

AGENDA

City of El Cajon

Successor Agency – Oversight Board

8:00 a.m., Wednesday, November 20, 2013

BOARD MEMBERS:

SAHAR ABUSHABAN

*Chancellor of the California
Community Colleges
Representative*

SCOTT BUXBAUM

*County Board of Education
Representative*

GLORIA CHADWICK

*Grossmont Healthcare District
Representative*

JIM GRIFFIN

*County Board of Supervisors
Representative*

MICHAEL GRIFFITHS

City of El Cajon

MANJEET RANU

*(Former RDA/MMPEG
Employee) City of El Cajon*

DEBRA TURNER- EMERSON

*County Board of Supervisors
Representative*

OB LEGAL COUNSEL: MEYERS NAVE

SUCCESSOR AGENCY STAFF:

DOUGLAS WILLIFORD

*Executive Director/
City Manager*

MAJED AL-GHAFRY

*OB Secretary /
Assistant City Manager*

MORGAN FOLEY

General Counsel

JENNY FICACCI

Housing Manager

HOLLY REED-FALK

Financial Operations Manager

VICTORIA DANGANAN

Senior Accountant

RON LUIS VALLES

Administrative Secretary

**Meeting Location: El Cajon Police Station
Community Room #161
100 Civic Center Way, El Cajon, CA 92020**

- I. CALL TO ORDER & PLEDGE OF ALLEGIANCE:
- II. ROLL CALL:
- III. AGENDA CHANGES:
- IV. PUBLIC COMMENT: (This is the opportunity for a member of the public to address the Oversight Board on any item of business within the jurisdiction of the Board that is not on the agenda. Under State law no action can be taken on items brought forward under Public Comment, except to refer the item to the staff for administrative action or to place it on a future agenda.)
- V. ACTION ITEMS:
 1. Approval of Action Minutes – October 29, 2013, special meeting
 2. Termination of Owner Participation Agreement for Property Known as El Cajon Towne Center
- VI. OTHER ITEMS FOR CONSIDERATION:
- VII. STAFF COMMUNICATIONS:
 1. Department of Finance – Recognized Obligation Payment Schedule (ROPS 13-14B) Determination Letter
 2. Upcoming work program
- VIII. BOARD REPORTS/COMMENTS:
- IX. ADJOURNMENT:

We endeavor to be in total compliance with the Americans with Disabilities Act. If you require assistance or auxiliary aids in order to participate at Oversight Board meetings, please contact staff at (619) 441-1741 as far in advance of the meeting as possible.



DRAFT SUMMARY MINUTES

Successor Agency to the El Cajon Redevelopment Agency Oversight Board

**Special Meeting - Wednesday, October 29, 2013
El Cajon Police Station Community Room #161
100 Civic Center Way, El Cajon, CA 92020**

BOARD PRESENT: Scott Buxbaum, Gloria Chadwick, Jim Griffin, Michael Griffiths, Manjeet Ranu and Debra Turner-Emerson (Chair)

BOARD ABSENT: Sahar Abushaban

OB LEGAL COUNSEL: George Eiser III, representing law firm of Meyers Nave

STAFF PRESENT: City Manager Douglas Williford, Assistant City Manager Majed Al-Ghafry, Housing Manager Jenny Ficacci, Financial Operations Manager Holly Reed-Falk, Senior Accountant Victoria Danganan, and Administrative Secretary Ron Luis Valles

CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

The meeting was called to order at 8:00 a.m. by TURNER-EMERSON.

PUBLIC COMMENT:

No public comment.

ACTION ITEM NO. 1: APPROVAL OF ACTION MINUTES – September 18, 2013

GRIFFIN made a motion, seconded by BUXBAUM, to approve the minutes. **Motion carried 5-0 (CHADWICK, abstained due to absence at previous meeting; ABUSHABAN, absent).**

ACTION ITEM No. 2: APPROVAL OF SALE OF SECURED PROPERTY TO URBN RESTAURANTS INC.

FICACCI summarized the staff report, and provided to Board and staff a revised offer dated October 28, 2013, from URBN, and an inventory list of items dated October 15, 2013, at the Downtown El Cajon Brewing Company.

Discussion ensued about time line for starting opening business and staff noted that owners are targeting for opening by early spring 2014. GRIFFIN praised the new

owners for their patience in working for the City. WILLIFORD also thanked the new owners for their professionalism and especially thanked the Oversight Board for convening for this special meeting. TURNER-EMERSON said this restaurant was going to be a great addition to downtown El Cajon.

GRIFFIN made a motion, seconded by GRIFFITHS, to adopt Resolution OB-13-13 approving the sale of fixtures, equipment and inventory to URBN Restaurants Inc. or such other business entity formed and controlled by or controlling URBN Restaurants Inc., or the shareholders thereof, including but not limited to URBN Coal Fired, LLC ("URBN") and the City of El Cajon, in its capacity as Successor Agency, in the amount of \$200,000 for the secured property identified in the settlement agreement between Stephan Meadows, Mandy Meadows and Downtown El Cajon Brewing Co ("DECB") approved by the Oversight Board on April 18, 2013, as Resolution No. OB-06-13. **Motion carried 6-0 (ABUSHABAN, absent).**

STAFF COMMUNICATIONS:

Staff presented proposed meeting dates for 2014 which will be held the third Wednesday of every month, except in May as the Community Room was not available on the 21st, so the meeting will be held on Thursday, May 22, 2014.

There is one item on the agenda for the November 20, 2013 meeting. Staff is trying to group several items for either the December or January meetings to maximize the Board's time at meetings.

BOARD REPORTS/COMMENTS:

There were none.

ADJOURNMENT:

CHADWICK made a motion, seconded by GRIFFIN, to adjourn the special meeting of the El Cajon Successor Agency Oversight Board at 8:12 a.m. this 29th day of October 2013, to 8:00 a.m., November 20, 2013, in the Police Station's Community Room, 100 Civic Center Way, El Cajon, California.

Motion carried 6-0 (ABUSHABAN, absent).

APPROVED:

Debra Turner-Emerson, Chairperson

ATTEST:

Majed Al-Ghafry, Oversight Board Secretary

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AGENDA REPORT
CITY OF EL CAJON SUCCESSOR AGENCY OVERSIGHT BOARD
November 20, 2013, Meeting

SUBJECT: TERMINATION OF OWNER PARTICIPATION AGREEMENT FOR PROPERTY KNOWN AS EL CAJON TOWNE CENTER.

RECOMMENDED ACTION: That the Oversight Board adopt the proposed Resolution to:

1. Approve the Termination of Owner Participation Agreement and related restrictive covenants ("Termination Documents") with Shadow Mountain Church, Inc., its successors and/or assigns, governing the land use restrictions for the property known as the El Cajon Towne Center, located at Magnolia Avenue between Park and Wells Avenues, reserving and retaining, however, the nondiscrimination covenants set forth in section 401, which shall continue to be covenants running with the land; and
2. Approve execution of all reasonable and required documentation by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of the chief executive officer for the Successor Agency, necessary to formalize and complete the Termination Documents as outlined in this report.

BACKGROUND: On March 1, 1989, the former El Cajon Redevelopment Agency ("Agency") entered into an Owner Participation Agreement ("OPA") with Hopkins Development Company, L.P. (the "Original Developer") for development of that certain property located on the east side of Magnolia Avenue, between Wells Avenue and Park Avenue, more particularly described as Parcel 1 in the Agreement ("Parcel 1"). The OPA was subsequently amended by Agency Resolution on August 16, 1989, November 15, 1993, March 21, 1995, and by Letter Agreement approved May 11, 1993, (collectively, the "Agreement").

Parcel 1 has changed ownership several times and a portion is now owned by Shadow Mountain Community Church, Inc., which is currently in escrow and is awaiting sale to Diamond Development, LLC ("New Developer").

Section 401 of the Agreement provides, among other things, that the Original Developer and its successor and assignees devote Parcel 1 to commercial retail, and other accessory uses, as specified in the Redevelopment Plan, and that the covenant shall run with the land (the "Restrictive Covenant") indefinitely. Section 401 also includes nondiscrimination language that are covenants running with the land, remain required by Redevelopment Law, and should be retained in perpetuity. The Termination Documents will retain the nondiscrimination covenants set forth in section 401.

The new owner, Diamond Development, LLC, and the County of San Diego Department of Health and Human Services ("HHSA"), is seeking to lease a portion of Parcel 1 and has proposed a use as administrative offices for HHSA programs, including Child Welfare

Services, Aging and Independent Services, Public Health Services, and East County Regional Mental Health Services, under Conditional Use Permit 2187 (“CUP 2187”), which is inconsistent with the Restrictive Covenant. The requested use requires a waiver of the provisions of the Agreement, which must be approved in writing by the appropriate authorities of the former Agency and the Developer.

CUP 2187 is set to be heard before the Planning Commission on November 4, 2013, and will be forwarded to the City Council for a final decision on December 10, 2013. Staff is recommending approval of CUP 2187, subject to conditions included in the draft resolution.

Because the Restrictive Covenant limits the use of Parcel 1 in accordance with the OPA, it becomes a land use restriction that must be addressed prior to approval of a discretionary entitlement process to use the property for anything other than retail commercial purposes. For these reasons, staff is recommending that the Agreement be terminated with the New Developer.

Termination of the Agreement also meets Section 34181(e) of California Health and Safety Code, which requires that successor agencies “determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated...” Section 34181(e) allows the termination of such agreements if the Oversight Board finds that early termination is in the best interests of the taxing entities. By terminating the OPA, the New Developer will have the flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of this and neighboring properties much sooner than is presently realized. Staff finds no reasons to any longer maintain these land use restrictions.

FISCAL IMPACT: The requested action relates only to termination of a former Agency Owner Participation Agreement regulating land use for Parcel 1, and will result in elimination of future direct project management costs charged for the management of the OPA.

ATTACHMENTS:

1. Proposed Resolution
2. Termination of Owner Participation Agreement
3. Owner Participation Agreement

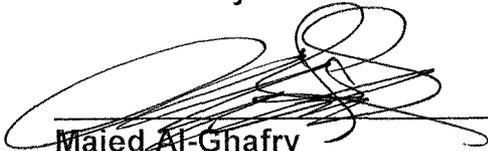
Oversight Board Agenda Report
Termination of Owner Participation Agreement –
Property Known as El Cajon Towne Center
November 20, 2013, Agenda

Prepared by:



**Jenny Ficacci
Housing Manager**

Reviewed by:



**Majed Al-Ghafry
Secretary / Assistant City Manager**

Approved by:



**Douglas Williford
Executive Director/City Manager**

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RESOLUTION NO. OB-14-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE TERMINATION OF THE OWNER PARTICIPATION AGREEMENT AND RELATED RESTRICTIVE COVENANTS WITH SHADOW MOUNTAIN CHURCH, INC., ITS SUCCESSOR AND/OR ASSIGNMENTS, GOVERNING THE LAND USE RESTRICTIONS FOR THE PROPERTY KNOWN AS EL CAJON TOWNE CENTER, LOCATED AT MAGNOLIA AVENUE BETWEEN PARK AVENUE AND WELLS AVENUE.

WHEREAS, on March 1, 1989, the former El Cajon Redevelopment Agency (the "Agency") entered into an Owner Participation Agreement ("OPA") with Hopkins Development Company, L.P. (the "Original Developer") for the development of that certain property located on the east side of Magnolia Avenue, between Wells Avenue and Park Avenue, more particularly described as Parcel 1 in the OPA ("Parcel 1"); and

WHEREAS, the OPA was subsequently modified by amendments to the OPA on August 16, 1989, November 15, 1993, March 21, 1995; and by Letter Agreement approved May 11, 1993, (collectively the "Agreement"); and

WHEREAS, Parcel 1 has changed ownership several times and a portion is now owned by Shadow Mountain Community Church, Inc., which is currently in escrow and is awaiting sale to Diamond Development, LLC ("New Developer"); and

WHEREAS, Section 401 of the Agreement provides, among other things, that the Original Developer and its successors and assignees devote Parcel 1 to commercial retail, and other accessory uses, as specified in the Redevelopment Plan, and that the covenant shall run with the land (the "Restrictive Covenant") indefinitely; and

WHEREAS, Section 401 of the Agreement further provides covenants prohibiting discrimination, and specifies language required to be included in all deeds and leases related to Parcel 1, in perpetuity (the "Nondiscrimination Covenant"); and

WHEREAS, New Developer and the County of San Diego Department of Health and Human Services ("HHSA") are seeking to lease a portion of Parcel 1 and have proposed use as administrative offices for HHSA programs including Child Welfare Services, Aging and Independent Services, Public Health Services, and East County Regional Mental Health Services, under Conditional Use Permit 2187 ("CUP 2187"), which is inconsistent with the Restrictive Covenant; and

WHEREAS, the requested use by HHSA requires a waiver of the provisions of the Agreement, which must be approved in writing by the appropriate authorities of the former Agency and the Developer; and

WHEREAS, CUP 2187 is set to be heard before the Planning Commission on November 4, 2013, and will be forwarded to the City Council for a final decision on December 10, 2013; and

WHEREAS, staff is recommending approval of CUP 2187, subject to conditions included in any such resolution presented to the Planning Commission for adoption thereof; and

WHEREAS, because the Restrictive Covenant limits the use of Parcel 1 in accordance with the OPA, it becomes a land use restriction that must be addressed prior to approval of a discretionary entitlement process to use the property for anything other than retail commercial purposes; and

WHEREAS, for these reasons staff is recommending the Agreement be terminated with the New Developer, while retaining and reserving the Nondiscrimination Covenant for Parcel 1; and

WHEREAS, termination of the Agreement also meets Section 34181(e) of California Health and Safety Code, which requires that successor agencies "(d)etermine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated...."; and

WHEREAS, Section 34181(e) allows the parties to terminate such agreements if the Oversight Board finds that early termination is in the best interests of the taxing entities; and

WHEREAS, by terminating the OPA, the New Developer will have the flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of Parcel 1 and neighboring properties much sooner than is presently realized; and

WHEREAS, staff finds no reason to any longer maintain these land use restrictions, except for the Nondiscrimination Covenant.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference.
 - 2. Approval of the Termination Agreement of Owner Participation Agreement, related restrictive covenants and preparation of reasonable and required documentation is exempt from the California Environmental

Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed agreements will not cause a significant adverse physical change to the environment either directly or indirectly.

3. The proposed terms would be in the best interests of the affected taxing entities and the public because it will allow the New Developer to have flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of Parcel 1 and neighboring properties much sooner than is presently realized.
- B. The Oversight Board hereby approves the Termination of Owner Participation Agreement and related restrictive covenants ("Termination Documents") with Shadow Mountain Church, Inc., its successors and/or assigns, governing the land use restrictions for the property known as the El Cajon Towne Center, located at Magnolia Avenue between Park and Wells Avenue; provided, however, that the Termination Documents shall expressly reserve and retain the Nondiscrimination Covenants in perpetuity.
- C. The Oversight Board hereby approves execution of all reasonable and required documentation by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of the chief executive officer for the Successor Agency, necessary to formalize and complete the Termination Documents as outlined in this Resolution.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly scheduled meeting held this 20th day of November 2013, by the following vote to wit:

AYES :
NOES :
ABSENT :

Debra Turner-Emerson, Chairperson

ATTEST:

Majed Al-Ghafry, Oversight Board Secretary

DRAFT

TERMINATION OF OWNER PARTICIPATION AGREEMENT

This TERMINATION OF OWNER PARTICIPATION AGREEMENT (ATermination Agreement@) is entered into as of _____ (“Date of Agreement”) by and between the SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic (“Agency”), and SHADOW MOUNTAIN CHURCH, INC., a California nonprofit corporation, its successors and/or assignments (the “Owner@).

RECITALS

A. The Former El Cajon Community Redevelopment Agency, (the “Agency”), entered into an Owner Participation Agreement (“OPA”) dated March 1, 1998, with Hopkins Development Company L.P. (the “Original Developer”), for the development of that certain property located on the east side of Magnolia Avenue, between Wells Avenue and Park Avenue, more particularly described as Parcel 1 in the OPA (“Parcel 1”). The OPA was subsequently modified by amendments to the OPA on August 16, 1989, November 15, 1993, March 21, 1995; and by Letter Agreement approved May 11, 1993. Parcel 1 has changed ownership several times and a portion is now owned by Shadow Mountain Community Church, Inc., which is currently in escrow and is awaiting sale to Diamond Development, LLC (the “New Developer”).

B. Section 401 of the OPA provides, among other things, that the Original Developer and its successors and assignees devote Parcel 1 to commercial retail, and other accessory uses, as specified in the Redevelopment Plan, and that the covenant shall run with the land (the “Restrictive Covenant”) indefinitely. Section 401 of the OPA further provides covenants prohibiting discrimination and specifies language required to be included in all deeds and leases related to Parcel 1 in perpetuity (the “Nondiscrimination Covenant”).

C. New Developer and the County of San Diego Department of Health and Human Services (“HHSA”) are seeking to lease a portion of Parcel 1 and have proposed use as administrative offices for HHSA programs including Child Welfare Services, Aging and Independent Services, Public Health Services, and East County Regional Mental Health Services, under Conditional Use Permit 2187 (“CUP 2187”), which is inconsistent with the Restrictive Covenant. The requested use by HHSA requires a waiver of the provisions of the OPA, which must be approved in writing by the appropriate authorities of the former Agency and the Developer. CUP 2187 is set to be heard before the Planning Commission on November 4, 2013, and will be forwarded to the City Council for a final decision on December 10, 2013

D. Because the Restrictive Covenant limits the use of Parcel 1 in accordance with the OPA, it becomes a land use restriction that must be addressed prior to approval of a discretionary entitlement process to use the property for anything other than retail commercial purposes. The New Developer desires to have the flexibility to market the property to a greater number of possible tenants, which could result in an increased valuation of Parcel 1 and neighboring properties much sooner than is presently realized.

E. Termination of the OPA also meets Section 34181(e) of California Health and Safety Code, which requires that successor agencies “(d)etermine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated....” Section 34181(e) allows the parties to terminate such agreements if the Oversight Board finds that early termination is in the best interests of the taxing entities.

F. For these reasons, the Owner now wishes to terminate the OPA with the Agency while retaining and reserving the Nondiscrimination Covenant for Parcel 1.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agency and Owner hereby agree as follows:

1. Termination of the OPA. Effective upon the Date of Agreement of this Termination Agreement, Agency and Owner hereby acknowledge and agree that the OPA shall be terminated and discharged, and shall be of no further force or effect, except retaining and reserving the Nondiscrimination Covenant for Parcel 1. Upon the effectiveness of the termination of the OPA as provided in the immediately preceding sentence, neither Agency nor Owner shall have any rights or obligations pursuant to the OPA, except those respecting reservation of the Nondiscrimination Covenant.

2. Mutual Releases. In consideration of the foregoing, Agency and Owner hereby irrevocably and unconditionally release, acquit, and forever discharge each other, and each of the other’s successors, predecessors, assigns, owners, stockholder, directors, officers, employees, agents, guarantors, representatives, attorneys, divisions, parent corporations, subsidiaries, affiliates, partners, joint venturers, unincorporated associates, trusts, trustors, trustees, beneficiaries, heirs, insurers, and affiliated persons or entities (which specifically includes, but is not limited to, with respect to the Agency, the former Agency, and the City of El Cajon, from any and all charges, complaints, claims, contracts, liabilities, duties, obligations, promises, agreements, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including attorney’s fees and court costs, anticipated or actual incurred, of any nature whatsoever, known or unknown, suspected or unsuspected, which Agency or Owner, or their successors and assigns, including the New Developer, or any related person or entitled as described above, now has, owns or holds, or claims to have, own or hold, or which said parties at any time heretofore had, owned or held, or claimed to have had, owned or held, against one another, or any of the other related persons or entities as described above, in any way arising out of or relating to the OPA, or to implementation of the OPA by either party.

3. Waiver of Civil Code Section 1542. Agency and Owner both understand and agree that the releases provided in Section 2 above extend to all claims of every kind of nature, whether known or unknown, suspected or unsuspected, arising out of, in connection with, or raised in relation to the OPA, or implementation of the OPA by Agency or Owner. It is expressly understood and agreed that Agency and Owner each hereby waives the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Agency: _____ Owner: _____

4. Counterparts. This Termination Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement.

IN WITNESS WHEREOF, this Termination Agreement has been executed by each party's respective duly authorized officers, as of the date first above written.

SUCCESSOR AGENCY:

**SUCCESSOR AGENCY TO THE FORMER
EL CAJON REDEVELOPMENT AGENCY,**
a public body, corporate and politic

, Mayor

ATTEST:

, Secretary

APPROVED AS TO FORM:

, Agency Counsel

OWNER:

SHADOW MOUNTAIN CHURCH, a California nonprofit corporation

OWNER PARTICIPATION AGREEMENT

by and among the

EL CAJON REDEVELOPMENT AGENCY

and

HOPKINS DEVELOPMENT COMPANY, L.P.

OWNER PARTICIPATION AGREEMENT

by and among the

EL CAJON REDEVELOPMENT AGENCY

and

HOPKINS DEVELOPMENT COMPANY, L.P.

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ATTACHMENTS

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Attachment No. 2	Legal Description
Attachment No. 3	Schedule of Performance
Attachment No. 4	Grant Deed
Attachment No. 5	Scope of Development
Attachment No. 6	Certificate of Completion
Attachment No. 7	Memorandum of Agreement
Attachment No. 8	Site Map - Subdivided Parcels

OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into by and among the EL CAJON REDEVELOPMENT AGENCY (the "Agency") and HOPKINS DEVELOPMENT COMPANY, L.P., a Delaware limited partnership (the "Developer"). The Agency and the Developer hereby agree as follows:

ARTICLE I SUBJECT OF AGREEMENT

Section 101. Purpose of Agreement. The purpose of this Agreement is to effectuate the Redevelopment Plan (as hereinafter defined) for the El Cajon Redevelopment Project (the "Project") by providing for the disposition and development of certain property situated within the Project Area (the "Project Area"). That portion of the Project Area to be developed pursuant to this Agreement (the "Site") is depicted on the "Site Map", which is attached hereto as Attachment No. 1 and incorporated herein by reference. This Agreement is entered into for the purpose of developing the Site and not for speculation in land holding. Completing the development on the Site pursuant to this Agreement and the acquisition by the Agency of that certain real property to be conveyed to the Agency by the Developer is in the vital and best interest of the City of El Cajon, California (the "City") and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project has been undertaken.

Section 102. The Redevelopment Plan. The Redevelopment Plan for the Central Business District Redevelopment Project was approved and adopted by the City Council of the City of El Cajon by Ordinance No. 2437 on December 28, 1971 and was amended and retitled the Redevelopment Plan for the El Cajon Redevelopment Project by Ordinance No. 4038 adopted on July 14, 1987; said ordinances and the Redevelopment Plan as so approved (the "Redevelopment Plan") are incorporated herein by reference.

Section 103. The Project Area. The Project Area is located in the City, the exact boundaries of which are specifically described in the Redevelopment Plan.

Section 104. The Site. The Site is that portion of the Project Area designated on the Site Map (Attachment No. 1) and more particularly described in the "Legal Description", which is attached hereto as Attachment No. 2 and is incorporated herein by reference. The Site will be subdivided by the

Developer into two parcels: Parcel No. 1 will be approximately 9.03 acres in size and will be retained by the Developer; Parcel No. 2 will be approximately 5.85 acres in size and will be conveyed by the Developer to the Agency pursuant to Section 204 of this Agreement. Parcel No. 1 will be developed by the Developer in one phase as described in the Scope of Development (Attachment No. 5).

Section 105. Parties to the Agreement.

(a) The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at the El Cajon City Hall, 200 East Main Street, El Cajon, California 92020.

"Agency," as used in this Agreement, includes the El Cajon Redevelopment Agency, and any assignee of or successor to its rights, powers and responsibilities.

(b) The Developer is Hopkins Development Company, L.P. The principal office and mailing address of the Developer for the purposes of this Agreement is Hopkins Development Company, #13 Corporate Plaza, Suite 200, Newport Beach, California 92660.

Section 106. Prohibition Against Change in Ownership, Management and Control of Developer. The qualifications and identity of the Developer are of particular concern to the City and the Agency. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth in this Agreement including Sections 313 through 314.

Except as allowed in Section 313 through 314 of the Agreement and any transfer to a partnership of which Developer is the managing general partner, the Developer shall not assign all or any part of this Agreement or any rights hereunder without the prior written approval of the Agency. The Agency shall not unreasonably withhold its approval of an assignment or use of a partnership which includes the Developer as a general partner, provided that: (1) the assignee partnership shall expressly assume the obligations of the Developer pursuant to this Agreement in writing satisfactory to the Agency; (2) unless released by the Agency in writing, which release shall not be unreasonably withheld for a financially responsible and experienced shopping center developer, the

original Developer shall remain fully responsible for the performance and liable for the obligations of the Developer pursuant to this Agreement; and (3) any good faith deposits provided to assure the performance of the Developer's obligations under this Agreement shall remain in full force and effect. The Developer shall promptly notify the Agency in writing of any and all changes whatsoever in the identity of the persons in control of the Developer and the degree thereof.

Subject to Developer's continuing obligations under Section 202(d) relating to the payment provided for therein, the restrictions of this Section 106 shall terminate and be of no further force and effect with respect to Parcel No. 1 or any portion thereof upon issuance by the Agency of a Certificate of Completion, as described in Section 314 of this Agreement, for all improvements to be provided by the Developer pursuant to this Agreement. Subject to any continuing obligations of Developer under the provisions of Section 211, following conveyance of Parcel No. 2 to the Agency as herein provided, the Developer shall have no further duty or obligation with respect to Parcel No. 2.

Section 107. Deposit. On December 10, 1987, the Agency and Developer entered into an Exclusive Negotiation Agreement. As part of the Exclusive Negotiation Agreement, the Developer deposited a certified check for the sum of ten thousand dollars (\$10,000.00) with the Agency (the "Deposit"). Said Deposit shall be transferred and made applicable to this Agreement. The Developer shall, upon execution of this Agreement, deposit an additional \$40,000 to increase the Deposit to a total of \$50,000. The Agency shall be entitled to retain any interest earned on the Deposit.

The Deposit is made to ensure that Developer will negotiate in good faith to close escrow and commence construction of the improvements as provided in this Agreement. The Deposit shall be returned to Developer upon close of escrow and commencement of construction of the improvements. If the Developer defaults hereunder, the Agency shall retain all of the Deposit as liquidated damages for Developer's failure to close escrow and complete construction hereunder as Agency's sole damages for such failure. The Agency and the Developer agree that the amount of damages which would be sustained by the Agency is impracticable or extremely difficult to fix, and the foregoing amount as would be retained by the Agency represents a reasonable sum as liquidated damages.



Agency Initial Here



Developer Initial Here

All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and the permitted successors and assigns of the Developer. Whenever the term "Developer" is used herein, such term shall include any other permitted successors and assigns as herein provided.

ARTICLE II ASSEMBLY OF THE SITE

Section 201. Acquisition of the Site. The Developer is in escrow with Nevada Investment Holdings, Inc. to purchase the Site. Said escrow is scheduled to close on or before _____, _____. The Developer agrees to use its best efforts to close escrow and take title to Site on or before _____, _____.

Section 202. Disposition of the Site; Sale to Agency.

(a) Upon acquisition by the Developer of the Site pursuant to Section 201 of this Agreement, and subject to applicable terms and conditions of this Agreement, the Developer agrees to subdivide the Site into 2 parcels as shown on Attachment No. 8, Site Map - Subdivided Parcels. The first parcel, Parcel No. 1, shall be approximately 9.03 acres in size and shall front on Magnolia Avenue; the second parcel, Parcel No. 2, shall be approximately 5.85 acres in size and shall front on Ballantyne Street.

(b) The Developer agrees to sell to the Agency and the Agency shall purchase from the Developer Parcel No. 2 for \$12.75 per square foot or a total of approximately \$3,250,000 (the "Purchase Price"). The exact Purchase Price shall be adjusted prior to Close of Escrow based on the final size of Parcel No. 2 as shown on the Final Parcel Map with respect to the Site. The full amount of the Purchase Price shall be paid at the Close of Escrow as hereinafter defined.

(c) As part of the consideration for the sale of Parcel No. 2 to the Agency and for Developer fulfilling its obligations hereunder, the Agency agrees to pay to the Developer an amount equal to the costs incurred by Developer for the demolition of the improvements on Parcel No. 1 in the manner provided for in Section 301 and Parcel No. 2 in the manner provided for in Section 211. The Agency also agrees to use its best efforts to acquire by negotiation or otherwise the leasehold interests of any existing tenants who have not otherwise entered into agreements with the Developer or the Agency for the relocation of such tenant's business. The Developer shall be reimbursed for one-half of the costs incurred by Developer in connection with the demolition and

removal of the structures and improvements on each parcel, upon completion of the work by Developer with respect to such parcels and submission to Agency by Developer of invoices accompanied by such supporting documentation as may be required by Agency. The balance shall be paid upon satisfaction of the requirements of the preceding sentence and completion by the Agency of the acquisition of all leasehold interests, the relocation of the tenants and the payment of all costs in connection with such acquisition and relocation as hereinafter provided. The Agency shall pay all costs of acquisition (including the cost of such leasehold interests and goodwill payments) and relocation payments; provided, however, that the total aggregate payments for the costs of demolition and removal of the structures and improvements and the costs of acquisition and relocation shall not exceed \$1,150,000. In the event that the Agency determines that all or a portion of the structures or improvements on Parcel No. 2 are to remain in place, or that a tenant occupying any part of Parcel No. 2 will continue to occupy all or part of Parcel No. 2, the aggregate amount of reimbursement provided for in the preceding sentence shall be reduced on a pro rata basis by the estimated cost of demolition of such structures or removal of such improvements and the cost of acquiring the tenants' leasehold interest (including goodwill) and relocating such tenant, which amount shall be determined by mutual agreement of the parties or in the absence of such an agreement, by the Agency. If the Agency later determines to have the structures or improvements on Parcel No. 2 demolished and Developer performs such work, Developer shall receive the full amount previously withheld less the amount paid by the Agency for the acquisition of any leasehold interest (including goodwill) and the relocation of the tenants. Any costs in excess of the \$1,150,000 (or such lesser adjusted amount as may be determined as hereinabove provided) shall be paid by the Developer within 30 days of receipt of a written request of the Agency and any costs savings shall be retained by the Agency. In addition, the Agency agrees to pay to Developer an amount equal to \$1,000,000 as a land write-down subsidy. The land write-down subsidy shall be paid at Close of Escrow; provided, however, that in the event Developer fails to proceed with development of Parcel No. 1 in accordance with the Scope of Development, the land write-down subsidy shall be immediately repaid to Agency. Developer's repayment obligations as described in the previous sentence and its obligation to pay any excess costs of acquisition, demolition or relocation as described above shall be secured by a deed of trust with respect to Parcel No. 1, to be recorded at the time specified in the Schedule of Performance, which deed of trust Agency agrees shall be subordinated to Developer's acquisition or construction financing. Developer's repayment obligations will be forgiven and the deed of trust released as of the date the certificate of completion is issued pursuant to Section 314 hereof with respect to construction of the improvements to Parcel No. 1.

(d) As consideration for the Agency fulfilling its obligations hereunder, the Developer agrees to pay to Agency upon sale of Parcel No. 1 or the refinancing thereof, 25% of the Net Sale Proceeds. For purposes of this Section, "Net Sale Proceeds" shall be defined as the gross proceeds of any sale or refinancing (after the permanent loan has funded) less the amount of such proceeds used to repay the (1) Developer equity and/or advances, (2) then existing loans, including principal and accrued interest thereon, and (3) the total amount of cost incurred in connection with obtaining and closing such sale or refinancing, including without limitation, loan fees, points, title and escrow costs, and brokers fees (the amount of such costs to be verified to the Agency's satisfaction). Net Sale Proceeds shall not include any gross or net operating income from the project and such operating income shall not offset development costs for purposes calculating Net Sale Proceeds.

Section 203. Disposition Escrow. The Agency agrees to open an escrow (the "Disposition Escrow") with First American Title Company of San Diego, or with another mutually agreeable escrow company (the "Escrow Agent"), by the time established therefor in the Schedule of Performance (Attachment No. 3) (the "Close of Escrow"). The escrow described in this Section 203 shall be referred to as the "Disposition Escrow", and the conveyances provided for in Section 204 shall be referred to as the "Disposition Conveyance". The Agency and the Developer shall provide such escrow instructions as shall be necessary for and consistent with this Agreement.

Section 204. Conveyance of Title by Developer and Delivery of Possession. Subject to any extensions of time mutually agreed upon between the Agency and the Developer and satisfaction of the conditions precedent set forth in Section 213, the conveyance of Parcel No. 2 from Developer to the Agency (the "Disposition Conveyance") shall be completed on or prior to the date specified therefor in the Schedule of Performance (Attachment No. 3). Said Schedule of Performance (Attachment No. 3) is subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency. The Agency and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered by the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 212 of this Agreement. At the time of delivery of possession, Parcel No. 2 shall be free and clear of all tenants and/or occupants claiming any right of possession of all or any part of Site except with the prior written approval of the Executive Director of the Agency.

Section 205. Form of Deed for the Conveyance by Developer. The Developer shall convey to the Agency title to Parcel No. 2, in the condition provided in Section 206 of this Agreement by grant deed in the form of the Grant Deed (Attachment No. 4).

Section 206. Condition of Title. The Developer shall convey to the Agency fee simple merchantable title to Parcel No. 2, free and clear of all recorded or unrecorded liens, encumbrances, covenants, assessments, easements, leases and taxes, except for the Redevelopment Plan and such liens, encumbrances, covenants, assessments and easements to which the Developer and the Agency may consent. Escrow Agent is hereby instructed to deliver to Agency a preliminary title report immediately following recordation of the Parcel Map referred to in Section 202 covering the Parcel No. 2 property together with all underlying documents referred to as exceptions therein. The parties shall act reasonably in evaluation of any encumbrances and Developer shall act diligently and promptly to conform the condition of title to that required for the Agency.

Section 207. Time for and Place of Delivery of Grant Deed. Subject to any mutually agreed upon extension of time, the Developer shall deposit the Grant Deed (Attachment No. 4) with the Escrow Agent at least ten (10) days before the date established for the date of the Disposition Conveyance pursuant to the Schedule of Performance (Attachment No. 3).

Section 208. Recordation of Grant Deed. The Escrow Agent shall file the Grant Deed for recordation in the Office of the County Recorder for San Diego County, and shall deliver the Purchase Price to the Developer after delivery to the Agency of a title insurance policy insuring title in conformity with Section 210 of this Agreement.

Section 209. Taxes and Assessments. Real property taxes and assessments including any supplemental taxes or assessments, if any, on the Site, levied, assessed or imposed for any period commencing prior to conveyance of title, shall be borne by Developer. Taxes and assessments with respect to Parcel No. 2 shall be prorated as of the Close of Escrow.

Section 210. Title Insurance. Concurrently with recordation of the Grant Deed (Attachment No. 4) conveying title to Parcel No. 2, the Escrow Agent shall provide and deliver to Agency a title insurance policy issued by a title company acceptable to the Agency insuring that the title to Parcel No. 2 is vested in Agency in the condition required by Section 206 of this Agreement. The Title Company shall provide the Developer with a copy of the title insurance policy and the title insurance policy shall be for the amount of the Purchase Price; the Developer shall bear the cost of a standard California Land Title Association ("CLTA") policy for such

amount. The Agency shall bear the excess cost of an American Land Title Association ("ALTA") title insurance policy for Parcel No. 2 based upon the Purchase Price, and all other costs incurred for or related to such title insurance including, but not limited to, the cost of an ALTA survey and any non-standard endorsements requested by the Agency.

Section 211. Condition of Parcel No. 2. Subject to the provisions of Section 204 and as hereinafter provided, Parcel No. 2 shall be conveyed in an "as is" condition. Developer agrees to remove at Developer's sole expense, (subject to reimbursement by the Agency in accordance with the provisions of Section 202(c)) all existing structures and improvements located thereon including any buildings, foundations, underground tanks and utilities as may be necessary for the development or use of Parcel No. 2. The Agency may, in its sole discretion, defer the demolition of the structures or improvements on Parcel No. 2 and if the Agency determines that the Developer is not able to effectively accomplish such demolition, the Agency may undertake the demolition in such manner as it determines. If the soil conditions of Parcel No. 2 are not in all respects entirely suitable for the use or uses to which Parcel No. 2 will be put, then it is the sole responsibility and obligation of Developer to take such action as may be necessary to place Parcel No. 2 in a condition entirely suitable for the development of the Parcel No. 2.

Section 212. Preliminary Work. Prior to the conveyance of title by the Developer, representatives of Agency shall have the right of access to Parcel No. 2 at all reasonable times for the purpose of obtaining data and making surveys, tests and borings necessary to carry out this Agreement.

Any preliminary work undertaken on Parcel No. 2 by Agency prior to conveyance of title to the Agency shall be done only after written consent of the Developer, which consent shall not be unreasonably withheld, and at the sole expense of Agency. The Developer agrees to assist Agency in the prompt processing of all zoning, environmental, parcel map, building permits for buildings and site work, water letters, drainage, traffic signal, fire department, sign criteria approval and any other approvals deemed necessary or appropriate by Agency in connection with its contemplated development.

Section 213. Conditions Precedent to the Conveyance. Prior to and as conditions to the Close of Escrow for the Disposition Conveyance, each of the following conditions shall have been met by the respective times established therefor in the Schedule of Performance (Attachment No. 3) unless waived in writing by the Agency:

1. A parcel map with respect to the Parcel No. 2 with conditions approved by Agency and Developer shall have been recorded.
2. Developer shall have closed escrow with respect to the acquisition of the Site.
3. The Developer shall have provided the Agency with evidence satisfactory to the Agency that the Developer has or will be able to obtain financing for the construction of the improvements on Parcel No. 1.
4. Agency has approved the condition of title relating to Parcel No. 2 and the title company is prepared to issue its policy of title insurance for the full Purchase Price in form, including any endorsements, satisfactory to Agency.
5. The Agency has deposited into escrow the Purchase Price and the land write-down subsidy as provided in Section 202(c).
6. The Agency shall not be in material default of this Agreement.
7. The requirements of Sections 204, 206 and 211 have been satisfied to the satisfaction of the Agency, unless the Agency has agreed to an extension of time within which to satisfy such requirements.
8. The Developer shall have deposited the fully executed deed of trust required by Section 202(c).

The foregoing items numbered 1 to 8, inclusive, together constitute the "Conditions Precedent to the Conveyances."

Section 214. Zoning of Parcel No. 1. Zoning of Parcel No. 1 shall be such as to permit development of Parcel No. 1 and construction of improvements thereon in accordance with the provisions of this Agreement and the use, operation and maintenance of such improvements.

The Developer shall be responsible to make appropriate application to the City of El Cajon to satisfy all provisions of the California Subdivision Map Act (Government Code Section 66410, et seq.) and local enactments pursuant thereto applicable with respect to the development of Parcel No. 1.

ARTICLE III
DEVELOPMENT OF PARCEL NO. 1

Section 301. Scope of Development. Parcel No. 1 shall be cleared of all existing structures located thereon including any buildings, foundations, and utilities as may be necessary for the development or use of Parcel No. 1 and shall be developed as provided in the "Scope of Development", which is attached hereto as Attachment No. 5 and is incorporated herein. Such work shall be at Developer's sole expense (subject to reimbursement of a portion of such costs pursuant to Section 202(c) hereof).

The development shall include any plans and specifications submitted to Agency for approval, and shall incorporate or show compliance with all applicable mitigation measures.

Section 302. Design Concept Drawings. By the respective times set forth therefor in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and submit to the Agency for its approval, which shall not be unreasonably withheld, Design Concept Drawings and related documents containing the overall plan for development of Parcel No. 1 including exterior elevations, landscaping, parking and other preliminary drawings in sufficient detail to enable the Agency to evaluate the proposal for conformity to the requirements of this Agreement. Parcel No. 1 shall be developed as established in this Agreement and such documents except as changes may be mutually agreed upon between the Developer and the Agency. Any such changes shall be within the limitations of the Scope of the Development (Attachment No. 5).

Section 303. Final Plans and Related Documents. By the respective times set forth therefor in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and submit to the Agency, Final Plans, construction drawings, landscape plans, and related documents for development of Parcel No. 1 for architectural review and written approval, which shall not be unreasonably withheld. Approval of the drawings and specifications, as provided in the Schedule of Performance (Attachment No. 3), will be granted by the Agency staff if they conform to Design Concept Drawings theretofore approved. Any items so submitted and approved in writing by the Agency shall not be subject to subsequent disapproval.

The landscaping, and finish grading plans shall be prepared by a professional landscape architect who may be the same firm as the Developer's architect.

During the preparation of all drawings and plans, staff of the Agency and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and

review of drawings, plans and related documents by the Agency. The staff of Agency and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Agency can receive prompt and speedy consideration.

Developer shall make application to the Department of Building and Planning of the City of El Cajon for all approvals necessary under the statutes, code, ordinances and resolutions of the City of El Cajon and any other statutes(s) or code(s) applicable to the Developer Improvements which require approval, including, but not limited to, all approvals for permits, licenses, and certificates of occupancy.

If any revisions or corrections shall be required by the City Department of Building and Planning or any other official, agency, department, division or bureau of the City of El Cajon having jurisdiction, the Developer and the Agency shall cooperate to accommodate such requirements.

Section 304. Agency Approval of Plans, Drawings, and Related Documents. The Agency shall have the right of architectural and planning review of all plans and submissions including any changes therein.

Provided that the submissions by the Developer are timely and are complete, the Agency shall approve or disapprove the plans, drawings and related documents referred to in Sections 302 and 303 of this Agreement within the times established in the Schedule of Performance (Attachment No. 3). Failure by the Agency to either approve or disapprove within the times established in the Schedule of Performance (Attachment No. 3) shall be deemed an approval. Any disapproval shall state in writing with reasonable specificity the reasons for disapproval. The Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder, shall revise such portions and resubmit to the Agency as soon as possible after receipt of the notice of disapproval as provided in the Schedule of Performance (Attachment No. 3). Except for the approval of the Design Concept Drawings approved pursuant to Section 302, all Agency approvals shall be given by the Executive Director or his designee if the plans so approved are consistent with the approved Design Concept Drawings.

If the Developer desires to make any substantial changes in the construction plans after their approval by the Agency, the Developer shall submit the proposed change to the Agency for its approval, which shall not be unreasonably withheld. If the construction plans, as modified by the proposed change, conform to the requirements of Section 304 of this Agreement and the Scope of Development (Attachment No. 5) the Agency shall approve the proposed change and notify the Developer in writing

within 30 days after submission to the Agency. Such change in construction plans shall, in any event, be deemed approved by the Agency unless rejected, in whole or in part, by written notice thereof by the Agency to the Developer, setting forth the reasons therefor, and such rejection shall be made within said 30-day period.

Section 305. Cost of Construction. The cost of developing Parcel No. 1 including the removal of all existing structures and construction of all improvements thereon shall be borne by the Developer (subject to reimbursement for a portion of such costs as provided in Section 202(c) hereof).

Section 306. Construction Schedule. The Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Developer Improvements and the development of Parcel No. 1. The Developer shall begin and complete all construction and development within the times specified in the Schedule of Performance (Attachment No. 3).

Section 307. Bodily Injury and Property Damage Insurance. The Developer shall defend, assume all responsibility for and hold the Agency, its officers and employees, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any of the Developer's activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall take out and maintain during the life of this Agreement, a comprehensive liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit policy, including contractual liability, as shall protect the Developer, City and Agency from claims for such damages.

The Developer shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and the Agency and their respective officers, agents, and employees as additional insureds under the policy. The certificate by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and the Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not contributing with any insurance maintained by the Agency or 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 and the Agency. The required certificate shall be furnished by the Developer at the time set forth therefor in the Schedule of Performance (Attachment No. 3).

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

The obligations set forth in this Section shall remain in effect only until a final Certificate of Completion has been furnished for all of the Developer Improvements as hereafter provided in Section 314 of this Agreement.

Section 308. City and Other Governmental Agency Permits. Before commencement of construction or development of any buildings, structures or other works of improvement upon Parcel No. 1, the Developer shall, at its own expense secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by such construction, development or work. It is understood that the Developer's obligation is to pay all necessary fees and to timely submit to the City final drawings with final corrections to obtain a building permit; the Agency will, without obligation to incur liability or expense therefor, use its best efforts to expedite issuance of building permits and certificates of occupancy for construction that meets the requirements of the City Code.

Section 309. Rights of Access. For the purpose of assuring compliance with this Agreement, representatives of the Agency and the City shall have the right of access to Parcel No. 1, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements, so long as they comply with all safety rules. The Agency shall indemnify, defend and hold the Developer harmless from any claims for bodily injury or property or related damages arising out of the activities of the Agency and the City as referred to in this Section 309.

The Developer and the Agency agree to cooperate in placing and maintaining on the Site one sign indicating the respective parts of the Developer and the Agency in the project. The cost of the sign shall be borne solely by the Developer. The Developer may additionally erect and maintain not more than two (2) signs pertaining to the leasing of Parcel No. 1, which may be maintained for a reasonable period of time to initially accomplish its leasing purpose.

Section 310. Local, State and Federal Laws. The Developer shall carry out the construction of the improvements in conformity with all applicable laws.

Section 311. Antidiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

Section 312. Taxes, Assessments, Encumbrances and Liens. The Developer shall pay when due all real property taxes and assessments on Parcel No. 1. Prior to issuance of a Certificate of Completion pursuant to Section 314, the Developer shall not place or allow to be placed on Parcel No. 1 or any part thereof any mortgage, trust deed, encumbrance or lien other than as expressly allowed by this Agreement. The Developer shall remove or have removed any levy or attachment made on Parcel No. 1 or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto.

Section 313. Prohibition Against Transfer of Parcel No. 1, the Buildings or Structures Thereon and Assignment of Agreement. Prior to the issuance by the Agency of a Certificate of Completion (pursuant to Section 314 of this Agreement) as to any building or structure, the Developer shall not, except as permitted by this Agreement, without prior approval of the Agency, make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of Parcel No. 1 or of the buildings or structures on Parcel No. 1. This prohibition shall not be deemed to prevent the granting of temporary or permanent easements or permits to facilitate the development of Parcel No. 1 or to prohibit or restrict the leasing of any part or parts of a building or structure for occupancy for a term commencing upon completion. Provided that Developer remains liable for its performance hereunder, the Developer may enter into ground leases or similar agreements for the purpose of facilitating the development of Parcel No. 1. Developer shall notify the Agency in writing of its intention to enter into such an agreement prior to the execution thereof. Except as reasonably provided for in connection with the Agency's approval of any transfer, upon Agency's approval of any transfer from Developer to a permitted transferee of a portion of Parcel No. 1 and assumption of

Developer's obligations hereunder by such transferee, Developer shall be released of further responsibilities with respect to such transferred portion hereunder.

Any transfers permitted hereunder are subject to compliance with the provisions of Section 202(d).

Section 314. Certificate of Completion. Promptly after completion of all construction and development required by this Agreement to be completed by the Developer upon Parcel No. 1 or any portion thereof conveyed by Developer for purposes of development in conformity with this Agreement, the Agency shall furnish the Developer with a Certificate of Completion upon written request therefor by the Developer. At the request of the Developer a Certificate of Completion may be issued with respect to each separate building to be constructed on Parcel No. 1. Such Certificate shall be substantially in the form of Attachment No. 6 hereto. The Agency shall not unreasonably withhold any such Certificate of Completion. Such Certificate of Completion shall be a conclusive determination of satisfactory completion of the construction required by this Agreement. Subject to compliance with the provisions of Section 202(d), after recordation of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition), incur any obligation or liability under this Agreement except that such party shall be bound by any covenants contained in the Grant Deed (Attachment No. 4), lease, mortgage, deed of trust, contract, other instrument or transfer, or other documents establishing covenants on Parcel No. 1 or any portion thereof in accordance with the provisions of Section 401 of this Agreement, which shall be applicable according to its terms.

A Certificate of Completion of construction for the improvement and development of Parcel No. 1, shall be in such form as to permit it to be recorded in the Recorder's Office of San Diego County.

If the Agency refuses or fails to furnish a Certificate of Completion for Parcel No. 1 after written request from the Developer, the Agency shall, within thirty (30) days of written request therefor, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. The statement shall also contain Agency's opinion of the actions of the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items of materials for landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond by the Developer with the Agency in an amount representing a

fair value of the work not yet completed. If the Agency shall have failed to provide such written statement within said thirty (30) day period, the Developer shall be deemed entitled to the Certificate of Completion.

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

ARTICLE IV USE OF PARCEL NO. 1

Section 401. Uses. The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to Parcel No. 1 or any part thereof, that during construction and thereafter, the Developer, such successors and such assignees, shall devote Parcel No. 1 to commercial retail, and other accessory uses as are specified in the Redevelopment Plan and which are consistent with the City's General Plan and Zoning Ordinance as it now exists or is hereafter amended and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the land.

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Parcel No. 1, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of Parcel No. 1. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of Parcel No. 1 on the basis of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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 race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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:

"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, handicap, age, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

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

Section 402. Effect and Duration of Covenants. After issuance of a Certificate of Completion, all of the terms, covenants, agreements or conditions set forth in this Agreement

shall cease and terminate excepting only the following provisions which shall survive as follows in accordance with their provisions:

(a) Section 401 (relating to Uses) and Section 403 (maintenance) shall remain in effect until the termination date of the Redevelopment Plan as such Plan may be amended from time to time by proper amendment thereto.

(b) Sections 401 (relating to Antidiscrimination) shall remain in effect in perpetuity.

(c) Section 202 shall be enforceable according to its terms for such period as any portion of the amounts provided for in Section 202 remain unpaid.

(d) Article VI (relating to Defaults and Remedies) shall remain in effect to the extent necessary to enforce other provisions of this Agreement.

Section 403. Maintenance of Parcel No. 1. The Developer shall maintain all improvements and shall not permit the accumulation of debris or waste materials. Developer shall provide for the maintenance of Parcel No. 1.

The Developer shall also maintain the landscaping required to be planted under the Scope of Development (Attachment No. 5) in a healthy condition. If, at any time, Developer fails to maintain said landscaping, and said condition is not corrected after expiration of thirty (30) days from the date of written notice from the Agency, either the Agency or the City may perform the necessary landscape maintenance and Developer or the owner of property upon which the maintenance occurs shall pay such costs as are reasonably incurred for such maintenance.

Issuance of a Certificate of Completion by the Agency shall not affect Developer's obligations under this section.

Section 404. Rights of Access. The Agency, for itself and for the City and other public agencies, at their sole risk and expense, reserves the right to enter Parcel No. 1 or any part thereof at all reasonable times for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on Parcel No. 1. Any such entry shall be made only after reasonable notice to Developer, and Agency shall indemnify and hold Developer harmless from any costs, claims, damages or liabilities pertaining to any entry.

Section 405. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction. The covenants established in this Agreement and the deeds shall, without regard to technical classification and

designation, be binding for the benefit and in favor of the Agency, its successors and assigns, as to those covenants which are for its benefit. The covenants, contained in this Agreement and the Deeds shall remain in effect until the termination date of the Redevelopment Plan. The covenants against racial discrimination shall remain in perpetuity.

The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Agency, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. The Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

ARTICLE V GENERAL PROVISIONS

Section 501. Notices, Demands and Communications Among the Parties. Written notices, demands and communications among the Agency and the Developer shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and the Developer. Such written notices, demands and communications may be sent in the same manner to such other addresses as any party may from time to time designate by mail as provided in this Section 501.

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

Section 502. Conflicts of Interest. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The 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.

Section 503. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of another party not consented to by the party seeking to be excused; acts or failures to act of the City of El Cajon or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer.

Section 504. Nonliability of Officials and Employees of the Agency. No member, official or employee of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

Section 505. Inspection of Books and Records. The Agency has the right at all reasonable times upon 24 hours written or telephonic notice to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement. The Developer also has the right at all reasonable times to inspect the public records of the Agency pertaining to the Site as pertinent to the purposes of the Agreement.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 601. Defaults--General. Subject to the extensions of time set forth in Section 503, failure or delay by any party to perform any term or provision of this Agreement constitutes a breach under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence.

The injured party shall give written notice of breach to the party in breach, specifying the breach complained of by the injured party. Notice shall be given to all parties in the event a breach is asserted. Except as required to protect against further damages, the injured party may not institute proceedings against the party in breach until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any breach, nor shall it change the time of breach. Failure of the breaching party to cure the breach within thirty (30) days of the date of the notice or such longer period as may be agreed to by the parties shall constitute a default under this Agreement.

Section 602. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions in Section 106 and Section 601, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California, in an appropriate municipal court in that county, or in the Federal District Court in the Central District of California.

Section 603. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 604. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

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

Section 605. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 606. Inaction Not a Waiver of Default. Any failures or delays by a party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 607. Remedies and Rights of Termination Prior to Conveyances. In the event of an occurrence of an event of default hereunder, the parties shall have the following remedies:

(a) Damages. Subject to the provisions of Section 107, if any 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. Notice shall be given to all parties in the event a default is asserted. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of breach (or within such other period as is set forth herein), the defaulting party shall be liable to the other party for any damages caused by such default.

(b) Specific Performance. If a party defaults under any of the provisions of this Agreement, any non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days of service of the notice of default, or such other time limit as may be set forth herein with respect to such default, the non-defaulting party at its option may thereafter (but not before) commence an action for specific performance of terms of this Agreement.

(c) Termination by the Developer. In the event that, despite delivery of the Grant Deed with respect to Parcel No. 2 by the Developer, the Agency is unable, through no fault of its own, to tender the Purchase Price, in the manner, and by the date provided in this Agreement, and any such failure shall not be cured within thirty (30) days after the date or written demand by the Developer, then

this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency, and thereupon neither the Agency nor the Developer shall have any further rights against or liability to any other party under the Agreement or with respect to the subject matter of the Agreement. In the event of the Agency's failure or default with respect to the event set forth in this Section 607(c), said right of termination provided in this Section 607(c) shall be Developer's sole and exclusive remedy. Upon termination of this Agreement, all monies or documents deposited by any party into escrow shall be returned to the party making such deposit.

(d) Termination by the Agency. In the event that prior to recordation of the Certificate of Completion provided for in Section 314:

- (1) The Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or
- (2) There is a change in the ownership of the Developer contrary to the provisions of Section 106 hereof; or
- (3) The Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor any such default or failure shall not be cured within thirty (30) days after the date of written demand therefor by the Agency; or
- (4) The Developer fails to satisfy the Conditions Precedent to the Conveyances by the time established therefor in the Schedule of Performance (Attachment No. 3);

then this Agreement and any rights of the Developer or any assignee or transferee in the Agreement, or arising therefrom with respect to the Agency or the Site, shall, at the option of the Agency, be terminated by the Agency, and thereupon neither the Agency nor the Developer shall have any further rights against or liability to any other party under the Agreement or with respect to the subject matter of the Agreement; except that upon occurrence of an event described in paragraph (1), (2), (3) or (4) above, the Agency shall retain the good faith deposit as provided in Section 107 hereof.

Section 608. Remedies of the Parties for Default Prior to Completion of Construction.

(a) Termination and Damages. Prior to the recordation of a Certificate of Completion, if either the Developer or the Agency defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of the notice of default, subject to the provisions of Section 107, the defaulting party shall be liable to the other party for any damages caused by such default.

(b) Action for Specific Performance. If either the Developer or the Agency defaults under any of the provisions of this Agreement prior to the recordation of a Certificate of Completion for the improvements and development to be made thereon, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default, the nondefaulting party at its option may institute an action for specific performance of the terms of this Agreement.

ARTICLE VII
SPECIAL PROVISIONS

Section 701. Submission of Documents to the Agency for Approval. Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the Agency for approval and the Developer seeks to have such documents deemed approved if not acted on by the Agency within the specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Agency within the stated time. If there is not time specified herein for such Agency action, the Developer may submit a letter referencing this Section 701 and requiring Agency approval or rejection of documents within thirty (30) days after submission to the Agency or such documents shall be deemed approved.

Section 702. Successors In Interest. The terms, covenants, conditions and restrictions of this Agreement shall extend to and shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Developer and the Agency.

Upon the termination of the restrictions imposed by Section 106 of this Agreement, which terminate upon the issuance by the Agency of a Certificate of Completion for the Site or any

portion thereof, all of the terms, covenants, conditions and restrictions of this Agreement which do not terminate upon the issuance by the Agency of the Certificate of Completion for the Site or any portion thereof shall be deemed to be, and shall, constitute terms, covenants, conditions and restrictions running with the land.

Section 703. Recordation. It is hereby agreed, consented to and understood by the Agency and the Developer that a "Memorandum of Agreement," in the form of Attachment No. 7, shall be recorded in the Office of the County Recorder of the County of San Diego immediately upon execution of this Agreement by all parties hereto, or at such other time as may be designated by the Agency.

Section 704. Amendments to this Agreement. Developer and Agency agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either party, provided said requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

ARTICLE VIII ENTIRE AGREEMENT, WAIVERS

Section 801. Counterparts. This Agreement is executed in five (5) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 24 and Attachments 1 through 8, which constitutes the entire understanding and agreement of the parties.

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

Unless otherwise specifically provided herein, all waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments hereto must be in writing by the appropriate authorities of the Agency and the Developer.

In any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Agency and the Developer have signed this Agreement on the respective dates set forth below.

3/1, 1989

EL CAJON REDEVELOPMENT AGENCY

By: John Pelt
Chairman

ATTEST:

Marilyn Lynn
Secretary

HOPKINS DEVELOPMENT COMPANY, L.P.
a Delaware limited Partnership

By: Stephen Hopkins Development Company
of Newport Beach, a California corporation
General Partner

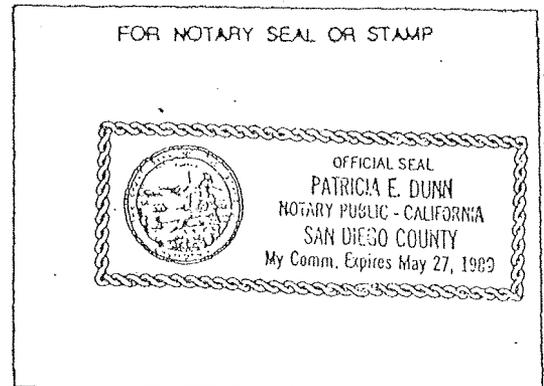
2-17, 1989

By: [Signature]
Stephen C. Hopkins, President

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) SS.

On this 1st day of March 1989, before me the undersigned Notary Public, in and for said County and State, personally appeared John Pelt, and Marilyn Lynn personally known to me (or proved to me on the basis of satisfactory evidence) to be the Chairman and the Secretary of the El Cajon Redevelopment Agency which executed the within instrument and acknowledged to me that such California Redevelopment Agency executed it.

Patricia E. Dunn



STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

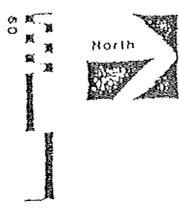
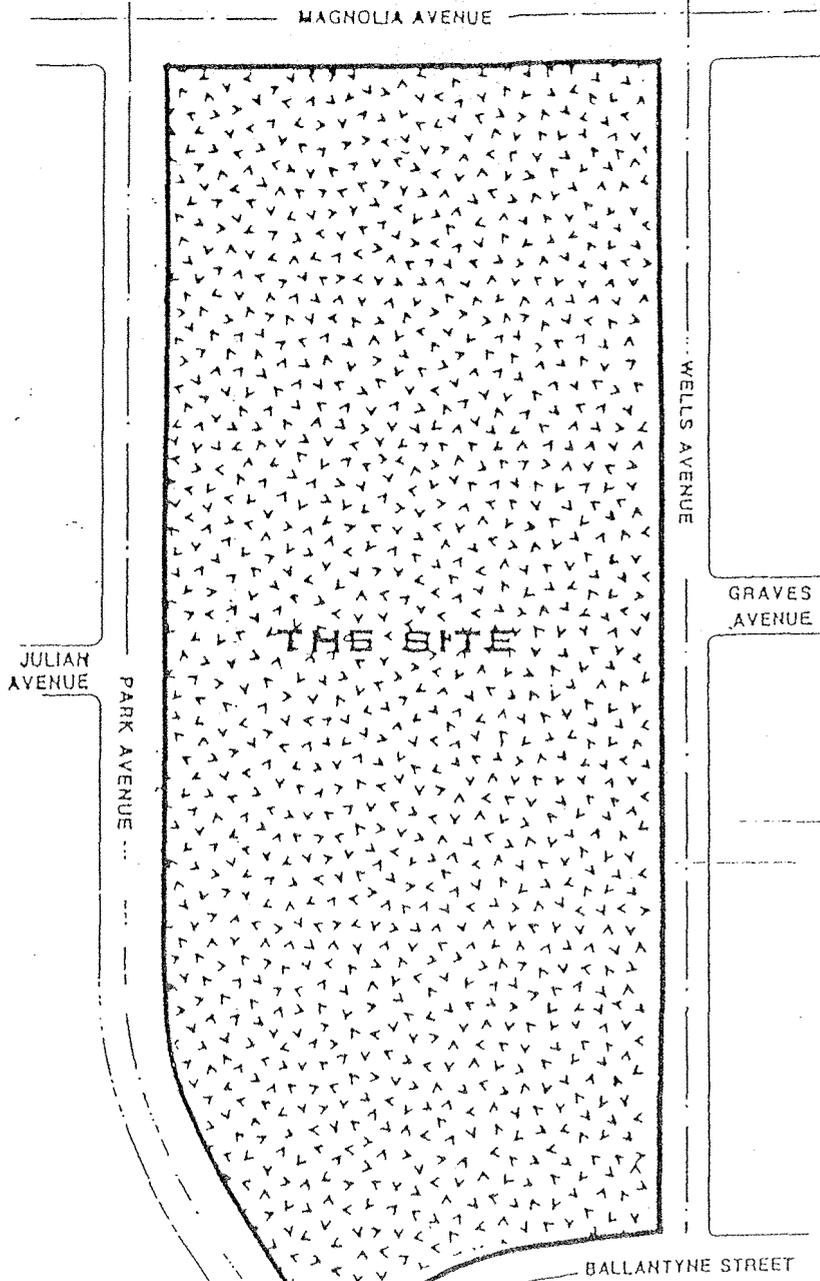
On this 17th day of February, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared STEPHEN C. HOPKINS, President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, on behalf of STEPHEN HOPKINS DEVELOPMENT COMPANY OF NEWPORT BEACH, a California corporation, the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, said corporation being known to me to be a partner of HOPKINS DEVELOPMENT COMPANY, L.P., a Delaware limited partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Blanche Hallworth

Notary Public in and for
said County and State





ATTACHMENT NO. 1 SITE MAP

ATTACHMENT NO. 2

LEGAL DESCRIPTION

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

LOT 1 OF EL CAJON SHOPPING CENTER, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5030, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON SEPTEMBER 5, 1962.

EXCEPTING THEREFROM THE INTEREST AS GRANTED TO THE CITY OF EL CAJON, A MUNICIPAL CORPORATION BY DEED RECORDED NOVEMBER 10, 1981 AS FILE NO. 81-356521 OF OFFICIAL RECORDS, BEING MORE FULLY DESCRIBED IN PARCEL A AND B AS FOLLOWS:

PARCEL A:

THAT PORTION OF LOT 1 OF EL CAJON SHOPPING CENTER, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 5030, LYING NORTHEASTERLY OF A CURVE CONCAVE SOUTHWESTERLY, SAID CURVE HAVING A RADIUS OF 25 FEET AND BEING TANGENT TO THE EASTERLY LINE OF SAID LOT 1 AND THE NORTHERLY LINE OF SAID LOT 1, EL CAJON SHOPPING CENTER.

PARCEL B:

THAT PORTION OF LOT 1 OF EL CAJON SHOPPING CENTER, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 5030, LYING SOUTHEASTERLY OF A CURVE CONCAVE NORTHWESTERLY, SAID CURVE HAVING A RADIUS OF 25 FEET AND BEING TANGENT TO THE EASTERLY LINE OF SAID LOT 1 AND THE SOUTHERLY LINE OF SAID LOT 1, EL CAJON SHOPPING CENTER.

ATTACHMENT 3

Schedule of Performance

<u>Event</u>	<u>Time Frame</u>
1. Developer submits good faith deposit.	Prior to public hearing.
2. Agency executes and records this agreement. One (1) copy of the Agreement is delivered to the participant.	When Public Hearing has been held and Agreement has been approved.
3. Developer submits Tentative Parcel Map, CUP and Specific Plan amendment applications to the City of El Cajon.	Within 30 days of execution of OPA.
4. Agency and Developer open escrow for the purchase and sale of Parcel No. 2.	Within 10 days of Event No. 3.
5. Agency commences acquisition of any outstanding lease hold interests on the Site not held by the Developer.	Within 30 days of Event No. 2.
6. Developer commences demolition all unoccupied structures on the Site and removal of any underground fuel tanks unless Agency authorizes delay to facilitate relocation of tenants or other purposes.	Within 30 day of Event No. 5.
7. Developer receives all required City approvals, records Final Parcel Map and provides letter of intent from construction lender for Parcel No. 1.	Within 105 days of Event No. 2.
8. Agency receives possession of tenants' leasehold interest and commences relocation.	Within 15 days of receiving the Prejudgement Order of Possession.
9. Developer closes escrow gaining title to the Site.	On or around <u>May 1, 1989</u> but no later than <u>May 31, 1989</u> .
10. Agency completes purchase of Parcel No. 2 from Developer, and provides land write-down payment secured by a deed of trust. Deed of Trust to secure land write-down payment and excess cost of acquisition, relocation and demolition pursuant to Section 202(c) of this Agreement is recorded at close of escrow on Parcel No. 2.	Within 10 days of Event No. 9 and recording of Final Parcel Map.

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|---|---|
| 11. Developer submits building plans for development of Parcel No. 1 to City Building Department. | No later than 60 days from Event No. 6. |
| 12. Agency completes relocation of Sir George's and 4 Day Tire. | Within 90 days of service of Order of Possession. |
| 13. Developer receives approval of building plans and shows evidence that any soil contamination has been remedied or clean up plan has been approved by County Health Department. City issues building permits. | Within 90 days of Event No. 6. |
| 14. Agency reimburses Developer for one half (1/2) the cost of demolition incurred by the Developer as limited by Section 202(c) of this Agreement. | Within 15 days of completion of all demolition and relocation, and submittal and approval of invoice accompanied by such supporting documentation as may be required by the Agency. |
| 15. Developer submits certificate of insurance pursuant to Section 307 to Agency. | After Event No. 7 and prior to issuance of first building permit. |
| 16. Developer commences construction. | Within 30 days of Event No. 12 and the completion of all necessary demolition for Parcel No. 1. |
| 17. Developer completes construction and Agency issues Certificate of Completion. | Within 12 months of Event No. 16. |
| 18. Agency releases trust deed for land write down payment and returns good faith deposit. | Within 10 days of Event No. 17. |
| 19. Agency pays Developer remaining one half of demolition cost consistent with Section 202(c) of this Agreement so that the total cost to the Agency for acquisition, relocation, loss of goodwill and demolition shall be limited to \$1,150,000. | Completion by the Agency of acquisition of all leasehold interests, relocation of tenants and payments of all associated costs. |
| 20. Developer reimburses Agency for funds expended in the acquisition of leasehold interest, tenent relocation, loss of goodwill payments and Site demolition in excess of \$1,150,000 as provided in Section 202(2) of this Agreement. | Within 30 days of receipt of written request from Agency. |

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

DOCUMENTARY TRANSFER TAX \$.....
..... Computed on the consideration or value of property conveyed; OR
..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

Signature of Declarant or Agent determining tax - Firm Name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HOPKINS DEVELOPMENT COMPANY L.P., a limited partnership organized under the laws
of the State of Delaware

hereby GRANT(S) to

EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic

the real property in the City of El Cajon
County of San Diego

, State of California, described as

SEE EXHIBIT A attached herto and incorporated herein

Dated _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, the undersigned, a
Notary Public in and for said State, personally appeared

_____, personally known to me or proved to
me on the basis of satisfactory evidence to be the person _____
who executed the within instrument as _____
of the partners of the partnership that executed the within
instrument, and acknowledged to me that such partnership
executed the same.

WITNESS my hand and official seal.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INSERTED]

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

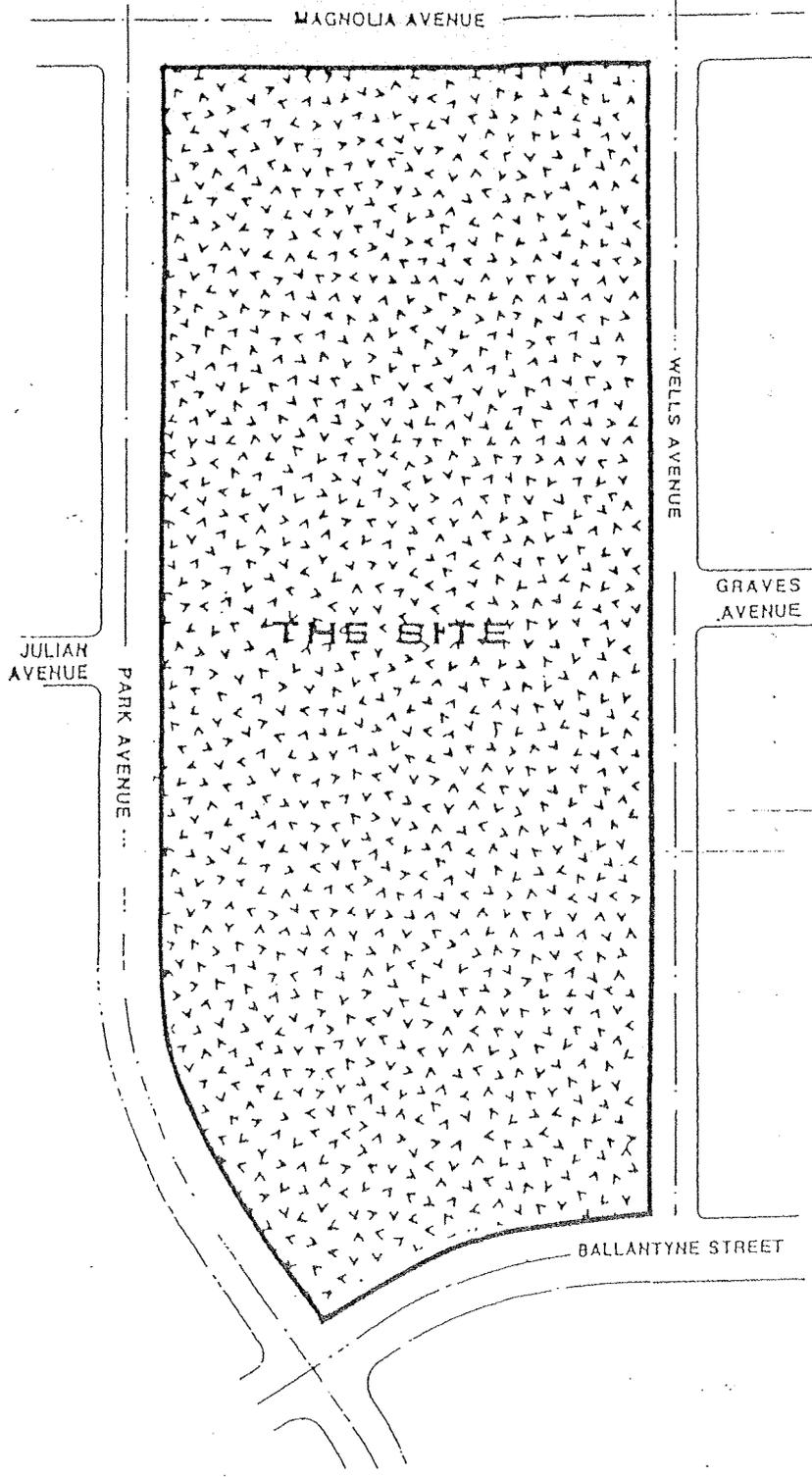
On this 17th day of February, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared STEPHEN C. HOPKINS, President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, on behalf of STEPHEN HOPKINS DEVELOPMENT COMPANY OF NEWPORT BEACH, a California corporation, the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors, said corporation being known to me to be a partner of HOPKINS DEVELOPMENT COMPANY, L.P., a Delaware limited partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Blanche I. Hallworth

Notary Public in and for
said County and State





ATTACHMENT NO. 1 SITE MAP

ATTACHMENT NO. 2

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3. Developer submits Tentative Parcel Map, CUP and Specific Plan amendment applications to the City of El Cajon.	Within 30 days of execution of OPA.
4. Agency and Developer open escrow for the purchase and sale of Parcel No. 2.	Within 10 days of Event No. 3.
5. Agency commences acquisition of any outstanding lease hold interests on the Site not held by the Developer.	Within 30 days of Event No. 2.
6. Developer commences demolition all unoccupied structures on the Site and removal of any underground fuel tanks unless Agency authorizes delay to facilitate relocation of tenants or other purposes.	Within 30 day of Event No. 5.
7. Developer receives all required City approvals, records Final Parcel Map and provides letter of intent from construction lender for Parcel No. 1.	Within 105 days of Event No. 2.
8. Agency receives possession of tenants' leasehold interest and commences relocation.	Within 15 days of receiving the Prejudgment Order of Possession.
9. Developer closes escrow gaining title to the Site.	On or around <u>May 1, 1989</u> but no later than <u>May 31, 1989</u> .
10. Agency completes purchase of Parcel No. 2 from Developer, and provides land write-down payment secured by a deed of trust. Deed of Trust to secure land write-down payment and excess cost of acquisition, relocation and demolition pursuant to Section 202(c) of this Agreement is recorded at close of escrow on Parcel No. 2.	Within 10 days of Event No. 9 and recording of Final Parcel Map.

- | | |
|---|---|
| 11. Developer submits building plans for development of Parcel No. 1 to City Building Department. | No later than 60 days from Event No. 6. |
| 12. Agency completes relocation of Sir George's and 4 Day Tire. | Within 90 days of service of Order of Possession. |
| 13. Developer receives approval of building plans and shows evidence that any soil contamination has been remedied or clean up plan has been approved by County Health Department. City issues building permits. | Within 90 days of Event No. 6. |
| 14. Agency reimburses Developer for one half (1/2) the cost of demolition incurred by the Developer as limited by Section 202(c) of this Agreement. | Within 15 days of completion of all demolition and relocation, and submittal and approval of invoice accompanied by such supporting documentation as may be required by the Agency. |
| 15. Developer submits certificate of insurance pursuant to Section 307 to Agency. | After Event No. 7 and prior to issuance of first building permit. |
| 16. Developer commences construction. | Within 30 days of Event No. 12 and the completion of all necessary demolition for Parcel No. 1. |
| 17. Developer completes construction and Agency issues Certificate of Completion. | Within 12 months of Event No. 16. |
| 18. Agency releases trust deed for land write down payment and returns good faith deposit. | Within 10 days of Event No. 17. |
| 19. Agency pays Developer remaining one half of demolition cost consistent with Section 202(c) of this Agreement so that the total cost to the Agency for acquisition, relocation, loss of goodwill and demolition shall be limited to \$1,150,000. | Completion by the Agency of acquisition of all leasehold interests, relocation of tenants and payments of all associated costs. |
| 20. Developer reimburses Agency for funds expended in the acquisition of leasehold interest, tenant relocation, loss of goodwill payments and Site demolition in excess of \$1,150,000 as provided in Section 202(2) of this Agreement. | Within 30 days of receipt of written request from Agency. |

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

DOCUMENTARY TRANSFER TAX \$.....

..... Computed on the consideration or value of property conveyed; OR

..... Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

Signature of Declarant or Agent determining tax - Firm Name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HOPKINS DEVELOPMENT COMPANY L.P., a limited partnership organized under the laws
of the State of Delaware

hereby GRANT(S) to

EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic

the real property in the City of El Cajon
County of San Diego

, State of California, described as

SEE EXHIBIT A attached herto and incorporated herein

Dated _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, the undersigned, a
Notary Public in and for said State, personally appeared

_____, personally known to me or proved to
me on the basis of satisfactory evidence to be the person ___
who executed the within instrument as _____
of the partners of the partnership that executed the within
instrument, and acknowledged to me that such partnership
executed the same.

WITNESS my hand and official seal.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INSERTED]

SCOPE OF DEVELOPMENT

I. GENERAL DESCRIPTION

The entire Site is approximately 14.88 acres in size. It is generally located east of Magnolia Avenue, south of Wells Avenue, west of Ballantyne Street and north of Park Avenue.

The Site shall be subdivided into two parcels: Parcel No. 1 will be 9.03 acres in size, will be retained by the Developer and is the subject of this Scope of Development; Parcel No. 2 will be 5.85 acres in size and will be conveyed to the Agency by the Developer pursuant to this Agreement.

The Developer shall develop on Parcel No. 1 a 92,500 square foot commercial center known as El Cajon Commercial Center hereinafter referred to as the "Project".

The Developer, its architect, engineer and contractor shall work closely with the Agency's staff and redevelopment consultant, and the City's planning staff to coordinate design, color and landscaping details which are subject to Agency approval. The Developer will also apply for and receive all necessary permits and approvals from the City of El Cajon to provide for the construction of the proposed development.

II. DEVELOPMENT

The Developer shall construct or cause the construction of a commercial center approximately 92,500 square feet in size which shall include:

- a movie theater complex of approximately 30,000 square feet,
- a health spa of approximately 20,500 square feet,
- a toy store of approximately 10,050 square feet,
- a set-down restaurant of approximately 9,000 square feet,
- a fast food pad of approximately 2,500 square foot, and
- approximately 20,500 square feet of other retail uses.

A. Architecture and Design

The improvements shall be of high architectural quality, and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design and exterior finish of each building shall be visually and physically related to and an enhancement of each other. The attached site plan and evaluations (Exhibits A and B) shows the proposal development layout and architectural design.

B. Signs

Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. Signs identifying the building use will be permitted, but their height, size, location, color, lighting and design will be subject to Agency approval and shall conform to the City of El Cajon's Municipal Code.

C. Building Setbacks

Building setbacks shall be approved by the Agency and shall conform to the City of El Cajon's Municipal Code.

D. Building Heights

Building heights shall not exceed that permitted by the applicable zoning.

E. Access

Vehicular access shall conform to all City requirements.

F. Loading

Adequate loading and unloading space shall be provided. Loading spaces visible from streets shall be landscaped or screened to prevent unsightly or barren appearance.

G. Screening

All outdoor storage of materials or equipment shall be enclosed or screened by walls, landscaping or enclosure to the extent and in the manner required by the Agency.

H. Landscaping

The Developer shall submit full landscaping plans to the City of El Cajon for their approval. Landscaping shall consist of trees, shrubs and installation of an adequate irrigation system to maintain such plant material. The type and size of trees to be planted, together with the landscape plan, shall be subject to City and Agency approval prior to planting. The Developer shall meet all on-site landscaping requirements of the City and shall maintain all landscaping in good condition for the term of this agreement.

I. Utilities

All utilities on Parcel No. 1 which serve the development shall be underground or enclosed at Developer's expense whenever physically and economically feasible, or when not feasible, all above-ground utilities shall be placed at the rear of Parcel No. 1.

J. Parking

Off-street parking shall be as required by the City of El Cajon's Municipal Code.

III. EASEMENTS

The Developer shall grant and permit or cause the granting and permission of all necessary and appropriate easements and rights for the development of the Site, including but not limited to temporary construction easements and easements and rights of vehicular access, pedestrian access, parking, structural support, sanitary sewers, storm drains, water,

electrical power, telephone, natural gas, as are necessary for and consistent with the development as contemplated herein.

IV. CONTROLS AND RESTRICTIONS - MISCELLANEOUS

Controls and restrictions consistent with this Agreement including but not limited to minimum size parking spaces and minimum loading facilities shall be consistent with the City of El Cajon's Municipal Code.

V. IMPROVEMENT, FACILITIES, UTILITIES, DEMOLITION, SITE CLEARANCE, AND ON AND OFF-SITE WORK

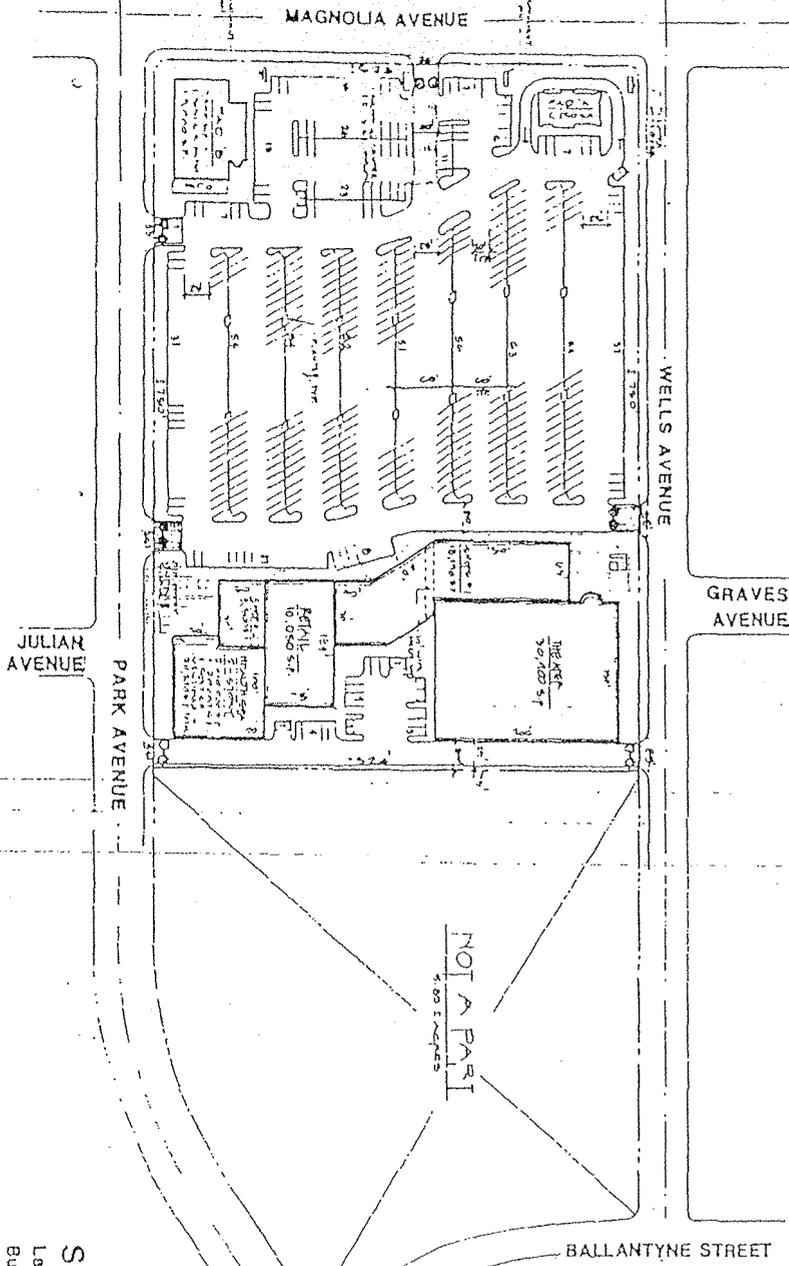
The Developer shall provide or cause to be provided at its' cost and expense, the off-site improvements such as curbs, sidewalks and utilities. The Developer will demolish all site improvements, remove all underground fuel tanks and clean up any contamination related to the site. The Developer will fund all relocation, goodwill, lease-hold interest and demolition costs in excess of \$1,150,000. The Developer will in return pay the Agency twenty-five (25) percent of the net sale or refinancing proceeds of the Project.

All improvements to be constructed by Developer shall be constructed or installed in accordance with the technical specifications, standards and practices of the City and in accordance with approved plans and specifications. Developer plans for such public improvements shall be submitted to the Agency for review and approval prior to advertising for bids. All such activities shall be completed in accordance with high architectural standards at a time and in a manner consistent with the Developer's design and construction efforts.

VI. AGENCY RESPONSIBILITIES

The Agency agrees to purchase Parcel No. 2 for \$12.75 per square foot. Additionally, the Agency will pay the cost of site demolition together with assuming the responsibility and cost for the relocation of existing tenants, loss of goodwill payments, and purchase of lease-hold interests up to a not-to-exceed amount of \$1,150,000. The Agency will also provide additional financial assistance to the Developer in the form of a \$1,000,000 land write-down payment at the time of close of escrow on Parcel No. 2.

EXHIBIT A



Summary
 Land 9.03 AC 271,546 SF
 Building 74,390 SF (INCLUDING PATIO)
 Land/Bldg 3.17 / 1

Park'g Prov'd 617 stalls
 Park'g Ratio 654 / 1000
 Park'g Req'd 483 stalls

ALL ROOMS, SHOW, SERVICE, STORAGE, TRASH ROOMS AND THE USES AS SHOWN ON THIS PLAN ARE SUBJECT TO MODIFICATION AT THE OWNER'S DISCRETION WITHOUT NOTICE.

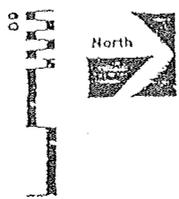
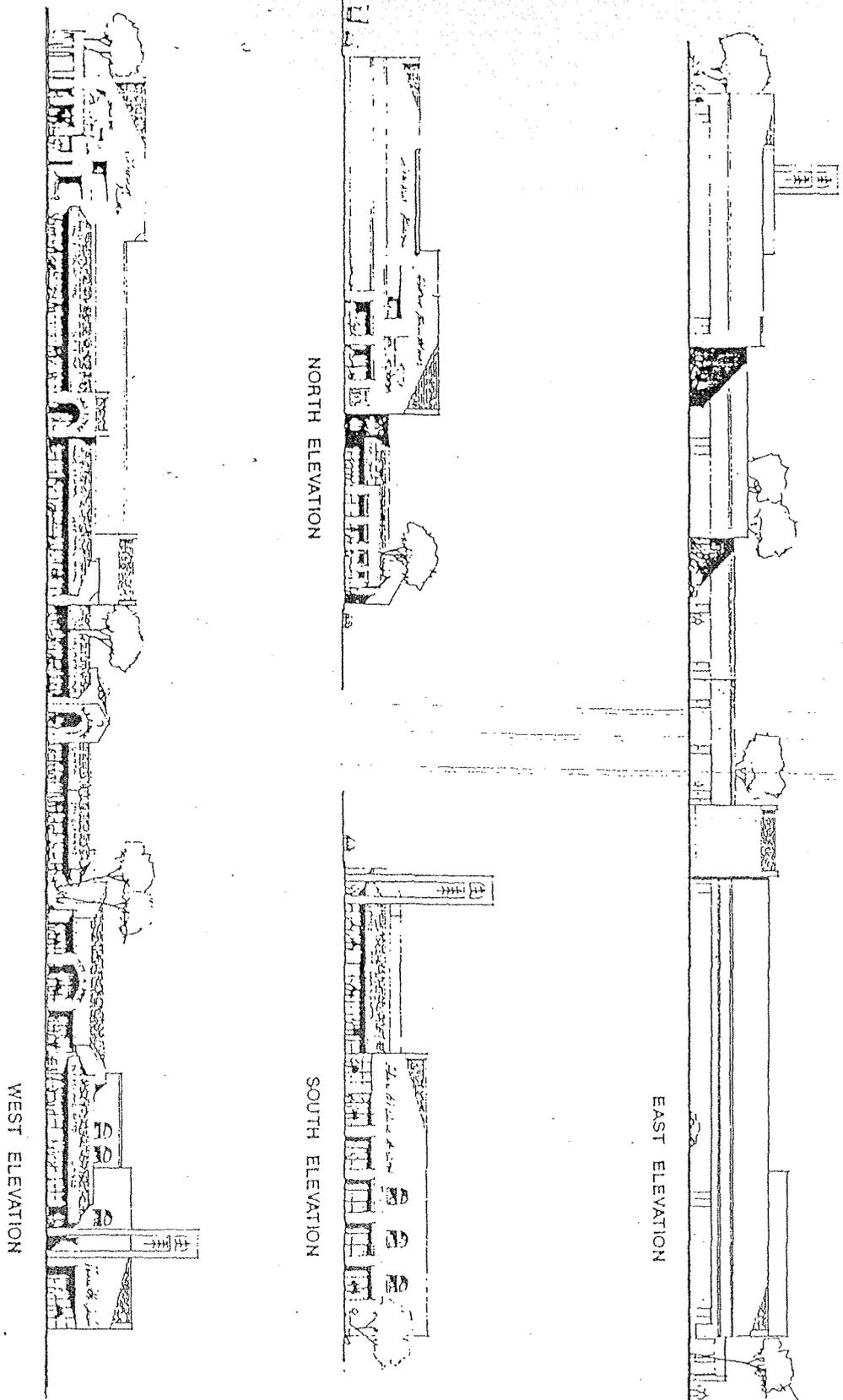


EXHIBIT B



ATTACHMENT NO. 6

Recording Requested by:

When Recorded Return to and
Mail Tax Statements to:

CERTIFICATE OF COMPLETION FOR
CONSTRUCTION AND DEVELOPMENT

WHEREAS, Owner, the El Cajon Redevelopment Agency, a public body, corporate and politic, hereinafter referred to as "Agency", has entered into an Owner Participation Agreement with Hopkins Development Company, L.P., hereinafter referred to as the "Developer", providing for the redevelopment of certain real property situated in the City of El Cajon, California described on Exhibit "1" attached hereto and made a part hereof; and

WHEREAS, as referenced in said Owner Participation Agreement, the Agency shall furnish the Developer with a Certificate of Completion upon completion of construction and development, which certificate shall be in such form as to permit it to be recorded in the Recorder's Office of San Diego County; and

WHEREAS, such certificate shall be conclusive determination of satisfactory completion of the construction and development required by the Owner Participation Agreement; and

WHEREAS, the Agency has conclusively determined that the construction and development on the above described real property required by the Owner Participation Agreement has been satisfactorily completed; and

NOW THEREFORE,

1. As provided in said Owner Participation Agreement, the Agency does hereby certify that the construction and development has been fully and satisfactorily performed and completed.

2. Nothing contained in this instrument shall modify in any other way any other provisions of said Owner Participation Agreement.

IN WITNESS WHEREOF, the Agency has executed this certificate this _____ day of _____, 19__.

EL CAJON REDEVELOPMENT AGENCY

By _____

ATTEST:

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On this _____ day of _____, in the year _____
before me, the undersigned, a Notary Public in and for said State, personally
appeared _____

known to me (or proved to me on the basis of satisfactory evidence) to be the
person who executed this instrument as the _____
(insert title of the officer)

(name of public corporation, agency or political subdivision)
and acknowledged to me that the _____

_____ executed it.
(public corporation, agency or political subdivision)

Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[TO BE INSERTED]

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

LOT 1 OF EL CAJON SHOPPING CENTER, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5030, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON SEPTEMBER 5, 1962.

EXCEPTING THEREFROM THE INTEREST AS GRANTED TO THE CITY OF EL CAJON, A MUNICIPAL CORPORATION BY DEED RECORDED NOVEMBER 10, 1981 AS FILE NO. 81-356521 OF OFFICIAL RECORDS, BEING MORE FULLY DESCRIBED IN PARCEL A AND B AS FOLLOWS:

PARCEL A:

THAT PORTION OF LOT 1 OF EL CAJON SHOPPING CENTER, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 5030, LYING NORTHEASTERLY OF A CURVE CONCAVE SOUTHWESTERLY, SAID CURVE HAVING A RADIUS OF 25 FEET AND BEING TANGENT TO THE EASTERLY LINE OF SAID LOT 1 AND THE NORTHERLY LINE OF SAID LOT 1, EL CAJON SHOPPING CENTER.

PARCEL B:

THAT PORTION OF LOT 1 OF EL CAJON SHOPPING CENTER, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 5030, LYING SOUTHEASTERLY OF A CURVE CONCAVE NORTHWESTERLY, SAID CURVE HAVING A RADIUS OF 25 FEET AND BEING TANGENT TO THE EASTERLY LINE OF SAID LOT 1 AND THE SOUTHERLY LINE OF SAID LOT 1, EL CAJON SHOPPING CENTER.

ATTACHMENT NO. 7

Recording Requested By
And When Recorded Mail To:

El Cajon Redevelopment Agency
200 East Main Street
El Cajon, California 92020
Attn: Executive Director

MEMORANDUM OF AGREEMENT

This is a Memorandum ("Memorandum") of Agreement as more particularly provided for in that certain Owner Participation Agreement (the "Agreement") entered into on _____, 1989, by and among the El Cajon Redevelopment Agency ("Agency") and Hopkins Development Company, L.P. ("Developer"), concerning the following described real property (the "Site") located in the City of El Cajon, County of San Diego, State of California:

See Exhibit A, attached hereto and incorporated herein by reference.

Subject to the Agreement, upon acquisition of the Site by Developer, Agency is to have certain rights to purchase Parcel No. 2, all as more particularly described in the Agreement; said Agreement, which is on file as a public record with the Agency at 200 East Main Street, El Cajon, California 92020, is incorporated herein by reference.

This Memorandum is prepared for the purpose of recordation and is not a complete summary of the Agreement. Provisions of this Memorandum shall not be used to interpret the provisions of the Agreement. In the event of conflict between this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control.

EL CAJON REDEVELOPMENT AGENCY

By: _____
Chairman

ATTEST:

Secretary

HOPKINS DEVELOPMENT COMPANY, L.P., a
Delaware limited partnership

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this _____ day of _____, in the year 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as the _____
(insert title of the officer)

(name of public corporation, agency or political subdivision)
and acknowledged to me that the _____

(public corporation, agency or political subdivision)
executed it.

Signature of Notary Public

RESOLUTION NO. 87-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CAJON DETERMINING THAT THE ACQUISITION OF CERTAIN REAL PROPERTY FOR PUBLIC PARKING IMPROVEMENTS IS OF BENEFIT TO THE EL CAJON REDEVELOPMENT PROJECT AND THE IMMEDIATE NEIGHBORHOOD IN WHICH THE PROJECT IS LOCATED; AND, DETERMINING THAT THERE ARE NO OTHER REASONABLE MEANS OF FINANCING SAID ACQUISITION

WHEREAS, the El Cajon Redevelopment Agency ("Agency") is authorized to carry out the redevelopment of the El Cajon Redevelopment Project ("Project Area"); and

WHEREAS, the Redevelopment Plan for the Project Area authorizes the Agency to pay all or part of the value of the acquisition and construction of certain public improvements such as public parking facilities ("Public Improvements"); and

WHEREAS, there has been presented to the Agency at the meeting of February 21, 1989 an Owner Participation Agreement between the Agency and Hopkins Development Company, L.P., a Delaware limited partnership, which among other things provides for the acquisition of certain real property by the Agency (the "Owner Participation Agreement"); and

WHEREAS, it is not financially feasible for the necessary Public Improvements to be provided by private enterprise acting alone, and without the direct financial participation of the Agency there are insufficient resources available for the Public Improvements; and

WHEREAS, California Health and Safety Code Section 33445 provides that a redevelopment agency may, with the consent of the legislative body, pay all or part of the value of public buildings, facilities, structures or other improvements upon a finding that such public improvements are of benefit to the project area or the immediate neighborhood in which the project is located and that there are no other reasonable means of financing such public improvements available to the community;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CAJON DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby determines that the design, acquisition, construction and installation of the Public Improvements are of benefit to the Project Area and the surrounding neighborhood in which the project is located.

(Continued on Page 2)

Section 2. The City Council hereby determines that it is appropriate to construct and install or cause the construction and installation of the Public Improvements and that there are no other reasonable means of financing the Public Improvements.

PASSED AND ADOPTED by the City Council of the City of El Cajon, California, at an adjourned meeting held this 28th day of February, 1989, by the following vote to wit:

AYES	:	Hanson, Shoemaker, Miller, Stockwell, Reber
NOES	:	None
ABSENT	:	None
ABSTAIN	:	None

JOHN REBER
Mayor of the City of El Cajon

ATTEST:

MARILYNN LINN, CMC
City Clerk

I hereby certify that the above and foregoing is a full and true copy of Resolution No. 87-89 of the Resolutions of the City of El Cajon, California, as adopted by the City Council of said City on the 28th day of February, 1989.

_____, CMC
City Clerk

CITY OF EL CAJON – SUCCESSOR AGENCY



OVERSIGHT BOARD MEMORANDUM

DATE: October 30, 2013
TO: Oversight Board Members
FROM: Jenny Ficacci, Housing Manager
SUBJECT: Recognized Obligation Payment Schedule (ROPS 13-14B) – Department of Finance Determination Letter

On October 30, 2013, Successor Agency staff received a determination letter from the Department of Finance (DOF) in response to submission of the ROPS 13-14B for the period of January 1, 2014, to June 30, 2014. DOF denied \$1,613,719 in requested project management, enforceable obligation or administrative costs as follows:

DOF Denied Project Management, Enforceable Obligation and/or Administrative Costs 10/30/13:		
Line 16:	Promissory Note payment - 100 Fletcher Parkway	\$ 840,665
Line 62:	Legal costs - Hazmat Park/Ballantyne Project	\$ 1,250
Line 66:	Legal costs - Hazmat Prescott Promenade	\$ 1,000
Line 70:	Legal costs - 100 Fletcher Parkway	\$ 5,000
Line 73:	Demolition - 100 Fletcher Parkway	\$ 361,020
Line 75:	Legal costs - Johnson Avenue Corridor Revitalization Project (Other Funds)	\$ 2,500
Line 82:	Legal costs - Real Property Asset Management	\$ 7,500
Line 86:	Legal costs - Civic Center Complex Revitalization Project	\$ 10,000
Line 88:	Demolition - Civic Center Complex Revitalization project	\$ 367,650
Administration:	Reduction of Admin from \$79,463 to \$62,329	\$ 17,134
Total Amount Denied		\$ 1,613,719

As a result of the DOF's determination, staff submitted a Meet & Confer request to the DOF on November 5, 2013, to dispute the denial of legal costs associated with all Projects, which are costs directly associated with a particular project and are not general "administration" legal costs. In the future, staff intends to request a proposal from the City Attorney's Office for each ROPS period where legal services are anticipated on projects for submission to DOF.


 Jenny Ficacci
 Housing Manager

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October 30, 2013

Ms. Victoria Danganan, Senior Accountant
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020

Dear Ms. Danganan:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of El Cajon Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14B) to the California Department of Finance (Finance) on September 18, 2013 for the period of January through June 2014. Finance has completed its review of your ROPS 13-14B, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations for the reasons specified:

- Item No. 16 – City of El Cajon Loan Repayment in the amount of \$840,665 is not allowed at this time. The Agency received a Finding of Completion on April 11, 2013. As such, the Agency may place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC section 34191.4 (b) (1). While ROPS 13-14B falls within fiscal year 2013-14, the repayment of this loan is subject to the repayment formula outlined in HSC section 34191.4 (b) (2) (A).

HSC section 34191.4 (b) (2) (A) allows this repayment to be equal to one-half of the increase between the ROPS residual pass-through distributed to the taxing entities in that fiscal year and the ROPS residual pass-through distributed to the taxing entities in the 2012-13 base year. Since the formula does not allow for estimates, the Agency must wait until the ROPS residual pass-through distributions are known for fiscal year 2013-14 before requesting funding for this obligation. Therefore, this item is not eligible for Redevelopment Property Tax Trust Funds (RPTTF) at this time.

- Item Nos. 62, 66, 70, 75, 82, and 86 – Legal Costs totaling \$27,250 funded by RPTTF (Item Nos. 62, 66, 70, 82, and 86) and \$2,500 funded by Other Funds (Item No. 75) are not enforceable obligations. Insufficient documentation was provided to support the amounts claimed or that the costs will be necessary. Therefore, these items are not enforceable obligations and are not eligible for RPTTF or Other Funds on this ROPS.

- Item Nos. 73 and 88 – Disposition Costs totaling \$728,670 are not enforceable obligations. No documentation was provided to support the amounts claimed. In addition, a Long Range Property Management Plan has not been approved supporting the necessity of the demolition costs for these properties. Therefore, these items are not enforceable obligations and are not eligible for RPTTF funding on ROPS 13-14B.
- Claimed administrative costs exceed the allowance by \$17,134. HSC section 34171 (b) limits the fiscal year 2013-2014 administrative expenses to three percent of property tax allocated to the Agency or \$250,000, whichever is greater. The San Diego County Auditor-Controller's Office distributed \$187,671, thus leaving a balance of \$62,329 available for ROPS 13-14B. Although \$79,463 is claimed for administrative cost, only \$62,329 is available pursuant to the cap. Therefore, \$17,134 of excess administrative cost is not allowed.

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14B form the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the table below includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14B. If you disagree with the determination with respect to any items on your ROPS 13-14B, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's maximum approved RPTTF distribution for the reporting period is \$1,509,658 as summarized on the next page:

Approved RPTTF Distribution Amount For the period of January through June 2014	
Total RPTTF requested for non-administrative obligations	4,275,964
Total RPTTF requested for administrative obligations	79,463
Total RPTTF requested for obligations	\$ 4,355,427
Total RPTTF requested for non-administrative obligations	4,275,964
Denied Items	
Item No. 16	840,665
Item No. 62	1,250
Item No. 66	1,000
Item No. 70	5,000
Item No. 73	361,020
Item No. 82	7,500
Item No. 86	10,000
Item No. 88	367,650
	<u>1,594,085</u>
Total RPTTF approved for non-administrative obligations	2,681,879
Total RPTTF allowable for administrative obligations (see Admin Cost Cap table below)	62,329
Total RPTTF approved for obligations	2,744,208
ROPS III prior period adjustment	(1,234,550)
Total RPTTF approved for distribution	\$ 1,509,658
Administrative Cost Cap Calculation	
Total RPTTF for 13-14A (July through December 2013)	4,060,555
Total RPTTF for 13-14B (January through June 2014)	2,681,879
Total RPTTF for 13-14A (July through December 2013)	6,742,434
Allowable administrative cost for fiscal year 2013-14 (Greater of 3% or \$250,000)	250,000
Administrative allowance for 13-14A (July through December 2013)	187,671
Allowable RPTTF distribution for administrative cost for ROPS 13-14B	62,329

Pursuant to HSC section 34177 (I) (1) (E), agencies are required to use all available funding sources prior to RPTTF for payment of enforceable obligations. Beginning with the ROPS 13-14B period, Finance required successor agencies to identify fund balances for various types of funds in its possession. During our ROPS 13-14B review, Finance requested financial records to support the fund balances reported by the Agency; however, Finance was unable to reconcile the financial records to the amounts reported. As a result, Finance will continue to work with the Agency after the ROPS 13-14B review period to properly identify the Agency's fund balances. If it is determined the Agency possesses fund balances that are available to pay approved obligations, the Agency should request the use of these fund balances prior to requesting RPTTF in ROPS 14-15A.

Please refer to the ROPS 13-14B schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14B Forms by Successor Agency/.](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14B%20Forms%20by%20Successor%20Agency/)

Absent a Meet and Confer, this is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2014. This determination applies only to items where funding was requested for the six month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to HSC section 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Ms. Holly Reed-Falk, Financial Operations Manager, City of El Cajon
Mr. Juan Perez, Senior Auditor and Controller Manager, San Diego County
California State Controller's Office