STAFF REPORT
CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers/
Honorable Chairperson and Board of Directors
FROM: David Ott, City Manager/Executive Director
MEETING DATE: January 26, 2011
ORIGINATING DEPT: City Manager’s Office
SUBJECT: Approval of the First Amended and Restated Exclusive Right to Negotiate Agreement for the Development of an Affordable Housing Project at the 500 block of South Sierra Avenue and the Execution Thereof

STAFF REPORT UPDATE
Item # C.3

DISCUSSION:

Attachment 3: First Amended and Restated Exclusive Right to Negotiate and Predevelopment Loan Agreement (South Sierra Avenue Development).
FIRST AMENDED AND RESTATED EXCLUSIVE RIGHT TO NEGOTIATE AND PREDEVELOPMENT LOAN AGREEMENT
(SOUTH SIERRA AVENUE DEVELOPMENT)

This First Amended and Restated Exclusive Right To Negotiate Agreement (this "Agreement"), initially executed as of July 14, 2010 (the "Effective Date"), as fully amended and restated as of January 2011 (the "Amendment Date"), is entered into by and between the Solana Beach Redevelopment Agency, a public body, corporate and politic (the "Agency"); the City of Solana Beach, a municipal corporation (the "City"); and Hitzke Development Corporation, a California corporation (the "Developer"), on the basis of the following facts. The Agency, City, and Developer may sometimes be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

A. The City Council of the City adopted the Solana Beach Redevelopment Agency Project Plan (the "Redevelopment Plan") on July 13, 2004. The Redevelopment Plan includes provisions for the development of affordable housing to meet the Agency’s affordable housing obligations under Health & Safety Code Section 33413.

B. The City owns a site of approximately 18,260 sq. ft. site, which is currently used for public parking, located in the 500 block of South Sierra Avenue (APN 298-211-81-00), as further described in the attached Exhibit A (the "Site"). The Site may be suitable for ten (10) units of very low income housing as part of a mixed use project that would also include replacement of the existing public parking, neighborhood-serving commercial space, and private off-street parking accessory to the other uses (the “Development”). The concept for the Development is further described in the attached Exhibit B. The Agency desires to facilitate the development of affordable housing on the Site to assist in meeting the Agency’s affordable housing production obligations under Health & Safety Code Section 33413. As required by Health & Safety Code Section 33334.2(g), the Agency hereby finds that construction of very low income housing on the Site will be of benefit to the Redevelopment Plan, in that the Site is within 500 feet of the area included within the Redevelopment Plan.

C. The City, Agency, and Developer desire to continue exclusive negotiations for redevelopment of the Site and construction of the Development.

D. The purposes of this Agreement are: (1) to establish procedures and standards for the negotiation by the City, Agency, and Developer of a disposition, development, and loan agreement (a "DDLA") and other required agreements pursuant to which, among other matters, if specified preconditions are satisfied: (a) the City would consider transferring the Site to the Agency on terms to be determined; and the City or Agency would ground lease the Site to the Developer at an amount to be negotiated that would enable a financially feasible Development; (b) the Agency would make a construction and permanent loan to the Developer to assist in financing the Development; and (c) the Developer would develop and operate the Development
on the Site; and (2) to set forth terms for disbursement and repayment of a predevelopment loan by the Agency to the Developer in an amount not to exceed Six Hundred Forty-Eight Thousand Dollars ($648,000) (the "Predevelopment Loan") from the Agency’s Low and Moderate Income Housing Fund to fund certain analyses, investigations, and plans completed by the Developer for the purpose of providing affordable housing. As more fully set forth in Section 4.1, the Developer acknowledges and agrees that this Agreement in itself does not grant the Developer the right to develop the Development, nor does it obligate the Developer to any activities or costs to develop the Development, except for the actions and negotiations contemplated by this Agreement.

E. Until completion of certain feasibility studies for the Development to be funded through the Predevelopment Loan, it is not possible to provide meaningful information for environmental assessment of the Development in accordance with the provisions of the California Environmental Quality Act ("CEQA"). It is the intention of the Parties to use the feasibility studies to be funded through the Predevelopment Loan to prepare the necessary environmental assessment under CEQA prior to approval of discretionary actions of the City and the Agency that would authorize and enable development of the Development. The Predevelopment Loan is exempt from the requirements of CEQA pursuant to Section 15262 of the California Code of Regulations Sections 15000 et seq. ("CEQA Guidelines"), in that the Predevelopment Loan is being used to fund feasibility and planning studies that consider environmental factors (including environmental studies and studies of water, sewer, and other utilities).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

ARTICLE 1.
EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1 Good Faith Negotiations. The City, Agency, and the Developer shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of a DDLA for the development of the Development on the Site. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory DDLA.

Among the issues to be addressed in the negotiations are: (i) agreements between the City, Agency, and Developer regarding use and ownership of the Site; (ii) terms of a ground lease for the Site between the City, Agency and Developer; (iii) amount, timing, method, source, and other terms of a loan for construction and permanent financing for the Development between the Agency and the Developer; (iv) the physical and land title conditions of the Site and remediation of any adverse conditions, (v) the precise scope of the Development and the land use approvals necessary for the Development, (vi) the development schedule for the Development,
(vii) operation, marketing, and management of the Development, including the public parking and affordable housing; and (vii) any required agreements between the City and Agency regarding the financing of the Development.

Section 1.2 Negotiating Period. Subject to earlier termination pursuant to specific provisions of this Agreement, the negotiating period (the "Negotiating Period") under this Agreement commenced on the Effective Date and shall expire one hundred eighty (180) days after the Amendment Date. The Negotiating Period may be extended on the City and Agency's behalf for up to an additional one hundred twenty (120) days by the Agency Executive Director/City Manager (the "Agency Executive Director") if, in the Agency Executive Director's reasonable judgment, sufficient progress toward a mutually acceptable DDLA has been made during the one hundred eighty (180) day negotiating period to merit such extension.

If, despite their respective diligent good faith efforts, the Parties are unable to reach agreement and execute and deliver a DDLA by the expiration of the Negotiating Period (as the Negotiating Period may be extended pursuant to the preceding paragraph), then this Agreement shall terminate and no Party shall have any further rights or obligations under this Agreement, except that the provisions of Sections 3.7(b), 4.3, 4.5, 4.6, and 4.7 shall survive any termination. If a DDLA is executed by the Parties, then, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDLA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period, the City and Agency shall not negotiate with any entity, other than the Developer, regarding the disposition, use, or development of the Site, or solicit or entertain bids or proposals to do so.

Section 1.4 Identification of Developer Representatives and Development Team.

(a) Identification of Developer Representative. The Developer's representative to negotiate the DDLA with the City and Agency is Ginger Hitzke. The Developer's negotiating representative may be changed by written notice to the City and Agency.

(b) Development Team. The Parties acknowledge that the identity and quality of the Developer's team for the Development is important to the completion of the tasks set forth in Article 2 below, and in seeking to negotiate a mutually acceptable DDLA. The following shall constitute initial members of the Developer's team for the Development:

- Architect: Foundation for Form Architecture
- Landscape Architect: DeLorenzo, Inc.
- Civil Engineer: SWS Engineering, Inc.

The architect, landscape architect, and civil engineer identified above shall comprise the "Development Team" for the Development. The Developer may replace one or more members of the Development Team upon receipt of Agency approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 1.5 Identification of City and Agency Representative. The City's and Agency's representative to negotiate the DDLA with the Developer is David Ott, City Manager.
and Agency Executive Director, who has ultimate staff authority to make decisions related to this Agreement that can be made at the staff level, and to make staff recommendations to the City Council and Agency Board in connection with decisions required to be made by the Council and Board. The Agency's negotiating representative may be changed by written notice to the Developer.

ARTICLE 2.
NEGOTIATION TASKS AND DDLA PROVISIONS

Section 2.1 Overview; ERNA Schedule. To facilitate negotiation of the DDLA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 within an overall timeframe that will support negotiation and execution of a mutually acceptable DDLA prior to the expiration of the Negotiating Period.

Section 2.2 Development of Work Program and Schedule. Within thirty (30) days after the Amendment Date, the Parties shall meet and mutually agree upon a list of negotiation tasks, responsibilities of the Parties, and schedule (the "erna Schedule") needed to negotiate a DDLA for the Development within the Negotiating Period. The negotiation tasks may include but are not limited to those listed in this Article 2 and listed for convenience in Exhibit C. Each of the tasks listed in this Article 2 shall be completed within the time period set forth in the ERNA Schedule.

Section 2.3 Proposed Term Sheet. The City and Agency shall provide the Developer with a proposed non-binding term sheet (the "Proposed Term Sheet") containing proposed business and financial terms for negotiation of the DDLA and based on the pro forma submitted by the Developer and the pro forma analysis submitted by Keyser Marston Associates, Inc. dated November 16, 2010. The Developer shall provide the City and Agency with any written comments regarding the Proposed Term Sheet. Thereafter, the Parties shall conduct negotiations for the DDLA taking into account the Proposed Term Sheet and any Developer comments.

Section 2.4 Community Engagement. The Parties shall confer and seek agreement on an appropriate strategy to obtain input from community members regarding the Development. If desired by the City or Agency, the Developer shall take the lead in noticing and conducting one or more community workshops to solicit community input on the Development; and the Developer shall participate in any community workshop regarding the Development is requested by the City or Agency. All workshops shall be noticed to all property owners and occupants in the vicinity of the Site.

Section 2.5 Conceptual Site Plans. The Developer shall cause preparation by a licensed architect of a conceptual site plan, elevations, and other plans adequate to constitute a complete application for all City Land Use Entitlements and which shall be materially consistent with the development concept included as Exhibit B.

Section 2.6 Planning Application and Land Use Entitlements. The Developer shall submit to the City a complete application for all discretionary land use entitlements required from the City to develop the Development (collectively, the "City Land Use Entitlements"). The Developer's application for the City Land Use Entitlements shall be materially consistent with
the development concept included as Exhibit B. Following submittal, the Developer shall use
diligent good faith efforts to seek City approval of the City Land Use Entitlements in accordance
with all applicable legal requirements and procedures. Nothing in this Agreement shall obligate
the City to exercise its discretion regarding the Development in any particular manner.

Section 2.7 CEQA Review. As part of its review of the City Land Use Entitlements
and the DDLA, the City shall complete the documentation required for the processing of the
DDL A and the City Land Use Entitlements under CEQA and the CEQA Guidelines; provided,
that nothing in this Agreement shall be construed to compel the Agency or the City to approve or
make any particular findings with respect to such CEQA documentation. The Developer shall
reasonably assist the City in its determination by providing information about the Development,
as requested. It is the intent of the City and Agency that CEQA review for the DDLA shall be
completed concurrently with CEQA review of the City Land Use Entitlements.

If the City or Agency, in its sole discretion, determines that the approval of the City Land
Use Entitlements or DDLA requires non-feasible mitigation measures, or fails to yield benefits
that outweigh significant unavoidable impacts, or the City or Agency otherwise determines, in its
sole discretion, not to make any finding required by CEQA as a prerequisite to approval of the
City Land Use Entitlements or DDLA, it may terminate the Agreement. Upon such termination,
no Party shall have any further rights or obligations under this Agreement, except that any
provision of this Agreement that is specified to survive termination shall remain in effect and
binding upon the Parties.

Section 2.8 Application for HOME Funds and NEPA Review. The Developer
previously applied for federal HOME funds for the Development from the County of San Diego
(the "County") and intends to reapply for these funds. HOME funds may be available to assist
the Development. Consequently, if the Parties determine that the Developer shall reapply for
HOME funds, prior to the Developer's undertaking certain activities, including transfer of an
interest in the Site to Developer, an Environmental Assessment pursuant to NEPA and
implementing regulations of the Department of Housing and Urban Development ("HUD") (24
CFR Part 58) must be completed, and HUD must approve the County's Request for Release of
Funds after completion of the Environmental Assessment. The Parties agree that it would be
desirable to prepare an Environmental Assessment prior to approval of the DDLA and agree to
cooperate in working with the County to prepare an Environmental Assessment prior to approval
of the DDLA, if possible.

Section 2.9 Coastal Commission Approval. The Developer shall informally consult
with the California Coastal Commission regarding the conformance of the Development with
Coastal Commission plans and policies. If the City Land Use Entitlements are approved, the
Developer shall submit to the California Coastal Commission a complete application for all
discretionary land use entitlements required from the Coastal Commission and shall use diligent
good faith efforts to seek Coastal Commission approval. City shall cooperate with Developer in
seeking Coastal Commission approval. Coastal Commission approval of all required entitlements
shall be required prior to transfer of any interest in the Site to Developer but may occur after
approval of the DDLA.
Section 2.10 Payment for the Site; City and/or Agency Financial Contribution. The Parties shall seek to agree upon the terms for the transfer of the Site to the Agency, if the Parties determine to do so, and the ground lease to the Developer from the City or Agency. The City and Agency shall further seek to agree upon the terms of any use of City funds or funds from the Low and Moderate Income Housing Fund of the Agency to assist in the development of affordable housing on the Site. The nature, timing and amount of any City and/or Agency financial contribution to the Development shall be based on a good faith pro forma financial analysis of the Development, as well as analysis of such financial information by City and Agency staff and consultants, and other relevant information. It is the Parties’ intent that any mutually acceptable financial contribution to be included in a DDLA shall be in a form or forms authorized for funding from the Agency’s Low and Moderate Income Housing Fund pursuant to the California Community Redevelopment Law. The proposed ground lease payments for the Site shall be subject to confirmation pursuant to the formal reuse valuation and the noticed hearing and City Council finding process to be conducted in accordance with Health and Safety Code Section 33433, as further described in Section 2.11 below.

Section 2.11 Section 33433 Report. If the Parties concur upon the terms of a proposed DDLA for presentation to the Agency Board and the City Council, the Agency shall prepare the necessary documentation pursuant to Section 33433(a)(2)(B) of the California Health and Safety Code (the "Section 33433 Report") to be submitted to the Agency Board and the City Council in conjunction with the Agency’s and the City Council’s consideration of any DDLA that results from negotiations pursuant to this Agreement. The Section 33433 report shall contain the estimated value of the Site determined at its highest and best use under the Redevelopment Plan and the estimated value of the Site determined as the use and with the conditions, covenants and development costs required pursuant to the proposed DDLA.

Section 2.12 Due Diligence. During the Negotiating Period, the Developer shall complete due diligence activities, including but not limited to planning, soils report, hazardous materials report, financial feasibility and title adequacy.

(a) Physical Adequacy Determination. During the Negotiating Period, Developer shall determine whether the Site is suitable for development of the Development, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the massing of the proposed Development improvements and the parking requirements imposed on Developments of this type and the other environmental and regulatory factors that the Developer deems relevant. Any executed DDLA shall not provide for an additional opportunity for the Developer to determine the physical suitability of the Site or for the Developer to terminate the DDLA as a result of the purported physical unsuitability of the Site (unless such unsuitability arises solely from an event occurring subsequent to the execution of the DDLA).

(b) Title Adequacy Determination. The Agency has provided a Preliminary Title Report on the Site to the Developer. The Developer shall object to any exception appearing on the Preliminary Title Report within thirty (30) days of the Amendment Date, and the Parties shall establish a schedule for resolution of such objections as part of the ERNA Schedule.
Section 2.13 Reports; Treatment of Documents Upon Termination.

(a) Developer's Reports. Unless otherwise waived by the Agency, the Developer shall provide the Agency with copies of all reports, studies, analyses, plans, memoranda, and similar documents, but excluding financial or confidential or proprietary information, prepared or commissioned by the Developer and funded in whole or in part with the Predevelopment Loan, promptly upon their completion.

(b) City and Agency's Reports. The City and Agency shall provide the Developer with copies of all reports, studies, analyses, correspondence and similar documents (collectively, “documents”) prepared or commissioned by the City or Agency with respect to the Site and the Development, promptly upon their completion.

(c) Treatment of Documents Upon Termination. If this Agreement is terminated without the execution of a DDLA, the City’s and Agency’s rights with respect to the information submitted by the Developer under this Agreement shall be as set forth in the Assignment of Documents (as described and defined in Section 3.5).

Section 2.14 Progress Reports. From time to time as reasonably agreed upon by the Parties, each Party shall make oral or written progress reports advising the other Parties on studies being made and matters being evaluated by the reporting Party with respect to this Agreement and the Development.

Section 2.15 Review and Approval of All Discretionary Actions. The City Land Use Entitlements and any DDLA that may be negotiated are subject to approval at a public hearing by the City and Agency. The decision of the City and Agency regarding the City Land Use Entitlements and DDLA shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the Agency Board and/or City Council is required to make by law, including all necessary findings and determinations required under CEQA, state and local land use provisions, and the California Community Redevelopment Law. As to those matters, nothing herein, nor to be contained in the DDLA, shall obligate the City or Agency to exercise its discretion in any particular manner.

ARTICLE 3.
PREDEVELOPMENT LOAN PROVISIONS

Section 3.1 Predevelopment Loan Activities. Certain predevelopment activities are to be undertaken by the Developer in connection with performance of its obligations pursuant to this Agreement. The attached Exhibit C sets forth a list of certain predevelopment activities to be undertaken by the Developer in connection with performance of its obligations pursuant to this Agreement (the "Predevelopment Loan Activities") and a corresponding budget estimate for the various Predevelopment Loan Activities. Amounts expended by the Developer to pay costs incurred for the Predevelopment Loan Activities are referred to in this Agreement as the "Predevelopment Loan Expenditures."

Section 3.2 Predevelopment Loan. Subject to satisfaction of the conditions set forth in Section 3.6, the Agency shall lend to the Developer the Predevelopment Loan for the
Developer's documented Predevelopment Loan Expenditures, but in no event to exceed a maximum cumulative principal amount to be disbursed by the Agency of Six Hundred Forty-Eight Thousand Dollars ($648,000). The Predevelopment Loan funds disbursed by the Agency pursuant to this Agreement are referred to as the "Predevelopment Loan Funds." The Predevelopment Loan shall be evidenced by a promissory note (the "Promissory Note"), substantially in the form set forth in the attached Exhibit E, which shall be executed by the Developer concurrently herewith.

Section 3.3 Interest.

(a) Subject to the provisions of Section 3.3(b) below, the outstanding principal balance of the Predevelopment Loan shall bear simple interest at the rate of three percent (3%) per annum commencing with the date of first disbursement.

(b) In the event of a Developer Event of Default pursuant to Section 4.8, interest on the Predevelopment Loan shall begin to accrue, as of the date of the Event of Default and continue until such time as the Predevelopment Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

Section 3.4 Use of Predevelopment Loan Funds: Other Developer Funds. The Developer shall use the Predevelopment Loan Funds exclusively to pay or reimburse itself for previously paid Predevelopment Loan Expenditures consistent with the Draw Requests submitted to the Agency pursuant to Section 3.6(d). The Developer shall pay from funds other than Predevelopment Loan Funds all other costs and expenses incurred by the Developer in fulfilling its obligations under this Agreement and the Predevelopment Loan Documents. Any disbursed Predevelopment Loan Funds held by the Developer after the Developer has paid all Predevelopment Loan Expenditures shall be promptly returned to the Agency.

Section 3.5 Security. As security for repayment of the Predevelopment Loan, and as part of the consideration for entering into this Agreement, the Developer hereby assigns to the Agency and City its rights and obligations with respect to certain agreements, plans, specifications, other documents, and approvals, pursuant to an Assignment of Agreements, Plans and Specifications, and Approvals (the "Assignment of Documents"), substantially in the form set forth in the attached Exhibit E, which shall be executed by the Developer and all Contractors, as defined in the Assignment of Documents, prior to and as a condition of the initial disbursement of Predevelopment Loan Funds. The assignments set forth in the Assignment of Documents shall become effective immediately upon the occurrence of a Repayment Event (as defined in Section 3.7(b)). The Agency and City shall not have any obligation under any contracts or agreements assigned pursuant to the Assignment of Documents until the Agency and/or City expressly agrees in writing to be bound by such contracts or agreements. Upon the occurrence of a Repayment Event, the Agency and/or City may use any of the foregoing assigned documents pursuant to the Assignment of Documents for any purpose for which the Developer could have used them for development of the Development, and the Developer shall cooperate with the Agency and/or City to implement the Assignment of Documents and shall immediately deposit with the Agency for the Agency's and/or City's use all the agreements,
plans and specifications, approvals and other documents that are the subject of the Assignment of Documents.

The Promissory Note and the Assignment of Documents are collectively referred to in this Agreement as the "Predevelopment Loan Documents."

Section 3.6 Conditions to Funding. The Agency shall disburse Predevelopment Loan Funds upon satisfaction of the following conditions:

(a) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement or the Predevelopment Loan Documents;

(b) The Developer has executed and delivered to the Agency the Predevelopment Loan Documents, and the Predevelopment Loan Documents are in full effect, including an Assignment of Documents signed by any and all consultants who have submitted a bill or invoice for which Predevelopment Loan Funds are being requested;

(c) The Developer has delivered to the Agency a copy of the Developer's organizational documents and a corporate authorizing resolution, in form reasonably satisfactory to the Agency, authorizing the Developer's execution of this Agreement, the Promissory Note, the Assignment of Documents, and the transactions contemplated by the Predevelopment Loan Documents;

(d) The Developer has delivered to the Agency a written request (each a "Draw Request") setting forth one or more Predevelopment Loan Expenditures incurred or to be incurred by the Developer, and attaching a copy of the bill or invoice covering the Predevelopment Loan Expenditures incurred; and

(e) The following shall have been completed, as follows:

(1) Prior to approval of all City Land Use Entitlements, the Agency shall disburse to the Developer fifty percent (50%) of Developer's documented Predevelopment Loan Expenditures shown as "Predevelopment Loan Activities Prior to Receipt of City Land Use Entitlements" in Exhibit D attached hereto.

(2) After approval of all City Land Use Entitlements, the Agency shall disburse to the Developer the remaining cost of Developer's documented Predevelopment Loan Expenditures shown as "Predevelopment Loan Activities Prior to Receipt of City Land Use Entitlements" in Exhibit D attached hereto.

(3) Prior to issuance of a building permit for the Development and closing of all construction financing needed to construct the Development and after approval of all City Land Use Entitlements, the Agency shall disburse to the Developer fifty percent (50%) of Developer's documented Predevelopment Loan Expenditures shown as "Predevelopment Loan Activities After Receipt of City Land Use Entitlements" in Exhibit D attached hereto.
(4) After issuance of a building permit for the Development and closing of all construction financing needed to construct the Development and after approval of all City Land Use Entitlements, the Agency shall disburse to the Developer the remaining cost of Developer’s documented Predevelopment Loan Expenditures shown as “Predevelopment Loan Activities After Receipt of City Land Use Entitlements” in Exhibit D attached hereto.

Draw Requests may be submitted on a monthly basis. If the Agency disputes any Draw Request, it shall notify the Developer of such dispute within ten (10) calendar days after receipt of the Draw Request, and thereafter the Parties shall confer in good faith to resolve such dispute.

Subject to satisfaction of the above funding conditions, within ten (10) days after receipt of a Draw Request in form and substance reasonably acceptable to the Agency, the Agency shall disburse Predevelopment Loan Funds to the Developer in an amount equal to the Predevelopment Loan Expenditures shown on such approved Draw Request; provided however, that the total cumulative amount of Predevelopment Loan Funds required to be disbursed by the Agency to the Developer pursuant to this Agreement shall not exceed a maximum amount of Six Hundred Forty-Eight Thousand Dollars ($648,000).

Notwithstanding any other provisions of this Agreement, the Agency shall have no further obligation to disburse any portion of the Predevelopment Loan Funds to the Developer following: (1) termination of this Agreement; or (2) notification by the Agency to the Developer of a Developer default which, if not cured within the cure period set forth in Section 4.8 would become a Developer Event of Default under the terms of this Agreement or the Predevelopment Loan Documents; provided, however, that once a Developer default has been cured, the Agency's obligation to disburse Predevelopment Loan Funds in accordance with this Agreement shall be reinstated.

Section 3.7 Repayment of Predevelopment Loan.

(a) No Payment or Assignment During Negotiating Period. Prior to the expiration of the Negotiating Period or the occurrence of a Repayment Event, as defined below, no payments of principal or interest shall be owed by the Developer with respect to the Predevelopment Loan, and the City and Agency shall not exercise their rights to the Assignment of Plans.

(b) Repayment Event. As used in this Agreement, the term "Repayment Event" means either: (1) expiration of the Negotiating Period without execution of a DDLA by the Parties and without the existence of a City or Agency Event of Default pursuant to Section 4.8; (2) a termination of this Agreement prior to the expiration of the Negotiating Period for any reason other than as a result of a City or Agency Event of Default pursuant to Section 4.8; or (3) a Developer Event of Default pursuant to Section 4.8.

(1) Upon occurrence of a Repayment Event, Developer shall, within thirty (30) days after the Repayment Event (the “Maturity Date”), either: (A) pay the Agency the principal amount and any unpaid interest on the Predevelopment Loan; or (B) take all actions necessary to implement the Assignment of Plans and to deposit all documents pursuant to the Assignment of Plans with the Agency.
(2) If the Developer fails to repay the Predevelopment Loan or to take all actions necessary to implement the Assignment of Plans by the Maturity Date, then the Agency may declare a Developer Event of Default pursuant to Section 4.8 and shall thereupon have all rights and remedies set forth in this Agreement and the Predevelopment Loan Documents. All principal and interest amounts remaining due with respect to the Predevelopment Loan shall be due and payable commencing on the date of the Developer Event of Default pursuant to this Section 3.7(b).

(c) **If DDLA Becomes Effective.** If the DDLA is executed by the Parties and becomes effective, then as will be fully specified in such DDLA: (1) this Agreement shall be terminated; (2) the Promissory Note shall be repaid by funding of a subsequent loan provided by the Agency pursuant to the DDLA for purposes of repayment (the "DDL A Loan"); (3) a new promissory note and assignment of documents with respect to the DDL A Loan shall be executed by the developer under the DDL A; and (4) thereupon all obligations with respect to repayment of the DDLA Loan shall be as set forth in the DDLA and the accompanying documents executed in connection with the DDLA.

(d) **Upon City or Agency Event of Default.** If this Agreement is terminated as a result of a City or Agency Event of Default pursuant to Section 4.8, the Developer shall have no obligation to repay any principal or interest with respect to the Predevelopment Loan, and the Agency shall cancel the Promissory Note.

**ARTICLE 4.**
**GENERAL PROVISIONS**

Section 4.1 **Limitation on Effect of Agreement.** This Agreement shall not obligate the City, Agency or the Developer to enter into a DDLA or to enter into any particular DDLA. By execution of this Agreement, the City and Agency are not committing themselves to or agreeing to undertake any conveyance, disposition, or use of the Site. Execution of this Agreement by the City and Agency is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Agency Board and City Council action the final discretion and approval regarding the execution of a DDLA and all proceedings and decisions in connection therewith. Any DDLA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDLA has been considered and approved by the Agency Board and, if required by law, the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City, if required, Agency, and the Developer. Until and unless a DDLA is signed by the Developer, approved by the Agency Board and/or City Council, if required, and executed by the Agency and/or City, if required, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on any Party to enter into or support entering into a DDLA or be used as evidence of any oral or implied agreement by any Party to enter into any other legally binding document.

Section 4.2 **Notices.** Formal notices, demands and communications between the City, Agency, and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express
delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City and Agency: Solana Beach Redevelopment Agency
625 S. Hwy 101
Attn: David Ott, Executive Director
Phone: (858) 720-2400
Fax: (858) 792-6513

With copy to: Johanna N. Canlas, Agency Counsel
McDougal Love Eckis Boehmer & Foley
8100 La Mesa Blvd., Suite 200
La Mesa, CA 91942
Phone: (619) 440-4444
Fax: (619) 440-4907

Developer: Hitzke Development Corp.
251 Autumn Drive, Suite 100
San Marcos, CA 92069
Attn: Ginger Hitzke
Phone: (760) 798-9809
Fax: (760) 539-9978

With copy to: Alfred Fraijo
Sheppard Mullin Richter & Hampton LLP
333 S Hope St., 43rd FL
Los Angeles, CA 90071-1448
Phone: (213) 620-1780
Fax: (213) 620-1398

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.3 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Site with respect to this Agreement or any dispute or act arising from it.

Section 4.4 Costs and Expenses. Except with respect to use by the Developer of Predevelopment Loan Funds as authorized pursuant to Section 3.4, each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement and the performance of each Party's obligations under this Agreement, except as otherwise agreed in writing by the Parties.

Section 4.5 No Commissions. The City and Agency shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDLA that may result from this Agreement. The City and Agency represent that they have engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the
City and Agency harmless from any claims by any broker, agent or finder retained by the Developer.

Section 4.6 Indemnity. Developer shall indemnify, protect, defend and hold harmless the City and Agency, and their officials, officers, employees, representatives, members, and agents (collectively, "Indemnified Parties") from and against any and all challenges to this Agreement, and any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from the negligent acts, errors, or omissions and willful misconduct with respect to the obligations of the Developer, its officers, employees, representatives, member and agents hereunder or the Site, excluding any such losses arising from the active negligence or willful misconduct of the Agency, the City or any of the Indemnified Parties. This indemnity obligation in connection with events occurring prior to the termination of this Agreement shall survive the termination of this Agreement.

Section 4.7 Nonliability of City and Agency Officials and Employees. No member, official, employee, or contractor of the City or Agency shall be personally liable to the Developer in the event of any default or breach by City or Agency or for any amount which may become due to Developer or on any obligations under the terms of the Agreement.

Section 4.8 Defaults and Remedies.

(a) Default. Failure by a Party to negotiate in good faith as provided in this Agreement, failure by a Party to meet a deadline for performance of an action as set forth in this Agreement (with particular reference to the ERNA Schedule), failure by the Developer to repay the Predevelopment Loan or implement the Assignment of Plans pursuant to Section 3.7(b), or failure by a Party to observe any other material provision of this Agreement or the Predevelopment Loan Documents shall constitute a default hereunder. Failure of a Party to approve or execute a DDLA after negotiating in good faith shall not constitute a default hereunder.

(b) Notice and Cure. The non-defaulting Party or Parties shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting Party of such notice, or within such further time as the non-defaulting Party or Parties determine is reasonable to cure such default, such default shall be deemed to constitute an "Event of Default" by the defaulting Party, and the non-defaulting Party may exercise the remedies set forth in Section 4.8(c).

(c) Remedies. Upon occurrence of a City or Agency Event of Default, the Developer's sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to the cancellation of the Predevelopment Loan as provided in Section 3.7(d). Following such termination and cancellation of the Predevelopment Loan, no Party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Developer's obligations pursuant to Sections 4.3, 4.5, 4.6, and 4.7 shall survive such termination.

Upon occurrence of a Developer Event of Default, the City and Agency's sole remedies shall be to: (1) terminate this Agreement; and (2) exercise any rights and remedies
set forth in Section 3.7(b) and the Predevelopment Loan Documents. Following such
termination, no Party shall have any right, remedy or obligation under this Agreement; provided,
however, that the Developer's obligation pursuant to Sections 3.7(b), 4.3, 4.5, 4.6, and 4.7 shall
survive such termination.

Except as expressly provided above, no Party shall have any liability to
the other for damages or otherwise for any default, nor shall any Party have any other claims
with respect to performance under this Agreement. Each Party specifically waives and releases
any such rights or claims they may otherwise have at law or in equity.

The Parties agree that, based upon the circumstances now existing, both
known and unknown, it would be impractical or extremely difficult to establish the damages to
the non-defaulting Party by reason of an Event of Default by the defaulting Party. Therefore, it
would be reasonable at the termination of this Agreement pursuant to this subsection (c) to award
the non-defaulting Party "liquidated damages." Liquidated damages in the event of a City or
Agency Event of Default are equal to any disbursed Predevelopment Loan Funds. Liquidated
damages in the event of a Developer Event of Default are those rights and remedies set forth in
Section 3.7(b) and the Predevelopment Loan Documents. These shall be the as the sole and
exclusive remedies of the non-defaulting Parties.

Section 4.9 Attorneys' Fees. The prevailing Party in any action to enforce this
Agreement and/or the Predevelopment Loan Documents shall be entitled to recover attorneys'
fees and costs from the other Party.

Section 4.10 Governing Law and Venue. This Agreement and the Predevelopment
Loan Documents shall be governed by and construed in accordance with the laws of the State of
California. The Superior Court of the County of San Diego shall be the site and have jurisdiction
for the resolution of all actions.

Section 4.11 Entire Agreement. This Agreement and the Predevelopment Loan
Documents constitute the entire agreement of the Parties regarding the subject matter of this
Agreement.

Section 4.12 Interpretation. The terms of this Agreement shall be construed in
accordance with the meaning of the language used and shall not be construed for or against any
Party by reason of the authorship of this Agreement or any other rule of construction which
might otherwise apply. The part and paragraph headings used in this Agreement are for purposes
of convenience only, and shall not be construed to limit or extend the meaning of this
Agreement.

Section 4.13 Counterparts. This Agreement may be executed in counterparts, each of
which shall be deemed an original but all of which together shall constitute one and the same
agreement.

Section 4.14 Assignment. The Developer may not transfer or assign any or all of its
rights or obligations under this Agreement or the Predevelopment Loan Documents without the
City and Agency's prior written approval. Any attempted transfer or assignment in violation of
the preceding sentence shall be void.
Section 4.15  **No Third Party Beneficiaries.** This Agreement and the Predevelopment Loan Documents are made and entered into solely for the benefit of the City, Agency, and the Developer and no other person shall have any right of action under or by reason of this Agreement or the Predevelopment Loan Documents.

Section 4.16  **Severability.** In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

Section 4.17  **Time Is of the Essence.** Time is of the essence for each of the Parties' obligations under this Agreement.

Section 4.18  **Confidentiality.** Developer acknowledges and agrees that the City and Agency are public entities with a responsibility and, in many cases, legal obligation to conduct their business in a manner open and available to the public. Accordingly, any information provided by the Developer to the City or Agency with respect to the Site, the Development, or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that the Developer reasonably deems and identifies in writing as proprietary and confidential in nature, the City and Agency agree to exercise their best efforts to keep such information confidential as allowed by law.

Section 4.19  **Actions By The Agency and City.** Except with respect to the ultimate approval of the DDLA and City Land Use Entitlements and the making of any statutorily required findings in connection with their approval (which ultimate approval and statutory findings may be made exclusively by the Agency Board and the City Council), whenever this Agreement or any of the Predevelopment Loan Documents calls for or permits the approval, consent, authorization or waiver of the Agency or City, the approval, consent, authorization, or waiver of the Agency Executive Director or the Agency Executive Director's designee shall constitute the approval, consent, authorization or waiver of the City and Agency without further action of the City Council or Agency Board.

Section 4.20  **Nondiscrimination.** Developer and its contractors, subcontractors, agents, and employees shall not, because of the race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, or disability of any person, refuse to hire or employ the person, or refuse to select the person for a training program leading to employment, or bar or discharge the person from employment or from a training program leading to employment, or discriminate against the person in compensation or in terms, conditions or privileges of employment with respect to performance of this Agreement.

Section 4.21  **Authority.** Each Party represents and warrants to the other that the signatory below has full authority to execute this Agreement on behalf of such Party, and that this Agreement constitutes the valid and binding obligation of such Party.

Section 4.22  **Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties to this Agreement. Any reference in this Agreement to a specifically named
Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Section 4.23 Exhibits. The following exhibits are attached to and incorporated in this Agreement by reference.

Exhibit A Legal Description of the Site
Exhibit B Proposed Development Concept
Exhibit C ERNA Tasks
Exhibit D Predevelopment Loan Activities
Exhibit E Form of Promissory Note
Exhibit F Form of Assignment of Documents
IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the Parties on the date first above written.

DEVELOPER:

HITZKE DEVELOPMENT CORPORATION, a California corporation

By: ____________________________
   Ginger Hitzke
Its: President

AGENCY:

SOLANA BEACH REDEVELOPMENT AGENCY, a public body corporate and politic

By: ____________________________
   David Ott
Its: Executive Director

CITY:

CITY OF SOLANA BEACH, a municipal corporation

By: ____________________________
   David Ott
Its: City Manager
ATTEST:

By: ________________________________

City Clerk

APPROVED AS TO FORM:

______________________________

Johanna Canlas, City Attorney/Agency Counsel

Dated: ____________________________
EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

All that certain real property situated in the County of San Diego, State of California, described as follows:

The west 100 feet of the North 181 feet of the following described real property:

All that portion of SUNSET PLAZA, in the County of San Diego, State of California, according to Map thereof No. 5575, filed in the office of the County Recorder of said County, together with that portion of the North Half of the Southwest Quarter of Section 2, Township 14 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to official plat thereof, lying North of a line that is parallel with and distant 856.09 feet at right angles Northerly from the South line of said North half of the Southwest Quarter; and West of the Westerly line of State Highway as described in deed from Michael Collins to the State of California, recorded in Book 357, Page 499 of Official Records of said County and South of a line that is parallel with and distant 153.33 feet at right angles Southerly from the North line of said North half of the Southwest Quarter of lying Easterly of the center line of that certain 60.00 foot strip described in Easement Deed to the County of San Diego, recorded April 11, 1963 as Document No. 62239 of Official Records and known as Sierra Avenue.

Assessor’s Parcel Number: 298-211-81
EXHIBIT B

PROPOSED DEVELOPMENT CONCEPT

The proposed Development concept is for a mixed use project, primarily consisting of affordable housing. Based on plans prepared to date, the Development is anticipated to include the following features:

- A three floor building with residential units on the second and third floor;

- 10 units of affordable rental housing of varying sizes including;
  - three one-bedroom flats with a minimum of 520 square feet,
  - three two-bedroom townhomes with a minimum of 870 square feet;
  - three three-bedroom flats with a minimum of 1050 square feet, and
  - One four-bedroom flat with a minimum of 1320 square feet;

- Affordable to very low income households;

- Approximately 1300 square foot ground floor commercial space for an upscale neighborhood market;

- 16 residential and 7 commercial parking spaces;

- 31 public parking spaces;

- Eco-friendly development that will receive a minimum certification of LEED gold rating or the equivalent.

The Developer intends to use commercially reasonable efforts to employ Green Building strategies in the Development, such as:

- Thermally efficient roofs, walls and windows that reduce heating loads and enhance thermal comfort, including green roof and solar energy.

- Building shape and orientation, thermal mass and daylighting strategies that reduce cooling loads.

- Efficient HVAC systems and electrical lighting that capitalize on daylighting strategies.

- Water efficient supply and waste fixtures.

- Adaptable interior designs, providing visual access to the outdoors and access to daylight.

- Interior finishes and installation methods having lower VOC emissions.
• Landscaping strategies that require little or no irrigation, permit groundwater replenishment and provide on-site storm water management, and/or

• Qualify for LEED Gold certification.
**EXHIBIT C**

**ERNA TASKS**

This list of ERNA tasks summarizes the various activities which need to be accomplished during the Negotiating Period under the Agreement to which this exhibit is attached. The description of items in this list of ERNA tasks are meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. The intent is that the Parties shall utilize this list of tasks to develop the ERNA Schedule described in the Agreement. All dates are “to be determined” except where shown specifically below. The required tasks and schedule may be modified by the Parties consistent with accomplishing the tasks within the Negotiating Period.

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 30 days after the Amendment Date</td>
<td>Parties mutually agree upon the ERNA Schedule. (Section 2.2)</td>
</tr>
<tr>
<td></td>
<td>City and Agency provide a Proposed Term Sheet. (Section 2.3)</td>
</tr>
<tr>
<td></td>
<td>The Developer provides the Agency with any written comments on the Proposed Term Sheet. (Section 2.3)</td>
</tr>
<tr>
<td></td>
<td>Parties agree upon and implement community engagement strategy. (Section 2.4)</td>
</tr>
<tr>
<td></td>
<td>Developer completes conceptual plans adequate for review of City Land Use Entitlements. (Section 2.5)</td>
</tr>
<tr>
<td></td>
<td>Developer submits complete application for City Land Use Entitlements. (Section 2.6)</td>
</tr>
<tr>
<td></td>
<td>The City advises the Developer regarding CEQA review and the estimated cost of such CEQA review, and commences CEQA review. (Section 2.7)</td>
</tr>
<tr>
<td></td>
<td>The Parties consult with the County regarding the required NEPA review and endeavor to complete an Environmental Assessment prior to approval of any DDLA, if feasible. (Section 2.8)</td>
</tr>
<tr>
<td></td>
<td>The Parties consult with the Coastal Commission regarding the conformance of the Development with Coastal Commission plans and policies. (Section 2.9)</td>
</tr>
<tr>
<td>DATE</td>
<td>ACTION</td>
</tr>
<tr>
<td>---------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>The Agency completes a Section 33433 report. The Parties agree upon a payment for the Site. (Sections 2.10 and 2.11)</td>
</tr>
<tr>
<td>Within 30 days of the Amendment Date</td>
<td>The Developer determines the physical adequacy of the Site and present any objections to the City and Agency. The Parties establish a schedule for resolution of any objections. (Section 2.12(a))</td>
</tr>
<tr>
<td></td>
<td>The Developer provides any objections to exceptions shown in the Preliminary Title Report. The Parties establish a schedule for resolution of any objections. (Section 2.12(b))</td>
</tr>
<tr>
<td></td>
<td>The Developer obtains the City Land Use Entitlements from the City. (Section 2.6)</td>
</tr>
<tr>
<td></td>
<td>Deadline for approval and execution of DDLA. Expiration of the Negotiating Period, unless extended in accordance with Section 1.2.</td>
</tr>
</tbody>
</table>
EXHIBIT D
PREDEVELOPMENT LOAN ACTIVITIES

Proceeds of the Predevelopment Loan may be used only for the Predevelopment Loan Activities for the Development, generally in the amounts and for the costs set forth below. The Developer shall not use the Predevelopment Loan for any other purposes without the prior written consent of the Agency.

<table>
<thead>
<tr>
<th>Predevelopment Loan Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Predevelopment Loan Activities Prior to Receipt of City Land Use Entitlements</strong></td>
<td></td>
</tr>
<tr>
<td>Architect – Conceptual Drawings and Permit Application</td>
<td>$145,000</td>
</tr>
<tr>
<td>Landscape Architect – Conceptual Drawings and Permit Application</td>
<td>$20,000</td>
</tr>
<tr>
<td>Civil Engineering – Conceptual Drawings and Permit Application (includes water &amp; sewer analysis, soils, environmental, dry utilities)</td>
<td>$63,500</td>
</tr>
<tr>
<td>Other Consultants – Permit Application Phase</td>
<td>$27,500</td>
</tr>
<tr>
<td>Discretionary Permit Fees (including environmental review)</td>
<td>$35,000</td>
</tr>
<tr>
<td>Legal Fees</td>
<td>$70,000</td>
</tr>
<tr>
<td>Contingency – Permit Phase (15%)</td>
<td>$55,000</td>
</tr>
<tr>
<td><strong>TOTAL – PERMIT PHASE</strong></td>
<td><strong>$416,000</strong></td>
</tr>
<tr>
<td><strong>Predevelopment Loan Activities After Receipt of City Land Use Entitlements</strong></td>
<td></td>
</tr>
<tr>
<td>Architect – Building Plans and Construction Drawings</td>
<td>$99,500</td>
</tr>
<tr>
<td>Landscape Architect – Construction Drawings</td>
<td>$15,000</td>
</tr>
<tr>
<td>Civil Engineering &amp; Surveying – Construction Drawings</td>
<td>$27,500</td>
</tr>
<tr>
<td>Other Engineering – Construction Drawings Phase (Structural Drawings, Title 24, Green Building Consultants)</td>
<td>$40,000</td>
</tr>
<tr>
<td>Predevelopment Loan Activity</td>
<td>Amount</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>TCAC Fees and Deposits</td>
<td>$20,000</td>
</tr>
<tr>
<td>Contingency (15%)</td>
<td>$30,000</td>
</tr>
<tr>
<td>TOTAL – PRECONSTRUCTION PHASE</td>
<td>$232,000</td>
</tr>
<tr>
<td>GRAND TOTAL PREDEVELOPMENT LOAN</td>
<td>$648,000</td>
</tr>
</tbody>
</table>

D-2

166302915870.6
1/19/2011
EXHIBIT E

FORM OF ERNA PROMISSORY NOTE

PROMISSORY NOTE
(Predevelopment Loan)

$648,000

Solana Beach, CA

EXHIBIT E, 2011

FOR VALUED RECEIVED, Hitzke Development Corporation, a California corporation (the "Borrower"), promises to pay to the Redevelopment Agency of the City of Solana Beach (the "Agency"), or order, the principal sum of Six Hundred Forty Eight Thousand Dollars ($648,000), or so much thereof as is advanced to Borrower pursuant to Article 3 of the ERNA (as defined below), as provided below.

1. ERNA. This promissory note (the "Note") is made pursuant to the terms of the First Amended and Restated Exclusive Right To Negotiate Agreement, initially executed as of July 14, 2010, as fully amended and restated as of January ___, 2011, entered into between the Borrower and the Agency (the "ERNA"). All capitalized terms used but not defined in this Note shall have the meanings set forth in the ERNA.

2. Repayment Terms: Interest. The indebtedness evidenced by this Note shall be due and payable at the times and in the manner set forth in Section 3.7 of the ERNA. Interest shall accrue as set forth in Sections 3.3 and 4.8 of the ERNA.

3. Security. As the security for this Note, Borrower has executed and delivered to the Agency the Assignment of Documents, as fully provided in Section 3.5 of the ERNA.

4. Acceleration Pursuant to Default; Application of Payments; No Waiver. The Agency's rights to require full repayment of principal and unpaid interest under this Note upon an Event of Default by Borrower under the ERNA are as set forth in Section 3.7(b) of the ERNA. All payments received from the Borrower shall be applied first to the accrued interest and second to the principal outstanding under this Note. Neither acceptance by the Agency of the payments provided for herein nor any failure by the Agency to pursue its legal and equitable remedies upon a Borrower Event of Default under the ERNA shall constitute a waiver of the Agency's right to require prompt payments when due of all disbursed principal and interest owing or to declare a default and exercise all of its rights under this Note, the ERNA, and the other Predevelopment Loan Documents.

5. No Offset. The Borrower hereby waives any rights of offset it now has or may hereafter have against the Agency, its successors and assigns, and agrees to make the payment called for herein in accordance with the terms of this Note.

6. Waiver; Attorney's Fees. The Borrower, for itself, its heirs, legal representatives, successors and assigns, waives diligent presentment, protest and demand, and notice of protest,
dishonor and non-payment of this Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees. If an action is instituted on this Note, the undersigned promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.

7. **Manner and Place of Payment.** All payments of principal and interest shall be payable in lawful money of the United States of America at the office of the Agency as set forth in Section 4.2 of the ERNA or at such other address as the Agency may provide to the Borrower by notice in accordance with Section 4.2 of the ERNA.

8. **Full Recourse Note.** This Note shall be fully recourse against the Borrower and any judgment or execution thereof entered in any action, legal or equitable, on this Note may be enforced personally against the Borrower.

9. **Assignment.** The Agency's rights under this Note may be assigned by the Agency to the City of Solana Beach in its discretion. No other assignment of the Agency's rights under this Note may be made without the prior written approval of the Borrower in its discretion.

10. **Conflict.** If any term or provision of this Note conflicts with any term or provision of the ERNA, the term of provision of the ERNA shall control to the extent of such conflict.

**BORROWER:**

HITZKE DEVELOPMENT CORPORATION, a California corporation

By: [Signature]

Ginger Hitzke

Its: President
EXHIBIT F

ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND APPROVALS
(Predevelopment Loan)

FOR VALUE RECEIVED, the undersigned, Hitzke Development Corporation, a California corporation (the "Developer"), hereby assigns and transfers to the Redevelopment Agency of the City of Solana Beach, a public body corporate and public (the "Agency") and to the City of Solana Beach, a municipal corporation (the "City"), all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below);

(2) All written reports, studies, investigations, analyses, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions, other documents, and addenda thereto (collectively "Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below); and

(3) All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development (collectively, the "Governmental Approvals").

This Assignment is made pursuant to the terms of the First Amended and Restated Exclusive Right To Negotiate Agreement, initially executed as of July 14, 2010 as fully amended and restated as of January 1, 2011, entered into between the Developer, the City, and the Agency (the "ERNA"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the ERNA. The Site with respect to which the Agency has made the Predevelopment Loan to the Developer under the ERNA is described in Exhibit A attached to this Assignment.

For purposes of this Assignment, the term "Contractor" means any architect, construction contractor, engineer, consultant or other person or entity entering into Agreements with the Developer and/or preparing Plans and Specifications for the Developer with respect to the Development.

The Developer hereby irrevocably appoints the City and/or the Agency as its attorney-in-fact (which agency is coupled with an interest) to, upon the occurrence of a Repayment Event under and as defined in Section 3.7(b) of the ERNA, demand, receive, and enforce any and all of the Developer's rights with respect to the Plans and Specifications, Agreements and Governmental Approvals, and perform any and all acts in the name of the Developer or in the name of the City or Agency, as applicable, with the same force and effect as if performed by the Developer in the absence of this Assignment.
As further provided in Section 3.5 of the ERNA, the City and the Agency shall not have any obligation under any of the Agreements unless and until the City and/or the Agency expressly agrees in writing to be bound by such Agreement(s). Upon the occurrence of a Repayment Event, the City and/or the Agency may use any of the Agreements assumed by the City and/or the Agency and any of the Plans and Specifications and Governmental Approvals for any purpose for which the Developer could have used them for development of the Development. Upon the occurrence of a Repayment Event, the Developer shall cooperate with the City and/or Agency to implement this Assignment and shall immediately deposit with the City and/or Agency all the Agreements, Plans and Specifications, and Governmental Approvals.

The Developer represents and warrants to the City and Agency that no previous assignment(s) of its rights or interest in or to the Plans and Specifications, Agreements, and/or Governmental Approvals has or have been made, and the Developer agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without prior written approval of the Agency Executive Director) so long as the Agency holds or retains any security interest under the ERNA.

This Assignment is made to secure: (1) payment to the Agency of all sums now or hereafter owing under the Promissory Note dated as of the date hereof made by the Developer to the order of the Agency, and any and all additional advances, modifications, extensions, renewals and amendments thereof; and (2) payment and performance by the Developer of all its obligations under the ERNA.

This Assignment shall terminate upon the earliest to occur of: (1) repayment in full of the Predevelopment Loan; (2) termination of the ERNA as a result of an uncured City or Agency Event of Default pursuant to Section 4.8 of the ERNA; or (3) execution of a DDLA.

This Assignment shall be governed by the laws of the State of California, and the Developer agrees that the Superior Court of the County of San Diego shall be the site and have jurisdiction for the filing and maintenance of any action arising hereunder and further agrees that the prevailing Party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of the Developer, City, and the Agency; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by the Developer contained in the ERNA.

Exhibit A, the Architect's Consent, the Landscape Architect's Consent, and the Engineer's Consent are attached hereto and incorporated herein by reference.
Executed by the Developer on ____________, 2011.

DEVELOPER:

HITZKE DEVELOPMENT CORPORATION, a California corporation

By: ____________________________
   Ginger Hitzke

Its:  President
EXHIBIT A

PROPERTY DESCRIPTION

All that certain real property situated in the County of San Diego, State of California, described as follows:

The west 100 feet of the North 181 feet of the following described real property:

All that portion of SUNSET PLAZA, in the County of San Diego, State of California, according to Map thereof No. 5575, filed in the office of the County Recorder of said County, together with that portion of the North Half of the Southwest Quarter of Section 2, Township 14 South, Range 4 West, San Bernardino Meridian, in the County of San Diego, State of California, according to official plat thereof, lying North of a line that is parallel with and distant 856.09 feet at right angles Northerly from the South line of said North half of the Southwest Quarter; and West of the Westerly line of State Highway as described in deed from Michael Collins to the State of California, recorded in Book 357, Page 499 of Official Records of said County and South of a line that is parallel with and distant 153.33 feet at right angles Southerly from the North line of said North half of the Southwest Quarter of lying Easterly of the center line of that certain 60.00 foot strip described in Easement Deed to the County if San Diego, recorded April 11, 1963 as Document No. 62239 of Official Records and known as Sierra Avenue.

Assessor’s Parcel Number: 298-211-81
ARCHITECT'S CONSENT

The undersigned architect ("Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Architect's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Architect except as disclosed to the City and Agency arising out of the preparation and delivery of the Plans and Specifications to the Developer and/or the performance of the Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Architect agrees that if, at any time, the City and/or Agency elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then so long as the Architect has received, receives or continues to receive the compensations called for under the Agreements, the City and/or Agency may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of the City and/or Agency in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The City and/or Agency may assign its rights pursuant to this paragraph to another development entity in its discretion.

Architect further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the City and Agency, Architect will give written notice to the City and Agency at the address shown below of such breach. The City and/or Agency shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the City and/or Agency to cure said Default or to undertake completion of construction of the Improvements.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the ERNA, as applicable.
Executed by the Architect on ____________, 2011.

Address of City and Agency:
Solana Beach Redevelopment Agency
625 S. Hwy 101
Attn: David Ott, Executive Director
Phone: (858) 720-2400
Fax: (858) 792-6513

Address of Architect:
Foundation for Form Architecture
830 25th Street, Studio 200
San Diego, CA 92102

Architect: Foundation For Form Architecture

By: ________________________________
Its: ________________________________
LANDSCAPE ARCHITECT'S CONSENT

The undersigned landscape architect ("Landscape Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Landscape Architect's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Landscape Architect except as disclosed to the City and Agency arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Landscape Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Landscape Architect agrees that if, at any time, the City and/or Agency elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Landscape Architect written notice of such election; then so long as the Landscape Architect has received, receives or continues to receive the compensations called for under the Agreements, the City and/or Agency may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Landscape Architect will continue to perform its obligations under the Agreements for the benefit and account of the City and/or Agency in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The City and/or Agency may assign its rights pursuant to this paragraph to another development entity in its discretion.

Landscape Architect further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Landscape Architect in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the City and Agency, Landscape Architect will give written notice to the City and Agency at the address shown below of such breach. The City and/or Agency shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the City and/or Agency to cure said Default or to undertake completion of construction of the Improvements.

Landscape Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the ERNA, as applicable.
Executed by the Landscape Architect on ____________, 2011.

Address of City and Agency:
Solana Beach Redevelopment Agency
625 S. Hwy 101
Attn: David Ott, Executive Director
Phone: (858) 720-2400
Fax: (858) 792-6513

Address of Landscape Architect:
DeLorenzo, Inc.
2827 Presidio Drive
San Diego, CA 92110

Landscape Architect: DeLorenzo, Inc.

By: _____________________________

Its: _____________________________
ENGINEER'S CONSENT

The undersigned engineer ("Engineer") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Engineer except as disclosed to the City and Agency arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Engineer's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Engineer agrees that if, at any time, the City and/or Agency elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Engineer written notice of such election; then so long as the Engineer has received, receives or continues to receive the compensations called for under the Agreements, the City and/or Agency may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Engineer will continue to perform its obligations under the Agreements for the benefit and account of the City and/or Agency in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The City and/or Agency may assign its rights pursuant to this paragraph to another development entity in its discretion.

Engineer further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Engineer in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the City and Agency, Engineer will give written notice to the City and Agency at the address shown below of such breach. The City and/or Agency shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the City and/or Agency to cure said Default or to undertake completion of construction of the Improvements.

Engineer warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the ERNA, as applicable.
Executed by the Engineer on _____________, 2011.

Address of City and Agency:  
Solana Beach Redevelopment Agency  
625 S. Hwy 101  
Attn: David Ott, Executive Director  
Phone: (858) 720-2400  
Fax: (858) 792-6513

Address of Engineer:
SWS Engineering, Inc.  
261 Autumn Drive, Suite 115  
San Marcos, CA 92069

Engineer: SWS Engineering
By: ____________________________
Its: ____________________________