JOINT DEVELOPMENT AGREEMENT

for

CUPEY STATION, PARCELS A AND B

between the

PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY

as the Authority

and

GRUPO DE DESARROLLO LOS ALTOS SAN JUAN, INC.

as the Developer

Dated as of December 30, 2008
JOINT DEVELOPMENT AGREEMENT

(CUPEY STATION, PARCELS A AND B)

This JOINT DEVELOPMENT AGREEMENT (this "Agreement" or this "Development Agreement") entered into as of this 30th day of December, 2006 (the "Effective Date") by and between the PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY (hereinafter with its successors and assigns, the "Authority"), a body politic and corporate, duly established and existing under the laws of the Commonwealth of Puerto Rico, with a principal place of business at Centro Gobierno Mental Minillas, South Building, 10th Floor, Santurce, Puerto Rico 00940, represented herein by the Secretary of the Department of Transportation and Public Works (Dr. Carlos J. González Miranda) and by the Executive Director of the Highways and Transportation Authority (Eng. Luis M. Trinidat Garay), under the authority of Act 74 of June 23, 1965, as amended [9 L.P.R.A. 2004 (h)], particularly by Law Number 1 of March 6, 1991, and the Reorganization Plan Number 6 of 1971 (32 L.P.R.A., App. III, Article VI); and GRUPO DE DESARROLLO LOS ALTOS SAN JUAN, INC. (hereinafter with its successors and assigns, the "Developer"), with a principal place of business at P.O. Box 363823, San Juan, P.R. 00936; it being understood that such successors and assigns may include a future development entity to be created by the Developer for the specific purpose of undertaking the project described herein, subject to the prior written approval of the Authority.

Recitals

1. The Authority built and owns Tren Urbano Phase I, a heavy rail rapid transit line, which commenced passenger service in 2005. In accordance with Law 207 of 25 August 2000, the Authority is authorized to pursue transit-oriented joint development projects on surplus properties owned by the Authority in the vicinity of Tren Urbano stations (the "Joint Development Program").

2. The Puerto Rico Highways and Transportation Authority has designated for development under the Joint Development Program a site consisting of two contiguous parcels of land which the Authority owns at Cupey Station. The site is located adjacent to (and includes the footprint of) the station’s East Headhouse entrance at the intersection of PR-1 and PR-176. Parcel A, consisting of approximately 19,133 square meters (4.6 cuerdas), and Parcel B, consisting of approximately 2,784 square meters (0.7 cuerdas) are more particularly described in Section 2.1 hereof and Exhibit A attached hereto (collectively "the Premises" and individually the "Parcel A Premises" and the "Parcel B Premises", as applicable).

3. On January 17, 2006, the Authority issued a Request for Qualifications and Proposals in order to solicit qualified proposals for the development of the Premises under the Joint Development Program (the "RFQ/P"). In response to the RFQ/P, the Developer submitted a
Statement of Qualifications on or before the deadline of June 23, 2006, and was found by the Authority to be a Qualified Developer, as defined in the RFQ/P.

4. On or before the deadline of August 31, 2006, the Developer submitted a Development Proposal to acquire the Premises for the development, construction and rental or resale, as applicable, of: a high-rise Office Building containing approximately 330,000 gross leasable square feet of office space and approximately 32,000 square feet of commercial retail space; a Garage containing approximately 1,331 parking spaces and a commercial entertainment area of approximately 66,000 square feet; a Residential Building containing approximately 87 apartments, 21,000 square feet of retail space, 60,000 square feet of office space, and 168 parking spaces; and various street, sidewalk, plaza, and station improvements (such project, as described in the Proposal and as may be revised pursuant to this Agreement, is hereinafter referred to as the "Project").

5. On or before the deadline of January 31, 2007, the Developer submitted its Best and Final Offer to the Authority, providing certain modifications, clarifications, and extensions of its Development Proposal.

6. The Authority, by a vote of its Board of Awards on May 30, 2007, designated the Developer as the developer of the Premises, subject to the negotiation and execution of this Agreement, the Ground Lease/Surface Rights Contract for Parcel A, the Deed for Parcel B, and compliance with the terms and conditions set forth herein and therein.

Therefore, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Authority and the Developer agree as follows:

ARTICLE I

AGREEMENT TO LEASE, CONSTITUTE SURFACE RIGHTS, PURCHASE AND SELL THE PREMISES, AND ENTER INTO THE GROUND LEASE/SURFACE RIGHTS CONTRACT AND THE DEED

1.1 Agreement. Subject to the terms and conditions of this Agreement, including, without limitation, the performance by the Developer of its development obligations described herein:

(a) the Authority as lessor and the Developer as lessee agree to enter into a ground lease for the Parcel A Premises;

(b) the Authority agrees to grant the Developer surface rights (derechos de superficie) on the Parcel A Premises; and

(c) the Authority agrees to sell in fee simple, and the Developer agrees to purchase in fee simple, the Parcel B Premises.

The Parcel A Premises and the Parcel B Premises shall be conveyed in two
separate and distinct Closing transactions; it is expressly understood that at each such Closing, the Authority will deliver the Ground Lease/Surface Rights Contract or Deed, as the case may be, only with respect to the corresponding Parcel. Notwithstanding the foregoing, subject to the provisions of Section 4 hereof, the Closings may occur on the same day.

1.2 **Ground Lease and Surface Rights Terms for the Parcel A Premises.** The ground lease and Developer's surface rights on the Parcel A Premises shall have a term of 50 years, commencing upon the date of the issuance of the use permit. The ground lease and the surface rights shall be subject to the requirements set forth in Sections 3.3(a) and 3.3(b) hereof. The Developer shall make combined annual ground lease and surface rights payments to the Authority according to the following schedule. The initial payment shall be made on the Parcel A Closing Date, as defined in Section 4.1 hereof, and each subsequent payment shall be due on the day of the anniversary of said Parcel A Closing Date.

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The above schedule is based on the construction costs submitted by the Developer in its Development Proposal for Parcel A, which at the time of said Proposal were [redacted]. The Developer will make every effort to maintain said construction costs and to off-set any escalation therein through value engineering, savings in so-called soft costs, or other appropriate strategies. In the event the Developer cannot avoid or off-set an increase in construction costs, the Developer may notify the Authority in writing and provide detailed written evidence explaining such increase and demonstrating that it cannot be avoided or off-set under prevailing market conditions. The Developer and the Authority will then negotiate in good faith an adjustment in the Ground Lease and Surface Rights Annual Payment in order to mitigate the Developers' increment in construction costs. It is expressly understood that the Education Rent established in Section 3.3(a)(i) through 3.3(a)(iii) hereof shall not be subject to such adjustment.
1.3 **Purchase Price for the Parcel B Premises.** The Purchase Price for the Parcel B Premises shall be [$redacted$] payable on the Parcel B Closing Date (the "Purchase Price"); provided, however, that said Purchase Price is subject to adjustment based on a final updated appraisal to be undertaken by the Authority, which will be valid and in effect at the time of the Parcel B Closing. The Purchase Price shall be further adjusted in accordance with paragraphs (a) through (c) of this Section 1.3.

(a) At the Closing, the Purchase Price shall be adjusted by granting the Developer a credit with respect to each unit of Workforce Affordable housing in the Project, which shall be not less than ten percent (10%) of the total number of residential units in the project, as provided in Section 3.3(c) below (the "Adjusted Purchase Price"). The credit for each Workforce Affordable Unit shall be the difference between the Workforce Affordable Maximum Sales Price as defined in Section 3.3(c) below and the appraised value of the lowest-priced market-rate units of equivalent bedroom count in the Project, such value to be determined by the Lender's final pre-Closing appraisal, subject to the Authority's approval which shall not be unreasonably withheld, conditioned, or delayed; provided, however, that the credit for each Workforce Affordable Unit shall not exceed $99,000. For purposes of calculating the Adjusted Purchase Price to be paid at the Closing, each credit shall take effect at the time of the Closing; however, the portion of the aggregate credit attributable to any Workforce Affordable Unit which fails to be verified by the Authority as set forth in Section 1.3(b) hereof, for reasons attributable to the developer, shall promptly become due to the Authority (a "Post-Closing Balance") and shall bear interest as provided in Section 1.3(c) hereof commencing as of the Closing Date.

(b) Each Workforce Affordable Unit and the associated credit shall be subject to subsequent verification, based on receipt of evidence reasonably satisfactory to the Authority, that the Workforce Affordable Unit was sold or rented to a buyer or tenant who was qualified for Workforce Affordable Units, in accordance with a procedure that will be established by the Authority prior to the Closing Date.

(c) Any Post-Closing Balance, as defined in Section 1.3(a) hereof, shall bear interest at the Mid-Term Applicable Federal Rate (AFR) for purposes of Section 1274(d) of the Internal Revenue Code, compounded annually, such interest to be fixed at the Closing Date. All accrued interest shall be added to the Purchase Price. The Developer's obligation to pay any Post-Closing Balance and interest accruing thereon shall be evidenced by a promissory note and secured by a mortgage on the Premises, which may be subordinate to the mortgage held by the Developer's construction lender, and by a clean, unconditional letter of credit from a financial institution acceptable to the Authority or a guarantee of the same quality and value.

1.4 **Terms of Ground Lease, Surface Rights and Deed to be Finalized.** At the Parcel A Closing and Parcel B Closing, respectively (as defined in Section 4.1 hereof), the Authority and the Developer shall execute and deliver a ground lease and surface rights agreement for the Parcel A Premises and a deed of sale for the Parcel B Premises, all in form and substance satisfactory to the parties hereto (the "Ground Lease/Surface Rights Contract" and the "Deed", respectively). It is contemplated that the parties will reasonably approve the matters that are prerequisite to the completion of the Ground Lease/Surface Rights Contract and the Deed during the term of this Agreement; provided that the Ground Lease/Surface Rights Contract and...
the Deed shall contain the terms and provisions set forth in Exhibit B attached hereto. Critical additional terms of the Ground Lease/Surface Rights Contract and the Deed to be agreed upon by the parties include the following:

(a) Final plans and specifications for the Project (the "Final Plans and Specifications"), which are required to be prepared by the Developer and endorsed by the Authority prior to the Closing Date in accordance with the design review process ("Design Review Process") described in Section 3.1 and Exhibit C of this Agreement.

(b) Final description of Land, Buildings and Appurtenant Rights comprising the Premises which shall (A) be consistent with the survey of the Premises previously delivered to the Developer and Survey (as such terms are defined in Section 2.4) of the Premises (as adjusted pursuant to Section 2.1 below) to be obtained by the Developer at its expense and approved by the Authority prior to the Closing Date; and (B) be incorporated into the Ground Lease/Surface Rights Contract and the Deed, respectively. The Developer acknowledges that the Authority is in the process of recording evidence of its title to the Premises with the Property Registry.

(c) Exclusions, reserved rights, and other matters to which the Premises are subject, all to be incorporated into the Ground Lease/Surface Rights Contract or the Deed, as applicable. The Developer acknowledges that the Authority will exclude from the Premises the existing East Headhouse structure from and below its roof (except for its separate commercial space), its pedestrian tunnel, and its subsurface infrastructure, and will reserve from the Premises certain rights (the "Reserved Rights") as the Authority may determine prior to the Closing Date, as necessary or desirable to be incorporated into the Ground Lease/Surface Rights Contract or the Deed, as applicable; provided that the Reserved Rights shall not unreasonably interfere with the development of the Project, the Developer’s rights under this Agreement or applicable law, or the use of the Premises permitted hereunder. Subject to the foregoing, the Reserved Rights will include, without limitation, any rights which may be necessary to ensure that the Project conforms to the Federal Transit Administration’s Joint Development Policy and those that may arise during the process of registration of title.

(d) Ground Lease/Surface Rights Contract and/or Deed restrictions for the benefit of the Authority, its successors and assigns and binding on the Developer, its successors and assigns, described in Exhibit B of this Agreement (the "Restrictions") will be finalized in connection with the Design Review Process described in Section 3.1 of this Agreement, provided that the Restrictions shall not unreasonably interfere with the use of the Premises permitted hereunder.

1.5 Identity of the Developer and Guarantor. The Developer is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico and has provided to the Authority the Developer’s financial statements submitted in response to the RQOF and the Developer’s Statement of Qualifications (the “Financial Statements”). The Developer hereby represents and warrants that it has undertaken all corporate action necessary to enter into, execute and deliver this Agreement. For purposes of Section 4.3(g) of this Agreement, the term “Guarantor” shall mean collectively, Grupo de Desarrollo los Altos San Juan, Inc., or such other
guarantors reasonably approved by the Authority.

ARTICLE 2

PREMISES

2.1 Description. The approximate perimeter boundaries of the Parcel A and Parcel B Premises (together, "the Premises") are described in Exhibit A to this Agreement. During the term of this Agreement, such boundaries may be altered, contracted or expanded by the Authority as described in subsections (a) and (b) immediately below; provided that any change by the Authority to the perimeter boundaries of the Premises may not result in an increase of the Developer’s construction or other development costs, nor materially and adversely interfere with or delay the ability of the Developer to construct, use or operate the buildings in the Project (the "Buildings"), or other improvements, as shown on the Development Concept Plan (as defined in Section 3.1 and Exhibit D) hereto:

(a) to the extent an alteration, contraction or expansion of such boundaries is required in connection with the Authority recording evidence of its title to the Premises with the Property Registry; and

(b) to the extent an alteration, contraction or expansion of such boundaries is consistent with the Final Plans and Specifications as and to be endorsed in accordance with the Design Review Process as provided under this Agreement and with the Survey to be approved in accordance with Section 4.3(i) below.

If any change to the perimeter boundary of the Premises required by the Authority causes a material increase to the Developer’s construction costs or other development costs, the Developer shall notify the Authority in writing and provide the Authority with evidence reasonably satisfactory to the Authority of such increased costs within thirty (30) days of the Developer’s written notice of such change. If after receipt of such evidence the change to the perimeter boundary of the Premises is still required by the Authority, then the Developer shall receive a credit against the Ground Lease/Surface Rights Contract Payment Schedule for the Parcel A Premises, or the Purchase Price for the Parcel B Premises, as applicable, in the amount of such material increase in the Developer’s construction or other development costs. The credit to the Ground Lease/Surface Rights Contract Payment Schedule or the Purchase Price shall not be effective until the parties hereto enter into an amendment of this Agreement which sets forth the amount of such credit.

2.2 Condition. Subject to the provisions of this Agreement, and except for the Authority recording evidence of its title to the Premises with the Property Registry, which shall be performed by the Authority prior to each Closing Date, the Parcel A and Parcel B Premises shall be delivered to the Developer on their respective Closing Dates, in their present condition, and free and clear of all occupants and tenants, but otherwise “as is”, including, without limitation, legal title, subsurface conditions, existing structures, the presence of oil or hazardous materials, their present uses and non-uses, and laws, ordinances, and regulations affecting the same; it being agreed that during the Due Diligence Period the Developer shall have the
opportunity to examine the Premises on the terms and conditions set forth in Section 3.8 hereof. The Authority (a) has made no representations or warranties of any kind, express or implied, in fact or by law, with respect to such condition or the suitability of the Premises for the uses contemplated in the Deed and (b) shall have no obligation to do any work on or with respect to the Premises. In the event that the Authority is unable to deliver to the Developer on or prior to the Closing Date evidence of free and clear title to the Premises, which shall have been duly presented to the Registry of Property in final form for recording, then the Authority agrees to acquire at its sole cost (a) title insurance policy(ies) containing such provisions and endorsements as may be necessary to protect the Developer’s interest in the Premises.

2.3 **Due Diligence Period.** Commencing upon the Effective Date and terminating at 5:00 p.m. on the date which is ninety (90) days thereafter (the “Due Diligence Period”), the Developer and its representatives shall have the right to enter upon the Premises to inspect, perform tests, take measurements and conduct other investigations of the condition of the Premises, including, without limitation, environmental site assessments, soil and groundwater tests, property surveys, evaluation of utilities, and examination of title. Said Due Diligence Period may be extended by the Developer for up to an additional sixty (60) days in the event the Developer discovers unusual conditions requiring further investigation; provided that the Developer shall notify the Authority in writing as to the need for such extension and the reasons therefor. Such examination of the Premises shall be at the Developer’s sole cost and expense and on the terms and conditions set forth in Section 3.8 hereof. If the Developer is satisfied in its sole judgment with the results of its due diligence investigations, then it shall pay the Closing Guarantee (as defined in Section 6.3) to the Authority prior to the expiration of the Due Diligence Period. Failure of the Developer to pay the Closing Guarantee prior to the expiration of the Due Diligence Period shall be deemed an election by the Developer to terminate this Agreement.

2.4 **Survey.** The Developer agrees that within sixty (60) days of receipt of a legal description of the Premises from the Authority, it shall provide the Authority with a confirmation of said legal description prepared by its own duly registered and authorized surveyor.

2.5 **Ownership of Premises.** Prior to the Parcel A Closing Date, as defined in Section 4.1 hereof, the Authority shall continue at all times to be the owner of the Premises, in their entirety, in fee simple. From and after the Parcel A Closing Date, the Developer shall possess a long-term leasehold interest in the Parcel A Premises. Said leasehold interest shall terminate upon the fiftieth (50th) anniversary of the issuance of the Parcel A use permit, at which time all interests in the Parcel A Premises, including the ownership of any and all improvements constructed thereon, will revert to the Authority.

Upon and after the Parcel A Closing Date, the Authority shall continue to own the Parcel B Premises in fee simple until the Parcel B Closing Date. From and after the Parcel B Closing Date, the Developer shall be the owner of the Parcel B Premises in fee simple.

Prior to the Parcel A Closing Date, the Authority may use the Premises or lease them to a third party on a monthly basis. After the conclusion of the Due Diligence Period the Authority will require any such third party to insure the Premises against any event or change in condition
inconsistent with the condition of the premises upon the conclusion of the Developer’s Due Diligence.

ARTICLE 3

IMPROVEMENTS

3.1 Design Review Process. The Authority acknowledges receipt of and hereby approves the Development Concept Plan dated August 31, 2006, which is described in Exhibit D, for the construction of the Private Improvements described in Section 3.3 below (the “Private Improvements”) and the Public Improvements described in Section 3.4 below (the “Public Improvements,” and collectively with the Private Improvements, the “Improvements”). The subsequent stages of the design of the Project, culminating in Final Plans and Specifications, shall be prepared by the Developer and reviewed and endorsed by the Authority pursuant to the Design Review Process described in Exhibit C. With respect to the Education Space referenced in Section 3.3(A) hereof, the Authority shall exercise its design review in consultation with the Puerto Rico Department of Education. Without limiting the Authority’s rights to review all other aspects of the design of the Project, the Developer acknowledges that the Design Review Process will include the Authority’s detailed review and approval of modifications to the Tren Urbano headhouse; pedestrian and vehicular access routes to the Tren Urbano levels of the Parcel A garage; and the pedestrian tunnel described in Section 3.4(c) hereof.

3.2 Construction. Under the terms of and subject to the Ground Lease/Surface Rights Contract and the Deed, when executed, and this Agreement, including without limitation the dates specified for the commencement and completion of construction, the Developer, at its sole risk and cost, shall construct the Improvements in accordance with the Final Plans and Specifications endorsed by the Authority for the Project.

3.3 Private Improvements. Except as may be otherwise provided in this Agreement or the Exhibits thereto, the Private Improvements to be constructed by the Developer pursuant to the Ground Lease/Surface Rights Contract and the Deed shall comply with the Development and Design Guidelines of the Authority set forth in Section 5 of the RFP/P, and shall consist of the following, provided that if the construction is phased, the Improvements on Parcel A must be commenced before the Improvements on Parcel B:

(a) The construction on the Parcel A Premises of a high-rise Office Building substantially as shown in the Development Concept Plan, containing approximately 330,000 square feet of office space and approximately 32,000 square feet of retail space, including shops, restaurants, entertainment facilities, or other high-volume commercial space (unless different numbers are agreed to in accordance with the Ground Lease/Surface Rights Contract).

Within the Office Building, approximately 200,000 gross rentable square feet of office space shall be leased by the Developer, as surface landlord, to the Puerto Rico Department of Education, as tenant (the “Education Office Space”), for a term commencing on the day the Office Building and Garage (see subparagraph (b) below) are permitted for occupancy and concluding at the end of the term of the Ground Lease/Surface Rights Contract (the “Education
Subsequent to the Effective Date, the Developer will work collaboratively with the Department of Education to undertake Space Programming Studies that will refine the precise square footage, layout and tenant improvements of the Education Office Space. The Education Lease shall be executed prior to the Closing Date (subject to actual closing taking place). The Authority acknowledges that the Developer will rely in part on the Education Lease to obtain financing for the construction of the Office Building and the Garage. The rent schedule and other key terms of the Education Lease shall be as follows:

(i) For an initial term of five (5) years, commencing on the effective date of the Education Lease: a Base Rent of [redacted] per gross leasable square foot, inclusive of parking (as provided below), property taxes and property insurance, but exclusive of Common Area Maintenance charges, tenant utility costs and tenant improvements.

(ii) On the fifth anniversary of the effective date of the Education Lease, and on each subsequent fifth anniversary thereof, the Developer may increase the Base Rent by a factor not to exceed fifteen percent (15%) of the Base Rent previously in effect.

(iii) The Education Lease shall include, as part of the Basic Rent, the use by the Department of Education’s employees and visitors of certain reserved parking spaces in the Garage between the hours of 7:00 AM and 7:00 PM Monday through Friday, exclusive of legal holidays (“the Education Parking Spaces”). The number of such spaces shall be 2.4 per 1,000 square feet of gross leasable office space, rounded to the closest integer. By way of example, if the Education Office Space should consist of exactly 200,000 gross leasable square feet, the number of Education Parking Spaces would be 480.

(b) The construction on the Parcel A Premises of a Garage substantially as shown in the Development Concept Plan, containing 1,331 parking spaces and a commercial entertainment area of approximately 66,000 square feet (unless different numbers are agreed to in accordance with the Ground Lease/Surface Rights Contract). The Garage, which shall be owned and managed by the Developer as part of its surface rights, shall be for the shared use of the office and retail tenants in the Project as well as Tren Urbano passengers. The Garage shall be designed and operated subject to the following requirements:

(i) The Education Parking Spaces shall be provided as set forth in subsection (a) above. On weekends, legal holidays, and on workdays before 7:00 AM and after 7:00 PM, such spaces may be used by the Developer for other activities associated with the Project.

(ii) Within the Garage, 400 parking spaces shall be set aside for the use of Tren Urbano passengers between the hours of 7:00 AM and 7:00 PM Monday through Friday, exclusive of legal holidays, and 100 such spaces at all other times (the “Park-and-Ride Spaces”). The Developer and the Authority shall enter into an agreement, for a term commencing on the day the Garage is permitted for occupancy and concluding at the end of the term of the Ground
Lease/Surface Rights Contract, setting forth the use and management of the Park-and-Ride Spaces, the rates to be charged Tren Urbano passengers, and the payments to be made by the Authority to the Developer to subsidize the use of such spaces (the “Park-and-Ride Agreement”). The Park-and-Ride Agreement shall be executed prior to the Closing Date. The Authority acknowledges that the Developer will rely on the Park-and-Ride Agreement to obtain financing for the construction of the Garage. The terms of the Park-and-Ride Agreement shall include, without limitation, an annual lease payment by the Authority to the Developer of $ per square foot of building space constituting the Park-and-Ride Spaces. Said payment shall be reduced in a sum equal to the net cash flow (if any) generated by the overall operation of the Garage in excess of Developer’s debt service cost multiplied by 1.35.

(c) The construction on the Parcel B Premises of a multi-story Residential Building substantially as shown in the Development Concept Plan containing 87 units of housing, 21,000 square feet of retail space, 60,000 gross square feet of office space, and 168 parking spaces (unless different numbers are agreed to in accordance with the Deed). The Residential units may be sold or leased.

(d) No fewer than ten percent (10%) of the aggregate number of housing units constructed as part of the Project shall be “Workforce Affordable Units”. If the Workforce Affordable Units are marketed for sale, the sales price per unit shall not exceed $ for a one-bedroom unit (if any), $ for a two-bedroom unit, or $ for a three-bedroom unit, which amounts may be adjusted by the Consumer Price Index for all urban consumers (CPI-U), as regularly published by the bureau of labor statistics of the US Department of Labor for the period between the Parcel A Closing Date and the time the units are placed on the market (the “Workforce Affordable Maximum Sales Price”). The floor area of the one-bedroom, two-bedroom, and three-bedroom Workforce Affordable Units shall be at least equal to the median floor area of the market-rate one-bedroom, two-bedroom, and three-bedroom units, respectively. If the Workforce Affordable Units are marketed as rentals, they must remain rental for a minimum period of twenty (20) years, at a maximum rent schedule to be provided by the Authority prior to the time the units are placed on the market. The initial rents provided by the Authority shall be equivalent (in terms of household income) to the Workforce Affordable Maximum Sales Price, and will subsequently be indexed based on the rate of change in the HUD Fair Market Rents for the San Juan Metropolitan Area.

(e) The construction of vehicular access and egress drives, trash disposal facilities, and other accessory features, substantially as shown in the Design Concept Plan.

(f) Other than as provided in Section 3.4(c) hereof, and as may be expressly otherwise described in the Ground Lease/Surface Rights Contract or the Deed, as applicable, the Improvements shall be constructed wholly within the Premises and shall be in all material respects as provided in the Final Plans and Specifications (as the same may be revised in accordance with the Ground Lease/Surface Right or the Deed). The Project shall be a complete self-contained unit with independent facilities of its own and shall not be tied into or have any physical connection with any structure located on other property, provided that this sentence...
shall not be construed to prohibit connections to off-site utility lines, water and sewer facilities, thermal energy facilities, access to roadways and the like.

3.4 Public Improvements. The Developer agrees to cause certain Public Improvements essential to the Project to be constructed within and immediately adjacent to the Premises, at the Developer’s cost except as provided herein, in accordance with the Development Concept Plan and the Final Plans and Specifications to be endorsed by the Authority pursuant to the Design Review Process, including:

(a) Design and construction of a public plaza adjoining the Best Headhouse, as described in the Development Concept Plan and the Final Plans and Specifications.

(b) Design and construction of public sidewalks and streetscape amenities along the perimeter of the Premises, fronting on PR-1, PR-176, and PR-8838, generally within the mandatory setback area identified in Figure 14 of the RFQ/P and in Exhibit A hereto.

(c) Design and construction of an underground pedestrian tunnel connecting the Project to the public sidewalk at the northeast corner of Highways PR-176 and PR-8838, as described in the Developer’s Best and Final Offer dated January 31, 2007. The design, operation, and maintenance of said tunnel will be established in the Ground Lease/Surface Rights Contract, pursuant to the Design Review Process described in Exhibit C hereto. The Developer will finance the capital cost of the tunnel as part of the financing of the Office Building; the amortization of said cost will be recovered from the Office Building tenants, on terms to be provided in the Ground Lease/Surface Rights Contract.

(d) Temporary landscaping improvements in the portion of Sub-Parcel A-3 adjoining the northeastern boundary of the Premises, designated “Future Development by Others” in Figure 8 of the RFQ/P, and described as “Parcel C” in Article 8 hereof.

The Developer shall maintain the Public Improvements described in subparagraphs (a), (b), and (c) of this subsection throughout the term of the Ground Lease/Surface Rights Contract; and those described in subparagraph (d) until such time as the Parcel C Development Plan described in Article 8 hereof is implemented. If said Parcel C Development Plan is implemented contemporaneously with the remainder of the Project, or immediately subsequent thereto, the temporary improvements described in subparagraph (d) shall not be undertaken.

3.5 Permitting for the Project. The Authority shall be responsible for obtaining any approvals required for the Project from the Federal Transit Administration, and the Authority will act as “Agencia PropONENTE” in connection with any submittals required by the Puerto Rico Environmental Quality Board for the Project to comply with the Environmental Public Policy Law, Law No. 416 of September 22, 2004, as amended. The Developer shall cooperate with the Authority’s efforts to obtain such approvals.

Subject to the terms and conditions of this Agreement, the Developer, at its sole cost and expense, shall be responsible for obtaining all other permits, licenses, determinations, findings and approvals necessary to enable the Developer to construct and use the Improvements (the “Approvals”). The Authority shall cooperate with the Developer’s efforts to obtain such
3.6 **Status of Project.** The Developer shall, from time to time at reasonable intervals and as circumstances warrant, keep the Authority fully and currently advised of the status of all aspects of the Developer's progress in meeting the terms and provisions of this Agreement and its then current schedule for development of the Project, including, without limiting the generality of the foregoing, the status of development of materials for the Design Review Process, arrangements for construction and obtaining of all Approvals.

3.7 **Development Documents: Development Team.** The Developer's development team for the Project consists of the members described in the Developer's response to the RFQ/P (the "Development Team"). Any changes to the Development Team shall be subject to the Authority's prior express written approval, which will not be unreasonably withheld. The Authority shall be given an opportunity to review and comment upon any proposed agreements (collectively, the "Construction Contract") between the Developer and the Developer's construction managers and/or general contractor (collectively, the "Contractor"), and any proposed agreements between the Developer and its architects (collectively, the "Architect's Agreement"), provided that the Authority's review shall be solely to ensure such agreements are consistent with this Agreement.

3.8 **Early Access.** At any time after the Effective Date and prior to commencement of construction, subject to the requirements of Article 5 of this Agreement, the Developer and its employees, agents, contractors and representatives shall have the right, upon reasonable prior written notice, to enter onto the Premises for the limited purpose of performing surveys, tests, and inspections, provided that (a) the same shall be undertaken in a safe manner and in compliance with all applicable laws and regulations; (b) if the same includes any physical disruption to the surface or subsurface thereof, the Developer shall obtain the prior written consent of the Authority, and (c) after completion of any such surveys, tests and inspections, the Premises shall promptly be restored to their prior condition at the Developer's sole cost and expense.

3.9 **Construction Period Covenants.** The Developer covenants and agrees to be bound by the following construction period covenants (the "Construction Period Covenants"), all of which shall be applicable from the Parcel A Closing Date until the delivery of the final use permit (the "Construction Period") for the Private Improvements and the Public Improvements by the Administración de Reglamentos y Permisos (the "ARPE Use Permit"): 

(a) The Developer shall commence construction of the Private Improvements within sixty (60) days of the corresponding Closing Date.

(b) The Developer shall diligently prosecute construction of the Improvements in accordance with the construction schedule set forth in the Final Plans and Specifications. Construction of the Parcel A Improvements and the Private Improvements shall be completed in no event later than forty-eight (48) months from the Parcel A Closing Date, subject to delays caused by Force Majeure Events. Construction of the Private Improvements on Parcel B will begin no later than the issuance of the use permit for the office building in Parcel A. For purposes hereof, a "Force Majeure Event" shall mean a delay in or a failure of
performance by the Developer that (i) could not be prevented by the Developer’s exercise of reasonable diligence (including but not limited to unusual archaeological or environmental conditions) and (ii) results from acts of God, fire or other casualty, war, public disturbance and/or strikes or other labor disturbances in the San Juan area not attributable to the failure of the Developer to perform its obligations under any applicable labor contract or law and directly and adversely affecting the Developer.

(c) All Improvements shall comply with the Final Plans and Specifications, all applicable federal, state and local codes, laws and regulations as interpreted and enforced by the relevant regulating agency or agencies and all Approvals.

(d) Any changes to the Development Team from and after the Closing Date shall be subject to the Authority’s prior approval, which shall not be unreasonably withheld, conditioned or delayed.

(e) Upon completion of the Improvements, the Developer shall prepare at its expense and deliver to the Authority an ALTA/ACSM survey by a Commonwealth of Puerto Rico registered land surveyor showing the location of the Improvements and any matters of record.

A delay in or a failure of performance by the Developer of its obligations under this Section 3.9 shall not constitute a default to the extent that such delay or failure is caused by a Force Majeure Event (as defined in Section 4.1). The Developer shall use diligent efforts to minimize the delay and other adverse effects of any Force Majeure Event and the Developer shall provide the Authority with prompt notice in accordance with the provisions of this Deed of any Force Majeure Event excusing its delay or non-performance.

The provisions of this Section 3.9 shall survive the Closing and delivery of the Ground Lease/Surface Rights Contract and the Deed.

ARTICLE 4

CLOSING

4.1 Closing Date. For each of the Parcel A Premises and the Parcel B Premises, the delivery of the Ground Lease/Surface Rights Contract or Deed, as applicable, along with other documents contemplated by this Agreement and the payment of the corresponding initial Ground Lease Payment or Purchase Price, shall constitute a “Closing”, the specific such events to be designated as the Parcel A Closing and the Parcel B Closing. At any time on or before the Parcel A Closing, a provision will be included in the Parcel A Deed in favor of Parcel B as to Parcel B’s rights to be incorporated in Parcel A’s main garage.

Each of the aforementioned Closings shall occur on a Closing Date, which shall be any date set by the Developer upon at least thirty (30) days prior written notice to the Authority, but in no event later than the following respective dates (each an “Outside Closing Date”). Subject
to the conditions set forth in Sections 4.3 and 4.4 hereof, the Developer may elect to undertake both Closings on the same date.

(i) **Parcel A Outside Closing Date**: June __, 2010 (i.e., the date which is eighteen (18) months from the Effective Date). The Developer shall be entitled to extend the Outside Closing Date (i) if the Developer demonstrates to the satisfaction of the Authority that the Project is unable to obtain financing due to extraordinary and adverse market conditions, or (ii) if a condition described in Section 4.3(e), 4.4(b), or 4.4(c) is not satisfied as of the Outside Closing Date, provided that the Developer demonstrates to the satisfaction of the Authority that it has diligently pursued the Approvals or Agreements, as the case may be, in good faith and the failure to satisfy such condition is due to an action or inaction of the applicable authorities. In either such case, the Outside Closing Date shall in no event be extended beyond June __, 2011 (i.e., the date which is thirty (30) months from the Effective Date).

(ii) **Parcel B Outside Closing Date**: the date which is the second anniversary of the Parcel A Outside Closing Date.

Notwithstanding the foregoing, each Closing Date shall occur only after satisfaction of the conditions set forth in Sections 4.3 and 4.4 hereof, and in the event that such conditions are imposed on a party are not satisfied (or waived by the other party as hereinafter provided) by the Closing Date (as the same may have been extended as provided above), then such other party may terminate this Agreement and thereupon all rights and obligations of the parties under this Agreement shall cease, except as may be expressly provided in this Agreement. Except as may be specifically provided in this Agreement, the Outside Closing Date shall not be extended for any other reason.

4.2 **Place and Time of Closing**. Each Closing shall take place at the offices of the Authority at 11:00 a.m. on the corresponding Closing Date, or at such other place as may be mutually agreed upon. The Closing may be accomplished through customary escrow arrangements reasonably satisfactory to counsel to the Authority and the Developer.

4.3 **Conditions Precedent to Authority’s Obligations**. It shall be a condition precedent to the Authority’s obligation to execute the Ground Lease/Surface Rights Contract and the Deed on the corresponding Closing Date that each of the following shall have occurred or been satisfied, as applicable:

(a) **No Default**. The Developer shall not be in default of any of its obligations hereunder, and there are no facts which with the passage of time or giving of notice would constitute such a default.

(b) **Final Plans and Specifications**. The Final Plans and Specifications have been approved in writing by the Authority pursuant to the Design Review Process in accordance with Section 3.1 and Exhibit C hereof.
(c) **Developer Financial Statements.** The Developer and Guarantor shall have delivered to the Authority, as of the Closing Date, the most recent quarterly financial statements or report of the Developer, which shall reveal no material adverse change from the Financial Statements provided by the Developer under Section 1.5, along with such financial statement or report of the Guarantor as shall satisfy the requirements of Section 1.5. For purposes of this Section, the parties agree that changes in the financial condition of the Developer shall not be considered "materially adverse" unless such changes materially adversely affect the ability of the Developer to fulfill its obligations hereunder or under the Ground Lease/Surface Rights Contract or the Deed, including, without limitation, the obligation to complete construction of the Project.

(d) **Sufficiency of Funds.** On or before thirty (30) days prior to the Closing (the "Financial Ability Date"), the Developer shall have delivered to the Authority evidence acceptable to the Authority, in the Authority's reasonable discretion, that the Developer has sufficient available and unencumbered funds, or a combination of available and unencumbered funds and a firm financing commitment from a financial institution acceptable to the Authority, to complete construction of the Project in accordance with the Final Plans and Specifications and to cover all construction costs and all other Project costs. As soon as reasonably practicable, but in any event not later than ten (10) business days prior to the Closing, the Developer shall have delivered to the Authority copies of all financing documents required to be delivered by the Developer or its affiliates in connection with the financing of the Project, which documents shall be in form and substance satisfactory to the Authority.

(e) **Approvals.** Except as expressly provided in this Agreement, the Developer shall have obtained and submitted to the Authority copies of all Approvals required by law or by the regulations of any governmental authority which are usual and customary at the then existing stage of development and are necessary for the commencement of construction of the Project, with all appeal periods with respect to such Approvals having expired without an appeal being entered (or, if any appeal has been entered, such appeal having been dismissed with prejudice or denied).

(f) **Legal Opinions.** The Developer shall have delivered to the Authority an opinion or opinions of counsel reasonably satisfactory to the Authority as to the legal existence and corporate powers of the Developer, and as to the due authorization, validity and enforceability of, and absence (if such is the case) of conflicting agreements with, all documents and instruments to be executed by the Developer and such other party or parties on the Closing Date.

(g) **Completion Guaranty.** At or prior to the Closing, the Developer shall have delivered to the Authority a Completion Guaranty from the Guarantor in form and substance satisfactory to the Authority.

(h) **Construction Contract, Architect's Agreement.** The Developer shall have delivered to the Authority the fully executed Construction Contract and Architect's Agreement, in form and content previously reviewed and/or commented by the Authority as provided herein.

(i) **Survey.** The Survey shall have been completed and approved by the Authority, and a legal description of the Premises shall have been prepared and included in the
Ground Lease/Surface Rights Contract and the Deed in accordance with Section 1.4(b); and

(j) Other Documents. All other documents required to be executed or delivered in connection with the Deed and complementary thereto shall have been fully executed and delivered.

(k) Costs of Closing. The Developer shall have paid the Notary Public and related costs for the preparation of the Ground Lease/Surface Rights Contract (which shall take public deed form) and the Deed.

4.4 Conditions Precedent to the Developer’s Obligations. It shall be a condition precedent to the Developer’s obligation to execute the Ground Lease/Surface Rights Contract and the Deed on the Closing Date that each of the following shall have occurred or been satisfied, as applicable:

(a) No Default. The Authority shall not be in default of any of its obligations hereunder, and there are no facts, which, with the passage of time or giving of notice, would constitute such a default.

(b) Education Lease. The Developer and the Puerto Rico Department of Education shall have executed the Education Lease on terms consistent with Section 3.3(a) of this Agreement and with the reasonable requirements of the Developer’s financing entity.

(c) Park-and-Ride Agreement. The Developer and the Authority shall have executed the Park-and-Ride Agreement on terms consistent with Section 3.3(b) of this Agreement and with the reasonable requirements of the Developer’s financing entity.

(d) Title. The Authority shall have delivered to the Developer evidence of free and clear title to the Premises, which shall have been duly presented to the Registry of Property in final form for recording, or in the alternative (as provided in Section 2.2 hereof), (a) title insurance policy(ies) containing such provisions and endorsements as may be necessary to protect the Developer’s interest in the Premises.

(e) Legal Opinions. The Authority shall have delivered to the Developer an opinion or opinions of counsel reasonably satisfactory to the Developer as to the legal existence and powers of the Authority, and as to the due authorization, validity and enforceability of all documents and instruments to be executed by the Authority on the Closing Date.

(f) Other Documents. Any and all agreements required to be entered into by the Developer, and all other documents to be agreed upon by the parties, in a form mutually acceptable to the parties in accordance with the requirements of this Agreement, and, if applicable, shall have been fully executed and delivered.

ARTICLE 5
INDEMNIFICATION AND INSURANCE

5.1 Indemnification. The Developer hereby agrees to defend, indemnify and hold harmless the Authority, its members, officers, employees and agents from and against all claims, costs, fees, third-party out-of-pocket expenses, liabilities and damages (including without limitation reasonable attorneys’ fees and costs of investigation and litigation) whatsoever, which may be actually incurred by the Authority, its members, officers, employees or agents as a result of any acts or omissions undertaken by the Developer or its authorized agent in its implementation of this Agreement or its activities with respect to the Premises, the Project, or the Improvements. This Section 5.1 shall survive expiration or earlier termination of this Agreement.

5.2 Insurance. If, at any time prior to the execution of the Ground Lease/Surface Rights Contract and the Deed, the Developer or its employees, agents, contractors or representatives enter onto the Premises pursuant to this Agreement, the Developer shall, at its sole cost and expense, have in full force and effect comprehensive general public liability insurance on an occurrence basis naming the Authority as an additional insured against claims for personal injury, death or property damage occurring upon, in or about the Premises and on, in or about the adjoining streets, including claims arising from the use of all equipment, hoists and motor vehicles or in connection with the hauling of materials or debris, with a combined single limit with respect to each occurrence in an amount not less than $5,000,000 for injury (or death) to persons and damage to property.

ARTICLE 6
DEFAULT AND TERMINATION

6.1 Default by the Developer. Any one or more of the following events shall constitute an “Event of Default” of the Developer:

(a) if the Developer fails to observe or perform any covenant, condition, agreement or obligation to be observed or performed by the Developer hereunder, and shall fail to cure, correct or remedy such default within thirty (30) days after the receipt of notice thereof from the Authority, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such period of thirty (30) days shall be extended to a period of time necessary to cure such failure, if, and so long as, the Developer proceeds promptly, continuously and with due diligence to cure the failure; or

(b) if any representation or warranty of the Developer set forth in this Agreement, or in any notice, certificate, demand, submittal or request delivered to the Authority by the Developer pursuant to this Agreement, shall prove to be incorrect in any material and adverse respect as of the time when the same shall have been made; or

(c) except as otherwise provided by applicable law, if the Developer shall be judicially declared bankrupt or insolvent according to law or if any assignment shall be made of the property of the Developer for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all
or any substantial part of the Developer’s property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of the Developer under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if the Developer shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts.

6.2 Termination. This Agreement shall terminate on the earliest to occur of the following:

(a) upon notice by the Authority to the Developer that there is an Event of Default in accordance with Section 6.1 (beyond any applicable grace or cure period), on the part of the Developer;

(b) upon failure of the Developer to pay the Closing Guarantee to the Authority in accordance with Sections 2.3 and 6.3;

(c) at any time agreed upon in a written instrument expressly terminating this Agreement signed by both the Authority and the Developer;

(d) upon the Closing Date in the event of a closing hereunder; or

(e) upon the Outside Closing Date, if a closing has not occurred (subject to any extension as permitted under Section 4.1).

Upon any termination as aforesaid, all obligations of the parties under this Agreement, except as may be expressly provided herein, shall cease.

6.3 Closing Guarantee. If the Developer is satisfied with its due diligence investigations of the Premises, the Developer shall pay to the Authority Fifty Thousand Dollars ($50,000) (the “Closing Guarantee”) in immediately available funds prior to expiration of the Due Diligence Period. If this Agreement shall subsequently terminate for the reasons specified in Section 6.2, the Authority shall retain the Closing Guarantee. If the Project proceeds to the Closing Date and execution of the Ground-Lease/Surface Rights Contract and the Deed, the Authority shall retain the Closing Guarantee and apply it to the Purchase Price.

6.4 Post-Closing Events of Default. Upon the occurrence of an Event of Default from and after the Closing Date, the Authority shall have the right to enforce the terms and conditions of this Agreement which survive the Closing by appropriate legal proceedings and to obtain injunctive relief requiring compliance with the terms of this Agreement, in addition to any other right or remedy available to the Authority. This Section 6.4 shall survive the Closing and delivery of the Ground Lease/Surface Rights Contract and the Deed.

6.5 Default by the Authority. If the Authority fails to observe or perform its obligation to convey title of the parcels as agreed hereunder, the Developer may assert such statutory cause of action under the procedures and with the remedies provided for by law.

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ARTICLE 7

TRANSFERS

7.1 Pre-Closing Prohibited Transfers. The Developer shall not directly or indirectly transfer (by assignment or otherwise) all or any of its interests under this Agreement without the prior express written consent of the Authority, which consent may be withheld by the Authority in its sole discretion. For purposes of this Section 7.1, a transfer shall include, without limitation, any transfer or change of legal or beneficial interests in the Developer (including voluntary and involuntary assignments and transfers, assignments and transfers by operation of law and a merger or consolidation of the stock or other beneficial interests of the Developer). Notwithstanding the foregoing, for purposes of financing the project the Developer may sell a non-controlling equity interest or form a single-purpose development entity controlled by the Developer subject to the prior written approval of the Authority, which approval shall not be unreasonably withheld.

7.2 Construction Period Prohibited Transfers. During the Construction Period (as defined in Section 3.9), the Developer shall not transfer (as defined in Section 7.1), lease or otherwise convey the Premises (or any portion thereof) without the prior written consent of the Authority, which consent may be withheld by the Authority in its sole discretion.

7.3 Permitted Transfers. Notwithstanding anything to the contrary contained herein, the Developer shall at all times have the right to (a) transfer, sell or lease individual residential or office condominium units in the Project to third parties on an arms-length basis at any time after the Closing Date, or (b) encumber, pledge, or convey its rights, title and interests in and to the Premises, or any portion or portions thereof by way of a bona fide mortgage or mortgages to secure the payments of any loan or loans obtained by the Developer to finance the development and construction of the Improvements or any part thereof, or to refinance any outstanding loan or loans therefor obtained by the Developer for any such purpose, provided, however, that the Developer shall give prior written notice to the Authority of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such mortgage(s) and any other information regarding the mortgage(s) and mortgage documents which the Authority may reasonably require. Any assignment or transfer in violation of this Article 7 shall be void. The provisions of this Article 7 shall survive the Closing and delivery of the Ground Lease/Surface Rights Contract and the Deed.

ARTICLE 8

DEVELOPMENT OF PARCEL C

8.1 Background Information. In the RFQ/P, reference was made to the "Future Development Parcel", located in Sub-Parcel A-3 between the northeast boundary of the Project's site and the University of Puerto Rico Biomolecular Sciences facility. It was stated in the RFQ/P that this area would be reserved by the Authority for future development by others and that, as an
interim measure, the Designated Developer of Parcels A and B would be required "to intervene in the Future Development Parcel by planting grass and other appropriate landscaping and maintaining the space at its cost until such time as the Authority requires it for future development."

As stated in its Request for Best and Final Offers dated December 22, 2006, the Authority has concluded that it is in the best interest of the Authority and Trein Urbano to invite the Designated Developer for Parcels A and B to include the "Future Development Parcel" as part of this Joint Development Project, to be designated as "Parcel C". Proponents were asked to indicate whether they would be interested in adding Parcel C to the Project, subject to the following general conditions:

(i) The land area of Parcel C is approximately 1,805 square meters. Its land value will be based on a timely fair market appraisal. The unit value per square meter is expected to be similar to, but not necessarily equal to, that of Parcel B.

(ii) Parcel C may be developed with housing, office, or university-related space on the upper floors, with the majority of the ground floor dedicated to retail or similar pedestrian-oriented uses.

(iii) The Designated Developer will be expected to consult with the University of Puerto Rico, to ascertain whether the University has any interest in being a tenant of the Parcel C development.

(iv) The Parcel C building should relate to the other building elements in the manner envisioned in Section 5.2.3 Figures 8, 9, 10, and 14 of the RFQ/P.

(v) Parking for Parcel C may be incorporated in the main garage on Parcel A-2 or provided independently within Parcel C itself.

In its Best and Final Offer to the Authority dated January 31, 2007, the Developer indicated its willingness and ability to incorporate Parcel C into the Project, subject to the above-listed conditions.

8.2 Parcel C Development Concept. Within ninety (90) days of the Effective Date, the Developer shall submit to the Authority a Parcel C Development Concept, which shall include, without limitation, the following provisions:

(a) the proposed program of uses, associated square footages and/or number of units as applicable, and marketing plan for the development of the Parcel;

(b) a Development Concept Plan, as that term is defined in Section 3.1 hereof, at a level of detail at least comparable to that which has heretofore been presented for Parcels A and B, such Development Concept Plan shall include the provisions for parking associated with the development of Parcel C;

(c) the form of legal conveyance by which the Developer proposes to acquire
the development rights to Parcel C, and the proposed timing of said conveyance (that is, whether Parcel C is to be conveyed on the Parcel A Closing Date or Parcel B Closing Date, as described in Section 4.1 hereof, or at a specific later time; provided, however, that the Closing for Parcel C shall occur on or before the third anniversary of the Parcel A Closing or the Developer’s rights to Parcel C under this Agreement shall terminate).

The Authority shall cooperate reasonably with the Developer in the preparation of the Parcel C Development Concept, including without limitation providing the Developer with an appraisal indicating the value of Parcel C, it being understood that said value will be subject to a final updated appraisal to be undertaken by the Authority which will be valid and in effect at such time as Parcel C is acquired by the Developer.

8.3 Approval and Incorporation of Plan. Within forty-five (45) days of the Developer’s submittal of the Parcel C Development Concept, the Authority shall indicate to the Developer in writing whether it has approved said Concept (such approval to be at the Authority’s sole discretion), or whether it requires certain modifications to said Concept. In the latter case, the Developer shall prepare and submit such modifications for the Authority’s review and approval.

Upon the Authority’s written approval of the Parcel C Development Concept, this Agreement shall be amended to incorporate said Concept as a full and integral part hereof, and all general provisions hereof shall apply to Parcel C (which will be incorporated in the definition of the term “Premises”), except as may be expressly provided in the Parcel C Development Plan.

It is expressly understood that the inclusion of Parcel C in the Project is contemplated as an additional benefit to the Project, and that the rights and obligations of the Parties with respect to Parcels A and B are in no way subject to or contingent upon the approval of a Parcel C Development Concept.

8.4 University of Puerto Rico Right of First Refusal. The parties acknowledge that because the University of Puerto Rico Biomedical Sciences facility is located immediately adjacent to Parcel C, it is desirable to provide a reasonable opportunity for the University to occupy some or all of any development to be implemented on Parcel C. To that end, the Developer agrees to consult with the University in preparing the Parcel C Development Concept pursuant to Section 8.2 hereof. For a period of six (6) months starting upon the Authority’s approval of the Parcel C Development Concept, the Developer shall provide the University with the right of first refusal to negotiate an agreement to occupy the Parcel C development.

ARTICLE 9

MISCELLANEOUS

9.1 Applicable Law; Jurisdiction; Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. The Authority and the Developer hereby irrevocably and unconditionally submit to the exclusive
jurisdiction of the courts of the Commonwealth of Puerto Rico in any action or proceeding arising out of or relating to this Agreement and irrevocably and unconditionally agree that all claims in respect of any such action or proceeding may be heard and determined in such courts. The titles of the Articles and Sections contained herein are for convenience only and shall not be considered in construing this Agreement.

9.2 No Waiver. No assent, express or implied, by either party to any breach of or default in any term, covenant or condition herein contained on the part of the other to be performed or observed shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition hereof.

9.3 Notices. All notices, demands, submissions, requests, consents, approvals, designations and other instruments required or permitted to be given pursuant to the terms hereof, shall be deemed to have been properly given if the same as provided in writing and delivered by hand or overnight mail delivery or sent by registered or certified United States mail, postage prepaid, return receipt requested, and:

*If directed to the Authority addressed to:*

Puerto Rico Highways and Transportation Authority  
P.O. Box 42007  
San Juan, Puerto Rico 00940-2007  
Attn: Dr. Carlos J. González Miranda  
Secretary  
with copies to:

Puerto Rico Highways and Transportation Authority  
398 Jesús T. Piñero Avenue  
San Juan, Puerto Rico 00918  
Attn: Tren Urbano Joint Development Director

*If directed to the Developer addressed to:*

Grupo de Desarrollo Los Altos San Juan, Inc.  
PO Box 363823  
San Juan, PR 00936-3823  
Attn: Oscar I. Rivera  
President  

*With copies to:*

*or to such other addresses as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, each party shall direct all sums payable to another party to said party’s address for notice purposes.*

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Page 23
9.4 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.5 Merger. The execution and delivery by the parties of the Ground Lease/Surface Right Contract and the Deed shall be deemed to be a full performance and discharge of every agreement and obligation contained herein, except as to any obligations or agreements herein which by their terms are to survive the execution and delivery of the Ground Lease/Surface Rights Contract and the Deed.

9.6 Entire Agreement; Amendment. This Agreement and the exhibits attached hereto include the entire agreement of the parties with respect to the development of the Project. No change, amendment or addition to this Agreement shall be effective unless in writing signed by all parties.

9.7 Compliance with Laws. With respect to all actions taken hereunder, the parties shall observe and obey and require all of their respective officers, employees, agents, suppliers and invitees to observe and obey all present and future applicable federal, state and municipal laws and regulations, seen or unforeseen.

9.8 Relationship of the Parties. Nothing contained herein shall be construed as creating the relationship of principal and agent or of partnership or of joint venture or, until execution and delivery of the Ground Lease/Surface Rights Contract and the Deed, of landlord and tenant between the Authority and the Developer, it being understood and agreed that no provision contained herein, nor any acts of the parties hereto, shall be deemed to create any such relationship between the parties.

9.9 Confidentiality. The parties recognize that each party may be required to deliver certain proprietary information to the other under the terms of this Agreement. Each party, upon receipt from the other party of any document designated, as "Confidential" or "Proprietary" shall use reasonable efforts, subject to compliance with all applicable laws, to protect the confidentiality of any such document and the information contained therein.

9.10 The Developer's Employees and Subcontractors to Work in Harmony. The Developer agrees for itself and its contractors that its employees and those of its contractors shall be able to work in harmony with all elements of labor employed by the Authority at other facilities owned or operated by the Authority.

9.11 Time of the Essence. Time shall be of the essence hereof.

9.12 No Recording. This Agreement shall not be recorded. Any attempt to record this Agreement shall, at the election of the other party, render it null and void.
EXECUTED as of the day and year first above written.

PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY

By:

Dr. Carlos J. González Miranda
Secretary
Department of Transportation and Public Works

By:

Ing. Luis M. Trinidad Garay
Executive Director
P.R. Highways and Transportation Authority

GRUPO DE DESARROLLO LSS ALTOS SAN JUAN, INC.

By:

Sr. Oscar Rivera Rivera
President
EXHIBIT A

Description of the Premises

[Survey and Segregation Plan to be provided.]
EXHIBIT B

Provisions to be included in Ground Lease/Surface Right and Deed

ARTICLE 1

DEFINED TERMS

Capitalized terms used in this Exhibit B without definition shall have the meanings set forth in the Joint Development Agreement.

ARTICLE 2

SURVIVING COVENANTS

2.1 Surviving Covenants. [Lessee]/[Grantee] covenants and agrees to be bound by the following covenants, all of which are intended to operate as covenants running with the land from the Closing Date (the “Surviving Covenants”):

(a) The Premises shall be used in a manner consistent with the principles of high-quality transit-oriented development.

(b) [Lessee]/[Grantee] shall not discriminate against anyone on the basis of race, color, sex, or national origin in accordance with 49 C.F.R. 26.7 (the successor to 49 C.F.R. 23.7, and its successor thereto in effect from time to time).

(c) [Lessee]/[Grantee] shall not discriminate based on disability and any improvements constructed on the Premises, including, without limitation, the Improvements, shall comply with the Americans with Disabilities Act as amended and in effect from time to time, all in accordance with 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) (and their successors thereto in effect from time to time).

(d) [Lessee]/[Grantee] shall comply with the requirements regarding conflict of interest and debarment set forth in FTA MA(10) dated October 1, 2003 (the successor to FTA MA(4) dated October 1, 1997), Section 3, Subparagraphs a(1), a(2) and (b) (and its successor thereto in effect from time to time).

(e) [Lessee]/[Grantee] shall comply with the workforce affordable requirements and the anti-speculation clause, set forth in schedule attached hereto.

2.2 Changes in Covenants. Any of the Surviving Covenants may be waived, annulled, changed or modified by an express written amendment to this [Ground Lease] / [Deed] executed by the Authority and [Lessee]/[Grantee], and by the filing of an appropriate instrument in the Property Registry.

2.3 Survival of Covenants. Subject to the provisions of Section 2.2, the Surviving Covenants shall survive in perpetuity. The Surviving Covenants shall be solely for the benefit
of, and enforceable only by, the Authority and its successors (which for these purposes shall not include the owners of any condominium units in the Project). All of the Surviving Covenants shall run with, and shall touch and concern, the land, shall bind the Developer and all of the Developer's successors, assigns, agents and legal representatives, and anyone having an interest in the Premises, shall continue to be effective and shall be enforceable by the Authority, as covenants running with the land without regard to technical classification or designation, legal or otherwise.

ARTICLE 3.

REMEDIES

3.1 Remedies. If at any time [Lessee]/[Grantee] is in default of its obligations hereunder, the Authority shall have the right to enforce the terms and conditions of this [Ground Lease] / [Deed] by appropriate legal proceedings and to obtain injunctive relief requiring compliance with the terms of this [Ground Lease] / [Deed] (it being agreed that the Authority will have no adequate remedy at law), in addition to any other right or remedy available to the Authority.

3.2 Entry on Premises by the Authority. [Lessee]/[Grantee] shall permit the Authority and its authorized representatives to enter the Premises at all reasonable times upon reasonable prior notice for the purpose of (i) access to, or inspection, maintenance, and repair of, the Tren Urbano facilities, or (ii) inspecting the Premises for compliance with the obligations of this [Ground Lease] / [Deed], provided that such inspections shall be conducted so as not to unreasonably interfere with the conduct of business therein by [Lessee]/[Grantee] or any other occupant. In the event of any emergency or potential emergency affecting the Tren Urbano facilities adjoining the Premises, the Authority shall have the right to enter upon the Premises without prior notification to [Lessee]/[Grantee].
EXHIBIT C

Design Review Process

Required submissions shall be made at three stages of project design and construction: Schematic Design, Design Development, and Final Plans and Specifications. Submissions shall include the materials described in Section A, below. The Authority’s right to endorse, and the process by which the Authority shall endorse or not endorse such submissions are further described in Section B, below. The Authority and the Developer shall each designate a construction representative as set forth in Section C below. Mandatory pre-submission meetings are required for all phases of design review two weeks prior to any submittal of plans to the Authority.

Submission and review of design materials will be a continuing process and it is expected that reasonable requests by the Authority for progress prints and other materials in addition to these required herein will be met by the Developer. Construction representatives of the Authority and the Developer (designated as set forth below) shall meet on a regular basis but no less frequently than monthly unless the parties otherwise agree, to review the status of the development of design materials for the Project. The Authority and Developer acknowledge and agree that the Developer has satisfied the submission requirements of items (a) through (g) of the Schematic Design stage of Design Review.

The parties understand that the Authority’s endorsement of plans under this Design Review process is for the sole purpose of determining the conformity of the Project, and any changes thereto requested by any other governmental agency or authority, to the Design and Development Guidelines described in Section 5 of the RFQ/P and other relevant design policy considerations, and does not constitute a review by the Authority of the Developer’s compliance with customary technical, professional, or legal design requirements applicable to the Project, all of which remain the sole and absolute responsibility of the Developer.

With respect to the Education Space referenced in Section 3.3(A) of this Agreement, the Authority shall exercise its design review in consultation with the Puerto Rico Department of Education.

A. SUBMISSION REQUIREMENTS

1. Schematic Design Stage

The intent of the review at this stage is to secure agreement on the basic design concept. The following materials must be submitted:

(a) Written description of the project including all program elements and space allocation for each element.

(b) Site plan at an appropriate scale (e.g., 1” = 16’ or 1” = 20’) showing:

(i) Relationships of proposed and existing buildings and open space.
Open spaces mutually defined by buildings on adjacent parcels and across streets shall be included.

(ii) Location of walks, driveways, parking, service areas, roads, and major landscape features.

(iii) Pedestrian and vehicular (including service) access and flow through the parcel and to adjacent areas.

(iv) Survey information, such as existing elevations, benchmarks, utilities, etc. (Survey to be prepared by the Authority).

(c) Schematic building plans showing ground floor, typical upper floor(s) and parking levels (scale 1\(\text{'} = 16\text{'})

(d) Shadow studies showing the effects of the proposed massing on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.

(e) Site model at an appropriate scale (e.g., 1\(\text{'} = 40\text{'}) All nearby buildings and streets should be included to illustrate the relationship to the surrounding buildings.

(f) Estimated development schedule for the project.

2. Design Development Stage

The intent of the review at this stage is to secure agreement on the design prior to detailed work on Final Plans and Specifications. The following materials (if not already received, reviewed and endorsed, as herein below provided) should be submitted:

(a) Updated written description of the Project (including all program elements and space allocation for each element).

(b) Site plan at an appropriate scale (e.g., 1\(\text{'} = 16\text{'}) or as determined after endorsement of the site plan submitted at the Schematic Design Stage) showing:

(i) Relationship of proposed building and open space to existing or proposed adjacent buildings, open spaces, streets, and buildings and open spaces across streets.

(ii) Proposed site improvements and amenities including paving, landscaping, lighting and street furniture extending at least to the back of the curb of adjacent streets and driveways.

(iii) Building and site dimensions, including setbacks and other dimensions.

(iv) Proposed site grading, including typical existing and proposed
grades at parcel lines.

(c) Site sections at an appropriate scale (e.g., 1” = 16’ or as determined after endorsement of the plans submitted at the Schematic Design Stage).

(d) Building plans, sections and elevations at an appropriate scale (e.g., 1” = 16”) developed from endorsed Schematic Design Stage drawings. Elevations shall show the Project in the context of the surrounding area as required by the Authority to illustrate relationships of character, scale and materials. All plans, sections and elevations shall reflect the impact of proposed structural and mechanical systems on the appearance of exterior facades, interior public spaces, and roofscape.

(e) Large-scale (as required and customary) typical exterior wall sections, elevations and detail sufficient to describe the architectural components, methods of their assembly and character of the building.

(f) Outline Specifications of all materials for site improvements, exterior facades, roofscape, and interior public spaces.

(g) Eye-level perspective drawings showing the Project in the context of the surrounding area.

3. Final Plans and Specifications Stage

The intent of the review at this stage is to secure agreement on the detailed design of the proposal. The following materials must be submitted:

(a) Written description of the Project, (including all program elements and space allocation for each element).

(b) Site plan showing all site development and landscape details for lighting, paving, planting, street furniture, utilities, grading, drainage, access, service, and parking.

(c) Complete architectural and engineering drawings and specifications.

(d) Eye-level perspective drawings or presentation model that accurately represents the Project, and a rendered site plan showing all adjacent existing and propose structures, streets and site improvements.

(e) Detailed construction schedule for the Project.

During the preparation of the Final Plans and Specifications, it is the Developer's responsibility to notify the Authority promptly and secure its approval of all changes from the endorsed Design Development Stage drawings that are contemplated for site improvements, exterior facades, roofscape and interior public spaces. Progress drawings representing 60% completion of the Final Plans and Specifications may be required for review by the Authority.

4. General Requirements - All Submissions
All materials submitted by the Developer to the Authority during the Schematic Design Stage, Design Development Stage, and the Final Plans and Specifications Stage shall comply with the following requirements:

(a) Preliminary meetings shall have been held with respect to each Stage, if so requested by the Authority.

(b) Such materials shall conform to the development concept plan endorsed previously by the Authority.

(c) Such materials shall have been prepared by an architect, engineer and/or surveyor, as appropriate, licensed to practice by the Commonwealth of Puerto Rico.

(d) Final plans and specifications shall conform to all applicable rules, regulations, ordinances, codes and laws of any governmental authority having jurisdiction over the construction, maintenance and use of the Project.

(e) Such materials shall comply with all applicable covenants, agreements and restrictions affecting the Premises and the Project.

(f) All reproducible materials shall be submitted in duplicate with five (5) extra copies of plans in half (1/2) size.

(g) Such materials constituting models (for example, the items required under Sections (A) (1) (d) of this Exhibit C) shall be made available for the Authority’s review, but the Developer shall not be required to provide a duplicate model to the Authority.

B. ENDORSEMENT OF DESIGN SUBMISSIONS

1. Except as hereinbelow expressly otherwise provided, the Authority shall have the right to endorse the materials submitted to the Authority pursuant to the provisions of Section A of this Exhibit C, and any substantial modifications thereof. Within a reasonable time, but not later than ten (10) business days (or such longer period of time as is mutually agreed upon by the parties) after submission by the Developer of any such materials, the Authority shall in writing either endorse such materials or notify the Developer of the specific respects in which it finds such materials to be unacceptable. Endorsement by the Authority shall not be unreasonably withheld. If the Authority fails to respond within such ten (10) business day period, the Developer may elect to so notify the Authority with the legend required below, and if the Authority fails to respond within ten (10) business days of its receipt of Developer’s notice, the Authority shall be deemed to have endorsed the applicable submission. In submitting any such notice to the Authority, the Developer shall place the following legend prominently at the top of the transmittal letter: “IMPORTANT RIGHTS MAY BE LOST BY FAILURE TO ACT PROMPTLY. THE SUBMISSION REFERRED TO HEREIN WILL BE DREMED ENDORSED TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE.” Promptly after receipt of notice from the Authority that it finds specific matters unacceptable, the Developer shall revise such materials in a manner acceptable to the Authority and shall make a revised submission within ten (10) business days (or such longer period of time as is mutually
EXHIBIT D

Development Concept Plan

The Proposal dated August 31, 2006 containing the Site Plan, Floor Plans, Elevations and related plans.