretion.

12. **Recordation.** The Parties shall cause this Agreement to be recorded in the official records of Orange County, California.

13. **Covenants For Benefit of the City and the Housing Authority.** All covenants without regard to technical classification or designation shall be binding for the benefit of the

City and the Huntington Beach Housing Authority, an express third party beneficiary of this Agreement, and such covenants shall run in favor of the City and the Huntington Beach Housing Authority without regard to whether the City or the Huntington Beach Housing Authority is or remains an owner of any land or interest therein to which such covenants relate. The City and the Huntington Beach Housing Authority, in the event of any breach of any such covenants, shall each have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants.

14. **Remedies Cumulative.** The Huntington Beach Housing Authority is an express third party beneficiary of this Agreement. The remedies herein provided for breach of the covenants contained in this Agreement shall be deemed cumulative, and none of such remedies shall be deemed exclusive. The Parties acknowledge that the City's and the Huntington Beach Housing Authority's rights under this Agreement are in addition to, rather than in lieu of, other rights and remedies of the City and the Huntington Beach Housing Authority provided in the Right of First Refusal executed in connection herewith and other project documents.

15. **Obligations Secured by Lien.**

(a) **Creation and Release of Lien.** All sums due from the Owner under the provisions of this Agreement shall constitute a lien on the Unit. The lien shall become effective upon recordation by the City or the Huntington Beach Housing Authority's authorized agent of a notice of lien ("**Notice of Lien**") concerning nonpayment of any sum due hereunder. The Notice of Lien shall state (i) the amount due, which amount shall include interest at the rate of ten percent (10%) per annum from the date due to the date paid, and shall also include the cost of preparing and recording the Notice of Lien, (ii) the expenses of collection in connection with any nonpayment, including, without limitation, reasonable attorneys' fees, (iii) a description of the Unit, (iv) the name and address of the City or the Huntington Beach Housing Authority, (v) the name of the Owner and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the City or the Huntington Beach Housing Authority to enforce the lien by sale. The lien shall relate only to the individual Unit and not to the condominium project as a whole. Upon payment to the City or the Huntington Beach Housing Authority of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the City or the Huntington Beach Housing Authority shall cause to be recorded a notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The City or the Huntington Beach Housing Authority may demand and receive from the Owner a reasonable charge for the preparation and recordation of the Notice of Release before recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

(b) **Enforcement of Liens.** The lien established pursuant to this Section 15 may be enforced by sale of the Unit by the City or the Huntington Beach Housing Authority,

their respective attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any sum due in accordance with this Agreement within thirty (30) days after recordation of the Notice of Lien. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The City and the Huntington Beach Housing Authority, each through its agents, shall each have the power to bid on the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the City or the Huntington Beach Housing Authority or the purchaser at the sale in order to secure occupancy of the Unit, and the Owner shall be required to pay the reasonable rental value for the Unit during any period of continued occupancy by the Owner or any persons claiming under the Owner. Suit to recover a money judgment for any amounts due under this Agreement shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section 15 shall include reasonable attorneys' fees as fixed by the court.

16. **Notices.** All notices required or permitted hereunder shall be delivered in person or by facsimile, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party.

If to the Owner:

Unit ____
Huntington Beach, California ____
Facsimile No.: _____

If to the City:

City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Economic Development Director
Phone: (714) 526-5582
Fax: (714) 375-5087

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Attorney
Tel. No.: (714) 536-5555
Fax No.: (714) 374-1590

Any such notice shall be deemed received upon delivery, if delivered personally or by facsimile, one (1) business day after delivery to an overnight courier, if delivered by overnight courier, and three (3) business days after deposit into the United States Mail, if delivered by registered or certified mail.

17. **No Waiver.** Failure by the City or the Huntington Beach Housing Authority to enforce or delay by the City or the Huntington Beach Housing Authority in enforcing any right or remedy with respect to this Agreement shall not bar or limit any subsequent enforcement of the same or any other right or remedy with respect to the same subject matter or a different subject matter. Rights and remedies of the City and the Huntington Beach Housing Authority under this Agreement may be waived or modified only by a written instrument signed by the City or the Huntington Beach Housing Authority which states an express intention to waive or modify such rights and remedies.

18. **Incorporation of Exhibit.** Exhibit "1" attached to this Agreement is hereby incorporated into this Agreement as if set forth in full at this point.

19. **Further Assurances.** The Owner shall from time to time provide the City with such further information and shall execute such further documentation and agreements as may be reasonably necessary or appropriate to carry out the purposes of this Agreement.

20. **Joint and Several Obligations.** If at any time the Unit is owned by more than one (1) individual, then all of the multiple owners shall be jointly and severally liable for the obligations imposed by this Agreement.

21. **Severability.** If any provision or clause of this Agreement conflicts with applicable law, or is otherwise rendered unenforceable or ineffectual, then the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

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IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date indicated above.

CITY OF HUNTINGTON BEACH

Date: _____

By: _____

REVIEWED AND
APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Jennifer McGrath

THE "OWNER" (each individual owner must sign and acknowledge below; add more signature lines if necessary)

By: _____
Name: _____

By: _____
Name: _____

By: _____
Name: _____

Add Acknowledgment

Exhibit "1"

Legal Description of the Unit

[See attached page(s)]

EXHIBIT "C"
RIGHT OF FIRST REFUSAL

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Recording Requested By and
When Recorded Mail to:

City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Economic Development Director

Space above this line for Recorder's use only

**RIGHT OF FIRST REFUSAL
MODERATE INCOME HOUSEHOLD**

This RIGHT OF FIRST REFUSAL (this "**Right of First Refusal**") is dated for identification purposes as of _____, 20__ and is entered into by and between the CITY OF HUNTINGTON BEACH, a charter city (the "**City**") and (list all owners) _____ (the "**Owner**") upon the terms and subject to the conditions set forth herein. As used herein, the term the "**Owner**" shall be deemed to include: (i) the foregoing listed individual or individuals and (ii) the successors and assigns of such individual or individuals during the time the successors and/or assigns own or hold an interest in the Unit. The City and the Owner are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**". This Right of First Refusal is entered into by the Parties with reference to the following facts:

RECITALS

A. Prior to or concurrently with the execution of this Agreement, the Owner has executed and entered into an agreement which entitles the Owner, subject to the terms and conditions thereof, to acquire a residential unit (the "**Unit**") located at _____ in the City of Huntington Beach, which unit is legally described in Exhibit "1" attached hereto and incorporated herein by this reference, at an "**Affordable Housing Cost**" with respect to a Moderate Income Household as defined in California Health and Safety Code Section 50093(b) whose annual household income exceeds eighty percent (80%), but does not exceed one hundred twenty percent (120%) of area median income for Orange County, adjusted for applicable household size (the "**Income Restriction Level**"). "**Affordable Housing Cost**" shall have the meaning provided by California Health and Safety Code Section 50052.5(b)(4), and shall be

computed in accordance with the Community Redevelopment Law of the State of California (California Health & Safety Code Section 33000 *et seq.*) and the regulations promulgated pursuant thereto or incorporated therein, including, without limitation, all regulations promulgated pursuant to California Health and Safety Code Section 50093, or any successor statute.

B. The Unit is being transferred to the Owner subject to that certain Agreement and Covenant Concerning Use and Resale of Residential Units (the “**Use and Resale Agreement**”) which contains, among other things, covenants restricting the use and resale of the Unit or of an interest therein.

C. In consideration for, among other things, the provision for the Owner to purchase the Unit at an Affordable Housing Cost, the Parties desire to give the City a right of first refusal on the terms and conditions provided below.

AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Events Triggering the Right of First Refusal.** At any time between the date Owner acquires title to the Unit and _____, 20__ (the fifty-fifth (55th) anniversary of the date the City issued a final inspection for the Unit, with such period being referred to herein as the “**Term**”), the City shall have a right of first refusal to purchase the Unit upon the occurrence of any of the following events (the “**Trigger Events**”):

- (a) The Owner receives an offer to purchase the Unit which the Owner is willing to accept;
- (b) The Owner ceases to occupy the Unit as his or her primary residence;
- (c) The Owner breaches any of its obligations set forth in the Use and Resale Agreement and fails to cure such breach within the applicable time set forth therein; or
- (d) The Owner defaults in the payment of any loan, tax, assessment or fee or in the performance of any other obligation secured by a lien on the Unit, and such default continues uncured for a period of thirty (30) days or more after Owner’s receipt of written notice from the City demanding such payment be made (provided that Owner shall not be deemed in default if it pays under protest or takes such other action as may be required to prevent such failure to pay from subjecting the Unit to judicial or non-judicial foreclosure). Where the Owner consists of more than one (1) individual, then the term the “Owner” as used in this Section 1 shall be deemed to mean “any one (1) or more of the individuals comprising the Owner”.

When used herein “final inspection” shall mean final building permits have been signed and utilities have been released.

Notwithstanding anything in this Right of First Refusal to the contrary, a transfer of title by an Owner that constitutes an “Exempt Transfer” under Section 3(b) of the Use and Resale Agreement shall not constitute a Trigger Event, provided that Owner shall be obligated to provide advance written notice of such transfer to the City, and any further transfer of the Unit by the trust remains subject to this Right of First Refusal.

2. **Offer Notice.** Immediately upon the occurrence of a Trigger Event at any time during the Term, and in all events prior to accepting any offer to purchase the Unit, the Owner shall deliver to the City a written notice (the “**Offer Notice**”) describing the Trigger Event in all material respects, and, if an offer to purchase is involved, stating all material terms and conditions applicable to the offer and the proposed purchaser, including, without limitation, a certification by the proposed purchaser, under penalty of perjury, of the gross income of the household of the proposed purchaser, the proposed purchaser’s intent with respect to its residency of the Unit, the proposed purchaser’s interest, if any, in any other residential property and such other information and certifications as the City may reasonably require. In addition, if requested by the City, the proposed purchaser shall submit to the City an executed disclosure statement which certifies that the purchaser is aware that during the Term the purchaser may only sell the Unit at an Affordable Housing Cost to a household of the Income Restriction Level, that the maximum permitted sales price may be less than fair market value and that the Unit must remain owner-occupied at all times and cannot be rented or leased.

3. **Acceptance Notice.** The City shall have twenty (20) days from the delivery of the Offer Notice and all additional information and materials that the City may reasonably require pursuant to Section 2 to act thereon (during which time the Owner shall not make or accept any offer to sell or purchase the Unit) within which to notify the Owner of its election to purchase the Unit pursuant to the terms and conditions specified in Section 4, by delivering written notice to the Owner (the “**Acceptance Notice**”) of such election. During this period, the Owner shall, upon twenty-four (24) hours advance telephonic or written notice, make the interior of the Unit fully available for inspection and documentation of its condition by the City and its representatives.

4. **Terms of Purchase by the City.** Upon delivery of the Acceptance Notice, the Owner and the City shall forthwith proceed to consummate the sale and purchase of the Unit through an escrow by means of a grant deed containing the covenants, conditions and restrictions specified in the Use and Resale Agreement in accordance with the following terms and conditions:

- (a) The purchase price shall be the least of the following three (3) values:

(i) the fair market value of the Unit (calculated as if free of all resale restrictions in this Right of First Refusal and in the Use and Resale Agreement), subject to Section 4.(d) below;

(ii) the maximum purchase price which is consistent with the sale of the Unit at an Affordable Housing Cost to a purchaser of the Income Restriction Level (as such amount is calculated and determined by the City in its good-faith discretion); or

(iii) if the Trigger Event was an offer to purchase the property, then the purchase price specified in the offer to purchase.

As a matter of information, the City shall, as often as the City determines in its reasonable discretion to be appropriate, but, in any event, at least annually, make available to the Owners a schedule of the projected purchase prices (based upon assumed interest rates, level of area median income, downpayment amounts and other relevant factors) which would constitute an Affordable Housing Cost with respect to the identified Applicable Income Restriction Level for the unit type indicated, provided that (i) such schedule of amounts shall be only for informational purposes and by way of example and shall not estop the City from requiring the actual sale of a Unit at a lower amount if necessary to cause that sale to constitute in fact a sale at an Affordable Housing Cost to a purchaser of the Income Restriction Level and (ii) the City shall, in no event, have any liability for the content of such schedule or any delay in its distribution, nor shall such schedule be used in any way to restrict, waive or otherwise limit any rights and remedies of the City hereunder. In any event, the purchase price paid by the City hereunder shall be offset and reduced by: (i) the cost to repair or replace any part of the Unit and bring the Unit and the fixtures therein up to good and habitable condition, ordinary wear and tear excepted, (ii) any other payments, costs, fees, damages and expenses payable to the City by the Owner under the Use and Resale Agreement or any other agreement between the Owner and the City, (iii) sums required to pay off and obtain reconveyance of all outstanding liens and encumbrances on the Unit not paid by the Owner from the Owner's funds at or before the close of escrow and (iv) the Owner's share (specified below) of closing costs, taxes, fees, premiums, prorations and charges associated with exercise of this Right of First Refusal.

(b) If the Owner does not receive the Acceptance Notice within the twenty (20) -day period described in Section 3, then the Owner may thereafter proceed to sell the Unit at any time within six (6) months after the expiration of said twenty (20) -day period, on the terms and conditions set forth in the Offer Notice, free and clear of any rights of the City under this Right of First Refusal with respect to that sale, provided that any such sale shall be subject to the Use and Resale Agreement and any other applicable agreements, covenants and restrictions, and shall comply with all restrictions and requirements thereof. Any sale or proposed sale during the Term on any other terms or after expiration of said six (6) -month period shall be a new sale subject to all of the terms of this Right of First Refusal. Notwithstanding any sale in accordance with this Section 4(b), this Right of First Refusal shall remain in effect and shall apply to and shall be binding upon the successor Owner and any succeeding sale that thereafter occurs or is proposed at any time during the Term. Notwithstanding anything in this Right of First Refusal

which is or appears to be to the contrary, this Right of First Refusal shall not prevent any Owner from accepting an offer to purchase the Unit which is expressly subject to this Right of First Refusal and the rights of the City hereunder, provided that, in that event, the offer shall expressly recite that it is subject to the Right of First Refusal and the proposed buyer shall have no further right to purchase or any other interest in the Unit should the City elect to exercise its rights under this Right of First Refusal.

(c) Unless the Offer Notice and Acceptance Notice have both specified otherwise, (i) the sale of the Unit to the City shall be through an escrow selected by the City and shall be completed within forty-five (45) days after the Owner's receipt of the Acceptance Notice, (ii) closing costs, taxes, fees, premiums, charges and prorations shall be allocated and paid in accordance with the customary practice for real estate transactions in Orange County and (iii) at the closing, and as a condition thereto, the City shall receive an ALTA owner's residential title insurance policy, subject only to its standard exclusions, an exception for current taxes and assessments not yet due, the Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") applicable to the Unit, easements of record, and any other exceptions approved by the City in writing at or following delivery of the Acceptance Notice. The City shall have the right to assign this Right of First Refusal and/or any rights of the City in or under any escrow for acquisition of the Unit to any person or entity it deems appropriate; provided, however, that in such event the City shall remain obligated under this Right of First Refusal through the closing. The City and Owner shall provide such further assurances and shall execute such further documentation consistent with this Right of First Refusal as shall be required to effect such sale and purchase.

(d) If the Parties are unable to reach agreement on the fair market value of the Unit to be used in calculating the purchase price payable by the City hereunder, then the value shall be determined by a private MAI real estate appraiser selected by the City. The appraiser may have other past or current contractual relationships with the City and/or with the City of Huntington beach, provided, however, that the appraiser shall be instructed to make an unbiased and fair evaluation. Fees of the appraiser shall be split and paid equally by the Owner and the City.

5. **Sale Voidable If Procedure Not Followed.** During the Term, any sale of the Unit by the Owner without full compliance with the terms and procedures set forth above shall be voidable by the City at the City's election in its sole, absolute and unfettered discretion.

6. **Release of Right of First Refusal.** At the expiration of the Term, the City shall deliver to the Owner, in recordable form, an acknowledgment of termination of this Right of First Refusal, which the Owner may record at the Owner's expense.

7. **Recordation.** The Parties shall cause this Right of First Refusal to be recorded in the official records of Orange County, California.

8. **Remedies Cumulative.** The Parties acknowledge that the City and the Huntington Beach Housing Authority, are express third party beneficiaries of this Agreement,

rights under this Right of First Refusal are in addition to, rather than in lieu of, other rights and remedies of the City and the Huntington Beach Housing Authority provided in the Use and Resale Agreement and related documents, and that all rights and remedies of the City and the Huntington Beach Housing Authority hereunder are cumulative with all other rights and remedies of the City or the Huntington Beach Housing Authority under any other document.

9. **Subordination.** Notwithstanding any other provisions hereof, the provisions of this Right of First Refusal shall be subordinate to the lien of that certain first deed of trust (the "**First Deed of Trust**") on the Unit, executed by the Owner, as trustor, in favor of _____, as trustee, for the benefit of _____, as beneficiary, and its assignees or successors in interest (the "**First Lienholder**") and recorded concurrently with this Right of First Refusal, and to any refinancing of that loan (the "**Acquisition Loan**") constituting an exempt transfer under the Use and Resale Agreement, provided that the First Lienholder (and any successor lender refinancing the Acquisition Loan), pursuant to a Subordination Agreement in recordable form executed by City and reasonably acceptable by First Lienholder, shall agree to provide the City with written notice of any default under the First Deed of Trust (or any such successor loan) and provide the City with not less than forty five (45) days thereafter in which to cure such default before proceeding with any foreclosure or deed in lieu of foreclosure with respect to the Unit. Any notice delivered to the City under this paragraph shall be delivered in the manner specified in Section 10 for delivery of notices to the City. The Subordination Agreement shall provide that, upon timely cure of the default under the First Deed of Trust and the City's acquisition, at its election, of the Owner's interest in the Unit, the City shall have the right to assume the loan secured by the First Deed of Trust so long as the City maintains ownership of the Unit, and, so long as the City continues as the Owner, the First Lienholder shall not exercise any due on sale clause contained in the First Deed of Trust.

10. **Notices.** All notices required or permitted hereunder shall be delivered in person or by facsimile, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party.

If to the Owner:

_____, Unit ____
Huntington Beach, CA ____
Phone: (____) ____-____
Fax: _____

If to the City:

City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Economic Development Director
Phone: (714) 526-5582
Fax: (714) 375-5087

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Attorney
Tel. No.: (714) 536-5555
Fax No.: (714) 374-1590

Any such notice shall be deemed received upon delivery, if delivered personally or by facsimile, one (1) business day after delivery to an overnight courier, if delivered by overnight courier, and three (3) business days after deposit into the United States Mail, if delivered by registered or certified mail.

11. **No Waiver.** Failure by the City or the Huntington Beach Housing Authority to enforce or delay by the City or the Huntington Beach Housing Authority in enforcing any provision of this Right of First Refusal shall not waive or limit any such provision or any subsequent enforcement of the provision with respect to the same subject matter or a different subject matter. Rights and remedies of the City or the Huntington Beach Housing Authority under this Right of First Refusal may be waived or modified only by a written instrument signed by the City or the Huntington Beach Housing Authority which states an express intention to waive or modify such rights and remedies.

12. **Incorporation of Exhibit.** Exhibit "1" attached to this Right of First Refusal is hereby incorporated into this Right of First Refusal as if set forth in full at this point.

13. **Further Assurances.** Each Party shall from time to time provide the other Party with such further information and shall execute such further documentation and agreements as may be reasonably necessary or appropriate to carry out the purposes of this Right of First Refusal.

14. **Severability.** If any provision or clause of this Right of First Refusal conflicts with applicable law, or is otherwise rendered unenforceable or ineffectual, then the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

15. **Remedies; Attorneys' Fees and Costs.** The Huntington Beach Housing Authority is an express third party beneficiary of this Right of First Refusal. Breach of the covenants contained in this Right of First Refusal may be enjoined, abated or remedied by appropriate legal proceeding, including, without limitation, by an action for specific performance, which the Owner hereby acknowledges as an appropriate remedy for enforcement of the rights set forth herein. If the City or the Huntington Beach Housing Authority incurs any attorneys' fees, court costs, or any other costs or expenses in investigating compliance with or enforcing this Right of First Refusal, or investigating or defending claims brought by the Owner

under this Right of First Refusal, then the City and the Huntington Beach Housing Authority shall each be entitled to recover any such fees, costs and expenses from the Owner, regardless of whether suit is brought for enforcement of this Right of First Refusal, and including, without limitation, any costs incurred by the City or the Huntington Beach Housing Authority upon appeal.

IN WITNESS WHEREOF, the Parties have duly executed this Right of First Refusal as of the date indicated above.

CITY OF HUNTINGTON BEACH

Date: _____

By: _____

REVIEWED AND
APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Jennifer McGrath

THE "OWNER" (*each individual owner must sign and acknowledge below; add more signature lines if necessary*)

By: _____
Name: _____

By: _____
Name: _____

By: _____
Name: _____

Add Acknowledgment

Exhibit "1"

Legal Description of the Unit

[See attached page(s)]

EXHIBIT "D"
CALCULATION EXAMPLE

CALCULATION EXAMPLE

CURRENT QUALIFYING INCOME AND RENT SCHEDULE
 PACIFIC CITY APARTMENT PROJECT
 HUNTINGTON BEACH, CALIFORNIA

I. 2012 Orange County Income Information

<u>Household Size</u>	<u>HCD Median</u>	<u>HUD Median</u>
1 Person	\$59,700	
2 Persons	66,250	
3 Persons	76,750	
4 Persons	85,300	85,300
5 Persons	92,100	
6 Persons	98,950	
7 Persons	105,750	
8 Persons	112,600	

II. Household Income Limits as Defined by the California Health & Safety Code

	<u>Moderate Income (Section 50093)</u>	
1 Person	\$53,950 -	\$71,650
2 Persons	61,650 -	81,000
3 Persons	69,350 -	92,100
4 Persons	77,050 -	102,350
5 Persons	85,250 -	110,550
6 Persons	89,400 -	118,750
7 Persons	95,550 -	128,900
8 Persons	101,750 -	135,100

III. California Health & Safety Code Section 50053 Affordable Housing Cost Calculations

	<u>Moderate Income</u>		
	<u>Studio</u>	<u>1-Bdrm</u>	<u>2-Bdrm</u>
Benchmark Household Size	1	2	3
% of HCD Median Income	110%	110%	110%
Household Income for Rent Calculation	\$65,670	\$75,075	\$84,425
% of Income Allotted to Gross Rent	50%	50%	50%
Allowable Gross Rent	\$1,642	\$1,877	\$2,111
(Less) Utilities Allowance	28	38	47
Allowable Net Rent	\$1,614	\$1,638	\$2,064

Based on utilities published by OCHA 10/1/2011. Includes Gas, Cooking, Heating, Water Heater, Electric: Basic.

Prepared by: Keyser Marston Associates, Inc.
 File name: AFI Rent_7_5_12: Inc_Rent

**City Council approved Conditions of Approval
dated June 14, 2004 and Development and Use
Requirements letter dated June 9, 2004**

**Not Attached; Previously Distributed with
Study Session Staff Report and**

**Available at Planning Division, City Hall,
City of Huntington Beach**

**Pacific City
Proposed Amendments to Conditions of Approval
Entitlement Plan Amendment No. 12-005
July 17, 2012**

EPA 12-005	Approved/Existing Language	Proposed Language	Staff Comments
<p>Tentative Tract Map No. 16338 Condition of Approval No. 2.b.</p> <p>"A draft Affordable Housing Agreement Plan received and dated December 23, 2003, shall be the conceptually approved plan. It shall be modified as necessary to reflect the requirements below and shall be submitted to the Planning Department for review and approval prior to recordation of the Tract Map. The agreement shall provide for affordable housing on-site, or combination of on-site and off-site. The contents of the agreement shall include the following:</p> <ol style="list-style-type: none"> (1) Minimum 15 percent (78 units) of the total units shall be affordable to families of very low- income (less than 50% of Orange County median), low-income level (less than 80% of Orange County median), and moderate-income level (less than 100% of Orange County median) for a period of sixty years. Section 1 Requirements of the Plan is acceptable with the clarification that it shall be for a period of 60 years. (2) A detailed description of the type, size, location and phasing of the affordable units, on-site and off-site. (3) Off-site affordable units (new or rehabilitated) shall be proportionate in size and bedroom mix to the proposed one, two and three bedroom condominium units, and under the full control of the applicant. (4) The affordable units shall be constructed 	<p><u>Complete Rewrite</u></p> <p>"An Affordable Housing Plan (the "Plan"), which reflects the requirements described below, shall be prepared by Applicant and submitted to the Planning and Building Department for review and approval prior to issuance of the first residential building permit. The contents of the Plan shall include the following:</p> <ol style="list-style-type: none"> (1) An obligation to provide 15% of the residential units as affordable units, with applicant providing 10% (51 units) on-site in the form of moderate income level (less than 120% of Orange County median) units for a period of 55 years to be dispersed among the market rate units and the City of Huntington Beach Housing Authority ("City HA") providing 5% (26 units) off-site in the form of very low income units. (2) The affordable units provided by the applicant shall be on-site and the affordable units provided by the City HA shall be off-site. (3) A detailed description of the type, size, location and phasing of the affordable units, on-site and off-site. (4) A detailed description of the disbursement of the affordable housing units and, at full build-out, dispersal of the units throughout the Project, consistent with the disbursement plan. The applicant shall prepare an 	<p>Prior 15% requirement reflected Redevelopment Project Area requirements; now 10% on-site by applicant with 5% off-site by successor agency. Affordable Housing Agreement will be established through the proposed Development Agreement No. 12-001.</p>	

and/or acquired prior to or concurrent with the market rate units. The affordable units must be entitled, approved, and building permits obtained (and/or restrictive covenants recorded) concurrent with the following development phasing:

<u>PHASE</u> (<u>Exhibit D-</u> <u>007</u>)	<u>RESIDENTIA</u> <u>L</u> <u>UNITS</u>	<u>AFFORDABLE</u> <u>RESIDENTIAL</u> <u>UNITS</u>
Ila	68	10
III	125	20
IV	203	30
Va	120	18

As an example, concurrent with issuing permits for any of the 68 units in phase Ila, at least 10 affordable units must be identified, entitled, approved, and building permits obtained, and/or covenant recorded. All affordable units must be made available for occupancy prior to issuance of building permits for the last phase of development unless such units are included as part of that phase; or evidence of the applicant's reasonable progress toward attainment of completion of the affordable units for the respective phase.

(5) A minimum of 50% of the required number of affordable housing units shall be on-site and the remaining number of units can be on-site or off-site. An option to the minimum 50% on-site is that the applicant may elect to build these units off-site, provided that the number of units is increased on a 2:1 basis and located within a redevelopment area. (PC)

(6) If units are located off-site, the applicant shall consider sites located throughout the City and provide documentation thereof to the Planning Department. (PC)

annual monitoring report that demonstrates: (i) the location of these and future affordable units are consistent with the disbursement plan; and (ii) the applicable rents are being charged for the affordable units.

(5) The first 50% (258) of the market rate residential units may be constructed and occupied prior to the construction and occupancy of any affordable units. Prior to final inspection of 75% (387) of the market rate residential units, 25 of the on-site affordable units must be entitled, approved and building permits obtained (and/or restrictive covenants recorded). The remaining 26 on-site affordable units must be entitled, approved and building permits obtained (and/or restrictive covenants recorded) prior to final inspection of 100% of the market rate residential units. The trigger points of 50% and 75% may vary by up to 5% to account for phasing or building types. If construction is completed and units receive final inspection for up to the first 50% of market rate units and no further construction of market rate residential units is commenced for a period of five (5) years following completion of construction of the units occupied, applicant shall designate and establish 10% of the existing market rate units as moderate affordable units.

(6) If units are located off-site, the applicant shall consider sites located throughout the City and provide documentation thereof to the Planning Department. (PC)

(7) Modify the Off-Site Units section of the Draft Affordable Housing Plan as follows: (PC)

- Section 2.A. (second bullet) delete last sentence refereneing Oak View area.
- Section 2.B. delete last sentence refereneing the Center Avenue area.

	<p>(7) Modify the Off-Site Units section of the Draft Affordable Housing Plan as follows: (PC)</p> <ul style="list-style-type: none"> • Section 2.A. (second bullet) – delete last sentence referencing Oak View area. • Section 2.B. – delete last sentence referencing the Center Avenue area. • Add Section 4. – Applicant shall notify affected school districts of all projects intended to satisfy the off-site affordable housing requirements so that the school district(s) may identify cumulative impacts. Projects will be required to mitigate impacts to affected school districts consistent with State law.” 	<ul style="list-style-type: none"> • Add Section 4. Applicant shall notify affected school districts of all projects intended to satisfy the off-site affordable housing requirements so that the school district(s) may identify cumulative impacts. Projects will be required to mitigate impacts to affected school districts consistent with State law.” 	
<p>Tentative Tract Map No. 16338 Condition of Approval No. 3.g.</p>	<p>"Agreement with appropriate school district intending to mitigate the impact on school facilities shall be executed. The Planning Department shall be provided with a copy of the agreement prior to recordation of the final tract map."</p>	<p><u>Delete Condition in its Entirety</u></p> <p>"Agreement with appropriate school district intending to mitigate the impact on school facilities shall be executed. The Planning Department shall be provided with a copy of the agreement prior to recordation of the final tract map."</p>	<p>Project will be subject to paying current school impact fees established by State law</p>
<p>Tentative Tract Map No. 16338 Condition of Approval No. 11.</p>	<p>"Prior to approval of the Final Tract Map, 100% of the City Park Land In-Lieu Fees for the residential portion of the project shall be paid. (CC)"</p>	<p><u>Complete Rewrite</u></p> <p>"City Park Land In-Lieu fees shall be due on a building by building basis at the time a certificate of occupancy or final building inspection approval is issued for that building and shall be in the amount applicable at the time the fees are paid or become due, whichever comes first."</p>	<p>Will be subject to fees in effect at final building permit</p>

ATTACHMENT NO. 4.3

<p>Code Requirement No. 8.</p>	<p>"Prior to approval of the Final Tract Map, 100% of the City Park Land In-Lieu Fees shall be paid. The required in-lieu fees and/or land dedication for park and recreational facilities are based upon the standards and formula for dedication of land (determined by the total number of residential units) pursuant to Section 254.08 of the HBZSO. The value of the park easement and/or improvements cannot be credited to the payment of the in-lieu fees pursuant to the HBZSO."</p>	<p><u>Complete Rewrite</u></p> <p>"City Park Land In-Lieu fees shall be due on a building by building basis at the time a certificate of occupancy or final building inspection approval is issued for that building and shall be in the amount applicable at the time the fees are paid or become due, whichever comes first. The value of the park easement and/or improvements cannot be credited to the payment of the in lieu fees pursuant to the HBZSO."</p>	<p>Applicant proposes to comply with new DIF fees under review by Council. <u>Note:</u> This is a code requirement and not subject to PC action; it is included for reference only.</p>
<p>CUP No. 02-20 with Special Permits/CDP No. 02-12 Condition of Approval No. 3.</p>	<p>"The project shall be developed in accord with the Phasing Diagram (Exhibit D-007). Phase IIa (Residential) and IIb (Commercial Parking Structure) shall be developed concurrently. Building permits for Phase III (Residential) and other residential phases shall not be issued until Phase IIb and IIc are completed, or evidence of the applicant's reasonable progress towards attainment of completion."</p>	<p><u>Complete Rewrite</u></p> <p>"If construction on either the retail or the hotel site has not commenced prior to the commencement of construction of the market rate residential units, a decorative scrim shall immediately be placed around the site not under construction with both a public art component and leasing information for that property. The owner/developer of the site, whether the retail or the hotel, shall be responsible for installation and maintenance of the scrim. If the applicable owner/developer fails to commence construction or install and maintain the scrim prior to the time the residential owner/developer commences construction, then the residential owner/ developer shall be responsible for installing and maintaining the scrim. Prior to occupancy of more than 50% of the market rate residential units the owner/developers of the retail and hotel sites shall become subject to construction and completion obligations detailed in a Development Agreement for the Project."</p>	<p>Allows the residential construction to proceed without the retail or hotel construction but a "lost revenue" fee to the City will be due if the retail or hotel construction lags. Fee amount and schedule established in Development Agreement No. 12-001</p>

<p>CUP No. 02-20 with Special Permits/CDP No. 02-12 Condition of Approval No. 6.c.</p>	<p>"The Village Green park area, pocket park, and entry corridor shall be designed and a detailed park improvement plan shall include typical neighborhood amenities including but not limited to tot lot play equipment, open turf play area and picnic tables and benches. All amenities must conform to current Consumer Product Safety Guidelines with certain amenities in compliance with the Americans with Disabilities Act. The entry corridor to the park (from Pacific View Ave.) and all other corridors must incorporate an architectural feature that properly identifies the area as public space. The plan shall identify play equipment, architectural features, plant material, ground cover, sidewalks, lighting, etc. and shall be reviewed and approved by the Community Services Commission, Community Services Director, and Public Works Director prior to installation."</p>	<p><u>Changes Underlined</u></p> <p>"The Village Green park area, pocket park, and entry corridor shall be designed by the applicant and a detailed park improvement plan, prepared by the applicant, shall include typical neighborhood amenities including, but not limited to, tot lot play equipment, open turf play area and picnic tables and benches, while also insuring that the public use is in keeping with the residential character of the park. In part this shall be accomplished by a design that focuses on passive activities consistent with residential use. All amenities must conform to current Consumer Product Safety Guidelines with certain amenities in compliance with the Americans with Disabilities Act. The entry corridor to the park (from Pacific View Ave.) and all other corridors must incorporate an architectural feature that properly identifies the area as public space. The plan shall identify play equipment, architectural features, plant material, ground cover, sidewalks, lighting, etc. and shall be reviewed and approved by the Community Services Commission, Community Services Director, and Public Works Director prior to installation."</p>	<p>Solidifies description of passive uses at public open space</p>
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<p>Code Requirement No. 8.</p>	<p>"Prior to approval of the Final Tract Map, 100% of the City Park Land and In-Lieu Fees shall be paid. The required in-lieu facilities are based upon the standards and formula for dedication of land (determined by the total number of residential units) pursuant to Section 254.08 of the HBZSO. The value of the park easement and/or improvements cannot be credited to the payment of the in-lieu fees pursuant to the HBZSO."</p>	<p><u>Complete Rewrite</u></p> <p>"City Park Land In-Lieu fees shall be due on a building by building basis at the time a certificate of occupancy or final building inspection approval is issued for that building and shall be in the amount applicable at the time the fees are paid or become due, whichever comes first. The value of the park easement and/or improvements cannot be credited to the payment of the in lieu fees pursuant to the HBZSO."</p>	<p>Applicant proposes to comply with new DIF fees under review by Council. Note: This is a code requirement and not subject to PC action; it is included for reference only.</p>
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Dept. of Planning
& Building

Karen Jackle
18652 Florida St. Suite 360
Huntington Beach, CA 92648
714-848-4040 Fax: 714-848-3321

July 9, 2012

Kim K. DeCoite
Planning Commission
2000 Main St.
Huntington Beach, CA 92648

RE: Pacific City requested amendments

Dear Planning Commission:

While downtown would like to see the dormant site where Pacific City is planned filled with revenue producing well planned development, **I have concerns about two amendments #1 & #3**, proposed for this development. While I am aware that other agreements have been made with similar amendments, downtown is not the same as the Beach-Edinger Corridor in its access and traffic and parkland potential

Regarding affordable housing: Where can city put 5% very low offsite to serve downtown affordable housing - instead of onsite? 10% moderate affordable housing would be onsite (teachers could live there). Please identify locations where offsite affordable housing could be placed if this amendment is not revised on its offsites. How many other units are awaiting funds from existing developments still unfilled?

I wonder also where affordable housing will go that was supposed to go on Van's Scate Park site now - it would also be good to know where in Beach-Edinger corridor affordable housing sites are now set aside. That affordable housing is necessary for residents to staff the commercial proposed and hotels, to "shop, play and stay."

Parkland: While there is some "passive use" open space proposed onsite, Delaying park fees to final inspection instead of final tract approval should not be allowed. We are in a budget shortfall crisis, why should the city foot the bill for the fees to process the development until it is completely built? This really impacts our city and is the worst choice of the amendments proposed. Why should the city (us taxpayers) have to wait until completion of the development for receipt of park fees thus preventing use of the funds for a number of years longer and initiation of putting the funds to use for parkland? We have to endure the construction, the phasing of the development until it can generate revenue but we should not have to wait on the park fees. Please identify the fees this development will generate based on the development agreement that is approved.

Sincerely,

Karen Jackle

ATTACHMENT NO. 5