

DISPOSITION AND DEVELOPMENT AGREEMENT

("DDA")

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA

("Agency")

and

PASEO NUEVO ASSOCIATES

("Developer")

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA ("Agency") and PASEO NUEVO ASSOCIATES ("Developer"). The Agency and the Developer agree as follows:

SECTION 100 SUBJECT OF AGREEMENT

101 PURPOSE OF AGREEMENT

The purpose of this Agreement is to effectuate the Redevelopment Plan (defined in Section 102) for the Santa Barbara Central City Redevelopment Project Area (the "Project Area" described in Section 103) by implementing "The Santa Barbara Retail Revitalization Project" within the Project Area. This Agreement provides for the acquisition by Developer and certain retail department stores (the "Majors" or "Major" as the context may require) of interests in certain real property in the Project Area (the "Project Site" defined in Section 104), and the redevelopment of said property into a retail shopping center (the "Retail Center" defined in Section 104). The development of the Retail Center pursuant to this Agreement is in the vital and best interests of the City of Santa Barbara (the "City") and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

102 THE REDEVELOPMENT PLAN

The Redevelopment Plan for the Central City Redevelopment Project was approved and adopted by the City Council of the City of Santa Barbara on November 14, 1972 by Ordinance No. 3566, as amended on August 30, 1977 by Ordinance No. 3923 and as further amended on December 16, 1986 by Ordinance No. 4438. The Redevelopment Plan as so amended is referred to herein as the "Redevelopment Plan." This Agreement shall be subject to the provisions of the Redevelopment Plan which is incorporated herein by this reference and made a part hereof as though fully set forth herein. By execution of this Agreement, Agency finds that the development of the Project Site pursuant to Section 301 and the "Parking Parcels" referred to in Section 104.3 of this Agreement is consistent with the Redevelopment Plan. Any amendment to the Redevelopment Plan which changes the restrictions and controls that apply to the Project Site and/or the "Parking Parcels" referred to in Section 104.3 shall require the written consent of Developer. In addition, Developer shall have the right to challenge, on the same basis as any of the Project Area property owners or lessees, amendments to the Redevelopment Plan which do not

directly affect the restrictions and controls governing the Project Site and/or the Parking Parcels.

103 THE PROJECT AREA

The "Project Area" is located in the City of Santa Barbara, California, the exact boundaries of which are specifically described in the Redevelopment Plan and in instruments recorded respectively as Instrument No. 48982 on December 14, 1972 in Book 2435, page 331 and as Instrument No. 77-44507 on September 1, 1977 of the Official Records of Santa Barbara County of the State of California, which instruments are incorporated herein by reference and made a part hereof.

104 THE PROJECT SITE AND APPURTENANT PARKING

104.1 Retail Center Parcels

A. General Description. The Project Site is to be developed and operated as a "Retail Center" pursuant to this Agreement (in particular Section 301 hereof) and is that area shown and described on the "Site Map and Legal Description" attached hereto as Attachment No. 1A, or in the alternative on the "Site Map and Legal Description (Alternate Development Plan)" attached hereto as Attachment No. 1B, and incorporated herein by these references (the "Site Map"). The Project Site is comprised of contiguous properties in an area bounded by State Street, Canon Perdido Street, Chapala Street and Ortega Street.

B. Acquisition Parcels. The Project Site (the "Project Site") includes eight (8) parcels which are shown on the Site Map as Parcels 1, 2, 3, 4, 5, 6 and 7 (referred to as "Acquisition Parcel" or "Acquisition Parcels" as the context may require) and Parcel 8 as shown on the Site Map. Parcels 1, 4 and 6 consist of properties within the Project Site presently owned by third parties which, subject to the terms and conditions of this Agreement, need to be acquired in their entirety by Agency in order for this Agreement to be implemented. Parcel 2 consists of property within the Project Site located in a public right-of-way which is to be vacated by the City and acquired by the Agency. Parcels 3 and 7 are portions of larger commercial properties, which portions are to be acquired by Agency in order to implement this Agreement. Parcel 5 (as shown on Attachment No. 1A) includes properties within the Project Site which are the rear portions of larger commercial properties (as described in Section 104.2), which portions similarly need to be acquired in order to implement this Agreement. Parcel 8 consists of property containing a public right-of-way within the Project Site owned by City. The City intends to restrict public use of Parcel 8 to pedestrian traffic by closing Parcel 8 to vehicular traffic, except for service vehicle use. City intends to grant an

easement to Developer over Parcel 8 for pedestrian and service vehicle ingress and egress, placement of utilities, landscaping, and construction and maintenance of non-building improvements thereon (Parcel 8 is hereafter referred to as "Nonvacated De La Guerra Street"). If the Alternative Development Plan incorporating the Rehabilitation Parcels (as defined in Section 104.2B) into the Retail Center provided for in Section 104.2 is implemented, the Project Site shall be modified by reconfiguration of the parcel lines of Acquisition Parcels 2 and 5 substantially as shown on Attachment No. 1B. The assemblage of the Acquisition Parcels to be held by Agency for disposition and use under this Agreement may also be referred to hereafter as the "Lease Parcels." Such assemblage is to be divided prior to such disposition and use into the respective Tracts described below in paragraph C. The conveyances by Agency shall be by means of the "Developer Lease" and "Major Leases" described in Section 202 for development, construction, operation and maintenance of retail stores on the Project Site of the Retail Center.

C. Conveyance and Development Components. The Project Site and the Retail Center thereon shall be developed in four (4) parcels: the mall component consisting of the mall stores, pedestrian and paseo areas and the Arts Complex (the "Developer Tract") the onsite parking facility (the "Onsite Parking Tract"), the department store component of The Broadway (the "Broadway Tract") and the department store component of Nordstrom (the "Nordstrom Tract"). The aggregate of the Developer Tract, the Broadway Tract and the Nordstrom Tract (that is, the portion of the Project Site where the retail stores are located, but without the inclusion of the Onsite Parking Tract which is to be retained by Agency) may sometimes be referred to hereafter as the "Shopping Center Tract." Reference to "Major's Tract" shall apply to the Broadway Tract and the Nordstrom Tract as the context may require.

104.2 Alternative Development Plan

A. Parcel 5 of the Project Site (as shown on Attachment No. 1A) to be acquired by Agency includes the rear portions (fronting on Chapala Street) of certain larger commercial properties which properties in their entirety are shown on Attachment No. 1B as Parcels 5 and 5a (commonly referred to and herein defined as the "Ott and Parma Parcels").

B. Developer is presently negotiating with the owners of the Ott and Parma Parcels pursuant to which, if consummated, the front portions thereof (fronting on State Street) would be ground leased to Developer for a term of approximately seventy-five (75) years for the purpose of rehabilitation and integration with the Retail Center. The portions of the Ott and Parma Parcels to be ground leased by the owners

thereof to Developer and rehabilitated is shown on the Site Map, Attachment No. 1B, as Parcel 5a and hereinafter referred to as the "Rehabilitation Parcels." The proposed form of the lease has been reviewed and approved by Agency.

C. Pursuant to Developer's negotiations and as part of the proposed agreement to lease, if consummated, the owners of the Ott and Parma Parcels would agree to convey at no cost to Agency fee simple title to Agency of the reconfigured version of Parcel 5 of the Ott and Parma Parcels as shown on Attachment No. 1B.

D. If Developer's negotiations are successful and Developer is able to obtain a lease substantially in said form approved by Agency and an agreement to convey, executed by the owners of the Ott and Parma Parcels on or before the date which is sixty (60) days following Agency's execution and delivery of this Agreement, then the provisions of Subsections E, F, G and H of this Section 104.2 shall apply, and the Rehabilitation Parcels shall be incorporated into the Retail Center.

E. If the Rehabilitation Parcels are incorporated into the Retail Center, the following shall apply:

(1) Developer shall be entitled to the credits described on Attachment No. 5 at the Close of Escrow of the Developer Lease;

(2) Annual Participation Rent (as defined in the Developer Lease) (as defined below) under the Developer Lease shall include the Rehabilitation Parcels and all other applicable provisions of the Developer Lease, such as Participation Rent Area, Project Costs, Participation Rent Debt Service and Senior Mortgage Payments, shall apply to the Rehabilitation Parcels;

(3) The Scope of Development shall be deemed to include the Rehabilitation Parcels;

(4) Developer, at Close of Escrow, shall submit its leasehold interest in the Rehabilitation Parcels to the terms of the Reciprocal Easement Agreement ("REA"), described in Section 702, and the fee owners of the Rehabilitation Parcels shall submit their interest to the terms of an Easement, Condition and Restriction Agreement ("ECR") in the form approved by Agency;

(5) Agency shall have the right to approve development plans and specifications for the improvements to the Rehabilitation Parcels to the same extent provided for other Retail Center development in Section 300 of this Agreement;

(6) The evidence of financing required under Section 217 of this Agreement shall include financing for rehabilitation of the Rehabilitation Parcels.

F. If the Rehabilitation Parcels are incorporated into the Retail Center, it is contemplated that at Close of Escrow of the lease of the Developer Tract to Developer, Parcel 5 (described in Subsection C above and shown on Attachment No. 1B) will be conveyed to Agency by the owners thereof pursuant to the above-described agreement to convey, and concurrently included in the Developer Lease. Title to Parcel 5 to be conveyed to Agency pursuant to this Section 104.2 by the owners thereof shall be in the condition set forth in Section 207. If there are any defects or encumbrances against such Parcel which the owners or Developer are unable to remove, Agency will consider using its powers under Section 201.3 to clear such title defects or encumbrances. Any costs and expenses incurred by Agency to clear such title defects or encumbrances shall reduce the credit to Developer described in Attachment No. 5. Agency's costs and expenses to clear any such title defects or encumbrances shall include, but not be limited to: costs and expenses incurred by the Agency for acquisition; compensation for the taking or threatened taking of property interests including, but not limited to, compensation for land, buildings, goodwill, fixtures, equipment and improvements; deposits necessary to obtain orders of prejudgment possession; eminent domain awards; court costs; attorneys fees; appraisals; title services; escrow fees, prorated taxes and rents; relocation payments and benefits to any person or entity lawfully entitled to such payments; and administrative costs directly related to the clearing of such title defects and encumbrances. Nothing in this Section 104.2 shall relieve Agency's obligations to deliver a leasehold interest to the Lease Parcels (including Parcel 5) after delivery of a Notice to Proceed as provided in Section 204.

G. No additional parking shall be required to be constructed or paid for by either Developer or Agency as a result of the rehabilitation, reconstruction and/or incorporation of the Rehabilitation Parcels into the Retail Center.

H. It is acknowledged by Agency and Developer that Parcel 5, as shown on Attachment No. 1B, to be acquired by Agency and leased to Developer as a result of the negotiations described in this Section 104.2 is substantially different from Parcel 5 described in Section 104.1 and shown on Attachment No. 1A, which Agency is to acquire if the Rehabilitation Parcels are not acquired by Developer and incorporated into the Retail Center. For purposes of this Agreement, Lease Parcels shall include the reconfigured Parcel 5 if the Rehabilitation Parcels (Parcel 5a) are incorporated into the Retail Center.

I. Agency and Developer acknowledge that as of the date of the execution of this Agreement, Developer has prepared its basic conceptual drawings and development plan and has submitted to Agency and City for approval site plans, development plans and other instruments which contemplate incorporation of the Rehabilitation Parcels into the Retail Center. The Conditions of Approval as defined below and described in the Scope of Development, issued and approved by the City contemplate such incorporation. If the Rehabilitation Parcels are not incorporated as part of the Retail Center, Developer shall prepare and submit to the Agency for approval new Basic Concept Drawings (as defined below) and related documents which eliminate the Rehabilitation Parcels from the Retail Center. Said redesign of the Retail Center shall be in accordance with the Scope of Development, and subject to Article 5 of the REA for approval of plans.

104.3 Appurtenant Parking Parcels and Appurtenant Interests

A. Appurtenant Interests Under Various Agreements. The Retail Center is to be supported by the construction, operation and maintenance of certain public parking facilities described in Section 701 (the "Appurtenant Parking") and other appurtenant rights and interests (the "Appurtenant Interests") to be provided by the Agency and/or the City pursuant to the parking agreement to be executed by the Agency and the Developer concurrently herewith in the form of Attachment No. 2 (the "Parking Agreement"); the Onsite and Offsite Parking Covenants (as defined below) to be executed between the Agency or City, as appropriate, Developer and the Majors in the form of Exhibits "B" and "C", respectively, attached to the Parking Agreement; and the REA (defined in Section 702) in the form of Attachment No. 3.

B. Offsite Parking Parcels. Parcels A and B shown on the Site Map are noncontiguous to the Project Site (and not a part of the Project Site) and owned by the City (herein sometimes referred to as the "Parking Parcels"). The Agency shall construct upon, or cause to be constructed upon, operate, or cause to be operated, and maintain, or cause to be maintained, with the cooperation of the City, the Offsite Parking Facilities to accommodate the public patrons of Retail Center in accordance with the agreements described in the preceding subsection with the cooperation of the City pursuant to the "Cooperation Agreement" to be entered into between Agency and City concurrently with the execution of this Agreement in the form of Attachment No. 4. Said Cooperation Agreement shall contain City's covenants to comply with this Agreement, the REA and the Parking Agreement, and shall be executed by Agency and City concurrently with the execution of this Agreement. Agency covenants and agrees that it shall comply with the Cooperation Agreement and exercise due diligence and best

efforts to enforce the obligations of the City thereunder. Amendments to the Cooperation Agreement shall have no force and effect unless and until reasonably approved by the Developer and, after the execution of the Developer Lease, the Lessee described in the Developer Lease.

C. Onsite Parking Tract. The Onsite Parking Tract shall be acquired by Agency and an Onsite Parking Facility shall be constructed, operated and maintained on the Onsite Parking Tract to accommodate the Retail Center in accordance with the agreements described in Subsection A above.

105 PARTIES TO THE AGREEMENT

105.1 The Agency

A. Identity of Agency. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California. The principal office of the Agency is located at City Hall, P.O. Drawer P-P, 735 Anacapa Street, Santa Barbara, California 93102.

B. Successors and Assigns. "Agency" as used in this Agreement includes the Redevelopment Agency of the City of Santa Barbara and any assignee of, or successor to, its rights, powers and responsibilities.

C. Agency Representative. The Executive Director of Agency is hereby appointed by Agency as its representative with respect to any and all consents or approvals to be given by Agency under this Agreement, or other action required to be taken by Agency hereunder, unless otherwise expressly provided herein.

105.2 The Developer

A. Identity of Developer. The Developer entering into this Agreement with the Agency is Paseo Nuevo Associates, a California limited partnership ("PNA"), in which John H. Reininga, Jr. and Alan M. Roodhouse are the general partners and various associates of John H. Reininga, Jr. and Alan M. Roodhouse are the limited partners as of the date hereof. The principal office of the Developer for purposes of this Agreement is c/o Reininga Corporation, 600 Montgomery Street, Suite 3600, San Francisco, California 94111.

PNA shall have the right, but shall have no obligation, at any time during the term of this Agreement, without the prior consent of Agency, to assign all of its right, title and interest under this Agreement to a partnership in which PNA and a JMB Entity (as defined below) are the general partners

("PNA-JMB Partnership"). Any such assignment shall be effective on the date that PNA delivers to Agency a copy of an assignment and assumption agreement executed by PNA and the PNA-JMB Partnership pursuant to which PNA shall assign all of its right, title and interest in this Agreement to the PNA-JMB Partnership and the PNA-JMB Partnership shall accept such assignment and assume all of PNA's rights and obligations under this Agreement. Concurrently with the delivery of the assignment and assumption agreement, the PNA-JMB Partnership shall deliver to Agency for its approval, a construction management agreement naming Reininga Corporation ("RC") as the construction manager for the Retail Center. Agency's approval of the construction management agreement shall not be unreasonably withheld. From and after the date of said assignment and assumption, the PNA-JMB Partnership shall be the Developer hereunder and all references herein to Developer shall be deemed a reference to the PNA-JMB Partnership or any permitted assignee or nominee thereof as herein provided.

As used herein, "JMB Entity" means:

- (a) JMB Realty Corporation, a Delaware corporation ("JMB Realty");
- (b) The shareholders of JMB Realty (a privately held company), namely, Judd Malkin and Neil Bluhm ("JMB Shareholders");
- (c) Any direct or indirect subsidiary of JMB Realty and any entity in which JMB Realty or the shareholders of JMB Realty own 50% or more of the voting stock (a "JMB Subsidiary");
- (d) JMB/Federated Realty Associates, Ltd., an Illinois limited partnership, Center Partners, Ltd., an Illinois limited partnership, JMB Shopping Centers, Inc., an Illinois corporation, or JMB Development Company, a division of JMB Realty;
- (e) Any real estate investment trust in which JMB Realty or any JMB Subsidiary is a manager or investment advisor, including without limitation JMB Realty Trust, Endowment and Foundation, Realty, Ltd. - JMB-I, and Endowment and Foundation Realty, Ltd. - JMB-II;
- (f) Any common law trust, corporation or common fund in which JMB Realty, a JMB Subsidiary or other affiliate of JMB Realty is an advisor or investment manager;
- (g) Any general or limited partnership in which one of the persons or entities specified in (a) through (f) above is a general partner; and

(h) Any other entity which, directly or indirectly, is controlled by, or under common control with, any of the persons or entities specified in (a) through (g) above.

Agency acknowledges that PNA is considering formation of the PNA-JMB Partnership and the assignment of PNA's rights and obligations hereunder as Developer to the PNA-JMB Partnership. In contemplation of the formation of the PNA-JMB Partnership, Agency and PNA have negotiated various provisions to this Agreement which shall become effective only if the PNA-JMB Partnership becomes the Developer. Notwithstanding the presence of such provisions in this Agreement, nothing contained herein shall be deemed to confer any rights upon any JMB Entity pursuant to this Agreement and Agency and PNA expressly acknowledge that no JMB Entity shall have any rights hereunder until such time as the PNA-JMB Partnership is formed and PNA assigns its rights and obligations hereunder to the PNA-JMB Partnership. In addition, PNA shall have no obligation under this Agreement to enter into the PNA-JMB Partnership.

The provisions of Subsections B and C of this Section 105.2 shall only be effective if PNA assigns its interests hereunder to the PNA-JMB Partnership.

B. Construction Management Agreement. The Developer has entered into a certain "Construction Management Agreement" with RC, which agreement has been delivered to and approved by the Agency. Pursuant to such Agreement, RC agrees to act as construction manager for the construction of the Retail Center. Developer may provide a substitute construction manager for RC provided that the substitute shall be an entity controlled by John H. Reininga, Jr. and/or Alan M. Roodhouse. As more particularly set forth in such Agreement, RC may be terminated by Developer as the construction manager only for specific defaults or events. If Developer terminates RC under the Construction Management Agreement, Developer shall provide the Agency with an explanation of the basis for such termination and shall, if requested by Agency, provide Agency with a certification that Developer believes in good faith that the termination of RC as construction manager is justified under the terms of the Construction Management Agreement. As between Agency and Developer, such certification shall be conclusive evidence of the propriety of the termination of RC as construction manager, and Agency shall not have the right to question the merits of Developer's decision to terminate RC as construction manager. The provisions of the Construction Management Agreement relating to termination of RC as construction manager shall not be altered without the consent of Agency (although Agency shall not be deemed a third party beneficiary of such provisions). In all other respects, and subject to the provisions of this Agreement and the other agreements between Agency and Developer,

the Construction Management Agreement may be amended without the consent of Agency.

C. Change in Construction Manager. If RC is terminated as the construction manager and such termination is in accordance with the provisions of subsection B above or is otherwise consented to by Agency in writing, then Developer shall be entitled to finish construction itself, so long as a JMB Entity (as defined below) reasonably satisfactory to Agency is then a general partner in Developer, or enter into a construction management agreement for construction of the Retail Center on terms and conditions determined by Developer with an experienced developer (which may or may not be affiliated with JMB) reasonably acceptable to Agency. For this purpose, Agency hereby approves in advance any JMB Entity as a substitute construction manager. If a default occurs in the construction of the Retail Center or in the performance of other duties delegated by Developer to RC under the Construction Management Agreement, Agency shall provide Developer with notice of such default and a reasonable period of time in which Developer can terminate the Construction Management Agreement and substitute a new construction manager. In such event, the Schedule of Performance shall be adjusted appropriately so as to provide reasonable periods for Developer itself or the new construction manager, as the case may be, to finish the tasks previously delegated to RC.

D. Assignments of Partnership Interests. Prior to Close of Escrow, the following provisions shall apply to changes in the constitution of the partners of PNA (after Close of Escrow, the Developer Lease shall control). Notwithstanding any other provision hereof, general partners of PNA may withdraw, new general partners may be admitted to PNA, and limited partners may withdraw from or be admitted to PNA, in each case without the consent of Agency, provided that at all times a "Reininga Entity" is a general partner in Developer.

As used herein, a "Reininga Entity" means PNA, John H. Reininga, Jr. and/or Alan M. Roodhouse, individually, any member of the families of John H. Reininga, Jr. and/or Alan M. Roodhouse, any trust for the benefit of such families or the estates of John H. Reininga, Jr. and/or Alan M. Roodhouse, any general or limited partnership in which one or more of the persons specified above retains control as a general partner and any other entity which, directly or indirectly, is controlled by or under common control with one or more of the persons specified above.

If the PNA-JMB Partnership becomes the Developer, the following provisions shall apply to changes in the constitution of the partners of Developer prior to the Close of Escrow (after the Close of Escrow, the Developer shall

control). Notwithstanding any other provision hereof, general partners of Developer may withdraw, or new general partners may be admitted to Developer, in each case without the consent of Agency, provided that at all times either a "JMB Entity" or "Reininga Entity" is a general partner or Developer.

E. Developer Representative. Alan M. Roodhouse is hereby appointed by Developer as the representative of said entity to be available to the Agency, said appointment to be effective until Developer otherwise notifies Agency in writing, but Roodhouse acting alone shall not have the authority to alter or modify the provisions hereof or otherwise bind Developer. Upon completion of the development provided for hereunder, the Developer shall manage the Retail Center with onsite management authorized to deal with the Agency as provided in the Developer Lease (except that Developer shall not be required to provide the management of businesses of the tenants and concessionaires occupying space within the Retail Center). It is anticipated that RC (or an entity controlled by John H. Reininga, Jr. and/or Alan M. Roodhouse) shall manage the property following completion of construction, but Developer reserves the right to substitute other management, and to change the terms and conditions of management, at any time and from time to time.

F. Disclosure. Upon written request from Agency, the Developer shall identify and disclose the persons and entities having an interest in PNA (or the PNA-JMB Partnership, if such partnership is the Developer,) and shall submit to the Agency such instruments and legal documents necessary to identify such persons and entities. Upon request, PNA (or the PNA-JMB Partnership if such partnership is the Developer) shall submit to Agency certificates specifying information sufficient to allow Agency to determine the ownership interests in Developer and whether any payments made to RC or any other Reininga Entity violate the "anti-speculation" provisions of Section 105.3A hereof. However, neither PNA nor the PNA-JMB Partnership shall be required to provide Agency with a copy of its partnership agreement.

105.3 Prohibition Against Changes in Ownership, Management and Control of Developer

A. Developer's Representation and Acknowledgment. The Developer represents and agrees that its lease of the Developer Tract, the construction of the improvements, and its other undertakings pursuant to this Agreement, are, and will be, used for the purpose of redevelopment of the Project Site and not for speculation in landholding. Developer further recognizes:

(1) the importance of the redevelopment of the Project Site to the general welfare of the community;

(2) the substantial financing and other public aid that have been made available by law and by the Agency for the purpose of making such redevelopment possible;

(3) the fact that a change in ownership or control of the Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degrees thereof, is for practical purposes a transfer or disposition of this Agreement or of the Project Site, as the case may be; and

(4) the Project Site is not to be acquired or used for speculation, but only for development in accordance with this Agreement.

B. General Prohibition. The qualifications and identity of the Developer, its partners and principals, are of particular concern to the Agency. The Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may not be assigned, nor may a transfer prohibited by this Agreement take place without the express written consent of the Agency.

C. Reservation of Rights. Notwithstanding any other provisions hereof, in addition to Developer's and PNA's rights to alter their internal ownership interests as set forth in Section 105.2, the Developer reserves the right at its discretion to join and associate with other entities of a similar reputation, who are reasonably satisfactory to the Agency, in joint ventures, partnerships or otherwise for the purpose of acquiring and developing the Project Site, or portions thereof, provided that Developer will remain fully responsible to the Agency for the performance of this Agreement as provided herein, and further provided that the Agency agrees that such joining or associating does not alter the responsibilities of the Developer.

D. Notification. Prior to the execution and delivery of the Developer Lease (at which time the terms of the Developer Lease shall then govern), the Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the partners in the Developer, PNA, or the shareholders of RC, or other parties associated with the Developer having an interest in this Agreement, or a material change in the degree thereof, of which it or any of its

officers have been notified or otherwise have knowledge or information.

E. Termination by Agency. Until conveyance of the leasehold interest pursuant to Section 206 hereof, and except as provided in this Agreement (including, without limitation, the provisions of Sections 105.2A, 105.2C, 105.2D and 105.3C), this Agreement may be terminated by the Agency as provided in Section 508.2 if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer (other than such changes occasioned by the death or incapacity of an individual and other than changes permitted by the other provisions hereof, including, without limitation, Sections 105.2A, 105.2C, 105.2D and 105.3D hereof), that has not been approved by the Agency, in Agency's sole discretion, at the time of such change. Notwithstanding the foregoing, a change in membership, management or control of Developer shall not be deemed to have occurred so long as a Reininga Entity remains a general partner in Developer. If the PNA-JMB Partnership becomes the Developer, a change in the membership management, or control of Developer shall not be deemed to have occurred so long as either a JMB Entity or a Reininga Entity remains a general partner and Developer.

106 DEVELOPER'S DEPOSIT

A. Delivery of Deposit. Within the time established in the Schedule of Performance (Attachment No. 9), the Developer shall deposit with the Agency cash in the amount of One Million Dollars (\$1,000,000) (which amount may be increased pursuant to Section 204F) (the "Developer's Deposit") or may provide security for said deposit by the delivery of an irrevocable letter of credit, certificate of deposit or other form of security instrument approved by the Agency drawn against the account of Developer at any savings and loan institution or bank (the "Bank") reasonably acceptable to the Agency; provided, however, in the event of the material adverse change in the financial position of the Bank from the date of this Agreement, or if Developer so elects, Developer shall select another bank or lending institution satisfactory to both parties. The effective date of such letter of credit, certificate of deposit or other security instrument shall be extended for such periods of time as necessary to fulfill the requirements of this Agreement until the Developer's Deposit is either returned to the Developer or retained by the Agency pursuant to this Section 106 and Sections 508.1 and 508.2 of this Agreement. The Developer may deliver and maintain the Letter of Credit required under Section 107 as security for the Developer's Deposit hereunder but the amount of the Developer's Deposit shall not be increased (except as provided in Section 204F) irrespective of Developer's delivery and maintenance of a Letter of Credit under Section 107 in excess

of the amount of the Developer's Deposit required under this Section 106 (or Section 204F).

B. Interest on Deposit. The Agency shall be under no obligation to pay or earn interest on the Developer's Deposit (except as otherwise provided under the provisions of Section 107.2B below), but if interest shall accrue or be payable thereon, such interest (when received by the Agency) shall be the property of the Developer and shall be promptly paid to the Developer.

C. Return of Developer's Deposit Upon Close of Escrow the Developer's Deposit shall be returned to Developer (or if the Developer's Deposit is secured by a Letter of Credit or alternate form of security, the alternate security shall be returned to Developer or the Letter of Credit shall be returned to Developer except to the extent it has been drawn upon for Developer's Loan (as defined in Section 201.2)).

D. Termination of Agreement. In the event that this Agreement is terminated by the Agency or the Developer pursuant to Sections, 106E, 508.1 or 508.2 of this Agreement, the Developer's Deposit shall be retained by the Agency (i.e., cash in the amount of Developer's Deposit, if cash is so deposited by Developer, otherwise the Agency shall be entitled to draw upon the Letter of Credit or alternate form of security up to an amount not in excess of the Developer's Deposit and the balance of the Letter of Credit or alternate security shall be immediately returned to Developer) or returned to Developer (together with the Letter of Credit and all other sums or security held by Agency hereunder) as provided in said Sections 106E, 508.1 and 508.2.

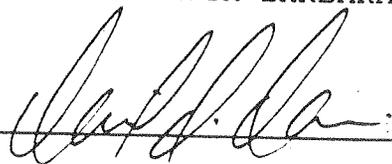
E. Termination by Developer. Developer may, at its election, notify Agency that Developer has elected to terminate this Agreement under the provisions of this Section 106E for the reason that Developer, after making diligent effort to fulfill the covenants, agreements and promises incumbent upon Developer under this Agreement, has determined in good faith that despite such diligent efforts Developer is unable to fulfill such covenants, agreements and promises due to no fault of Agency. Developer shall make such election in writing delivered to Agency, which writing shall state the efforts made by Developer and the grounds for Developer's inability to perform. Upon Developer's election to terminate hereunder, Agency, as its sole and exclusive remedy for Developer's default, shall have the right to retain the Developer's Deposit as liquidated damages pursuant to Section 106F for its own account and without liability to Developer. In such event, Agency may (if cash in the amount of the Developer's Deposit has not already been delivered to Agency) make demand upon the Letter of Credit, as provided in Section 107.3 in the amount of the Developer's Deposit (subject to

Section 201.2H) and after payment of the Developer's Deposit has been received by Agency, Agency shall return the Letter of Credit to Developer, together with all other sums or security held by Agency hereunder.

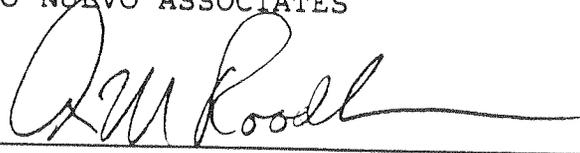
F. Liquidated Damages. THE AGENCY AND THE DEVELOPER, BY THIS AGREEMENT, MUTUALLY AGREE THAT LIQUIDATED DAMAGES MAY BE PAID TO THE AGENCY FROM THE DEVELOPER'S DEPOSIT AS A RESULT OF THE FAILURE OF THE DEVELOPER TO PERFORM THE OBLIGATIONS REQUIRED OF IT UNDER THIS AGREEMENT. THE AGENCY AND THE DEVELOPER MUTUALLY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES TO THE AGENCY IN CASE OF SUCH FAILURES OF THE DEVELOPER, AND THAT THE AMOUNTS SET FORTH IN THIS SECTION 106 AS THE DEVELOPER'S DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES WHICH THE AGENCY WOULD SUFFER. THE RETENTION BY THE AGENCY OF ANY OF SUCH DEPOSIT AS LIQUIDATED DAMAGES SHALL, THEREFORE, BE THE AGENCY'S SOLE AND EXCLUSIVE REMEDY AGAINST THE DEVELOPER IN THE EVENT OF ANY DEFAULT BY DEVELOPER UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT DELIVERED PURSUANT HERETO, AND ANY OF SUCH DEPOSIT RETAINED BY THE AGENCY SHALL THEREAFTER BE THE AGENCY'S PROPERTY WITHOUT ANY DEDUCTION, OFFSET (EXCEPT AS REQUIRED UNDER SECTION 201.2H), OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER. THE MAXIMUM AMOUNT OF LIQUIDATED DAMAGES TO WHICH AGENCY SHALL BE ENTITLED UNDER THIS AGREEMENT IS THE AMOUNT OF THE DEVELOPER'S DEPOSIT (I.E., \$1,000,000 UNLESS INCREASED PURSUANT TO SECTION 204F, SUBJECT TO SECTION 201.2H). IN NO EVENT SHALL AGENCY BE ENTITLED TO LIQUIDATED DAMAGES IN EXCESS OF THE FOREGOING (AND AGENCY SHALL RETURN TO DEVELOPER ALL AMOUNTS OR SECURITY IN EXCESS THEREOF) IRRESPECTIVE OF DEVELOPER'S DELIVERY AND MAINTENANCE OF A LETTER OF CREDIT, UNDER SECTION 107 IN EXCESS OF THE AMOUNT OF THE DEVELOPER'S DEPOSIT.

APPROVED per California Civil Code Section 1677:

REDEVELOPMENT AGENCY OF
THE CITY OF SANTA BARBARA

By:  _____

PASEO NUEVO ASSOCIATES

By:  _____

G. Notice of Intent to Draw on Letter of Credit. In the event Developer delivers a Letter of Credit or other form

of security instrument as security for Developer's Deposit hereunder and Agency is thereafter entitled under this Section 106 to retain the Developer's Deposit as liquidated damages, Agency agrees that it shall give Developer prior written notice of its intent to draw upon the Letter of Credit or other security. Upon receipt of Agency's notice, Developer shall have three (3) business days to tender cash to Agency in the amount of the Developer's Deposit (less the credit described in Section 201.2H(1)), in which event Agency shall return the Letter of Credit or other security instrument to Developer, together with all other sums or security held by Agency hereunder. If Developer fails to timely tender cash as herein provided, Agency shall be entitled to draw upon the Letter of Credit or other security instrument in an amount not in excess of the liquidated damages (less the credit provided in Section 201.2H(1)) and shall return the balance of the Letter of Credit or other security instrument to Developer, together with all other sums or security held by Agency hereunder.

107 DEVELOPER'S LETTER OF CREDIT

107.1 Delivery and Draws

A. Delivery of Letter of Credit. Upon the execution and delivery of this Agreement to Developer by Agency pursuant to Section 900, Developer shall deliver to Agency an irrevocable and unconditional (except for demand) letter of credit, of which Agency shall be beneficiary, issued by the Bank (the "Issuer") in the sum of \$7,780,000 (the "Letter of Credit"). Said Letter of Credit may be drawn upon demand of Agency (which demand Agency agrees not to make unless it is entitled thereto under the terms of this Agreement) in partial draws from time to time for any or, except for a draw under Section 107.1A(2), all of the following:

(1) Developer's one-time payment to Agency in consideration of Agency's agreements herein and contribution toward the Offsite Parking Facilities (the "Developer's Consideration") in the amount of \$7,780,000 (subject to the credits described in 205D) after the conditions precedent to the close of escrow and the conveyance of the Developer Lease have been satisfied in accordance with this Agreement, but only if, pursuant to Section 205D(3), Developer has consented to a draw on the Letter of Credit for the purpose of funding Developer's Consideration;

(2) The Developer's Deposit of \$1,000,000 referred to in Section 106 above, subject to increase pursuant to Section 204F;

(3) The advances to be made from time to time by Developer upon demand of Agency pursuant to the Developer Loan

referred to in Section 201.2 below, in an aggregate amount not to exceed \$2,000,000.

107.2 Expiry Date

A. Extensions of Expiry Dates/Substitute Letters of Credit. The expiry date of the Letter of Credit shall be not earlier than June 30, 1988 (the "First Expiry Date"). If Close of Escrow does not occur and this Agreement is not terminated on or prior to the First Expiry Date, then not later than thirty (30) days prior to the First Expiry Date, Developer shall obtain an extension of the expiry date from the Issuer, or deliver a similar Letter of Credit, with an expiry date (the "Second Expiry Date") the earlier of one year after the First Expiry Date or thirty (30) days following the projected Close of Escrow hereunder. If thirty (30) days prior to the Second Expiry Date the time for full performance of the obligations above has not yet occurred, Developer shall obtain an extension of the Second Expiry Date from the Issuer, or Developer shall deliver another similar Letter of Credit, the expiry date (the "Extended Expiry Date") of either of which shall be not less than thirty (30) days after the projected Close of Escrow hereunder.

B. Failure to Extend Expiry Dates or Deliver Substitute Letters of Credit. If the extensions of the expiry date, or the substitute Letters of Credit, as applicable, are not delivered to Agency at least thirty (30) days before the expiration of the First and Second Expiry Dates of the Letter of Credit held by Agency (as applicable), Agency shall have the right to demand the entire amount of the Letter of Credit and shall thereafter hold the monies received in a segregated interest bearing account (with interest accruing for the benefit of Developer provided Developer directs Agency with respect to the investment of said monies within forty-eight (48) hours after Agency's demand therefor, or if Developer fails to so direct, Agency may hold said monies in any interest bearing account established at an insured bank or lending institution of Agency's choice without liability to Developer as to the amount of interest payable thereunder) in trust under the same terms and conditions as applied to the rights of Agency to make demands under the Letter of Credit, until Developer delivers a substitute Letter of Credit in form similar to the original Letter of Credit, or this Agreement is terminated and either Agency is entitled to draw upon the Letter of Credit or Developer is entitled to the return of the Letter of Credit under this Agreement. All renewals or substitutions of the Letter of Credit described in this Section 107 shall be issued by the Issuer or by a bank or lending institution reasonably satisfactory to Agency in the event of the material adverse change in the financial position of the Issuer from the date of the last issuance, or if Developer selects a new issuer of the Letter of Credit.

107.3 Demands - In General

A. Form of Demand. The Letter of Credit shall provide that it shall be paid on written demand by Agency which contains the substance of one or more of the following statements:

"The Redevelopment Agency of the City of Santa Barbara ("Agency") under that certain Disposition and Development Agreement between Agency and Developer dated _____ (as amended and implemented) is entitled to the sum of \$ _____ pursuant to subsection (refer to (1), (2) or (3), as appropriate) of Section 107.1A of said Agreement."

B. Designation of Purpose of Demand. A demand under each separate subsection shall be separately stated in each demand, so that the amounts being demanded can be allocated to the various obligations referred to in the subsections for which the Letter of Credit has been issued. More than one subsection may be included in a single demand, provided, however, that payment to Agency upon a demand under Section 107.1A(2) above shall release and terminate all other executory obligations of the Issuer under the Letter of Credit.

107.4 Demands Pursuant to Subsection 107.1A(3)

A. Developer's Obligation. Agency's agreement to use the Letter of Credit to secure Developer's obligations under subsection 107.1A(3) (which refers to Section 201.2), rather than requiring Developer to procure an additional Letter of Credit in the amount of \$2,000,000 to secure such obligations is an accommodation by Agency to Developer, based on Developer's promise and agreement that the Letter of Credit (or combination of Letters of Credit) for Agency's benefit will always be maintained (prior to the Close of Escrow or earlier termination of this Agreement) in amounts not less than the amount set forth in subsection 107.1A(1) above unless the Developer's Deposit is drawn. Therefore, if Agency properly makes a demand on the Letter of Credit under 107.1A(3) above, Developer shall, upon written notice from Agency, immediately and without further demand either (i) obtain and deliver to Agency a new Letter of Credit containing similar terms and conditions as the original Letter of Credit except that the amount of the new Letter of Credit shall be the amount or amounts for which Agency has then demanded payment under 107.1A(3) above, (ii) restore the original Letter of Credit to the amount it is required to be without the demand and payment of the amounts called for in 107.1A(3), or

(iii) pay the amounts of the demand by Agency under 107.1A(3) to Agency in cash.

B. Application of Demands Under Section 107.1A(3). Any amounts up to \$2,000,000 paid to Agency by the Issuer of the Letter of Credit or in cash by Developer pursuant to a demand by Agency under 107.1A(3) shall constitute an advance as principal on the Promissory Note (as defined below) under Section 201.2. Notice by Agency to Developer that Agency is demanding payment under 107.1A(3) above shall constitute notice to Developer to restore the Letter of Credit, to provide a new Letter of Credit or cash in the amounts so demanded.

108 AGENCY PARTICIPATION IN PLANNING AND SELECTION OF TENANTS

A. Consultation with Agency and Submission of Marketing Plan

(1) Developer agrees to consult with Agency and seek Agency's comments in planning the quality of tenants, the tenant mix and the merchandise offered in the Retail Center. Developer further agrees to give good faith consideration to Agency's comments. It is understood that the Agency desires a substantial amount of the tenant use in the Retail Center be for the sale of retail goods subject to sales tax, and that certain categories of merchandise be available to the public.

(2) Prior to the leasing of space in the Retail Center, Developer shall submit to Agency for its approval a marketing plan for the mall tenants that conforms with the requirements of Section 17.3 of the REA and which shows the character, quality and representative samples of the types and names of proposed tenants as a goal to the end that the Retail Center maintains the quality, defined in the Scope of Development, and reflects the Agency's comments and desires.

B. Major Department Store Tenants. The Retail Center shall be anchored by two major department stores; Nordstrom and The Broadway. The selection of these two department stores is subject to the rights of Developer to obtain substitutes under the circumstances and as provided for in Sections 206.1A(3) and 206.1B below. Agency shall have the right to approve the terms upon which these two selected major department stores commit to participate in the Retail Center, with the operating covenant contained in the REA being an important factor in the granting of Agency's approval. As used in this subsection B, the terms to which the Majors commit shall be evidenced by (1) Escrow Instructions (or such other documents) executed by each Major whereby each Major agrees to execute and deliver the REA, Parking Agreement, Onsite Parking Covenants, Offsite Parking Covenants, and any separate agree-

ment or other document contemplated by the REA, and to proceed with the preparation of plans and specifications in accordance with Article 5 of the REA, (2) terms included in the lease for each Major and to which the Major has committed to be bound upon Close of Escrow and (3) those certain provisions of the REA which are enforceable by Agency, or actions in the REA which require Agency's approval or consent.

Any agreement entered into prior to the Close of Escrow between the Majors and Agency in connection with this Agreement shall include provisions substantially similar to the following: (i) Agency is executing the Agreement as an accommodation to Developer and the Majors, (ii) Agency shall not be bound to either of the Majors, and neither Major shall be bound to Agency, except upon the Close of Escrow under this Agreement and then only to the extent set forth in the Recordable Instruments and any other agreement entered into and among Agency and the Majors, (iii) prior to the Close of Escrow, any liability of Agency to the Majors shall be limited to costs and expenses that each Major may incur after Agency's delivery of the Notice to Proceed that will be a portion of Developer's Termination Costs under the terms and conditions of Section 204I hereof, (iv) Agency's total liability for Developer's Termination Costs (including the portion thereof allocated to each Major) shall in no event exceed Agency's Maximum Liability, (v) Agency's liabilities and obligations under this Agreement shall not be increased by reason of any such agreement among Agency and the Majors, and (vi) any claim that either or both of the Majors may have, or claim to have, against Agency under this Agreement or under any other agreement by and between Agency and either of the Majors prior to the Close of Escrow shall be expressly limited to such Major's allocable share of the Developer's Termination Costs, and neither Major shall have any further claim against Agency under this Agreement. Notwithstanding the above, Developer shall have no responsibility or obligation for any agreement by and between Agency and either or both of the Majors if Developer is not a party to such agreement, or has not otherwise consented to such agreement.

C. Other Retail Center Tenants. Notwithstanding the foregoing paragraphs, the Agency shall not have the right to approve particular tenants of the Retail Center except the Majors.

SECTION 200 ASSEMBLY AND DISPOSITION OF THE PROJECT SITE

201 ACQUISITION OF LEASE PARCELS BY AGENCY AND CONVEYANCE TO DEVELOPER AND MAJORS

201.1 Acquisition and Lease

A. In accordance with and subject to all the terms,

covenants and conditions of this Agreement, and provided that each Major shall agree to accept the conveyance of its Major Lease concurrently with the conveyance of the Developer Lease to Developer, the Agency agrees to acquire the Lease Parcels (including rights to Appurtenant Parking) by purchase and to convey the Developer Tract to Developer by ground lease. The Developer agrees to accept said conveyance of the Developer Lease, to pay Developer's Consideration to Agency (subject to the "Credits Against Developer's Consideration" contained in Attachment No. 5) as provided herein, and to develop the Lease Parcels on the Project Site into an integrated, multi-use Retail Center for the consideration and subject to the terms, conditions and provisions set forth herein. In addition, Agency shall cause City to execute, acknowledge, record in the Official Records of Santa Barbara County, and deliver to Developer, concurrently with the conveyance of the Developer Lease, an easement over Nonvacated De La Guerra Street for pedestrian and service vehicle ingress and egress, construction, maintenance and repair of utility lines, landscaping and construction, maintenance and repair of nonbuilding improvements ("De La Guerra Easement"). The De La Guerra Easement shall be for a term commensurate with the term of the REA and shall be appurtenant to the Developer Lease.

B. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency shall convey a Major Tract to each Major by ground lease. These separate conveyances are for the purpose of enabling each of the Majors to develop, construct, operate and maintain retail department improvements on their respective Tract in accordance with and pursuant to the REA. It is hereby agreed that after any such conveyance, no rights shall arise in the Agency against any Major, or against its respective Tract as a result of any default or breach of this Agreement with respect to such Tract by any other person except as contained in the Major Lease or the REA. This subsection B does not release Developer from its obligations under this Agreement to develop the entire Retail Center, or to secure two major department stores for the Retail Center.

C. Acquisition costs ("Acquisition Costs") are those costs paid, advanced or deposited by Agency as compensation to owners for the taking or acquisition of their property as set forth in the California Constitution and the California Eminent Domain Law (Code of Civil Procedure §§ 1230.010 et seq.). Acquisition Costs shall not include court costs, attorneys' fees, appraisals, title services, escrow fees, relocation payments, and other benefits to any person or entity located on the Project Site lawfully entitled to such payments, Agency's administrative and overhead costs, and all other soft costs in any way related to the acquisition of such full and partial parcels, and Agency shall be responsible for all such costs.

201.2 Developer Loan to Agency

A. Developer Loan to Fund Agency Acquisition Costs. The funds necessary for the Agency to purchase the Lease Parcels by negotiation and/or eminent domain, which are limited to Acquisition Costs, may come partially from a loan to the Agency by the Developer ("Developer Loan"). The Developer agrees to make such loan funds available to the Agency at the time and in the manner provided herein and Developer's obligations under this Section 201.2 shall survive the Close of Escrow.

B. Conditions to Advances Under Developer Loan. In the event Agency Acquisition Costs exceed \$12,500,000, Developer agrees from time to time as determined by Agency and subject to the conditions herein to make a loan to Agency of additional funds in an amount not to exceed \$2,000,000 needed by Agency for and on account of Agency Acquisition Costs that are in excess of \$12,500,000.

C. Evidence of Developer Loan. The Developer Loan shall be evidenced by a promissory note executed and delivered concurrently with the first demand thereunder pursuant to Section 201.2G below by Agency to Developer in the form attached hereto as Attachment No. 6 (the "Promissory Note"). The interest rate on the Developer Loan shall be ten percent (10%) simple interest.

If the Developer Lease is conveyed to Developer as provided in this Agreement, said loan shall be a special obligation of Agency payable only and solely from monies actually received by Agency on account of the Annual Participation Rent which is otherwise to be paid over to Agency under the Developer Lease and from no other source (except as expressly otherwise provided in the Developer Lease), in which event Agency shall not be liable or obligated to repay the Promissory Note from any other funds, revenues, assets or monies. At the Close of Escrow, Agency shall execute, acknowledge and deliver to Developer an assignment of rents ("Assignment of Rents") assigning to Developer all of Agency's right, title and interest in the Annual Participation Rent due and payable under the Developer Lease as security for the Promissory Note. The Assignment of Rents shall be recorded in the Official Records of Santa Barbara County at the Close of Escrow. In the event escrow does not close for any reason and the Developer Lease is not conveyed to Developer hereunder, the method, amount and source of repayment described under this Section 201.2C shall not apply, Agency shall not deliver the Assignment of Rents to Developer, and the Promissory Note shall be repaid in accordance with Section 201.2H below. In no event shall the Promissory Note be an obligation of the City, the State of California, or any other public entity.

Agency may, without consent or premium, prepay all or any portion of the Promissory Note at any time.

D. Intentionally Omitted.

E. Security for Developer's Loan Obligation. In order to secure Developer's agreement to make the Developer Loan, Developer shall deliver to Agency the partial draw irrevocable and unconditional (except for demand) Letter of Credit referred to in Section 107 issued by the Bank, or a bank or lending institution reasonably satisfactory to Agency. Provided Agency has delivered the Promissory Note to Developer, \$2,000,000 of the amount of that Letter of Credit shall be the amount that is security for the promise to make said loan and shall be available for a proper demand by Agency pursuant to the terms of this Agreement.

F. Pledge of Tax Increment. Concurrently with the delivery to Developer of the Promissory Note and as a condition precedent to any advances to Agency thereunder, Agency shall deliver to Developer in form reasonably satisfactory to Developer a pledge by Agency of the tax increment allocated to Agency under the Redevelopment Plan, or other security satisfactory to Developer, as security for the timely payment to Developer of any principal advanced and interest accruing ("Note Indebtedness") under the Promissory Note if this Agreement is terminated prior to the conveyance of the Developer Lease. Such pledge shall be subject and subordinate to the pledges of such tax increment pursuant to the Santa Barbara Redevelopment Agency Tax Allocation Bond Issue Series A, Santa Barbara Redevelopment Agency Tax Allocation Bond Issue Series B and Santa Barbara Redevelopment Agency Tax Allocation 1987 Subordinated Bonds to be issued by the Agency, and any amount of tax increment which the Agency is by law required to set aside and apply to purposes specified by law (e.g., 20 percent low and moderate set aside). Concurrently with the conveyance of the Developer Lease to Developer, the pledge shall be null and void, the instrument of pledge endorsed by Developer as cancelled and released, and returned to Agency by Developer concurrently with the alternate security and pledges required under this Agreement. The Promissory Note shall contain a provision whereby Agency, prior to the Close of Escrow under this Agreement, shall be liable in accordance with this Agreement for Note Indebtedness irrespective of its pledge of tax increment hereunder and that Developer shall be entitled at its option to proceed to collect Note Indebtedness against any other assets of Agency, subject to Section 201.2C above, and Developer shall not be limited to the tax increment for such repayment.

G. Notice of Demand. Agency shall from time to time notify Developer in writing as to (1) the amount of costs and expenses incurred and reasonably anticipated by Agency on

account of Agency Acquisition Costs and the amount of funds expended by Agency on their account and (2) the current acquisition budget and sources of funds (including the Developer Loan) demonstrating that the specified sources of funds are adequate to fund the acquisition budget. Not less than ten (10) calendar days prior to demanding an advance under the Promissory Note, Agency shall advise Developer of the amount of the advance to be demanded and shall execute and deliver the Promissory Note. At any time during which the current acquisition budget and its sources of funds are in balance, Agency shall be entitled to make a demand for an advance (which may be in anticipation of its need), but shall not be entitled to receive any advance until Agency has first spent, paid or deposited, the aggregate amount of \$12,500,000 for and on account of Acquisition Costs and Agency has waived or satisfied by written notice to Developer (contained in the Notice to Proceed or otherwise) the Agency Conditions set forth in Section 204A(2). Not later than the expiration of said ten (10) calendar days after such demand, Developer shall advance in cash the amount demanded by Agency (the aggregate of which shall not exceed \$2,000,000). Nothing contained in this Section 201.2G shall appear as a condition to the Issuer's otherwise unconditional obligations in the Developer's Letter of Credit (nor shall the right of Agency to have an unconditional Letter of Credit from the Issuer thereof constitute a waiver by Developer of any rights it may have against Agency if Agency improperly makes a demand under the Letter of Credit and receives an improper advance).

H. Advances Prior to Termination of Agreement. If pursuant to this Section 201.2 Developer or the Issuer of the Letter of Credit has made any advances or payments to Agency (or Agency has incurred indebtedness for which it would otherwise be entitled to receive an advance from Developer or payment from Issuer, in which case Agency shall still be entitled to receive such advance or payment provided such indebtedness or obligation is incurred prior to the date of termination of this Agreement) and this Agreement is terminated prior to conveyance of the Developer Lease, the monies so advanced or paid shall constitute an advance as principal under the Promissory Note and such note shall be paid as follows:

(1) If this Agreement is terminated by Agency because of Developer's Default, the amounts owing under the Promissory Note and the terms of payment thereof shall be as follows: the Note Indebtedness under the Promissory Note shall be credited and reduced to the extent that the Note Indebtedness equals but, does not exceed the amount specified for the Developer's Deposit under Section 106 (referred to herein as Credits Against Developer's Consideration and described in Attachment No. 5), in which case the Developer's Deposit shall be deemed paid (if not already paid in cash by Developer) and, the Letter of Credit shall not be drawn upon

for such Developer's Deposit; any Note Indebtedness balance remaining on the Promissory Note after such credit and reduction, if any, shall be paid in annual payments of \$200,000 per year including principal and interest until fully paid, the first payment of which shall commence on the first anniversary date of the termination of this Agreement. The amount by which the amount of Developer's Deposit exceeds the Note Indebtedness shall remain as Developer's Deposit under the provisions of Section 106 and Section 204 subject to their respective terms.

(2) If this Agreement is terminated: (i) by Developer because of Agency's Default; or (ii) by Developer or Agency as a result of Agency's failure to acquire all of the Project Site (including Agency's inability to acquire the Acquisition Parcels by purchase upon terms and conditions satisfactory to Agency or its subsequent failure or refusal to adopt a Resolution of Necessity and either party exercises its right to terminate this Agreement pursuant to Section 201.3.C, or having adopted such a Resolution, Agency's failure to institute or prosecute a condemnation suit with respect to such Acquisition Parcels, or for any reason other than Developer's Default after Agency delivers the Notice to Proceed under Section 204); or (iii) by Agency or Developer for any other reason not a default by either party hereunder, then the Note Indebtedness under the Promissory Note shall be paid promptly upon the receipt by Agency of any monies (e.g., return of deposits, consideration or damages) in connection with Agency's negotiation, acquisition or condemnation of the Acquisition Parcel(s). Agency will exercise best efforts to dispose of such Acquisition Parcels by sale, lease or other disposition or refinance as soon as possible after termination of this Agreement in order to pay in full such Note Indebtedness. The balance, if any, of the Note Indebtedness remaining after the application of the proceeds of the sale, lease or other disposition or refinance of the Acquisition Parcels shall be paid in not more than nine (9) equal annual installments of principal and interest, provided that no installment of principal and interest shall be less than Two Hundred Thousand Dollars (\$200,000). The first annual installment shall be due on the first anniversary date of the termination of this Agreement and similar installment payments shall be due on each succeeding anniversary date until all principal and interest have been paid in full; provided, however, that all unpaid principal and all accrued but unpaid interest due under the Promissory Note shall be due and payable not later than the ninth anniversary date. Agency's obligations under this Section 201.2H(2) shall continue to be secured in accordance with Section 201.2F above.

(3) For the purpose of this Section 201.2, "Developer's Default" and "Agency's Default" shall mean one or more failures or delays by Developer or Agency (as the case may be)

to perform any term or provision of this Agreement incumbent upon it to be performed (and which remains uncured after notice thereof) pursuant to Section 501.

I. Indebtedness. From and after the date of delivery to Developer, the Promissory Note shall constitute indebtedness of the Agency pursuant to California Health and Safety Code Sections 33670(b) and 33675.

201.3 Acquisition by Negotiation or Eminent Domain

A. Acquisition by Negotiation. Agency shall take all necessary and appropriate steps to attempt to negotiate the acquisition of the properties constituting the Lease Parcels upon terms mutually satisfactory to Agency and the property owners, and to relocate the occupants thereon in a timely manner compatible with the Schedule of Performance, subject to the restrictions and requirements of law governing the actions and procedures of the Agency in the acquisition of property and the relocation of displaced persons therefrom.

B. Acquisition by Eminent Domain. If Agency is unable to acquire by negotiation all properties and property interests comprising the Lease Parcels, Agency shall use its best efforts to implement the procedures required by law to consider the necessity of exercising Agency's right of eminent domain concerning the properties it is unable to acquire by negotiation. Nothing contained herein shall be construed to mean that Agency is agreeing or has agreed to exercise the right of eminent domain, which right shall be exercised only in the sole discretion of Agency and only after Agency has established pursuant to law that:

(1) The public interest and necessity require the development;

(2) The development is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; and

(3) The property sought to be acquired is necessary for the development.

In the event Agency adopts a resolution of necessity pursuant to Code of Civil Procedure 1245.210 et seq. concerning properties not acquired by negotiation, Agency shall provide Developer within the time set forth in the Schedule of Performance, a written schedule of its proposed activities (and the timing thereof) with respect to the condemnation of said properties and shall revise said schedule as necessary from time to time to perform its obligations under this Agreement within the times set forth in the Schedule of Perfor-

mance. Agency agrees that it shall exercise due diligence and best efforts to take the legal steps necessary to comply with the schedule in effect from time to time.

C. Property Not Acquired by Negotiation or Eminent Domain. In the event Agency is unable to acquire a property which would otherwise comprise a portion of the Lease Parcels by negotiation and does not determine to exercise its right of eminent domain for such property, Agency and Developer shall negotiate in good faith to determine whether or not the development contemplated by this Agreement can proceed without such property and the terms and conditions mutually acceptable to both parties upon which this Agreement might be modified or amended if the development is to proceed. If Agency and Developer are unable to come to a mutually satisfactory agreement under such circumstances within a reasonable time, then either party, upon written notice to the other, shall have the right to terminate this Agreement pursuant to Section 508.2C.

D. Filing and Prosecution of Condemnation Actions. If Agency does determine to exercise its right of eminent domain, it shall promptly file its condemnation actions and shall exercise due diligence and best efforts in its prosecution to final judgment of all such condemnation actions.

E. Agency's Obligation Prior to the Notice to Proceed. Prior to Agency's delivery of the Notice to Proceed pursuant to Section 204, Agency shall not be required to negotiate for the acquisition of or acquire any property, or file or prosecute an eminent domain action therefor (after a resolution of necessity is adopted by Agency), or relocate occupants therefrom, unless and until the condition in Section 204A(2) is satisfied or waived. If Agency delivers to Developer the Notice to Proceed pursuant to Section 204, Agency agrees to thereafter acquire title to all of the Lease Parcels and such agreement shall constitute a covenant of Agency hereunder, subject to Section 204.

202 FORM OF DEVELOPER LEASE AND MAJOR LEASE

At the time provided for hereinafter, Agency and Developer shall execute, Agency shall deliver to Developer, and Developer shall accept that certain ground lease in the form attached hereto and incorporated herein as Attachment No. 7 (the "Developer Lease"). At the time provided for hereinafter, Agency and each Major shall execute, Agency shall deliver to each Major, and each Major shall accept that certain ground lease in the form attached hereto and incorporated herein as Attachment No. 8 (individually the "Major Lease" and collectively the "Major Leases"). The Commencement Date of the Developer Lease and each Major Lease shall be the date that the Memorandum of Lease hereinafter referred to is

recorded, and the parties shall insert the date or authorize the Escrow Agent to insert that date in the Developer Lease and each Major Lease. The Developer's Consideration of \$7,780,000 (subject to the credits set forth in 205D) shall be paid to the Agency concurrently with delivery of the Developer Lease and the Major Leases. Concurrently with the delivery of the Developer Lease, Agency shall deliver to Developer the De La Guerra Easement duly executed and acknowledged by City in form and substance satisfactory to Developer.

203 ACQUISITION OF REHABILITATION PARCELS BY DEVELOPER

If Developer obtains a lease of the Rehabilitation Parcels as described in Section 104.2, and an agreement from the owners of the Ott and Parma Parcels to convey fee title to Parcel 5 thereof as described in Section 104.2, then Agency's obligation to acquire and convey the Lease Parcels shall be modified to include the altered configuration of Acquisition Parcels 2 and 5 as described in Section 104.2.

204 AGENCY CONDITIONS

A. Satisfaction of Agency Conditions. The commitment and obligation of Agency to convey the Lease Parcels to Developer are expressly contingent upon the following conditions (the "Agency Conditions") being fulfilled to the satisfaction of Agency:

(1) that Agency is able to acquire title to the Lease Parcels and is able to acquire title to all Lease Parcels within the time required by this Agreement; and

(2) that the Agency's Acquisition Costs will not exceed Sixteen Million Five Hundred Thousand Dollars (\$16,500,000).

B. Agency's Notice to Proceed; Confirmation of Majors.

(1) The Agency Conditions in Section 204A(1) and (2) above shall not be deemed fulfilled or waived by Agency unless and until Agency shall deliver in writing to Developer a notice (the "Notice to Proceed") which shall state substantially as follows:

"Agency hereby declares that the Agency Conditions set forth in Section 204 of the Disposition and Development Agreement have been fulfilled to the satisfaction of Agency or are otherwise hereby waived, and Agency elects to proceed without the benefit of such conditions."

(2) In the event Agency delivers the Notice to

Proceed on or before Date 2 but after Date 1 (as those dates are defined in Section 204E) and either Major, having originally been committed, is not then contractually committed to participate as a Major in the Retail Center as a result of the delay in the delivery of the Notice to Proceed, then Developer shall have a period of sixty (60) days following its receipt of the Notice to Proceed to obtain written confirmation that both Majors will participate in the Retail Center upon the terms set forth in the Major Leases approved by Agency and will perform within the time frames set forth in the Schedule of Performance (or such new time frames as agreed by the parties). If Developer is unable to obtain such written confirmation within said period, then Developer may elect to terminate this Agreement in the manner provided in Section 204E.

C. Developer's Notice of Dispute.

(1) Within ten (10) days after receipt by Developer of the Notice to Proceed, Developer may deliver to Agency a written notice to Agency entitled "Notice of Dispute to Notice to Proceed" (hereafter referred to as the "Notice of Dispute"), which notice shall make specific reference to this Section 204C and shall state in substance that Developer, upon knowledge and information then available to it, does not believe that Agency Conditions described in Sections 204A(1) and A(2) above can be fulfilled. Upon receipt of the Notice of Dispute, Agency shall promptly supply to Developer such documentation and information that is available to Agency which Agency claims supports the fulfillment of the disputed Agency Condition(s). The parties shall promptly meet and confer concerning such matters, during which Developer shall state in writing the knowledge and information it has and upon which it has formed its belief and reasonable conditions and evidence under and upon which it would withdraw its Notice of Dispute.

(2) Developer shall in any event withdraw its Notice of Dispute if there is reasonable evidence that Agency has or will have sufficient unencumbered funds or assets (which assets may include the properties to be acquired by Agency pursuant to this Agreement reasonably valued at their anticipated fair market value) from which to pay the amount of Agency's Maximum Liability under this Section 204, to repay the Developer Loan and the liquidated damages under Section 508.1D if Agency should be in default for failure to fulfill its obligation to deliver title to the Lease Parcels, including the Appurtenant Parking; provided, however, Developer shall not be obligated to withdraw its Notice of Dispute if the first Public Parking Facility is not under construction in accordance with phasing requirements established by the City Director of Public Works. Agency shall be allowed a reasonable time to pursue action and supply evidence

to eliminate Developer's challenge.

(3) If there is no reasonably substantial basis upon which the Notice to Proceed can be sustained or Developer cannot be obligated to withdraw its Notice of Dispute, the Notice to Proceed shall be deemed withdrawn and ineffective; provided, however that such shall not prejudice the right of Agency to deliver other and further Notices to Proceed (which shall similarly be subject to this subsection). If, however, the Notice to Proceed has a reasonably substantial basis and the fulfillment of Agency Conditions described in Section 204A(1) and A(2) can be reasonably predicted as probable, then the Notice to Proceed shall be deemed valid and effective, and Developer shall proceed accordingly.

(4) The Notice to Proceed by Agency shall be valid and enforceable if: (a) Developer does not deliver the Notice of Dispute to Agency within said 10 day period, (b) Developer is unreasonable in its challenge to said Notice to Proceed, (c) Developer does not meet and confer, or state in writing the evidence under which it would cease such challenge, or (d) Developer does not withdraw its Notice of Dispute when required to do so.

(5) If Agency fails or refuses to deliver a Notice to Proceed on the basis that the Acquisition Costs will exceed the amount set forth in Section 204A(2), Agency shall deliver to Developer an accounting in reasonable detail and such information, reports and appraisals reasonably requested by Developer to evidence the failure of such condition.

(6) The Notice to Proceed shall not waive Developer's obligations, subject to the conditions thereto, to make the Developer Loan described in Section 201.2 if called upon by Agency for acquisition of the Project Site which will continue to constitute both an obligation by Developer and condition to Agency's obligation to acquire the Project Site and fulfill other conditions and convey the Developer Lease to Developer, if applicable. Developer shall have the same rights to an accounting described in paragraph (5) above, if Agency elects to draw upon the Developer Loan.

D. Agency's Due Diligence Obligation. Agency agrees that it will exert due diligence and its best efforts to fulfill the conditions with respect to which it is able to take action (but is not undertaking or warranting that it will be able to fulfill such conditions) and to determine in good faith as to whether or not it is satisfied that the Agency Conditions have been fulfilled; provided, however, once a Notice to Proceed is delivered, pursuant to Section 204B, such Notice shall constitute Agency's covenant to deliver title to all the Lease Parcels (and provide the Appurtenant Parking) to Developer in accordance with this Agreement and subject to

this Section 204.

E. Termination of Agreement Prior to Delivery of the Notice to Proceed. For the purpose of this Agreement "Date 1" shall be defined as the date which is 8 months from the Effective Date of this Agreement, unless Developer advances Date 1 pursuant to Section 204F immediately below, in which event Date 1 shall be the date specified by Developer. This Agreement may be terminated by written notice delivered to the other party: (1) by Developer if the Notice to Proceed is not delivered by Date 1 (2) by Developer, at any time after Date 1 and prior to Date 2, if a Notice to Proceed has not been delivered or if a Notice to Proceed is delivered within such period and Developer is unable to procure the written commitment of the Majors as described in Section 204B; or (3) by either Agency or Developer if the Notice to Proceed is not delivered by one year after Date 1 ("Date 2").

In the event of the termination of this Agreement pursuant to this Section 204E, the Developer's Deposit shall be returned, together with all other funds or security held by Agency under this Agreement, and the Developer Loan repaid in accordance with Section 201.2H(2).

F. Developer's Advancement of Date 1. By written notice to Agency delivered not less than 30 days before the date selected, Developer may advance Date 1 to a date earlier than 8 months from the Effective Date, but in no event shall Date 1 be a date earlier than 6 months from the Effective Date. In the event that Developer advances Date 1 as provided herein, the amount of Developer's Deposit in Section 106 shall be increased to Two Million Five Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars (\$2,566,666).

G. Renegotiation. If the Agency Conditions under Section 204A(1) above cannot be fulfilled only for the reason that title to minor portions of the Lease Parcels cannot be acquired for the reasons stated therein, the provisions of Section 201.3C shall apply.

H. Agency's Acquisition of Acquisition Parcels After Termination

(1) If this Agreement is terminated: (i) by either Developer or Agency under Section 204E as a result of the failure of the Agency Conditions in Sections 204A(1) or (2); or (ii) by Agency in accordance with Section 204I, and within two (2) years thereafter title to the Lease Parcels is acquired by Agency, Agency shall promptly notify Developer in writing that title to the Lease Parcels has been acquired by Agency. Within ninety (90) days after delivery of said notification to Developer, and provided that Developer is still in business as a viable ongoing enterprise and its

financial condition since the execution of this Agreement has not suffered a material adverse change, Developer shall have the right to elect in writing delivered to Agency to negotiate exclusively with Agency concerning the possible disposition by Agency of the property so acquired for a period of two hundred seventy (270) days commencing after delivery of said election to Agency. During such period, Agency agrees to have its staff personnel meet with Developer at reasonable and convenient times to discuss and negotiate concerning the disposition of the properties, and, except as specifically provided below, nothing contained herein shall be construed as an obligation of Agency to enter into any agreement with Developer concerning disposition of the property or to agree to negotiate with Developer concerning possible disposition of the property after the expiration of the two hundred seventy (270) day period.

(2) Notwithstanding the foregoing, if the Agreement is terminated by Agency or Developer in accordance with Section 204I after Agency delivers the Notice to Proceed, and Agency thereafter acquires the Lease Parcels within two (2) years, then Developer shall have the right (to the extent authorized or permitted by applicable laws, rules, regulations and procedures) to reinstate its rights and obligations under this Agreement (and the other agreements provided hereunder), provided that Developer is still in business as a viable ongoing enterprise and its financial condition since the execution of this Agreement has not suffered a material adverse change. Upon reinstatement the rights and obligations of the parties shall be reinstated, provided that the Schedule of Performance (and other time frames set forth herein) shall be extended for a reasonable time to enable the parties to comply with the intent of such agreements, and upon such election Developer shall return to Agency any amounts Agency paid to Developer under Section 204I below except to the extent the Agency's delay increased the costs to Developer to close escrow and prepare for and proceed with the development of the Lease Parcels and financing related thereto.

I. Failure of Agency to Acquire Lease Parcels Subsequent to Notice to Proceed.

(1) If Agency delivers the Notice to Proceed referred in Section 204B above and thereafter, after exercising due diligence and best efforts, Agency fails to acquire the Lease Parcels, and/or is unable to convey the Developer Lease for reasons beyond Agency's control, then Agency may terminate this Agreement (subject to Notice of Extension as provided in subsection J); provided that upon termination Agency shall (a) return Developer's Deposit under Section 106 and the Letter of Credit delivered to Agency under Section 107; (b) pay the Developer Loan in accordance with Section 201.2H(1); (c) pay liquidated damages under Section 508.1D;

and (d) pay promptly to Developer after request (the "Request") an amount (the "Developer's Termination Costs") equal to all costs and expenses (or the applicable portion thereof) incurred by Developer and the Majors after delivery of the Notice to Proceed which are related to the Retail Center and in furtherance thereof, including without limitation, but subject to the maximum aggregate limitation of the Agency's Maximum Liability:

(a) the obligations (including early termination fees and damages) incurred to architects, engineers and designers in connection with the preparation of the Retail Center Final Working Drawings (defined in Section 304), landscaping plans (described in Section 303), and the procurement of and compliance with Development Approvals (defined in Section 214);

(b) the obligations incurred to accountants, attorneys and financial consultants in the implementation of this Agreement, including the negotiation and documentation of agreements related thereto and the prosecution of Developer's rights thereunder;

(c) the obligations (including early termination fees and damages) incurred on account of standby fees, points, loan preparation costs, brokerage fees, appraisal and survey and title fees, attorneys' fees and all other fees and costs related to the procurement of funds in furtherance of the Retail Center, including the cost of maintaining Developer's Letter of Credit, including renewals or extensions thereof, after the Notice to Proceed;

(d) the obligations (including early termination fees and damages) incurred to accountants, attorneys, consultants, architects, engineers, designers and other professionals in connection with the negotiation and implementation of agreements between the Developer and the Majors and the Developer and the Mall Tenants with respect to the Retail Center;

(e) the obligations (including early termination fees and damages) incurred on account of marketing costs and expenses, including leasing brokerage fees;

(f) the \$200,000 extension deposit, if paid pursuant to Section 206.1B(3);

(g) all other costs, expenses, and fees incurred in complying with this Agreement after delivery by Agency of the Notice to Proceed; and

(h) interest on Developer's Termination Costs from the date of expenditure to date of receipt by Developer at the Reference Rate referred to in the Developer Lease plus 350 basis points.

The Developer's Termination Costs for which Agency shall be liable under this subsection I shall not exceed Four Million Eight Hundred Fifty Thousand Dollars (\$4,850,000) (the "Agency's Maximum Liability") and shall be subject to subsection J below. Developer's Termination Costs shall constitute indebtedness of Agency under California Health and Safety Code Sections 33670(b) and 33675.

(2) Concurrently with the Request, Developer shall fully and faithfully account to Agency for the amounts claimed pursuant to the Request, and shall submit with the Request reasonable evidence of the costs and expenses constituting the Request and the bona fides of the incurred obligations. Agency and Developer agree to meet, consult and cooperate concerning any disputes arising out of the Request, the obligations claimed to have been incurred thereunder and the evidence to be submitted in support thereof.

(3) As Developer's sole remedy for Agency's Default hereunder and termination of this Agreement, Developer shall be entitled to the return of Developer's Deposit under Section 106 and Letter of Credit delivered under Section 107, the payment of the Developer Loan in accordance with Section 201.2H(2), Developer's Termination Costs and liquidated damages under Section 508.1D(1)(b). Except as provided for in this subsection I and Section 508.1D, Agency shall have no other liability or obligation to Developer upon termination of this Agreement pursuant to this subsection I.

J. Mitigation Notice.

(1) If Agency delivers the Notice to Proceed and thereafter, after exercising due diligence and best efforts, Agency determines in good faith that, notwithstanding the delivery of the Notice to Proceed, the Agency is unable to acquire title to the Lease Parcels for reasons beyond the control and due to no fault of Agency within the time allowed in this Agreement for conveyance of the Developer Lease, subject to the extension provided below, then Agency may deliver written notice to Developer (the "Mitigation Notice") terminating this Agreement, subject to extension as provided in Section 204J(3) below. Agency's Mitigation Notice shall supply Developer with such documentation and information that is available to Agency to support the Mitigation Notice, including specific reference to this subsection and the specific information and belief upon which Agency has relied in delivering the Mitigation Notice, and the projected date

upon which Agency could deliver the Lease Parcels pursuant to this Agreement, if at all.

(2) Upon receipt of the Mitigation Notice, Developer's obligations to perform under this Agreement shall be suspended and, provided Agency complies with the foregoing, Developer shall take all reasonable measures to mitigate the amount of Developer's Termination Costs (including the Major's costs) for which Developer will make a claim for payment from Agency, and to refrain from incurring any further costs or expenses that Developer would claim as constituting a portion of the Developer's Termination Costs. Notwithstanding the foregoing, this provision shall not be interpreted to limit any obligations or damages (including defense costs) resulting from the termination of then existing contractual obligations of Developer or the Majors.

(3) If the inability of Agency to acquire title to the Lease Parcels results solely from Agency's failure to acquire same within the time required in this Agreement, but Agency will be able to acquire title within the time set forth in the Mitigation Notice, then Developer, in its sole discretion, may extend the time within which Agency must deliver the Lease Parcels to the projected date set forth in Agency's Mitigation Notice or a date reasonably calculated to carry out this Agreement by written notice (the "Notice of Extension") to Agency within thirty (30) days following Developer's receipt of the Mitigation Notice. If so extended by Developer, the Agency's Mitigation Notice shall be rendered null and void and Agency shall continue to perform hereunder and use due diligence and best efforts to acquire and deliver the Lease Parcels to Developer within the time set forth in Developer's Notice of Extension.

K. Agency's Covenant. Agency covenants and agrees that it shall not convey, mortgage, pledge, hypothecate or otherwise encumber the Lease Parcels acquired or which may be acquired by Agency or the funds which may be used for acquisition thereof until Close of Escrow or earlier termination of this Agreement. This provision shall not constitute a servitude, lien or charge upon the Lease Parcels which servitude, lien or charge shall only be created pursuant to a separate written agreement executed by Agency and the beneficiary thereunder.

205 ESCROW

A. Escrow Opening and Escrow Instructions.

(1) Agency and Developer agree to open an escrow for the conveyance of the leasehold estate in the Lease Parcels with an escrow agent mutually satisfactory to the parties (the "Escrow Agent") within the time set forth in the

Schedule of Performance (Attachment No. 9). This Agreement constitutes the joint escrow instructions of the Agency and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

(2) The Agency and the Developer shall provide such additional escrow instructions consistent with this Agreement as shall be necessary. The Escrow Agent hereby is empowered to act under this Agreement, and upon indicating its acceptance of this Section 205 in writing, delivered to the Agency and the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

B. Recordable Instruments. Prior to Close of Escrow, and in accordance with the Schedule of Performance, Agency and Developer shall respectively execute, or cause to be executed, as appropriate (and in a manner qualified for recording) and deposit with Escrow Agent: the Memorandum of Developer Lease, the REA, the Parking Covenants, the Major Leases (or Memorandums thereof), the De La Guerra Easement and all other documents required to be recorded hereunder (all of which are referred to collectively as the "Recordable Instruments").

In addition, Developer and Agency shall deposit executed copies of the Parking Agreement and the Cooperation Agreement.

At Close of Escrow the Escrow Agent shall record the Recordable Instruments in accordance with these escrow instructions and shall buy, affix, and cancel any transfer stamps required by law. Any insurance policies covering the Lease Parcels are not to be transferred.

C. Delivery of Necessary Documentation. Subject to the fulfillment and satisfaction of the conditions precedent as otherwise set forth in this Agreement, Agency and Developer agree to and shall deliver to the Escrow Agent all documents necessary for the conveyance of the property interests in the Lease Parcels pursuant to Sections 205-211 in conformity with, within the times, and in the manner provided in this Agreement, and to satisfy all conditions precedent to conveyance required under Section 206 of this Agreement.

D. Developer's Share of Escrow Expenses and Deposits into Escrow. The Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs after the Escrow Agent has notified the Developer of the amount of such fees, charges, and costs, but in any event not later than one (1) day prior to the scheduled date for the conveyance of the leasehold in the Lease Parcels:

- (1) One-half of the escrow fee;

(2) The portion of the premium for the title insurance policies to be paid by the Developer and the Majors as set forth in Section 211 of this Agreement; and

(3) Provided that the condition precedents set forth in Section 206A to the Close of Escrow have been fulfilled, the Developer's Consideration of \$7,780,000, which amount shall be reduced by the credits described in Attachment No. 5 hereto and any other credits as the parties shall agree by written agreement executed prior to the conveyance of the leasehold in the Lease Parcels. If Developer deposits all or a portion of the foregoing amounts into escrow in cash, Agency shall concurrently deliver a credit in the amount of such cash deposit to Developer and the Issuer of the Letter of Credit held by Agency under Section 107 above, and the Letter of Credit shall be reduced accordingly and returned to Developer if Developer's obligations under Section 107.1 have been fulfilled. If Developer does not timely make the deposit in cash, Agency shall have the right (only with the prior written consent of Developer) but is not obligated to demand a draw against the Letter of Credit in the foregoing amount. If Agency does demand the draw on the Letter of Credit and receives the consent of Developer to such draw, Agency shall deposit the amount drawn into the escrow on account of the amount herein required of Developer. In the event Developer does not so deposit Developer's Consideration (less any appropriate credits), Developer shall be deemed to have failed and refused to close escrow and shall be in default under this Agreement, unless Developer reaffirms in writing its commitment and intention to construct and operate the Retail Center as provided in this Agreement and consents to the draw upon the Letter of Credit and the use of the proceeds of the draw as its required deposit.

E. Agency's Share of Escrow Expenses. The Agency shall pay in escrow to the Escrow Agent the following fees, charges, and costs promptly after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not later than one (1) day prior to the scheduled date for conveyance:

- (1) One-half of the escrow fee;
- (2) Costs necessary to place the title in the condition required by the provisions of this Agreement;
- (3) Recording fees;
- (4) Notary fees;

(5) The portion of the premium for the title insurance policies to be paid by the Agency as set forth in Section 211 of this Agreement;

(6) Ad valorem taxes, if any, upon the Lease Parcels for any time prior to conveyance of title; and

(7) Any state, county, city or other documentary stamps and transfer taxes.

The Agency, as provided in Section 209, shall timely and properly execute, acknowledge and deliver (or cause the City to execute, acknowledge and deliver as required under this Agreement) the Developer Lease, the Major Leases and the necessary Memorandums of Lease conveying to Developer and to the Majors the leasehold interests in their respective Tracts in accordance with the requirements of Section 208 of this Agreement, together with an estoppel certificate certifying that all acts necessary to entitle the Developer to such conveyance have been completed, if such be the fact, as well as all other Recordable Instruments and agreements required to be delivered under Section 205B.

F. Escrow Agent's Obligations. The Escrow Agent is authorized, after all conditions to Close of Escrow are waived or satisfied, to:

(1) Pay, and charge the Agency and the Developer respectively, for any fees, charges and costs payable under this Section 205 of this Agreement. Before such payments are made, the Escrow Agent shall notify the Agency and the Developer of the fees, charges and costs necessary to clear and convey the leasehold.

(2) Record the Recordable Instruments delivered through this escrow (or a concurrent escrow if applicable) if necessary or proper to vest the leasehold and other rights, including without limitation the Appurtenant Parking and the other appurtenant rights set forth in the Recordable Instruments, in the Developer and the Majors in accordance with the terms and provisions of this Agreement.

(3) Disburse funds and deliver the Leases and Memorandums of Lease, and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the Agency and the Developer. The deposit of the Developer's Consideration (reduced by the credits described in Section 205D), other consideration, or proof of other consideration, as the case may be, shall not be disbursed by the Escrow Agent to the Agency unless and until it has recorded the respective Memorandums of Lease pertaining thereto, the Recordable Instruments and other instruments required as conditions to the Close of Escrow and has delivered to the

Developer and Majors a title insurance policy insuring title acceptable to the Developer and its lender and the Majors and respective leasehold mortgagees which conform to the requirements of Section 211 of this Agreement.

(4) Return the Developer's Letter of Credit (or alternate security deposited in lieu thereof), or the balance thereof to Developer, subject to Section 205D above.

Recordation of the Recordable Instruments by the Escrow Agent in accordance with its obligations herein shall be "Close of Escrow" as referred to in this Agreement.

G. Escrow Account. All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in an interest-bearing general escrow account or accounts with any state or national bank doing business in the State of California, with interest accruing for the benefit of the depositing party. Such funds may be transferred to any other such general escrow account or accounts upon similar conditions. All disbursements shall be made on the basis of a thirty (30) day month.

H. Termination of Escrow.

(1) If either party terminates this Agreement after notice to the other party in accordance with Section 501, then either party shall be entitled to terminate the escrow described in this Section 205 and demand the return of its money, papers or documents upon ten (10) days written notice to the other party and the Escrow Agent. Thereupon all rights, liabilities, duties and obligations of the parties under this Agreement shall be as provided in Sections 508.1-508.2 of this Agreement.

(2) No termination of this escrow or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party at the address of its principal place of business. If any objections are raised within the ten (10) day period, the Escrow Agent is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the Escrow Agent shall perform all acts required for the conveyance of the leasehold interest in the Lease Parcels as soon as possible.

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

I. Amendments to Escrow Instructions. Any amendment to these escrow instructions shall be in writing and signed by both the Agency and the Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

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

K. Escrow Agent's Liability. The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 205 through 211, inclusive, of this Agreement.

L. Real Estate Commissions/Brokerage Fees. The Agency shall not be liable for any real estate commissions, finder's fees, brokerage fees or other fees or commissions of any kind which may arise herefrom. The Agency represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer agrees to hold the Agency harmless from any claim by any broker, agent or finder retained by the Developer.

206 CONVEYANCE OF TITLE AND DELIVERY OF POSSESSION AND ORDERS OF PREJUDGMENT POSSESSION

A. Conditions to the Conveyance of Title. Subject to the mutually dependent submissions, approvals and consents set forth in this Section which are conditions precedent to conveyance, and any mutually agreed upon extensions of times, conveyance to the Developer and Majors of their respective leasehold interests to the Lease Parcels in accordance with the provisions of this Section 206 and Section 207 of this Agreement, shall be completed on or prior to the dates specified in this Section 206 and the Schedule of Performance (Attachment No. 9).

(1) The following obligations of Developer are conditions precedent or concurrent to Agency's obligation to close escrow and convey the Lease Parcels. Agency, at its election and as its sole and exclusive remedy hereunder, may terminate this Agreement pursuant to Section 508, upon written notice delivered to Developer, and retain the Developer's Deposit (and the Letter of Credit and all other sums or security held by Agency shall be returned to Developer and the Developer Loan paid in accordance with Section 201.2H(1)) if any condition and obligation of Developer set forth below is

not satisfied by Developer or waived in writing by Agency within the times required in this Agreement.

(a) Maintenance of the Letter of Credit and submission by Developer of the Developer's Consideration of \$7,780,000 (reduced by the credits described in Section 205D) required pursuant to Sections 107, 202, and 205 and deposit thereof into escrow;

(b) Submission (and resubmission as may be required) by Developer and/or Majors, as applicable, and approval by Agency within the time set forth in the Schedule of Performance of:

(i) Developer's and each Major's evidence of financing pursuant to Section 217;

(ii) Developer's and each Major's designs, plans, drawings and related documents pursuant to Article 5 of the REA;

(iii) Developer's plan for extending reasonable preferences and opportunities for local businesses to participate in the Retail Center and for businesses displaced by the Retail Center to reenter after completion of development pursuant to Section 704 and of Developer's marketing plan pursuant to Section 108.

(c) Submission by Developer into escrow or concurrent escrows of the REA described in Section 702 executed by Developer and each Major.

(d) Execution and delivery into escrow by Developer and the Majors of their respective Leases, and execution in recordable form, acknowledgment and delivery of the respective Memoranda thereof.

(e) Submission by Developer into escrow of its share of escrow expenses required under Section 205.

(f) Developer has not cured a soil, geologic or seismic condition, or removed Hazardous Substances from, or protected the Project Site therefrom after having elected to do so within the time and in accordance with Section 215C hereof.

(g) Compliance by Developer with all of its material obligations, covenants, promises and agreements under this Agreement.

(2) The following covenants and obligations of Agency are conditions precedent or concurrent to Developer's obligation to close escrow hereunder. Developer, at its

election and in addition to any other rights or remedies Developer may have pursuant to Sections 507 and 508 (subject to Agency's Maximum Liability, if applicable), may terminate this Agreement upon written notice to Agency (and the Developer's Deposit, the Letter of Credit as well as all other monies or security held by Agency under this Agreement, shall be returned to the Developer and the Developer Loan paid in accordance with Sections 201.2H(2) if any condition and obligation set forth below is not satisfied by Agency or waived by Developer within the times required in this Agreement subsequent to the delivery of the Notice to Proceed:

(a) The acquisition of title to the Acquisition Parcels by Agency and delivery of title to the Lease Parcels into escrow as required by this Agreement.

(b) Approval by Developer and each Major of the title insurance policy required pursuant to Section 211 insuring title in the condition required therein, and of any unrecorded claims of which Developer and/or any Major shall have received knowledge or notice and against which the Title Insurance Company is unwilling to insure.

(c) Submission of evidence satisfactory to Developer that (i) the Parcel A Offsite Parking Facility or the Parcel B Offsite Parking Facility is substantially completed and available for parking and (ii) that the Offsite Parking Facility not so completed is under construction, is diligently proceeding towards completion and the Offsite Parking Facilities will be completed four months prior to the opening of the Retail Center as set forth in the Schedule of Performance.

(d) Execution and delivery by Agency (if Developer is entitled to such certificates) of the estoppel certificates described in Section 205E.

(e) Submission by Agency of its share of escrow expenses required pursuant to Section 205.

(f) Execution and delivery into escrow by Agency of the Developer Lease described in Section 202 and the Major Leases described in Section 206.1, and execution in recordable form, acknowledgment and delivery of Memoranda thereof.

(g) Execution and delivery into escrow by Agency of the REA described in Section 702.

(h) Agency has cured a soil, geologic or seismic condition or removed Hazardous Substances from, or otherwise protected the Project Site from Hazardous Substances

after having elected to perform such work within the time and in accordance with Section 215C hereof;

(i) The execution by City of the De La Guerra Easement and delivery of such Easement by Agency into escrow within the time set forth in the Schedule of Performance as required by this Agreement.

(j) Compliance and performance by Agency with all of its material obligations, covenants, promises and agreements required to be performed on or before the Close of Escrow under this Agreement, the Parking Agreement, the Cooperation Agreement and all other documents executed in connection therewith.

(3) The occurrence, satisfaction or waiver of the following are conditions precedent or concurrent to Developer's obligation to close escrow on the Lease Parcels. In the event Developer determines in good faith, after due diligence and best efforts, that the following conditions have not been satisfied or waived by Developer (to the extent such waiver would not render unlawful the development of the Retail Center in accordance with this Agreement and the Developer Lease) within the times required by this Agreement, Developer may elect to terminate this Agreement without further liability to Agency upon written notice delivered to Agency, in which event the Developer's Deposit as well as all other monies or security held by Agency under this Agreement shall be returned to the Developer and the Developer Loan paid in accordance with Section 201.2H(2):

(a) The Developer has obtained to its reasonable satisfaction all Development Approvals (defined in Section 214) required for the construction of the Retail Center on the Project Site including, without limitation, plan approval and building permits, utilities and, at or prior to the delivery of the Notice to Proceed, zoning for the Project Site.

(b) (i) After diligent investigation pursuant to Section 215, Developer has not uncovered any soil, geologic or seismic condition, or the presence of Hazardous Substances, that would render the contemplated development of the Project Site economically unfeasible, or (ii) Agency has cured any such soil, geologic or seismic condition, or removed such Hazardous Substances or protected the Project Site therefrom in accordance with and within the time specified in Section 215C.

(c) Delivery by Agency to Developer of the Notice to Proceed pursuant to Section 204.

(d) Approval and due execution by City of the Cooperation Agreement.

This provision shall not limit in any way any other rights or remedies Developer may have under Section 508 of this Agreement or under the Parking Agreement in the event the failure of any of the foregoing conditions results from Agency's willful default or Agency's default (or the default of the City) under the Cooperation Agreement.

(4) Notwithstanding Developer's obligation to close escrow, Developer, at its election and subject to the payment to Agency of liquidated damages pursuant to Section 106 as Agency's sole and exclusive remedy for Developer's termination pursuant to this paragraph (4), may elect to terminate this Agreement (in which event the Letter of Credit and all other sums or security held by Agency shall be returned to Developer and the Developer Loan paid in accordance with Section 201.2H(1) upon written notice to Agency in the event any condition set forth below is not satisfied by Developer within the times required in this Agreement:

(a) Execution in recordable form and delivery into escrow (or a concurrent escrow, as applicable) by each Major of the REA and Parking Covenants.

(b) Execution in recordable form and delivery into escrow (or a concurrent escrow, as applicable) by each Major of its respective Major Lease required and defined in Section 206.1 (except as otherwise provided in Section 206.1).

(c) The funding of Developer's construction financing and, if required by a Major, the construction financing for such Major.

B. Timely Performance. Subject to the terms and conditions of this Agreement, Agency and Developer agree to perform all acts necessary for conveyance in sufficient time for the leasehold to be conveyed in accordance with the foregoing provisions.

C. Delivery of Possession. Possession of the Lease Parcels shall be delivered to the Developer concurrently with the conveyance, except that access and entry may be granted before conveyance as permitted pursuant to this Section 206 and Section 215 of this Agreement. Developer shall accept conveyance and possession of the Lease Parcels on or before the date established therefor in this Section 206.

D. Order of Possession. If prior to the time provided in the Schedule of Performance (Attachment No. 9) for conveyance of the Lease Parcels, the Agency has not obtained title to any portion of the Lease Parcels, but has obtained a

judicial order authorizing the Agency to take possession of such portion, the Agency may deposit a copy of the order in escrow. Notwithstanding the provisions of this Agreement requiring the Agency to acquire title to each Lease Parcel prior to the time set for conveyance in the Schedule of Performance (Attachment No. 9), and to deposit the Leases for the Lease Parcels in escrow prior to such time, if the Agency has so deposited said order and:

(1) The Agency delivers possession of the Developer Tract and respective Tracts of the Majors to the Developer and the Majors on or prior to the time set for conveyance of such Lease Parcels in the condition required by Sections 212 and 213;

(2) The right of possession which the Developer and the Majors acquire from Agency is such that the Title Insurance Company will issue a policy or policies of title insurance meeting the requirements of Section 211;

(3) The Developer and each Major is able to secure construction financing on the basis of said title insurance policy or policies; and

(4) The Agency is diligently proceeding with the eminent domain actions seeking the rendering of a final judgment, which judgment would finalize the taking, and the Agency agrees to forthwith record or cause the recording of the grant deed or the judgment vesting title in Agency for such property when the Agency obtains title; then, provided all other conditions precedent to Developer's obligations have been waived or timely satisfied, the Developer shall not terminate this Agreement under the provisions of Section 508.1 but shall, concurrently with the Majors, accept such right of possession and proceed with the development of the Lease Parcels. Subject to the preceding sentence, the escrow provided in Section 205 with respect to the Lease Parcels, shall remain open until a grant deed to each Lease Parcel can be deposited therein in accordance with this Section 206.

206.1 Extension For Department Store Default

A. Regarding Major Tenants.

The Scope of Development and the plans and specifications to be submitted to and approved by Agency require that the Retail Center contain two major department stores satisfactory to Agency to participate in the Retail Center, each of which will be located in separate parcels in the Retail Center. As used in this Section, the term "participate" shall mean that each Major and Developer (with or without Agency) have entered into a binding agreement in which the Major agrees to lease its respective Major Tract, construct its

respective department store, open for business within the time provided in the Schedule of Performance, and agrees to the following operating covenants:

(1) Nordstrom and The Broadway each covenants to construct its respective improvements, open for business and operate its retail store as set forth in Sections 18.1 and 18.2 of the REA attached hereto as Attachment No. 3.

(2) Any Major that may substitute for either Nordstrom or The Broadway prior to the Close of Escrow shall covenant to open for business under the name approved by Agency and to operate a retail store in accordance with the conditions and limitations set forth in the REA for fifteen (15) years on the Major Tract under such name or such other name as used in the majority of such Major's Southern California stores; provided, however, in the event of the merger, acquisition, consolidation, or reorganization of such Major during said period, the Major shall covenant to operate under the name used by the Major or the majority of its Southern California stores immediately prior to such merger, acquisition, consolidation or reorganization. For the five (5) year period following the initial fifteen (15) year period, each Major will covenant to operate a retail department store under any name with merchandising categories and level of quality similar to the merchandising provided during the fifteen (15) year period. During such five (5) year period and subject to the operating covenant, the Major may assign its interest in the Major Lease, subject to the reasonable approval of Agency, which approval may take into consideration the categories of merchandising and level of quality of products offered by the assignee. The operating covenants of each Major shall be subject to such conditions and limitations as shall be approved by Agency.

(3) Developer is obligated to procure the participation of both such Majors, the failure of which, subject to Subsection B below, will constitute a default by Developer for which this Agreement may be terminated and upon which termination Agency may retain the Developer's Deposit (all of which is set forth elsewhere in this Agreement). In the event that one Major contractually commits to participate as a Major in the Retail Center and then for any reason not attributable to Developer fails to participate in accordance with its Major Lease with Agency, Developer shall be allowed an additional time within which to find a participant to substitute for such Major before Agency can terminate the Agreement for the reason that two participating Majors have not been procured. This Section is intended to set forth the conditions and the agreements to accommodate such circumstances.

B. Extension of Escrow Closing and Lease Conveyance.
In consideration of the foregoing intentions and recitals, Developer and Agency agree that prior to the Close of Escrow and the conveyance of the Developer Lease to Developer:

(1) If after Developer (a) has procured the required two Majors to participate in the Retail Center, and (b) Developer is not in default of its obligations under this Agreement or its agreements with the approved lender(s) (other than with respect to a Major's failure to perform) and the required two Majors, and

(2) A Major (by its own inability, fault or unilateral decision and not because of a fault or cause of Developer) fails to perform its obligations under its agreement with Developer or fails or refuses to take delivery of its Major Lease, or breaches or repudiates its obligation or intention to participate in the Retail Center, then Developer shall have a right and option to elect by written notice delivered to Agency to extend the date for Close of Escrow and conveyance of the Developer Lease from Agency to Developer for a period of time, not to exceed nine (9) months within which to procure a firm and binding written agreement with a substitute major department store satisfactory to Agency and submit such agreement to Agency for Agency's approval.

(3) In the event Developer is unable to procure a substitute Major within said nine (9) month period but Developer is diligently attempting to procure a substitute Major to participate as provided above, then upon submitting to Agency (a) written evidence and reports demonstrating bona fide attempts to procure a substitute Major, and (b) \$200,000 in good funds (which amount shall not be credited to Developer upon Close of Escrow), Developer may by written notice to Agency, accompanied by (a) and (b), extend the date for Close of Escrow and conveyance of the Developer Lease for an additional three (3) months.

(4) If all of the facts and circumstances in paragraph (2) above have occurred and are true (including the acceptance of the substitute Major by Agency and a firm and binding agreement between Developer and the substitute Major providing for the participation of the substitute Major in the Retail Center on terms approved by Agency), Developer shall have the right, but not the obligation, to close the escrow and take the conveyance of the Developer Lease (provided that all other conditions to the close of escrow have been fulfilled and Developer is otherwise entitled to require the Close of Escrow) even though all the plans and the evidence of financing pertaining solely to the substitute Major have not been submitted or approved, or any redesign of the Retail Center to accommodate the proposed building of the substitute Major has not been accomplished (provided, however, that any

such redesign does not materially change the scope and basic design of the Retail Center that has at that time already been approved by Agency). In such case, the plans, financing and design of the substitute Major shall be prepared, submitted and approved by Agency prior to the commencement of the term of the lease of that Major and prior to the commencement of any construction of the buildings or improvements of that Major's store.

(5) Notwithstanding any other provisions in this Section 206.1, in the event a Major fails to perform its obligations under its Agreement with Developer, or fails or refuses to take delivery of its Major Lease, or breaches or repudiates its obligation or intention to participate in the Retail Center as a result of the willful default of Agency under this Agreement or any other agreement related to the Retail Center (including the Cooperation Agreement), then the foregoing limitations on Developer's rights shall not apply.

(6) After the Close of Escrow, as between Developer and the Agency the default, termination or substitution of a Major shall be governed by the Developer Lease.

207 FORM OF CONVEYANCE

The Agency shall convey to the Developer, or its nominee, a leasehold interest in the Lease Parcels, in the condition provided in Section 208 of this Agreement by lease in the form attached hereto and incorporated herein as Attachment No. 7, and shall convey to Developer, or its nominee, the Appurtenant Parking and other Appurtenant Interests to this Agreement in the condition provided in Section 208 of this Agreement.

208 CONDITION OF TITLE

The Agency shall convey to the Developer, or its nominee, a leasehold in the Lease Parcels, including the interests required in Section 104.3 in the Appurtenant Parking and other Appurtenant Interests, free and clear of all recorded encumbrances, covenants, conditions, restrictions, equitable servitudes, assessments, easements, leases, taxes and other defects which inhibit, prevent or prohibit or which delay or substantially increase the cost of the development of the Lease Parcels in accordance with plans, drawings and related documents approved by Agency; except for those items which are permitted by and are consistent with this Agreement and (in particular) the Scope of Development (Attachment No. 10), and the REA. ~~Agency shall cause City to grant the De La Guerra Easement over Nonvacated De La Guerra Street to Developer;~~ subject only to such title exceptions as Developer may approve, but in any event, free and clear of all exceptions that would inhibit, prevent or prohibit or substantially increase the cost of Developer's use of the De La Guerra

Easement.

Title to the Lease Parcels shall describe each component of the Lease Parcels as a separate legal parcel, i.e., the Developer Tract, Broadway Tract and Nordstrom Tract.

Developer at its cost and expense shall prepare a parcel map implementing this Agreement which describes the various required parcels, which parcel map shall be suitable for recording. During the preparation of the parcel map, Developer shall consult with Agency and City, and the final form of the parcel map shall be subject to the approval of Agency and City. As provided in Section 214C, Agency shall record the approved parcel map at the Close of Escrow.

209 TIME FOR AND PLACE OF DELIVERY OF LEASES, MEMORANDA OF LEASES AND OTHER RECORDABLE INSTRUMENTS

Subject to any mutually agreed upon extensions of time, or an extension pursuant to Section 206.1, the Agency shall deposit the respective Leases and Memoranda of Lease for the Lease Parcels, as well as all other Recordable Instruments required under Section 205E with the Escrow Agent on or before the date established therefor in the Schedule of Performance (Attachment No. 9).

210 RECORDATION OF THE MEMORANDUM OF LEASES/RECORDABLE INSTRUMENTS

Prior to delivery of the Leases and Memoranda of Leases, the Escrow Agent shall file the Memoranda of Leases for the Lease Parcels, as well as all other Recordable Instruments required under Section 205F, for recordation among the land records in the Office of the County Recorder for Santa Barbara County. Recordation of the Memoranda of Leases and other Recordable Instruments shall constitute delivery to the Developer.

211 TITLE INSURANCE

A. Delivery of Title Insurance. As a condition to Developer's obligation to accept conveyance, concurrently with recordation of its Memorandum of Leases and other Recordable Instruments, ~~a title insurance company~~ (the "Title Insurance Company") ~~satisfactory~~ to the Agency, the Developer and the Majors shall provide and deliver to Developer and each of the Majors, respectively, a separate title insurance policy issued by the Title Insurance Company insuring that title to the leasehold interest in the Lease Parcels (together with the Appurtenant Interests and the De La Guerra Easement as such interests are provided in this Agreement) is vested in the Developer (or in the case of a Major's Tract that the leasehold interest in the Major's Tract, and Appurtenant

Interests, are vested in the Major) in the condition required by Section 208 of this Agreement. As a condition to Developer's obligation to the acceptance of conveyance, each title insurance policy shall be delivered with such reasonable endorsements as may be requested by Developer or Majors (or their respective lenders who are to receive a mortgage of the leasehold interest), and which the Title Insurance Company is willing to give in the absence of any title defect or impediment and in circumstances where all property interests are duly and properly documented and recorded (including, without limitation, endorsements concerning Agency's affirmative and negative covenants, consistency of the development of the Retail Center with the Redevelopment Plan, etc.). The title insurance policy at Developer's or the Major's option may be an A.L.T.A. owner's policy, the issuance of which shall be a condition of Developer's or the Major's obligation to accept the leasehold if the construction and development of improvements required by this Agreement are inhibited, prevented, prohibited or significantly delayed. The Title Insurance Company shall provide the Agency with a copy of the title insurance policy, and the title insurance policy shall be in the amount of the Project Costs (shown on Attachment No. 12 hereto) pertaining to each component of the Lease Parcels.

B. Agency's Obligation. The Agency shall exercise due diligence and best efforts to cause the Title Insurance Company to deliver the foregoing title insurance policies, including without limitation, the provision to the Title Insurance Company of waivers and indemnifications with respect to title to the Lease Parcels based upon an order for possession obtained through a condemnation action. The issuance of an A.L.T.A. policy or the provision of the endorsements, however, is not a covenant or promise by the Agency; provided that the issuance of title insurance insuring title to Developer and each Major in the condition required in Section 208 shall constitute a covenant of Agency subsequent to the delivery of the Notice to Proceed.

C. Endorsements. As a further condition to Developer's obligation to accept conveyance, concurrently with the recording of such Memoranda of Leases and the Recordable Instruments, the Title Insurance Company shall, if requested by the Developer or any of the Majors, provide an endorsement to insure the Developer's or the Major's estimated construction costs of the improvements to be constructed thereon and such other endorsements requested by Developer or the applicable Major.

D. Allocation of Premium Cost. The Agency shall pay only for that portion of the title insurance premiums attributable to a C.L.T.A. standard form owner's policy of title insurance in the amount of the \$7,780,000 Developer's Con-

sideration pertaining to the Lease Parcels. The Developer (or the Majors) shall pay for all other premiums for title insurance coverage or special endorsements.

212 TAXES AND ASSESSMENTS

Ad valorem taxes and assessments, if any, on the Lease Parcels and taxes upon this Agreement or any rights thereunder, levied, assessed, or imposed for any period prior to the conveyance of the leasehold interest or delivery of possession thereto, shall be borne by the Agency. All such ad valorem taxes and assessments levied or imposed for any period after such conveyances or delivery of possession shall be paid by the Developer and the Majors under their respective leases. Prior to the Close of Escrow, Agency shall use its best efforts to cause the City to either exclude the Shopping Center Tract from the Parking and Business Improvement Area ("PBIA") tax, or in the alternative, to cause the PBIA to be expanded to include the entire Shopping Center Tract.

213 OCCUPANTS OF THE LEASE PARCELS

The leasehold to each Lease Parcel shall be conveyed free of any possession or right of possession except that of the Developer. The Agency shall at its cost and expense perform all necessary relocation of the occupants from the Acquisition Parcels. Agency shall be responsible for payment of relocation claims or benefits claimed by (i) occupants of properties only a portion of which constitutes an Acquisition Parcel that are displaced by reason of such acquisition, including claims by occupants of the portions of such properties that are not included within the Acquisition Parcel, and (ii) by occupants of properties for which Agency, Developer and the owners of such properties have entered into Easement, Covenant and Restriction Agreements or other easement agreements to mitigate severance damages that such owners may claim as a result of acquisition of portions of such owners' properties for inclusion in the Project Site that are displaced by reason of such acquisition. Agency shall indemnify, defend and hold Developer free and harmless of and from any and all such relocation costs, benefits or obligations that Agency may have under applicable relocation laws, rules, regulations and guidelines with respect to the Acquisition Parcels or such other properties.

Relocation costs under applicable state or federal relocation laws for persons and businesses displaced from the Rehabilitation Parcels referred to in Section 203 and from all properties owned, operated or controlled by Developer as part of the Retail Center which are not relocation benefits that would be required to be paid by Agency pursuant to the preceding paragraph shall be the obligation and liability of Developer. Developer shall pay such relocation benefits, or

reimburse Agency if Agency shall have first paid such benefits, and agrees to indemnify Agency and hold it free and harmless of and from any and all such relocation costs, benefits or obligations that Agency may have under applicable state or federal relocation laws, rules, regulations and guidelines with respect to the Rehabilitation Parcels or such other properties. Agency shall advise Developer of any claims received or made by a person claiming to be eligible for or entitled to such benefits, and Developer shall have the reasonable right of review and to dispute the entitlement of the claimant before Agency makes any payment or allows a claim. Developer shall have the right to dispute and withhold payment for only those claims whose allowance or payment are, by applicable state or federal laws, rules, regulations and guidelines, discretionary with Agency, and Developer shall not have the right to dispute claims which Agency is mandated by such applicable state or federal laws, rules, regulations and guidelines to allow or pay. In the event Agency allows or pays a discretionary claim which is disputed by Developer, Agency shall thereafter bear the burden of proving that such claim is a necessary, reasonable and appropriate relocation claim and expense incumbent upon Agency under applicable state or federal law, rules, regulations or guidelines and it would otherwise be an abuse of Agency's discretion not to pay such claim. If Agency, with Developer's prior written consent, disputes a claim made by a displaced person and the dispute is determined by an administrative or judicial body of competent jurisdiction wherein the claimant is found eligible and a disputed claim is allowed, Developer shall reimburse Agency for the amount of the claim, and the costs of litigation, including reasonable attorneys' fees. If Developer and Agency determine that a reasonable basis for appeal of such determination exists, Agency shall prosecute such appeal and Developer shall reimburse Agency for the cost thereof, including reasonable attorneys' fees. If Agency disputes a claim made by a displaced person without Developer's written consent, and the claimant is found by an administrative or judicial body of competent jurisdiction to be entitled to a greater relocation payment than originally claimed, Developer's liability for such relocation claim shall not exceed the amount originally claimed by such claimant. In no event shall Developer be liable for any relocation payments under City or Agency ordinance, rule or regulation in connection with the Rehabilitation Parcels or any properties owned, operated or controlled by Developer as part of the Retail Center except to the extent that such ordinance, rule or regulation requires relocation payments consistent with and not in excess of relocation payments required under state and federal relocation laws, rules, regulations or guidelines. Agency shall not be obligated to reveal any information regarding the claimant which is confidential by law unless the claimant agrees to such disclosure.

214 ZONING OF THE PROJECT SITE; STREET VACATION;
DEVELOPMENT APPROVALS

A. Agency Obligation. The Agency shall use its best efforts to cause (and Developer's obligation to close escrow and take conveyance of the Developer Lease is conditioned upon) the zoning and vacation of streets and other public rights-of-way within the blocks comprising the Project Site to be such as to permit the development, construction, use, operation, and maintenance of the improvements specified in the Scope of Development and this Agreement to be developed and constructed thereon. In addition, Agency shall cooperate with Developer (and each Major) (including enforcement of and compliance with the Cooperation Agreement) to enable Developer (and each Major) to obtain all governmental approvals, certifications, and compliances necessary for the development of the Project Site in accordance with this Agreement (the "Development Approvals") including, without limitation, site and plan approval, building permits, and utilities.

B. EIR Certification and CEQA Compliance. Environmental documents have been prepared and certified in accordance with procedures adopted by City in compliance with the requirements of the California Environmental Quality Act of 1970, as amended (California Public Resources Code Sections 21000 et seq.) and all applicable state regulations and local ordinances and regulations enacted pursuant thereto, in connection with Agency's approval of this Agreement and all discretionary approvals granted pursuant hereto. In the event that this Agreement is amended or modified, Agency shall prepare or obtain such further environmental documents or any approvals of pertinent environmental documents as required by law for the development of the Project Site as required by such amendment or modification. Developer shall provide assistance to Agency as necessary to satisfy the requirements of CEQA with respect to the development of the Project Site.

C. Record Survey and Certificate of Compliance. The Agency shall use its best efforts to cause (and Developer's obligation to close escrow and take conveyance of the Developer Lease is conditioned upon) the Agency's recordation of a parcel map pursuant to Section 208 above under Agency's power to subdivide pursuant to Health and Safety Code Section 33430(a) and Certificate of Compliance with the Santa Barbara City Engineer.

215 CONDITION OF THE PROJECT SITE

A. Access to and Entry Upon the Project Site. Prior to the conveyance of the Lease Parcels, representatives of the Developer and the Majors shall have the right of access to and entry upon any portion of the Project Site which is owned by the Agency, of which the Agency has possession or concerning

which Agency is otherwise able to obtain permission from the property owners for such access, from time to time, at all reasonable times, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Agency, upon obtaining such possession or permission, shall promptly give Developer and the Majors written notice that Developer and the Majors have permission to enter such designated properties for the purposes stated herein and shall indemnify Developer from any claims that the entry of Developer and the Majors is without the permission of the owner thereof. Developer agrees to and shall indemnify and hold the Agency and City harmless from any and all injuries or damages arising out of any work or activity hereunder of the Developer, its agents, or its employees. Agency agrees to provide, or cause to be provided to the Developer and the Majors, all data and information pertaining to the Project Site and contained in the records of Agency when requested by Developer. Any such data and information provided by the Agency shall be for informational purposes only. Agency makes no warranty as to the accuracy, completeness or relevance of any such data and information. Developer shall rely on its own investigations and determinations.

B. Accessibility to Project Site for Soils Testing. It shall be the sole responsibility of Developer and the Majors) at their own expense, to investigate and determine the suitability of the soil, geologic and seismic conditions of the Project Site, and the lack of Hazardous Substances (as defined in Section 215.F below) thereon, for the intended development contemplated herein. Within ninety (90) days after the Effective Date of this Agreement, Developer shall provide Agency with a detailed description or listing of those portions of the Project Site ("Soils Testing Locations") to which Developer and the Majors will require access in order to perform the soils testing contemplated herein. Not later than ninety (90) days after the date that Developer and the Majors are given access to all of the Soils Testing Locations, Developer and the Majors shall perform and complete such soil testings to determine the presence of soil, geologic or seismic conditions, or the presence of Hazardous Substances, that may render the contemplated development of the Project Site economically unfeasible. If at any time during said ninety (90) day period Developer's testing uncovers a condition that may render the contemplated development economically unfeasible, Developer shall have the right to suspend preparation of Design Development or Final Working Drawings until the testing period is completed, and such suspension shall not constitute a default hereunder. If Developer (in consultation with the Majors) determines in its sole judgment that the soil, geologic or seismic conditions of the Project Site, or any portion thereof, or the presence of Hazardous Substances thereon have a material and substantial impact on the feasibility of the intended development that renders the Project

Site unsuitable for economically feasible development, Developer shall give written notice of such fact to Agency within ten (10) days after the end of the ninety (90) day testing period stating the reasons for the unsuitability.

C. Right to Cure. Within fifteen (15) days, after the date of Developer's written notice, Agency may give Developer written notice of its election to cure the condition set forth in Developer's notice, or if the condition specified in Developer's notice is the presence of Hazardous Substances, to assume the responsibility for the removal and protection of all such Hazardous Substances from the Project Site. Agency shall include within its written notice of election to cure evidence (i) that the cure or removal or protection can be accomplished within nine (9) months from the date of Agency's notice, and (ii) that Agency has the ability to pay for such cure, removal or protection. If Agency so elects, the cure, removal or protection shall be completed within nine (9) months after the date of Agency's notice subject to the enforced delay provisions of Section 605, provided that such enforced delay shall not exceed the later of (a) three (3) months after the commencement of the cause of the enforced delay or (b) the earlier of the date that (1) a Major's commitment to participate in the Retail Center has expired, or (2) an institutional lender's commitment to finance Developer's construction of its portion of the Retail Center has expired. Developer shall take conveyance of the Developer Lease after such condition has been corrected by Agency to Developer's satisfaction and the other conditions precedent or concurrent to Developer's obligation to close escrow have been satisfied or waived. If Agency does not give Developer written notice of its election to cure the condition set forth in Developer's written notice within fifteen (15) days from the date of Developer's notice, Developer may thereafter elect, by giving Agency written notice of such election within fifteen (15) days after the end of Agency's fifteen (15) day cure period, to cure the soil, geologic or seismic condition or remove or protect the project site from all such hazardous substances at its own expense. If Developer so elects, the cure or removal or protection shall be completed not more than nine (9) months after the date of Developer's written election to cure such condition, subject to enforced delay in accordance with Section 605 hereof; provided that such enforced delay shall not exceed the later of (i) three (3) months after the commencement of the cause of the enforced delay or (ii) the earlier of the date that (a) a Major's commitment to participate in the Retail Center has expired, or (b) an institutional lender's commitment to finance Developer's construction of its portion of the Retail Center has expired. If Developer does not elect to cure the condition within said fifteen (15) day period, this Agreement shall terminate as of the end of said fifteen (15) day period

and the rights of the parties shall be governed by Section 508.1.A hereof.

D. Termination Rights for Presence of Hazardous Substances After Testing Period. Notwithstanding anything contained herein, if Hazardous Substances are found on any portion of the Project Site after the expiration of the ninety (90) day testing period but prior to the Close of Escrow, and the presence of such Hazardous Substances renders the intended development of the Project Site economically unfeasible, Developer shall give notice of such fact to Agency within ten (10) days after the date that Developer discovers such presence or receives knowledge thereof, and the provisions of Section 215.C hereof shall thereafter govern the cure of such condition or the termination of this Agreement. Agency agrees that it shall immediately notify Developer of the existence, or any notice which it receives of the existence, of Hazardous Substances on the Project Site which Agency receives prior to the Close of Escrow.

E. Liability for Condition of Lease Parcels After Conveyance. If Developer does not terminate this Agreement in accordance with this Section 215, the Lease Parcels shall be conveyed in "as is" condition, with no warranty, express or implied by the Agency as to the soil, geologic or seismic condition of the Project Site, or the presence of known or unknown Hazardous Substances. Notwithstanding the above, if Agency has cured a soil, geologic or seismic condition or removed or protected the Project Site from hazardous substances in accordance with Section 215.C, Agency shall warrant at the close of escrow that the Lease Parcels are conveyed free of the soil, geologic or seismic condition or of the Hazardous Substance that Agency has cured, removed or protected. Agency shall not be obligated or liable in any manner (including, but not limited to the discovery, treatment, removal, sequestration or protection) for the presence of Hazardous Substances of any kind that are on or in, or claimed to be on or in, the Project Site after the Close of Escrow, except to the extent that Agency has elected to remove Hazardous Substances, or protect the Project Site therefrom in accordance with Section 215.C hereof prior to the Close of Escrow. If, after the Close of Escrow and except to the extent that such condition would constitute a breach of Agency's warranty hereunder, the soil conditions are not in all respects entirely suitable for the use or uses to which the Project Site will be put, then it is the sole responsibility and obligation of the Developer and the Majors to take such action as may be necessary to place the soil conditions of the Lease Parcels in a condition entirely suitable for development (unless Agency agrees to share any costs as specifically provided for in a further written instrument). Agency represents that its present employees, officers and members have no knowledge of the existence or

nonexistence of Hazardous Substances on the Project Site and that Agency has received no notice of the same.

F. Definition of Hazardous Substances. Hazardous Substances as used herein are any and all materials, wastes and substances designated as hazardous or toxic under the Resource Conservation and Recovery Act, 42 U.S.C. 6903(5); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14); the Clean Water Act, 33 U.S.C. 1317(a) and 1321; the Clean Air Act, 42 U.S.C. 7412; and the Toxic Substances Control Act, 15 U.S.C. 2606 or which may be designated as such by the Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the U.S. Department of Transportation, the California Department of Food and Agriculture, the Consumer Products Safety Commission, the U.S. Department of Health, Education and Welfare, the California Department of Health Service, the U.S. Food and Drug Administration and/or any other governmental agency now or hereafter authorized to regulate material and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Substances" shall also include all of the foregoing described materials, wastes, and substances as well as those materials, wastes and substances defined as "toxic materials" in Sections 66680 through 66685 of Title XXII of the California Administrative Code, Division 4, Chapter 30, as amended from time to time.

216 DEMOLITION, PROJECT SITE CLEARANCE AND PREPARATION.

A. All demolition, site clearance and site preparation work shall be performed by the Agency and the Developer as provided in the Scope of Development.

B. At its expense prior to the Close of Escrow, Agency shall demolish, raze and remove all above surface structures to grade level on Acquisition Parcels 1, 5 and 6, with the exception of the improvements located on Acquisition Parcel 5 that extend onto adjacent property (except for the "garden wing" of the building located on Acquisition Parcel 5). Agency shall demolish, raze and remove all above-surface and below-surface structures on Acquisition Parcel 3, with the exception of improvements located on Acquisition Parcels 3 and 5 that extend onto adjacent property, all in accordance with the Scope of Development. Agency may, at its own expense (subject to Developer's rights under 215 hereof), improve the surface of such demolished parcels and use the same for parking or otherwise pending conveyance to Developer pursuant to this Agreement. With respect to Acquisition Parcels 4 and 7 and the portion of Acquisition Parcels 3 and 5 containing improvements extending onto adjacent properties, Agency shall cause the improvements on such Parcels or portions of such Parcels to be vacated and separated from the balance of the

improvements and placed in a condition ready for demolition and restoration by Agency in accordance with the Scope of Development.

217 FINANCING COMMITMENTS OF DEVELOPER AND MAJORS.

A. Submission of Evidence of Financing Commitments - In General. Within the times established therefor in the Schedule of Performance (Attachment No. 9), the Developer shall submit (and in the case of a Major's Tract, shall submit or cause a Major to submit) to the Agency evidence that the Developer or a Major has obtained firm and binding commitments for financing (subject to subsection C below) necessary for the lease of the Lease Parcels and development of the Retail Center in accordance with this Agreement. Agency shall approve or disapprove such evidence of financing commitments within the times established in the Schedule of Performance. Failure of the Agency to approve or disapprove any such evidence of financing commitments within such times shall be deemed an approval.

B. Evidence of Financing from Unaffiliated Sources. If Developer or a Major shall elect to obtain financing from sources unaffiliated with Developer or that Major, the following evidence of financing shall be sufficient:

(1) Copies of all construction financing commitments, which commitments may include such conditions to funding as lenders normally require. The commitments for financing shall be in such form and content acceptable to Agency as reasonably evidences a firm and enforceable commitment subject only to reasonable conditions designed to protect the security of the proposed loan (e.g., title insurance, condition of title, approval of agreements, security documents, plans, projections, etc.); provided, however, that any conditions (including payment of loan fees, standby fees and costs) to such commitments shall all be removed and the commitment must be unconditional at the time of the Close of Escrow (except for the performance of Agency, City or any party to any agreement required under this Agreement other than the Developer or Major, respectively, and the satisfaction of all other conditions for Close of Escrow set forth in this Agreement) and conveyance to Developer and the instruments securing such financing shall be recorded next in order with the instruments to be recorded pursuant to this Agreement. If the Agency has not drawn down the full amount of the Developer Loan, but Agency is entitled to draw upon the Developer Loan for Acquisition Costs incurred by the Agency prior to the Close of Escrow as provided in Section 201.2 but not yet ascertainable at the time of closing, then the construction financing disbursement schedule shall contain a line item allowing the Developer to draw the undisbursed portion of

the Developer Loan in accordance with Section 201.2H for payment to the Agency.

(2) Proof of acceptance of the loan commitment by Developer or the Majors;

(3) Evidence satisfactory to the Agency of sources of capital sufficient to demonstrate that Developer or the Majors have adequate funds to cover the difference, if any, between construction costs minus financing authorized by mortgage loans.

C. Evidence of Financing from Affiliated Sources. If Developer or either Major shall elect to finance the acquisition and development of the Retail Center (or the portion thereof for which it is to cause the construction) with its own funds or the funds of an affiliated company or partially with its own funds and partially with the funds of a joint venturer or partner, sufficient evidence of financing shall consist of evidence reasonably satisfactory to Agency that Developer or the Major has or will have sufficient cash with which to commence, diligently pursue and complete the construction and improvement required of it under this Agreement or the Major Lease. Developer or the Major shall submit such evidence to Agency as may be reasonably required by Agency in order to make a fully informed decision based on documented and verified information and facts. Agency shall have the right to request additional evidence as it reasonably deems advisable. Notwithstanding the foregoing, the net worth or creditworthiness of each Major initially selected for the Retail Center, and without demonstration that funds necessary for this Agreement are in fact available and committed to this development, shall be deemed sufficient evidence (but not for the Developer or substitute Majors unless Agency otherwise agrees in writing).

D. Substitution of Financing. Developer (and each Major) shall have the right at any time to substitute the method of financing (i.e., financing obtained from third-party lenders or with its own funds and/or funds of a joint venture partner, or any combination thereof) provided that Developer provides to Agency satisfactory evidence of such financing commitments meeting the requirements of this Section 217.

SECTION 300 DEVELOPMENT OF THE PROJECT SITE

301 SCOPE OF DEVELOPMENT

The Project Site shall be developed by the Agency and the Developer (and, where applicable to the Major's Tracts, by each of the Majors) in accordance with and within the limitations established therefor in the Scope of Development (which is incorporated herein and attached to this Agreement as

Attachment No. 10), plans approved by the Agency and the Developer pursuant thereto and provisions of the REA (Attachment No. 3).

302 BASIC CONCEPT DRAWINGS

A. Submission of Basic Concept Drawings. The Developer has heretofore prepared and submitted to the Agency basic concept drawings and related documents containing the overall plan for development of the Project Site identified as "Schematic Drawings" prepared by Field/Paoli Architects dated June 8, 1987 and concept elevations last revised February 11 and 20, 1987 (the "Basic Concept Drawings"). The Basic Concept Drawings so submitted to the Agency include plans and sections of the improvements of Developer, and elevations of the improvements of Developer and the Majors as they are to be initially constructed on the Project Site and a description of the structural, mechanical and electrical systems pertaining to Developer's improvements. If the provisions of Section 203 regarding Rehabilitation Parcels are not effective for Parcels 5 and 5a or the agreements for such Rehabilitation Parcels (including Easement, Covenant and Restriction Agreements mutually satisfactory to Developer and Agency as well as the affected property owners) are not consummated in accordance with agreements approved by Agency, the Developer shall redesign and submit to the Agency for approval, the site plan and the Basic Concept Drawings so that property not included within the Retail Center shall not function as part of the Retail Center, nor be integrated into the Retail Center without the written consent and approval of Agency and Developer and the applicable Major, provided, however, the redesigned Basic Concept Drawings and the site plan shall take into account Developer's need to provide for the minimum gross leasable area needed by Developer for a successful Retail Center, and entrances and exits (including service and pedestrian accesses and easements) for the remainder of properties adjacent to the Retail Center which have been partially taken or acquired by Agency for inclusion in the Retail Center, in order to eliminate or reduce the damages which may be claimed due to the severance of the part taken from the adjacent property. In addition, Agency may require a redesign of Building 200 shown on the Basic Concept Drawings if in Agency's reasonable opinion, the owner of the buildings contiguous to Building 200 would assert a claim against Agency for loss of access to its buildings and such redesign to the Basic Concept Drawings will take into consideration Developer's need to retain such minimum gross leasable area in the Retail Center. For the purposes in this section, the minimum gross leasable area of the Retail Center shall mean not less than 92,000 square feet exclusive of retail space fronting on Chapala Street and exclusive of gross leaseable area planned for the Rehabilitation Parcels. Such redesigned Basic Concept Drawings and related documents shall be within

the limitations of the Scope of Development (Attachment No. 10).

B. Approval of Basic Concept Drawings. The Agency hereby approves the Basic Concept Drawings. The Developer, Agency, and applicable Major shall initial and date each page of those drawings and documents so approved and the Project Site shall be developed as generally established in such approved drawings and documents, except for such changes which may be mutually agreed upon between the Developer, Agency, and the applicable Major. Any such changes shall be within the limitations of the Scope of Development (Attachment No. 10).

303 LANDSCAPING PLANS

Landscaping plans shall be prepared by a licensed landscape architect, who may be the same firm as the Developer's architect. The Developer shall prepare and submit to the Agency for its approval, preliminary and final landscaping plans for the Project Site. These plans shall be prepared, submitted and approved within the times respectively established therefor in the Schedule of Performance attached to the REA. Agency approval of landscaping plans shall not be unreasonably withheld.

304 CONSTRUCTION DRAWINGS AND RELATED DOCUMENTS

A. Submission of Drawings and Related Documents.

(1) The Developer shall prepare (except that in the case of the department store buildings, the Majors may prepare) and submit to the Agency construction drawings and related documents for the Retail Center (including the parking structure on the Onsite Parking Tract) for architectural review of all buildings and written approval (subject to the limitation upon Agency's right to review set forth in Section 305) as and at the respective times established therefor in the Schedule of Performance; provided, however, that in no event shall Developer or the Majors be obligated to commence to prepare or submit the final working drawings referred to in this Section until Agency shall have delivered the Notice to Proceed (defined in Section 204) to Developer and such notice becomes valid and effective.

(2) Such construction drawings and related documents shall be submitted in two stages: "Design Development Drawings" and "Final Working Drawings." Design Development Drawings shall include a site plan indicating the general location and nature of the Site Improvement; plans, elevations, sections, schedules and notes as required to fix and describe the Project as to architectural, structural, mechanical and electrical systems; and outline specifications. Final Working Drawings are hereby defined as those in

sufficient detail to obtain a building permit. Approval of progressively more detailed drawings and specifications will be promptly granted by the respective party to whom such drawings and specifications are submitted if they are a logical evolution of previously approved plans and are not in conflict with drawings or specifications theretofore approved. Any items so submitted and approved in writing or deemed approved as provided in Section 305 of this Agreement by such party shall not be subject to subsequent disapproval.

B. Progress Meetings. During the preparation of all drawings and plans, the Agency, Developer, and each Major shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents.

C. Required Changes. If any revision or corrections of plans approved by the Agency, the Developer, or Major (as the case may be) shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer, the Agency and each Major shall cooperate in efforts to obtain a mutually acceptable alternative.

305 AGENCY'S APPROVAL OF PLANS, DRAWINGS, AND RELATED DOCUMENTS

A. Agency's Right of Limited Review. Subject to the terms of this Agreement, the Agency shall have the right of reasonable architectural review of all plans and submissions, including any proposed changes thereto, regarding only exterior elevations, exterior materials (including selections and colors) and the size, bulk and scale for all buildings and shall have no other approval rights of plans, drawings and related documents.

B. Timing of Approval. The Agency shall approve or disapprove the plans, drawings and related documents referred to in Sections 302, 303 and 304 of this Agreement (only with respect to the items described in the foregoing paragraph) within the times established in the Schedule of Performance. Failure by the Agency to either approve or disapprove within the times established in the Schedule of Performance shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval and the changes which the Agency requests to be made. Such reasons and such changes must be consistent with the Scope of Development and a logical evolution of any plans or items previously approved or deemed approved hereunder.

C. Disapprovals and Resubmission. As to plans and drawings (other than Basic Concept Drawings), the party submitting such plans and drawings, upon receipt of a dis-

approval, shall revise such plans and drawings (or such portions thereof) to be consistent with previously approved plans and drawings, and shall resubmit such revised plans and drawings (or such revised portions thereof) as soon as possible on receipt of the notice of disapproval. Plans approved or deemed approved shall be deemed in all respects to be in accordance with the Redevelopment Plan.

D. Submission and Approval of Final Working Drawings. Submission, approval and/or modifications of the Final Working Drawings shall be in accordance with Article 5 of the REA.

E. Construction of Appurtenant Parking

The Appurtenant Parking shall be constructed in accordance with the REA, Parking Agreement and Parking Covenants and the Developer and each Major shall have the rights set forth in each such agreement to review and approve, as applicable, the plans and drawings for the Appurtenant Parking and changes thereto.

306 COST OF CONSTRUCTION

The cost of developing the Project Site and of constructing all improvements thereon, shall be borne by the Developer and the Majors, except for work expressly set forth in the Scope of Development and elsewhere in this Agreement to be performed by the Agency or others.

307 CONSTRUCTION SCHEDULE OF PERFORMANCE; PROGRESS REPORTS

A. Construction Schedule. After the conveyance of the Lease Parcels, the Developer and the Majors shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements and the development of the Retail Center as provided in the Scope of Development (Attachment No. 10) and the REA (Attachment No. 3). In the event of a conflict, the provisions of the REA shall control. The Developer and the Majors shall begin and complete all construction and development within the time specified in the Schedule of Performance (Attachment No. 9) or within such reasonable extensions thereof as may be granted by the Agency. The Schedule of Performance (Attachment No. 9) is subject to revision from time-to-time as mutually agreed upon in writing between the Developer, the Majors and the Agency. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

B. Progress Reports. During periods of construction, the Developer and the Majors shall submit to the Agency a written report of its progress of the construction when and as requested by the Agency. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if any) taken since the last report. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

308 INDEMNIFICATION DURING CONSTRUCTION; BODILY INJURY AND PROPERTY DAMAGE

A. Indemnification. After Close of Escrow and during the period of construction on the respective Tracts, Developer and the Majors, as applicable, shall indemnify and hold harmless Agency and City as provided in the Developer Lease and each Major Lease from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the Project Site and which shall be directly or indirectly caused by any acts done thereon or any errors or omissions of the Developer, such Major, or its respective agents, servants, employees, or contractors. The Developer and/or the respective Major shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Agency or the City, or their respective agents, servants, employees, or contractors. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

B. Bodily Injury and Property Damage Insurance. Prior to Close of Escrow and during any period prior to conveyance of the leasehold for the respective Tracts, Developer shall indemnify and hold harmless Agency and City when the Developer is engaged in preliminary work on the Project Site pursuant to this Agreement, and during the period from the conveyance of title and ending on the date when a Certificate of Completion has been issued with respect to each component of the Retail Center, the Developer or the Major, as applicable, shall furnish, or cause to be furnished, to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount provided for in the respective leases of Developer and naming the Agency and the City as co-insureds. Developer and each Major shall provide such other insurance as is required under the Developer Lease or applicable Major Lease during the term of

each such lease. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

309 CITY AND OTHER GOVERNMENTAL AGENCY PERMITS

Before the conveyance of any leasehold interest, commencement of construction or development of any buildings, structures or other work of improvement upon any of the Project Site, the Developer and each Major shall (at its respective 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 its construction, development or work thereon. The Agency shall provide all proper assistance to the Developer and each Major in securing these permits including its performance under the Cooperation Agreement. Developer and each Major in no event shall be obligated to accept conveyance of the Developer Lease, or the applicable Major Lease, or to close escrow thereunder, nor to commence construction (the Schedule of Performance notwithstanding) if any such permit is not issued despite good faith efforts by the Developer or the Majors, respectively. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

310 RIGHTS OF ACCESS

Representatives of the Agency and the City shall have the reasonable right of access to the Project Site during the period of construction for the purposes of this Agreement in accordance with the provisions of Section 10.6 of the REA (Attachment No. 3). To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

311 LOCAL, STATE AND FEDERAL LAWS

Developer and the Majors shall carry out the construction of the improvements on the Project Site in conformity with all applicable laws, including all applicable federal and state labor standards. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

312 ANTI-DISCRIMINATION DURING CONSTRUCTION

The Developer for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, that the Developer will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, ancestry, or national origin, and that the Developer will comply with all applicable local, state and federal fair employment laws and regulations. To the extent that provisions concerning the subject matter of this Section are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

313 RESPONSIBILITIES OF THE AGENCY

A. General Obligation. The Agency, without expense to the Developer or assessment or claim against the Shopping Center Tract, shall perform all Agency actions specified herein and in the Scope of Development (Attachment No. 10) and the Parking Agreement (Attachment No. 2), within the times specified in the Schedule of Performance (Attachment No. 9).

B. Cooperation Agreement. Concurrently with the execution of this Agreement, the Agency shall enter (or shall have entered) into a Cooperation Agreement with the City in order to accomplish the objectives of this Agreement, including the provision of Appurtenant Parking and other Appurtenant Interests to the Project Site required by Section 104.3. The Agency shall comply with the Cooperation Agreement and exercise due diligence and best efforts to enforce compliance with such agreement by the City as provided in Section 104.3. For purposes of this Agreement, the default of the Agency and/or City under the Cooperation Agreement shall be deemed the default of the Agency under this Agreement.

314 TAXES, ASSESSMENTS, ENCUMBRANCES AND LIENS

Developer shall pay when due all real estate taxes and assessments on the Project Site assessed and levied subsequent to conveyance in accordance with the provisions of the Developer Lease and the REA.

315 PROHIBITION AGAINST ASSIGNMENT OF AGREEMENT

A. General Prohibition Prior to Issuance of Certificate of Completion. Prior to the recordation by the Agency of a Certificate of Completion of construction for each Component of the Retail Center as provided hereinafter, the Developer shall not, except as permitted by this Agreement, assign or

attempt to assign this Agreement or any rights herein without the prior written approval of the Agency.

B. Exceptions to General Prohibition. The provisions of this Section shall not prohibit the granting of any security interests described in this Agreement for financing the acquisition and development of the Shopping Center Tract, nor a sale to a partner, joint venturer or other entity associated with Developer for the express purpose of financing the acquisition and development of the Project Site as permitted under Sections 105.2 and 105.3 of this Agreement.

C. Assignment in Violation of Agreement. In the absence of specific written agreement by the Agency, no such assignment or approval by the Agency shall be deemed to relieve the Developer or any other party from any obligations under this Agreement as to the Project Site (or any portion thereof) until the completion of development and construction of the improvements thereon as evidenced by a Certificate of Completion recorded therefor.

In the event that, contrary to the provisions of this Agreement, the Developer does assign this Agreement or any of the rights herein, in violation of this Agreement, prior to the recordation of an appropriate Certificate of Completion, the Agency shall be entitled to increase the purchase price paid by the Developer for the applicable part of the Project Site by the amount that the consideration payable for such assignment is in excess of the purchase price paid by the Developer, plus the Project Costs attributable thereto, including carrying charges and costs related thereto. The consideration payable for such assignment (to the extent it is in excess of the amount so authorized) shall belong and be paid to the Agency, and, until so paid, the Agency shall have a lien on the Project Site for such amount.

D. Prohibition Against Transfer of the Project Site or of Improvements to be Constructed Thereon. Nothing contained herein shall prohibit the sale, transfer or conveyance of the Developer Tract except as provided in the Developer Lease.

316 SECURITY FINANCING PRIOR TO CONVEYANCE

A. No Encumbrance Permitted Prior to Close of Escrow. Developer and each Major shall not encumber their respective interest in this Agreement or in any other agreement with Agency, and shall not attempt to encumber the Developer Lease, any Tract (or applicable component thereof) or any Major's Lease which would have the effect of vesting any interest to the Project Site in the lender prior to the Close of Escrow. After Close of Escrow, security financing permitted on the Project Site, the rights and obligations of holders and the

rights and obligations of Developer, each Major and the Agency shall be in accordance with their respective Leases.

B. Notice to Agency and Agency Approval for Certain Financing. Developer and each Major shall not enter into any agreement for conveyance for financing prior to Close of Escrow unless (i) such agreement for conveyance is conditioned upon the approval of Agency and the Close of Escrow and (ii) such financing is then or thereafter submitted to Agency as evidence of financing under Section 217. Agency shall not withhold its approval if the lender and the conditions of the loan are in conformity with Section 217 and the provisions of the respective leases governing such financing. After such approval, such lender shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to Agency's approval of such evidence of financing without such lender giving its prior written consent thereto.

317 CERTIFICATE OF COMPLETION

Promptly after completion of all construction and development for each respective Tract, Agency shall furnish the Developer (or the Majors, as the case may be) with a Certificate of Completion in recordable form as provided in Section 4.9 of the Developer's Lease, in each Major's Lease and in accordance with the REA.

SECTION 400 USE OF THE PROJECT SITE

To the extent that provisions concerning the subject matter of Sections 400 through 405 inclusive are included in the REA or a lease for a Tract, and are for the benefit of and are independently enforceable by Agency, those other provisions shall prevail over this Section.

401 USES

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction, the Developer, such successors, and such assignees shall devote the Developer Tract to the uses respectively specified therefor in the Redevelopment Plan as restricted and limited by this Agreement, the Developer Lease, the REA and the Scope of Development; and the Developer further covenants and agrees that it will not agree with Majors to allow or suffer any use that is contrary to the restrictions or limitations of this Agreement, the Major Leases, the REA or the Scope of Development.

402 MAINTENANCE OF THE PROJECT SITE

The Developer shall maintain the improvements on the Developer Tract exclusive of any easements reserved by or

granted to City for landscaping purposes, shall keep the Developer Tract free from any accumulation of debris or waste materials and shall also maintain the landscaping required to be planted under the Scope of Development in a healthy condition in accordance with the Developer Lease and the REA.

403 OBLIGATION TO REFRAIN FROM DISCRIMINATION

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

404 FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES

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

A. In Deeds: "The grantee herein covenants by and for himself, his 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 sex, marital status, race, color, religion, creed, 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 any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

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

"That there shall be no discrimination against or segregation of any person or

group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him 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 land herein leased."

C. In Contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, 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 land."

405 EFFECT AND DURATION OF COVENANTS

After issuance of Certificates of Completion for all of the improvements constructed on the Project Site, or any portion thereof, all of the terms, covenants, agreements or conditions set forth in this Agreement pertaining to the obligation to construct improvements shall cease and terminate. Upon conveyance of the respective leaseholds as provided in Section 206, the terms and provisions of the REA and of the respective leases shall prevail over this Agreement to the extent the REA and such lease provisions are in conflict with this Agreement.

406 PUBLIC AGENCY RIGHTS OF ACCESS FOR CONSTRUCTION, REPAIR AND MAINTENANCE OF PUBLIC IMPROVEMENTS AND FACILITIES

The Agency for itself, and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Project Site or any part thereof for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Project Site. Any such entry shall be in compliance with the REA.

SECTION 500 DEFAULTS, REMEDIES AND TERMINATION

501 DEFAULTS - GENERAL

A. Notice and Right to Cure - In General. Subject to the extensions of time set forth in Section 605, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must within thirty (30) days after written notice from the other party commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default unless a different time period for curing a particular default is specified elsewhere.

B. Notice of Default. The nondefaulting party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time for curing a default.

C. No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or 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.

D. Additional Copies of Notice of Default. In the event a default of the Developer is claimed by the Agency with respect to the development of buildings and improvements on the Project Site, the Agency also shall furnish copies of such written notice of default to each party to the REA, as defined in Section 704 hereof, other than the Developer, at the address specified in the REA for serving of notice upon such party.

502 INSTITUTION OF LEGAL ACTIONS

In addition to any other rights or remedies, 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; provided, however, prior to the Close of Escrow and the conveyance of the Developer Lease, the Agency's sole and exclusive remedy for the default of Developer under this Agreement shall be limited to the retention of liquidated damages pursuant to Section 106; and the Developer's sole and exclusive remedy for the default of Agency shall be the remedies set

forth in Sections 204I(3) and 508.1. Such legal actions may be instituted in the Superior Court of the County of Santa Barbara, State of California, in an appropriate municipal court in that County, or in the Federal District Court in the Central District of California.

503 APPLICABLE LAW

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

504 ACCEPTANCE OF THE LEGAL 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 Chairman, Executive Director or Secretary of the Agency, 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 general partner, a corporate officer of the Developer or in such other manner as may be provided by law, whether made within or without the State of California.

505 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 time or different times, of any other rights or remedies for the same default or any other default by the other party.

506 DAMAGES

If either party 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 commenced to be cured within thirty (30) days after serving of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, the defaulting party shall be liable to the nondefaulting party for the damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default, except to the extent that rights of the parties are limited by liquidated damage or the maximum liability provisions in this Agreement, and any specific provisions contained herein which limit the rights and liabilities of the parties.

507 SPECIFIC PERFORMANCE

If either Agency or Developer defaults with regard to any of the provisions of this Agreement, neither the Agency nor the Developer, as applicable, shall have the right to commence or maintain an action for specific performance, except for the rights of Agency under Section 608.

508 REMEDIES AND RIGHTS OF TERMINATION PRIOR TO CONVEYANCE

508.1 Termination by Developer

A. Developer's Option to Terminate. The Developer at its option may terminate this Agreement (subject to the notice and cure provisions of Section 501) if prior to conveyance of the Developer Lease, the escrow cannot close, due to no fault of Agency, because:

(1) After diligent investigation of the soil conditions of the Project Site within the time required by Section 215 hereof, Developer determines that the soil conditions are such that development of the Project Site cannot economically or feasibly be pursued, and the Agency does not elect to correct such conditions in accordance with Section 215 hereof, or any time prior to Close of Escrow Developer determines that Hazardous Substances are present on the Project Site, and Agency does not elect to remove or protect the Project Site from such Hazardous Substances; or

(2) Agency has not delivered the Notice to Proceed within the time and in accordance with Section 204E because the conditions set forth in Section 204A(1) and (2) have not been satisfied; or

(3) The conditions described in Section 206A(3) are not satisfied or waived by Developer.

In the event of termination by Developer pursuant to this Section 508.1A, the Agency shall return Developer's Deposit, the Letter of Credit and all other sums or security held by Agency hereunder, and the Developer Loan (if made) shall be paid in accordance with Section 201.2H(2). Except for the rights reserved in the immediately preceding sentence, the duties and obligations of the parties shall fully cease and terminate, and neither party shall have any further rights or liabilities against the other; provided, however, that nothing contained herein shall limit the liability of Agency pursuant to Sections 204(I), 508.1B, or 508.1D if Developer terminates this Agreement for any of the foregoing reasons due to the default of Agency.

B. Agency's Default Subsequent to Notice to Proceed. Developer at its option may terminate this Agreement prior to the conveyance of the Developer Lease if, after delivery of the Notice to Proceed by Agency to Developer, Agency defaults in any of the following obligations: (a) streets and other public rights-of-way within the blocks comprising the Project Site are not vacated to permit the development and use of the Project Site specified in the Scope of Development as provided in Section 214, or (b) Agency has not acquired the properties necessary to constitute the Lease Parcels (Section 201.3), or (c) Agency does not tender conveyance of the Lease Parcels or deliver possession thereof or the right of prejudgment possession in the manner and condition and by the dates provided in this Agreement, or (d) Agency has not provided the Appurtenant Parking on the Parking Parcels as provided in the Parking Agreement referred to in Section 701.3, or (e) any of the conditions set forth in Section 206A(2) are not satisfied by Agency or waived by Developer within the times required by this Agreement, or (f) upon satisfaction of all conditions precedent and concurrent to Agency's obligation to make conveyance, Agency does not, in breach hereof, tender conveyance of the Lease Parcels, or (g) Agency has failed to cure a soil, geologic or seismic condition, or removed from or protected the Project Site from Hazardous Substances, after Agency has elected to cure such condition or remove or protect the Project Site from such Hazardous Substances in accordance with Section 215 hereof, or (h) Agency has breached or violated any material term or condition of this Agreement or Agency has breached or violated any material term or condition of the Cooperation Agreement or has failed to exercise due diligence and its best efforts to enforce Agency's rights against City under the Cooperation Agreement, and such failure or failures is or are not cured within thirty (30) days after written demand by Developer; then, in the event of termination by Developer pursuant to this Section 508.1B, Developer shall be entitled to any damages and remedies provided for such default as set forth and subject to the applicable limitations contained in the provisions of Sections 204 and 508.1D. Developer and Agency shall have the rights provided in Subsection 201.2.H(2) for payment of any amounts owing under the Promissory Note and the rights under Section 204H and I to the extent applicable and, except for the rights reserved in the immediately preceding sentence, each of the duties and obligations of the parties shall fully cease and terminate, and neither party shall have any further rights or liabilities against the other.

C. Developer's Option to Terminate Upon the Failure of Certain Conditions. Developer shall have the option described in Section 206A(4) to terminate this Agreement and the rights of the parties upon termination shall be as set forth therein and in Section 106E.

D. Developer's Right to Terminate Upon Agency's Failure to Perform Covenant

(1) Notwithstanding any other provision of this Agreement regarding Developer's termination rights, in the event Agency defaults by its failure to use due diligence and best efforts to perform its obligations hereunder, or fails to perform the obligations it has represented and covenanted to perform under this Agreement (after Developer has notified Agency of such default or defaults, and Agency thereafter and within a reasonable time does not cure or having commenced to cure does not diligently pursue and complete such cure), then Developer, as its sole and exclusive remedy for such default by Agency, shall be entitled to terminate this Agreement and receive liquidated damages (and the damage limitation defined as Agency's Maximum Liability in Section 204I shall apply only to the extent provided below) as follows:

(a) Prior to the delivery of the Notice to Proceed, Developer shall be entitled to receive an amount equal to One Million One Hundred Twenty-five Thousand Dollars (\$1,125,000);

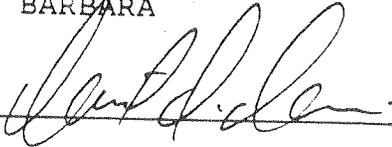
(b) After the delivery of the Notice to Proceed, Developer shall be entitled to receive an amount equal to Developer's Termination Costs (as defined in Section 204I), subject to the Agency's Maximum Liability, plus One Million One Hundred Twenty-five Thousand Dollars (\$1,125,000).

(2) THE AGENCY AND DEVELOPER BY THIS AGREEMENT MUTUALLY AGREE THAT LIQUIDATED DAMAGES MAY BE PAID TO THE DEVELOPER AS A RESULT OF AGENCY'S FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER, INCLUDING THE OBLIGATIONS AGENCY HAS REPRESENTED AND COVENANTED IT WILL PERFORM UNDER THIS AGREEMENT. THE AGENCY AND THE DEVELOPER MUTUALLY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES TO THE DEVELOPER IN CASE OF SUCH FAILURE OF AGENCY AND THAT THE AMOUNTS SET FORTH IN SECTION 508.1D(1) ABOVE ARE REASONABLE ESTIMATES OF THE DAMAGES WHICH DEVELOPER WOULD SUFFER. THEREFORE, AS A RESULT OF AGENCY'S FAILURE TO PERFORM ITS OBLIGATIONS, INCLUDING THE OBLIGATIONS AGENCY HAS REPRESENTED OR COVENANTED TO PERFORM UNDER THIS AGREEMENT, THE PAYMENT OF LIQUIDATED DAMAGES TO DEVELOPER BY AGENCY IN THE APPLICABLE AMOUNTS SET FORTH IN SECTION 508.1D(1) ABOVE SHALL BE DEVELOPER'S SOLE AND EXCLUSIVE REMEDY, EXCEPT THAT DEVELOPER SHALL BE ENTITLED TO THE RETURN OF THE DEVELOPER'S DEPOSIT UNDER SECTION 106 AND THE LETTER OF CREDIT DELIVERED UNDER SECTION 107, THE PAYMENT OF THE DEVELOPER LOAN IN ACCORDANCE WITH SECTION 201.2H(2), THE RETURN OF THE PAYMENT UNDER SECTION 206.1B(3) AFTER THE NOTICE TO PROCEED HAS BEEN DELIVERED, AND ALL OTHER SUMS DEPOSITED BY DEVELOPER WITH AGENCY HEREUNDER. FROM AND AFTER THE DATE THAT AGENCY BECOMES LIABLE FOR ANY OF THE AMOUNTS SET FORTH IN SECTION 508.1D(1),

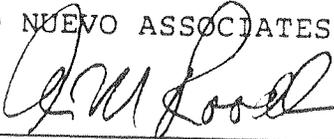
SUCH AMOUNTS SHALL CONSTITUTE INDEBTEDNESS OF AGENCY IN ACCORDANCE WITH CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 33670(b) and 33675 and AGENCY SHALL THEREAFTER INCLUDE PROVISIONS FOR PAYMENT OF SUCH AMOUNT IN ITS BUDGET.

APPROVED per California Civil Code Section 1677:

REDEVELOPMENT AGENCY OF THE CITY OF
SANTA BARBARA

By: 

PASEO NUEVO ASSOCIATES

By: 

508.2 Termination by Agency

A. Agency's Option. Agency at its option may terminate this Agreement (subject to the notice and cure provisions of Section 501) if prior to conveyance of the Developer Lease due to no fault of Agency (or the City under the Cooperation Agreement):

(1) Developer does not deposit and maintain with the Agency as required the Developer's Deposit and the Letter of Credit as provided in Sections 106 and 107, or the Issuer of the Letter of Credit does not honor a demand by Agency upon such Letter of Credit; or

(2) Developer improperly assigns or attempts to assign this Agreement, or any rights therein, or makes any total or partial sale, lease, transfer or conveyance of the whole or any part of the Project Site or the improvements to be developed thereon in violation of the terms of this Agreement; or

(3) Developer has not submitted to the Agency satisfactory evidence that the Developer and the Majors have the financing commitments specified in Section 217 on or prior to the date set forth therefor in the Schedule of Performance, or if there is a change in status of such evidence of financing reflecting adversely on the feasibility of the development of the Project Site pursuant to the requirements of this Agreement, and substitute financing is not obtained within a reasonable time after the date of written notice by the Agency; or

(4) Developer does not procure two Majors to participate in the Retail Center (subject to Section 206.1); or

(5) Developer (or a Major subject to Section 206.1) does not submit construction drawings and related documents as required by this Agreement, or does not submit construction drawings which are approved by the Agency; or

(6) Upon satisfaction of all conditions precedent and concurrent to Developer's obligation to take conveyance, Developer does not, in breach hereof, pay or deposit Developer's Consideration or take conveyance of the Developer Lease Parcels under tender of conveyance by the Agency; or

(7) Developer has not submitted and obtained the approval of the marketing plan required under Section 108 or Developer's plan for extending preference and opportunity for local businesses to become lessees on the Project Site and to displaced businesses to reenter pursuant to Section 704; or

(8) Developer fails to satisfy the conditions described in Section 206A(1) and such conditions are not waived by Agency; or

(9) Developer fails to cure a soil, geologic or seismic condition, or remove Hazardous Substances from, or protect the Project Site therefrom after having elected to do so within the time and in accordance with Section 215C hereof;

(10) Developer has breached or violated any other material term or condition of this Agreement.

B. Termination Resulting from Developer's Default. In the event of termination by Agency pursuant to Section 508.2A, Agency, as its sole and exclusive remedy for Developer's default or failure to perform under this Agreement, shall retain Developer's Deposit, and the Letter of Credit and all other sums or security held by Agency under this Agreement shall be returned to Developer, and the Developer Loan paid in accordance with Sections 201.2H(1), and Developer and Agency shall have no further rights or obligations under this Agreement except the rights regarding the plans and data in Section 608.

C. Termination Prior to Notice to Proceed. Agency may at its election terminate this Agreement if, after Date 2 and prior to the delivery by Agency to Developer of the Notice to Proceed, (i) Agency does not adopt resolution(s) of necessity for property not acquired by negotiation and purchased by Agency and thereafter exercises its right to terminate this Agreement pursuant to Section 201.3C, or (ii) the conditions

in Section 204A(1) and (2) are not otherwise satisfied or waived by Agency.

In the event of termination by Agency pursuant to this Section 508.2C, the Agency shall return Developer's Deposit, the Letter of Credit, and all other sums or security held by Agency under this Agreement, and the Developer Loan shall be paid in accordance with Section 201.2.H(2). Except for the rights reserved in the immediately preceding sentence, the rights of Developer in Sections 204H and 204I and the rights of Agency in Section 608, each of the duties and obligations of the parties shall fully cease and terminate, and neither party shall have any further rights or liabilities against the other.

D. Termination Subsequent to Notice to Proceed. After delivery by Agency to Developer of the Notice to Proceed, Agency may at its election terminate this Agreement in accordance with and subject to subsection I of Section 204 of this Agreement, in which event Developer shall have the rights under such sections and the Agency shall return Developer's Deposit, the Letter of Credit, and all other sums or security held by Agency under this Agreement, and the Developer Loan shall be paid in accordance with Section 201.2H(2), and Agency shall pay to Developer's Termination Costs in accordance with Section 204I.

E. Notice of Termination. Any termination shall be pursuant to a written notice to the other party, which notice shall specify the section and subsection upon which the noticing party relies.

509 INTENTIONALLY OMITTED

510 EXCULPATION CLAUSE

A. Exculpation of Agency. The exercise by Agency of its right of review of the Developer's and each Major's plans, specifications and drawings is to monitor conformity to and compliance with the Schedule of Performance and the design and exterior architectural treatment agreed to by Developer and each Major and approved by Agency in the Scope of Development and the Basic Concept Drawings.

(1) The Agency does not have, and by this Agreement expressly disclaims, the right to or duty for any review of the plans, specifications and drawings for the purpose of determining compliance with building codes, safety features or standards or for the purpose of determining or approving engineering or structural design, sufficiency or integrity. Approval or a direction or request to change by Agency of the plans, specifications and drawings submitted by Developer and each Major is not and shall not be a review or approval of the

quality, adequacy or suitability of such plans, specifications or drawings, nor of the labor, materials, services or equipment to be furnished or supplied in connection therewith. Any change or alteration in any construction document pursuant to a direction or request in writing by Agency shall similarly be within the provisions of this Section unless in response to such direction or request Developer, a Major, or its respective representative shall notify Agency in writing that the direction or request, if executed as directed or requested, shall constitute a danger or hazard to life, safety or property or shall create a dangerous condition that would or might constitute such a danger or hazard and Agency nevertheless requires such change or alteration.

(2) Agency does not have and expressly disclaims any right of supervision or control over the architects, designers, engineers or other draftpersons and professionals responsible for the drafting and formulation of the plans, specifications or drawings, or any right of supervision or control of contractors, builders, trades and other persons engaged in constructing and fabricating the improvements pursuant to the plans. Agency shall have no responsibility for determining whether or not the plans, specifications or drawings and the manner of soil and site preparation and construction pursuant to such plans constitute a hazard or threat to the life, safety or property of any party or person.

B. Indemnification of Agency, Developer and Majors. Except as specifically provided in the Section 510A(1) above with respect to changes or alterations made at the written direction or request of Agency, Developer (and each Major) agrees to and shall indemnify Agency and hold Agency free and harmless of and from any and all claims to the contrary of the above, and all other claims, costs, expenses (including attorneys' fees), suits, actions, causes of action, judgments, liabilities, obligations and demands of any nature resulting from or arising out of the site preparation, design, engineering, architecture, construction, management, operation, materials or workmanship of the improvements and construction performed or to be performed and installed by Developer pursuant to this Agreement.

Agency agrees to and shall indemnify Developer and each Major and hold Developer and each Major free and harmless of and from any and all claims, costs, expenses (including attorneys' fees), suits, actions, causes of action, judgments, liabilities, obligations and demands of any nature resulting from or arising out of the site preparation work performed or to be performed by the Agency pursuant to this Agreement.

SECTION 600 GENERAL PROVISIONS

601 NOTICES, DEMANDS AND COMMUNICATIONS BETWEEN THE PARTIES

Formal notices, demands and communications between the Agency and the Developer shall be deemed sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Agency and the Developer addressed to each party as follows:

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA
City Hall
P.O. Drawer P-P
735 Anacapa Street
Santa Barbara, California 93102
Attn: Executive Director

with a copy to:

City Attorney
City of Santa Barbara
City Hall
P.O. Drawer P-P
735 Anacapa Street
Santa Barbara, California 93102

DEVELOPER:

PASEO NUEVO ASSOCIATES
c/o Reininga Corporation
600 Montgomery Street
Suite 3600
San Francisco, California 94111

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

602 CONFLICT OF INTERESTS

No member, official or employee of the Agency shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

603 WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

604 NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES

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

605 ENFORCED DELAY: EXTENSION OF TIMES OF PERFORMANCE

In addition to specific provisions of this Agreement, performance by either party hereunder, with respect to items of planning, construction and development on the Lease Parcels prior to the Close of Escrow required hereunder, shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; 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 (excluding condemnation actions); unusually severe weather; adverse soil conditions; presence of Hazardous Substances; inability (when either party is faultless) of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of any public or governmental agency or entity (other than acts or failure to act of Agency or City 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. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Written notice by the party claiming such extension shall be given to the other party. Times of performance under this Agreement may also be extended in writing by the Agency and the Developer. Notwithstanding the above, a delay caused by the presence of Hazardous Substances shall not extend beyond the time specified in Section 215C.

Notwithstanding the foregoing, after the Notice to Proceed has been delivered, the Close of Escrow shall not be extended for delays which are outside the control of the Agency in connection with the acquisition and delivery to

Developer of title to the Lease Parcels beyond twelve (12) months.

606 INSPECTION OF BOOKS AND RECORDS

The Agency has the right (at the Developer's office on the Project Site, upon not less than seventy-two (72) hours' notice) to inspect (at its sole cost and expense) the books and records of the Developer pertaining to the Project Site as pertinent to the purpose of this Agreement. The Developer also has the right (at the Agency's office, upon not less than seventy two (72) hours notice, and at all reasonable times) to inspect (at its sole cost and expense) the books and records of the Agency pertinent to the purpose of this Agreement.

607 APPROVALS BY THE AGENCY AND THE DEVELOPER

Wherever this Agreement requires the Agency and the Developer to approve, review or consent to any contract, document, plan, proposal, specification, drawing or other matter under the provisions of Sections 206.1 and 300 to 318, inclusive, such approval, review or consent shall not be unreasonably withheld. In addition, unless specifically provided otherwise in the applicable section of this Agreement, all approvals by Agency under Sections 104.2, 105.2, 105.3, 106, 107, 108, 203, 204, 206.1 and 217 shall not be unreasonably withheld.

608 PLANS AND DATA

Where the Developer does not proceed with the development of the Retail Center, and when this Agreement is terminated without fault of Agency with respect thereto for any reason, the Developer shall deliver to the Agency any and all plans and data concerning the Retail Center which are in the possession of Developer to the extent such plans and data are not confidential or rights therein are reserved to others. Such delivery shall be without warranty or representation of any kind and subject to any reservation of rights by the drafter, author or composer thereof, and Agency shall indemnify Developer from any claims of improper or unauthorized use of such plans and data. Developer shall, when engaging such parties, shall exert its reasonable efforts (without additional expense, obligation or liability to Developer) to obtain permission for Agency to own and use said documents under this Section.

609 SUBMISSION OF DOCUMENTS FOR APPROVAL

Whenever this Agreement requires one party to submit plans, drawings or other documents to the other party for approval, which shall be deemed approved if not acted on by the receiving party within the time specified in the Agree-

ment, 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 within the stated time.

SECTION 700 SPECIAL PROVISIONS

701 APPURTENANT PARKING

701.1 General

A total of 1,676 parking spaces will be constructed pursuant to this Agreement to accommodate the parking requirements for public patrons of the Retail Center. Of this total 572 spaces shall be located on the Onsite Parking Tract. The balance of 1,104 spaces will be constructed on the noncontiguous Parking Parcels.

701.2 Developer's Onsite Parking

Concurrently with other construction on the Lease Parcels, and in accordance with the Basic Concept Drawings and the construction drawings and related documents approved by Agency pursuant to Sections 301 and 303 of this Agreement, Developer at its sole cost and expense shall construct or cause to be constructed a parking structure (the "Onsite Parking Facility") as an integral part of the Retail Center containing 572 parking spaces. Concurrently with other drawings and related documents to be submitted under this Agreement, Developer shall prepare and submit or cause to be prepared or submitted to Agency for Agency's approval: appropriate plans and drawings for such parking depicting the dimensions, striping and circulation, ingress and egress to and from public streets and pedestrian access from the parking facilities to the Retail Center. The ownership, operation, maintenance and management of the Onsite Parking Facility shall be in accordance with the Parking Agreement attached hereto as Attachment No. 2 and incorporated herein by this reference and the other agreements described in Section 104.3.

701.3 Appurtenant Parking - Parking Parcels

A. Agency's Offsite Parking. At the times and under the conditions set forth in the Parking Agreement (Attachment No. 2), Agency at no cost or expense to Developer shall construct or cause the construction of public parking facilities on each of Parcel A ("Parcel A Offsite Parking Facility") and Parcel B ("Parcel B Offsite Parking Facility") in accordance with the Parking Agreement to achieve a combined total of not less than 1,104 parking spaces (collectively the "Offsite Parking Facilities"). The Onsite Parking Facility together with Offsite Parking Facilities shall be sometimes collectively referred to herein as Appurtenant Parking, as defined

in Section 104.3. The operation, maintenance and management of the Offsite Parking Facilities (and any rights accruing to Developer and the Retail Center operation with regard to the Offsite Parking Facilities) shall be in accordance with the Parking Agreement, the REA and the Parking Covenants.

B. Parking Covenants. In connection with parking requirements of the Retail Center, those certain instruments entitled "Onsite Parking Covenants" and "Offsite Parking Covenants" attached to the Parking Agreement shall be executed by the parties, delivered and recorded upon Close of Escrow as set forth in Section 104.3.

C. Evidence of Financing and Ability to Complete. Prior to the Close of Escrow, Agency shall provide Developer with evidence reasonably satisfactory to Developer that: (i) either of the Parcel A Offsite Parking Facility or the Parcel B Offsite Parking Facility is substantially completed and is available to the public for parking, (ii) the other Public Parking Facility not completed under (i) immediately preceding is under construction and that funds necessary to finance the completion of the remaining Public Parking Facility are available to Agency and (iii) both of the Offsite Parking Facilities will be completed four (4) months prior to the opening of the Retail Center.

702 RECIPROCAL EASEMENT AGREEMENT

A. Description and Approval of REA. Concurrently with the conveyance of the Developer Lease at the Close of Escrow, Developer, the Majors and Agency shall execute and deliver the Construction, Operation and Reciprocal Easement Agreement (the "REA") in the form attached hereto as Attachment No. 3. The parties hereto hereby approve the form and provisions of the attached REA. The provisions of said REA may undergo technical, clerical and operating changes; however, no substantive provisions of the REA as approved may be changed or altered without the prior written consent of the Agency.

B. Agency Rights and Obligations. Execution of the REA by the Agency shall constitute a determination that the REA is consistent with this Agreement and performance of the covenants of the REA and such other agreements shall be deemed for all purposes performance of the covenants herein with respect to development, construction and time of performance. The rights and obligations of the Agency shall be as specifically provided in the REA.

C. Right to Integration. Except for the special provisions of this Agreement concerning the Rehabilitation Parcels, the rights to integrate other parties into the Retail Center or to provide access to any other parties to the Retail Center shall be governed by the REA. The obligations to pay

compensation to Agency for any such integration shall be contained in the Developer Lease.

703 ARTS COMPLEX

A. Developer's Responsibility. Section V.B of the Scope of Development requires Developer to include specially constructed improvements and areas to accommodate cultural components dedicated to the visual and performance arts. These components will be constructed and owned by Developer subject to the Developer Lease, which provides that the Lessee will be responsible to Agency for the operation and maintenance of these components as part of the entire Retail Center. Developer also shall be responsible for purchase and installation of basic equipment and seating necessary to the operation of the performing arts space.

B. Component Use. The components shall be used to encourage, promote and display artistic and cultural works and events for the benefit and enjoyment of the general public and as an amenity for the people of the City of Santa Barbara (as distinguished from businesses and patrons of the Retail Center itself), and shall be operated and managed with those goals as the primary objective (as opposed to operating as a profit-motivated feature of the Retail Center).

C. Component Operation and Management. Developer may sublease or enter into operating or management agreements regarding all or portions of these components to nonprofit organizations dedicated to the promotion of art and culture in the City of Santa Barbara, provided that any such sublease or agreement shall not require any payment by the sublessee/operator to Developer and (i) shall not relieve Developer from any obligation or duty under the Developer Lease, (ii) shall not be entered into unless it has first been submitted to and approved by Agency, and (iii) Developer shall first have submitted to and received approval from Agency of (a) an initial operating plan and (b) an initial budget. Any such agreement may provide that the nonprofit organization or the artists occupying or using the components shall be responsible for internal utility and housekeeping costs. Agency approval as to the management and operation of the sublessee/operator under this subparagraph shall relate solely to the determination of whether the sublessee/operator qualifies under the provisions of this Section 703, but shall not include any supervision, oversight or right of approval of the selection, content, programming or presentation of the art or other cultural items. Agency shall give written notice of approval or specific grounds for disapproval of the management and operation of the sublessee/operator within the time set forth in the Schedule of Performance.

D. Component Plan and Budget. Not less than 2 calendar months prior to the end of the first year of the agreement and each such year thereafter, the Developer (and the operator, if any) shall submit to Agency for its approval (i) an operating plan for the next year and (ii) a budget for the next year's operation. Each such budget shall contain all reasonably anticipated expenses needed for the year's operating plan and shall specify the source of all income and contributions sufficient to defray such expenses. In the case of a nonprofit organization as operator, if the operating plan is not so submitted, or having been submitted is not approved by Agency, or if the budget is not in balance, then the agreement shall be cancellable at any time at the option of the Developer or the Agency.

E. Alternative Plan. If the components are not being used and/or operated by an organization in accordance with the above, Developer shall prepare and submit its own operating plan to Agency for Agency's approval, and shall operate the components at its sole expense or with funds derived from its operations in the Retail Center in accordance with the approved plan. All capital and operating costs and expenses regarding the components (including, but not limited to, their construction, repair, replacement, maintenance and operation) shall be paid and incurred by private parties or by nonprofit organizations properly chartered for such purposes, and none of the construction, operation, maintenance, repair or any other cost or expense for or arising out of the components shall be a charge upon the Agency, the City or any other public entity.

F. Staffing. Developer shall at all times employ and maintain an employee on its staff to coordinate the operation and to provide scheduling and management of the components.

G. No Third Party Rights. The obligations of Developer set forth in this Section 703 (as well as any other part of this Agreement) shall not create any rights in or obligations to any persons or parties other than Agency.

704 PARTICIPATION PREFERENCES FOR RETAIL AND COMMERCIAL BUSINESSES

A. Developer's Obligation. The Developer agrees to provide reasonable preferences and opportunities for commercial retail sales and service businesses presently located on the Project Site or other local businesses. Attached hereto as Attachment No. 11 is Developer's proposed form of the Relocation and Local Tenant Preference Plan. The attached Relocation and Local Tenant Preference Plan is subject to review by Agency and further negotiation by and between Agency and Developer.

B. No Third Party Rights. The obligations of Developer set forth in this Section 704 (as well as any other part of this Agreement) shall not create any rights in or obligations to any persons or parties other than Agency. Agency alone shall be entitled to enforce or waive any provision of this Section 704.

705 DEFENSE OF CHALLENGES

Agency agrees to defend itself against any suits, litigation or proceedings challenging or threatening the validity or enforceability of this Agreement.

706 RECORDABLE INSTRUMENTS AND LOAN INSTRUMENTS PREVAIL

706.1 Prevailing Documents. From and after the delivery and effectiveness of the Recordable Instruments and the instruments entered into between Agency and Developer pursuant to the Developer Loan, the respective provisions of the Recordable Instruments (including an instrument of which the Recordable Instrument is a memorandum, such as the respective Memoranda of Leases) and the instruments for the Developer Loan shall prevail over the provisions of this Agreement to the extent that those provisions concern the same subject matter or are, or are claimed to be, in conflict.

706.2 Effect of Recordation. After the recordation of the Recordable Instruments,

- (A) The Majors and any party acquiring any interest in the Property described in that Recordable Instrument from, by or through Developer or the Majors (the Majors and such acquiring party and its successors and assigns, and all other parties claiming any interest in the Property by or through such party or its successors and assigns, all of whom are referred to hereafter as the "Acquiring Party") shall not incur or be deemed to have assumed any obligation or liability under this Agreement, or any condition in this Agreement, or be bound thereby, except that such Acquiring Party owning, possessing, occupying or using the Property shall be bound by that Recordable Instrument and, to the extent applicable, other Recordable Instruments in favor of Agency (the "Surviving Instruments").
- (B) Agency shall not as against Acquiring Party have any rights, remedies or controls regarding the Property described under the Recordable Instrument that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision, or failure of any condition, of this Agreement; and the respective rights

and obligations of Acquiring Party to Agency with reference to the Property shall be limited thereafter to the Surviving Instruments. The rights, duties and obligations between Agency and Developer contained in this Agreement shall survive to the extent that the provisions of Recordable Instruments and the Developer Loans instruments do not prevail as set forth in Section 706.1.

SECTION 800 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

A. Duplicate Originals. This Agreement is executed in six (6) duplicate originals each of which is deemed to be an original. This Agreement includes ninety (90) pages and 12 attachments which constitute the entire understanding and agreement of the parties.

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

C. Waivers/Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency or the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

D. Further Documentation. This Agreement is entered into by both parties with the recognition and anticipation that subsequent agreements implementing and carrying out the provisions of this Agreement will be necessary.

E. Headings

The headings contained in this Agreement are intended as reference only and are in no way to be used to construe or limit the text herein.

SECTION 900 OFFER BY DEVELOPER AND TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

A. Conditions of Offer and Acceptance. The delivery to Agency by Developer of this Agreement executed by Developer shall constitute an offer to Agency by Developer, which offer may be accepted by Agency only upon the fulfillment of the following conditions: (i) approval by the Board of Agency and the consent to this Agreement by the City Council of City in accordance with applicable requirements of law, (ii) submission to Agency (and approval by Agency) of written commitments by Nordstrom and The Broadway to participate in the Retail Center as required by Section 108B of this Agreement in a form

and containing terms and conditions satisfactory to Agency and Developer, (iii) delivery by Developer to Agency of the Letter of Credit, (iv) execution and delivery of the Parking Agreement by Agency and Developer; (v) execution and delivery of the Cooperation Agreement by City and Agency, and (vi) execution of this Agreement by an authorized officer of Agency and delivery of such fully executed Agreement to Developer within 75 days after the Delivery Date noted next to the signature of Developer. This Agreement shall not be binding on either party hereto unless and until all of the foregoing conditions have been satisfied.

B. Expiration and Rejection of Offer. If the conditions of both (ii) and (iii) in paragraph A above are not fulfilled within 60 days from the date upon which the events in (i) above have occurred, this offer by Developer shall expire and shall be deemed rejected by Agency.

C. Letter of Credit Necessary for Effectiveness. This Agreement shall not be effective for any purpose, nor shall it be binding on either party hereto unless and until Agency has received delivery of the required Letter of Credit.

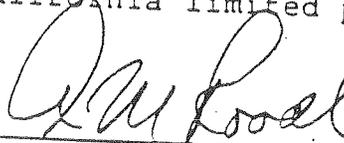
D. Effective Date of this Agreement. The date of this Agreement (the Effective Date) shall be the date when this Agreement shall have been signed by the Agency.

E. Execution by Agency Deemed Approval of Commitments. Execution of this Agreement and delivery thereof to Developer by Agency after receipt of the submissions in clause (ii) of paragraph A above shall constitute the approval of Agency as

required in said clause (ii) of paragraph A above and Section 108B.

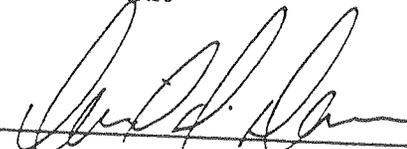
PASEO NUEVO ASSOCIATES
a California limited partnership

Delivery Date:
September 21, 1987

By 

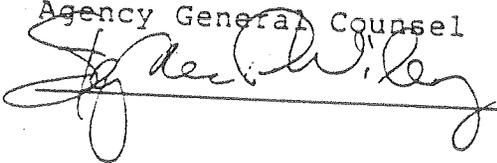
REDEVELOPMENT AGENCY OF THE CITY OF
SANTA BARBARA

Effective Date:
NOV 23, 1987

By 

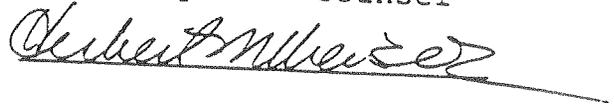
APPROVED AS TO FORM
THIS 23 DAY OF
November, 1987:

Agency General Counsel



APPROVED AS TO FORM
THIS 23 DAY OF
November, 1987:

Agency Special Counsel



LIST OF ATTACHMENTS

<u>SECTION</u>	<u>ATTACHMENT</u>	<u>DESCRIPTION</u>
104.1	1A	Site Map and Legal Description
104.1	1B	Site Map and Legal Description (Alternate Development Plan)
104.3A	2	Parking Agreement
104.3A	3	REA
104.3B	4	Cooperation Agreement
104.2E(1)	5	Credits Against Developer's Consideration
201.2C	6	Promissory Note
202	7	Developer Lease
202	8	Major Lease Form
106A	9	Schedule of Performance
208	10	Scope of Development
704A	11	Relocation and Local Tenant Preference Plan
211A	12	Project Costs