

PROMISSORY NOTE SECURED BY DEED OF TRUST
(Due on Sale; Balloon Payment)

\$12,000,000

Oakland, California
October 20, 1999

1. **Principal.** FOR VALUE RECEIVED, ROTUNDA PARTNERS II, LLC, a California limited liability company ("Maker"), promises to pay to the order of THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a public body, corporate and politic ("Payee"), at the address designated in **Section 15**, or at such other place as may be designated from time to time by the holder of this Note, and without set-off or counterclaim, the principal sum of TWELVE MILLION DOLLARS (\$12,000,000), or so much principal as may be advanced by Payee under that certain Disposition and Development Agreement between and Maker and Payee's predecessor in interest, Rotunda Partners I, a California general partnership, dated June 29, 1998, as amended by First Amendment dated January 29, 1999, and by Second Amendment dated July 14, 1999, together with interest thereon and on any unpaid interest, in accordance with the terms of this Note.

2. **Interest Rate.** Interest on the principal balance of this Note from time to time outstanding shall be computed at the rate of three percent (3%) per annum commencing on the earlier of (a) the first day of the fifteenth (15th) Note Year (as defined in the following paragraph of this Section), or (b) the date Maker first receives proceeds of refinancing pursuant to **Section 5(d)**.

For purposes of this Note, "Note Years" shall be consecutive periods of twelve (12) full months each, the first (1st) Note Year commencing on the date of this Note. Should interest not be paid when due hereunder, it shall bear interest at the same rate as the principal. Interest on this Note shall be computed on the basis of a three hundred sixty (360)-day year and a thirty (30)-day month, based on the actual number of days elapsed.

3. **Payments.** Principal and interest and other sums due under this Note are payable as provided in this Section:

(a) **Interest Only.** Commencing on the first day of the month following the month in which interest begins to accrue on principal pursuant to **Section 2**, and continuing on the first day of each succeeding months, Maker shall make payments of accrued interest only, in arrears.

(b) **Payment of Principal; Balloon Payment.** On the date twenty (20) years following the date of this Note (the "Maturity Date"), the entire unpaid principal balance, all accrued interest, and all other sums due hereunder shall be due and payable in full.

(c) **Prepayment of Principal.** Maker may prepay all or any portion of the principal at any time without penalty.

(d) **Order of Crediting Payments.** All payments, regardless of characterization by Maker before, at or after tender to Payee, shall be credited as follows unless otherwise designated by Payee, in its discretion: (i) first, to the payment of any and all collection costs as set forth in **Section 10**; (ii) second, to the payment of any and all late charges as set forth in **Section 4**; (iii) third, to the payment of all other amounts owing under the Deed of Trust other than interest and principal; (iv) fourth, to the payment of any accrued and unpaid Contingent Payment (as defined in **Section 5**); (v) fifth, to the payment of accrued and unpaid interest; and (vi) sixth, to the payment of principal.

4. **Late Charge; Default Interest Rate.** If any payment is not received by Payee within ten (10) days after its due date, or if the due date is not a business day, if any payment is not received by Payee on the next succeeding business day after such ten (10) day period, Maker shall pay to Payee a late charge of ten percent (10%) of such payment, which late charge shall be immediately due and payable without demand or notice by Payee. In addition, at Payee's option in its sole discretion, all amounts owing to Payee under this Note and the Loan Documents (as defined in **Section 6**) shall bear interest at the Default Interest Rate (as defined in the following paragraph) if any payment is not received by Payee within thirty (30) days after its due date, or if the due date is not a business day, if any payment is not received by Payee on the next succeeding business day after such thirty (30) day period, or if any other Event of Default occurs hereunder or under any of the other Loan Documents. The Default Interest Rate shall apply until the delinquent payment, together with all interest at the Default Interest Rate and all late charges thereon, have been received by Payee or such other Event of Default has been fully cured. Maker acknowledges that late payment of any payment or the occurrence of an Event of Default will cause Payee to incur costs which would be costly or inconvenient to establish. Maker and Payee agree that it would be impractical or extremely difficult to fix Payee's actual damages if any payment is not paid when due or an Event of Default occurs, and such late charge and Default Interest Rate represent a reasonable sum considering all of the circumstances and represent a fair and reasonable estimate of the costs that Payee will incur by reason of late payment or default. Acceptance of such late charge and interest at the Default Interest Rate shall not limit Payee's right to compel performance of any obligation or to exercise any of its rights or remedies under the Loan Documents.

"Default Interest Rate" is eight percent (8%) per annum.

5. **Contingent Payment.**

(a) **Agreement to Pay.** In addition to and not in substitution for principal or interest payable pursuant to **Section 3**, Maker shall also pay to the holder hereof an amount equal to the Contingent Payment (as defined in **Section 5(c)**), and payment(s) pursuant to **Section 5(d)**, all in accordance with the provisions of this **Section 5**.

(b) **Time for Payment.** In addition to any Contingent Payment payable at any earlier date in connection with a refinancing pursuant to **Section 5(d)**, the Contingent Payment shall be paid to the holder hereof upon the first bona fide sale of the Property (as "Property" is defined in **Section 6**) to occur following the date hereof, whether such a sale occurs before or after the Maturity Date of this Note. For purposes of this Note, a "bona fide sale" shall

mean any sale, conveyance, transfer or exchange of the Property for its then fair market value. For purposes of this Note, "fair market value" shall mean the price that a willing buyer would pay, and that a willing seller would accept, for the Property in an open market, arm's length transaction, with both buyer and seller having full and equal access to information regarding the Property, and with neither Buyer nor Seller acting under any duress or compulsion to buy or sell the Property, as the case may be. Should any Contingent Payment not be paid when due hereunder, it shall thereafter bear interest until paid at the Default Interest Rate.

The phrase "bona fide sale of the Property" shall also include a bona fide sale of all or substantially all of the ownership interest of Maker (e.g., sale of partnership interest, stock, or other form of ownership) to a third party where the purpose of the sale is to indirectly transfer the Property to such third party.

(c) **Contingent Payment Defined.** Contingent Payment means one half (1/2) of the excess, if any, of (i) the net proceeds from a bona fide sale of the Property (including all tangible and intangible personal property sold therewith) over (ii) Thirty Eight Million Dollars (\$38,000,000). For purposes of this Note, "net proceeds" shall mean the gross sales price for the Property less the following reasonable and customary expenses of sale actually paid by Maker in connection with the bona fide sale: brokerage commissions (not to exceed six percent (6%) of the sales price), attorneys' fees incurred in connection with such sale, and other closing and escrow costs and fees typically paid by the seller in accordance with the custom of Alameda County. In the event that the bona fide sale of the Property is a like-kind exchange, the gross sales price for the Property shall be deemed to include the fair market value of any property received by Maker in such exchange.

(d) **Payment Upon Refinancing.** In addition to the Contingent Payment payable upon a bona fide sale of the Property as provided in this **Section 5**, at the time of any refinancing of the Property (excluding the Take Out Financing as defined in Article 3 of the Deed of Trust) where the principal amount of the new loan exceeds Twenty One Million Dollars (\$21,000,000), Maker shall pay to Payee twenty percent (20%) of the net proceeds, if any, Maker receives from any such refinancing after payment of the previous loan which was secured by a deed of trust or mortgage encumbering the Property.

(e) **Survival of Obligation.** The obligation of Maker to pay the Contingent Payments pursuant to this **Section 5** shall continue until such time as a bona fide sale of the Property occurs, regardless of whether or not the remaining principal and interest due under this Note have previously been paid in full. Maker acknowledges and agrees that any enforcement by the holder hereof to receive payment of any Contingent Payment due hereunder shall not constitute a waiver of the rights of the holder hereof to enforce the provisions of **Section 11**.

(f) **Costs, Fees and Expenses.** Maker acknowledges and agrees that the agreement by Maker to pay the Contingent Payment shall not create a partnership, joint venture or any other relationship between Maker and the holder hereof except the relationship of borrower and lender. Accordingly, nothing contained in this Note shall obligate or be deemed to obligate the holder hereof to pay any costs, fees or expenses of the Property or of Maker incurred in connection with the Property, or otherwise.

6. Loan Documents. This Note is secured by a Deed of Trust and Fixture Filing (the "Deed of Trust"), recorded on the date of this Note in the Official Records of Alameda County, California, executed by Maker, as trustor, in favor of Payee, as beneficiary, and describing as security certain real property located in the City of Oakland, Alameda County, California, commonly known as the Rotunda Building and more particularly described therein (the "Property") and certain other Loan Documents. The Deed of Trust contains provisions for the acceleration of the maturity of this Note.

"Loan Documents" are those certain documents, agreements, and instruments referred to in Section 2.16 of the Disposition and Development Agreement referred to in **Section 1** of this Note.

7. Default. Each of the following shall constitute an Event of Default under this Note: (a) the failure to make any payment and/or perform any obligation required by this Note, the Deed of Trust, and/or other Loan Documents as and when due thereunder; (b) the breach of any agreement, representation, warranty and/or other covenant set forth in, or any other default under this Note, the Deed of Trust, and/or other Loan Documents which is not cured within the applicable cure period, if any, specified therein; (c) the occurrence of any event of default under any promissory note and related ancillary documents and instruments (including any deed of trust) which is secured by a deed of trust and/or other security instruments encumbering the Property, which event of default is not cured within the applicable cure period, if any, specified therein, or the commencement of any foreclosure proceeding (judicial or nonjudicial) or other enforcement proceeding under any such deed of trust and/or other security instruments; (d) the occurrence of any default by Maker under any other instruments, obligation or liability with respect to the Property, which is not cured within the applicable cure period, if any, specified therein; (e) Maker dissolves or is wound up or merges or is consolidated with or into any other entity; (f) Maker and/or any guarantor, or any shareholder, Principal, or partner in Maker and/or any guarantor, shall become insolvent, make an assignment for the benefit of creditors, or commence or become subject to any case or proceeding under the Bankruptcy Code or any other insolvency, receivership, reorganization, arrangement of debt, liquidation or debtor's relief law wherein Maker and/or guarantor, or any shareholder, Principal, or partner in Maker and/or any guarantor, is the debtor; or (g) any Event of Default under any other Loan Document.

8. Acceleration. Upon any Event of Default under this Note, the entire unpaid principal sum of this Note, together with all accrued interest and other sums due hereunder and under the Deed of Trust and/or other Loan Documents, shall become immediately due and payable, without demand or notice, at the election of the holder of this Note. Payment under this Note also may be accelerated by the holder of this Note pursuant to **Section 11**.

9. Joint and Several. If Maker consists of more than one person or entity, their obligations under this Note shall be joint and several. An individual executing this Note on behalf of a corporation, partnership or other legal entity warrants and represents that such individual has the legal authority and capacity to execute this Note on behalf of such entity.

10. Collection Costs. Maker agrees to pay all reasonable costs of collection and enforcement when incurred, whether or not any suit, action or proceeding is commenced,

including, without limitation, Attorneys' Fees (as defined in the Disposition and Development Agreement referred to in **Section 1**) and costs.

11. Transfer of Property. Subject to the following paragraph, in the event that: (a) the Property or any part thereof, or any interest therein, is sold, conveyed, alienated, assigned, liquidated, divested, optioned, leased (with or without an option to purchase), encumbered, hypothecated, or otherwise transferred by Maker in any manner or way, whether voluntarily or involuntarily; or (b) there is a transfer of any partnership interest, stock, or other form of ownership of Maker; or (c) there occurs a merger, consolidation, sale or lease of all or substantially all of the assets of Maker; or (d) maker agrees to do any of the foregoing (each of such acts, transactions and/or events described in clauses (a), (b) and (c) above being hereinafter referred to as a "Transfer"), then the entire unpaid balance of the principal sum, together with all accrued and unpaid interest thereon and all other sums due hereunder and under the Deed of Trust and/or other Loan Documents, shall be immediately due and payable without demand or notice, at the election of the holder of this note. Maker shall notify Payee promptly in writing of any proposed or actual Transfer that may give rise to the right of acceleration hereunder. Any attempted Transfer in violation of this **Section 11** shall constitute an Event of Default hereunder.

The provisions of the preceding paragraph to the contrary notwithstanding, Transfer shall not include:

(a) Any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, where the transferee has certain rights of management and control and where the aggregate percentage of the ownership interest in Maker that is transferred does not exceed twenty six percent (26%) at any time, or any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, where the transferee shall not have any rights to manage and control Maker;

(b) Any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, as a result of death, incapacity, and/or insolvency of the transferor where the transferee has certain rights of management and control and where the aggregate percentage of the ownership interest in Maker that is transferred does not exceed twenty six percent (26%) at any time, or any transfer (voluntary or involuntary) of any partnership interest, stock, or other form of ownership, where the transferee shall not have any rights to manage and control Maker;

(c) Any retail space leases and office leases covering individual portions of the Property entered into in the ordinary course of business; and

(d) Any encumbrance pursuant to Article 3 of the Deed of Trust.

Maker shall notify Payee of any exempt Transfer under (a) and (b) on or before the effective date of the Transfer, which notice shall include the name(s) and address(es) of the transferee(s). A copy of the agreement and/or instrument transferring the interest in question shall also accompany the notice to Payee. Any new Principal that shall have rights of management and control shall execute a guaranty in the form and content of **Exhibit K** to the Disposition and Development Agreement.

12. Continuance of Obligations. If all or any portion of the obligations hereunder are paid or performed, the obligations of Maker hereunder shall continue and remain in full force and effect in the event that all or any portion of such payment or performance is avoided or recovered directly or indirectly from Payee as a preference, fraudulent transfer or otherwise, irrespective of payment or performance in full of the obligations hereunder prior to such avoidance or recovery.

13. Maximum Interest. Maker and Payee expressly stipulate and agree that their intent is to at all times comply with applicable California Law governing the maximum rate or amount of interest payable on, or in connection with, this Note. If applicable Law is ever judicially interpreted to render usurious any amount contracted for, charged, taken, reserved or received under, or with respect to, this Note, the Deed of Trust, and/or other Loan Documents, or if the holder's exercise of the option to accelerate the maturity of this Note, or Maker's prepayment of this Note, results in Maker having paid any interest in excess of that permitted by applicable Law, then it is the express intent of Maker and Payee that all excess amounts theretofore collected by the holder be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Maker), and that this Note, the Deed of Trust and/or other Loan Documents, as the case may be, immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder be reduced, without the necessity of the execution of any new document, so as to comply with applicable Law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder.

All sums paid or agreed to be paid to Payee for the use, forbearance or detention of the indebtedness evidenced hereby shall, to the extent permitted by applicable Law, be amortized, prorated, allocated and spread throughout the full term of this Note until paid in full so that the rate or amount of interest on account of such indebtedness does not exceed any applicable usury ceiling. To the extent permitted by applicable Law now or hereafter in effect, the holder may, at its option and from time to time, implement any method of computing the maximum rate or amount of interest permitted under applicable Law by giving notice, if required, to Maker as provided by applicable Law.

14. Waiver. Maker and all sureties, guarantors and endorsers of this Note hereby severally (a) waive: (i) demand for payment, presentment for payment, dishonor, notice of nonpayment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest, notice of protest and all other notices and demands of any kind now or hereafter provided by any statute or rule of law; (ii) any exemption right against the indebtedness evidenced by this Note; (iii) diligence in collecting this Note or diligence in enforcing any of the security rights the holder hereof may have in and to the Property or any other security; (iv) to the fullest extent permitted by law, any defense based upon application of any "one action" or "antideficiency" Laws, including, without limitation, California Code of Civil Procedure Sections 580a, 580b, 580d and 726; and (v) any and all suretyship defenses of every kind that would otherwise be available in connection with this Note, the Deed of Trust, and/or other Loan Documents, including, without limitation, any right (whether now or hereafter existing) to require the holder to first proceed against Maker, any other person or entity, or any security, and any other rights or benefits under California Civil Code Sections 2809, 2810, 2819, 2845, 2849, 2850 and 2855; (b) agree to any substitution, exchange, addition or release of any person or party primarily or

secondarily liable hereon; (c) agree that the holder hereof shall not be required first to institute any suit, or exhaust any of its rights, remedies or recourses, against Maker or any other person or party primarily or secondarily liable hereunder or against any of the security in order to enforce payment or performance of this Note, the Deed of Trust, and/or other Loan Documents; and (d) consent to any extension, renewal or postponement of the time of payment or performance of this Note, the Deed of Trust, and/or other Loan Documents, or portion thereof and to any other indulgence with respect thereto without any notice, consent or consideration to any of them. The pleading of any statute of limitations as a defense to any obligation evidenced by this Note, the Deed of Trust, and/or other Loan Documents, including, without limitation, any guaranty, is waived to the fullest extent permitted by Law.

Maker agrees that a waiver of any rights under this Note shall not be deemed to be made by the holder hereof unless such waiver shall be in writing, duly signed by the holder, and each such waiver, if any, shall apply only with respect to the specific instance involved and shall in no way impair the rights of the holder or the obligations of Maker in any other respect at any other time. Maker further agrees that in the event the holder demands or accepts partial payment of this Note, such demand or acceptance shall not be deemed to constitute a waiver of any right to demand the entire unpaid balance of this Note at any time in accordance with the terms of this Note.

15. Notices. Any notice, demand, request or other communication under this Note shall be in writing and shall be deemed to have been duly given: (a) on the date of service if served personally on the party to whom notice is to be given; (b) on the date of transmittal of such notice to such party by telecopier device capable of creating a written record of such notice and its receipt, with an original of such notice deposited in first class mail addressed as set forth below; or (c) forty-eight (48) hours following deposit of such notice in registered or certified mail, postage prepaid and return receipt requested, and addressed to such party at its address as hereinafter set forth or such other address as the parties may hereafter designate:

To Payee: Redevelopment Agency of the City of Oakland
Office of Economic Development & Employment
1333 Broadway, 9th Floor
Oakland, California 94612
Attn: Executive Director
Fax: (510) 238-3691

Copies to: Redevelopment Agency of the City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612
Fax: (510) 238-6500

To Maker: c/o California Commercial Investments
600 Grand Avenue, Suite 404
Oakland, CA 94610
Fax: (510) 834-5380

16. Substitution. Maker and each surety, guarantor and endorser of this Note agree that Payee may, without notice to Maker or any such other parties and without affecting the liability of Maker or any such other parties, accept additional or substitute security for this Note, or release any security or portion thereof or any party liable for this Note, or extend or renew this Note (provided Payee shall notify Maker of any extension or renewal of this Note).

17. Assignment. Payee or any other holder of this Note shall have the right to sell, assign or otherwise transfer, in whole or in part, this Note, the Deed of Trust, and/or any Loan Document, including without limitation, any guaranty, without consent of or notice to anyone. Each purchaser, assignee or transferee of this Note shall be entitled to all rights and remedies of Payee hereunder. Maker may not sell, assign or otherwise transfer all or any part of its rights or obligations hereunder without the prior written consent of the holder of this Note, which may be withheld in the holder's sole and absolute discretion, and any such attempted transfer without such consent shall constitute an Event of Default hereunder and shall be null and void.

18. Further Assurances. Maker promptly shall make, execute, acknowledge and deliver, in form and substance satisfactory to the holder of this Note, all such additional instruments, agreements and other documents, and Maker shall do all other acts as may at any time be requested by holder, to effectuate and carry out the purpose of this Note.

19. Successors and Assigns. Subject to the provisions of Section 17, this Note shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, executors, successors and assigns of Payee, Maker and each surety, guarantor and endorser.

20. Severability. If any term or provision of this Note, or the application of it to any party or circumstance, is held to be invalid or unenforceable, the remainder of this Note, and the application of such term or provision to any other party or circumstance, shall not be affected thereby, the provisions of this Note being severable in any such instance.

21. Time of Essence. Unless otherwise expressly set forth herein, all references in this Note to "days" shall mean and refer to calendar days. Time is of the essence of this Note and each and every provision and obligation hereunder.

22. Lawful Money. Principal, interest and all other sums payable hereunder shall be paid in lawful and immediately available money of the United States.

23. Jurisdiction/Venue. Maker hereby irrevocably submits to the jurisdiction and venue of any state court sitting in Alameda County, California, in any action or proceeding brought to enforce or otherwise arising out of or related to this Note, the Deed of Trust, and/or other Loan Documents, including, without limitation, any guaranty, and irrevocably waives to the fullest extent permitted by Law any objection which Maker may now or hereafter have to the resting of such jurisdiction and venue in such forum, and hereby further irrevocably waives any claim that such forum is an inconvenient forum.

24. **Governing Law.** This Note shall be governed by and construed in accordance with the internal laws of the State of California, without reference to the provisions thereof regarding conflicts of laws.

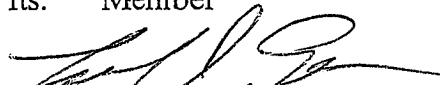
25. **Counterparts.** This Note may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Note to physically form one document.

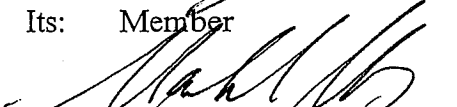
MAKER:

ROTUNDA PARTNERS II, LLC, a California
limited liability company

By: ROTUNDA PARTNERS I, LLC, a
California limited liability company
Its: Managing member

By: 
PHILLIP H. TAGAMI
Its: Member

By: 
LEONARD I. EPSTEIN
Its: Member

By: 
MARK A. MOSS
Its: Member

NO FEE DOCUMENT
RECORDING REQUESTED BY:

The Redevelopment Agency of
The City of Oakland

WHEN RECORDED, MAIL TO:

The Redevelopment Agency of the City of Oakland
c/o Oakland City Attorney's Office
One City Hall Plaza, 6th Floor
Oakland, California 94612

17th ST. GARAGE
DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN

THE REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND

and

ROTUNDA GARAGE, LP
A CALIFORNIA LIMITED PARTNERSHIP

August 26, 2004

Transfer of the Garage Project. Should Developer transfer or sell the Garage Project (Parcel 1), which event results in a higher assessed valuation based on the new transfer value, then the net available increment will be calculated on the first assessed value based on the completed Garage Project, subject to the increases permitted pursuant to Cal. Constitution, Article 13A, Sec. 2(b).

(h) Definitions Applicable to Article VI.

- (i) "Net Available Increment" means the Tax Increment Revenues collected from property within the Central District Redevelopment Project Area Plan and pursuant to the provisions thereof applicable solely to the Garage Project (Parcel 1), after subtracting any Affordable Housing Increment, Pass-Through Increment, Increment Pledged to Bonds, and State Increment Take Back.
- (ii) "Tax Increment Revenues" means the property taxes collected by Agency from the Garage Project (Parcel 1) in excess of that portion of the taxes that would be produced by the rate upon which the tax is levied each year by or for all of such taxing agencies upon the total sum of the assessed value of the taxable property in the Garage Project as shown upon the assessment roll used in connection with the taxation of such property by such taxing agencies, last equalized prior to the effective date of such ordinance approving the Redevelopment Plan as determined in accordance with California Community Redevelopment Law.
- (iii) "Pass-Through Increment" means the Tax Increment Revenues required by Community Redevelopment Law to be paid to other taxing agencies and otherwise pursuant to California Community Redevelopment Law and the Redevelopment Plan.
- (iv) "Affordable Housing Increment" means that portion of the Tax Increment Revenues set aside for the provision of very low, low and moderate income housing consistent with the requirements of California Community Redevelopment Law or as otherwise set by the Redevelopment Plan or Agency, which is currently twenty-five percent (25%) of the total Tax Increment Revenues at the commencement of this Agreement, but which percentage may be increased or decreased in the future.
- (v) "Increment Pledged to Bonds" means that portion of the Tax Increment Revenues pledged to bonds outstanding on the date the first payment of Net Available Increment is due to Developer pursuant to Subsection 6.01(b).
- (vi) "State Increment Take Back" means any recovery, reduction, redirection, or other use of Agency's Tax Increment Revenues mandated by the State of California, including, but not limited to ERAF. Agency will calculate the amount of any State Increment Take Back attributable to the Garage Project.

6.03 Assignment of Proceeds from Rotunda Building Promissory Note.

- (a) Subject to the other terms and conditions set forth in this Agreement, Agency

agrees to assign to Developer one-third (1/3) of the payment of principal and interest as may be paid on that certain Promissory Note secured by deed of trust in the principal amount of Twelve Million Dollars (\$12,000,000) executed by Rotunda Partners II, LLC, a California limited liability company, as maker, in favor of Agency, as payee and holder, dated October 22, 1999 and any and all modifications, extensions, renewals and replacements thereof. ("Promissory Note") and attached as Exhibit E. Payment of the assigned portion of the Promissory Note will be made in accordance with terms set out in the Promissory Note. The assignment set out herein assigns only the proceeds from the Promissory Note, and not any other of Agency's rights, remedies, or obligations under the Promissory Note. By this assignment of a portion of the Promissory Note, Agency is not committing to pay any specific amount, but only to assign a percentage of that amount of interest and principal actually paid by the payor. Any late charges or penalties paid by Rotunda Partners, II, LLC for late payments or other penalties associated with the Promissory Note are paid to Agency with no payment or apportionment to Developer.

- (b) Payments to Developer. Agency will make its best efforts to obtain an agreement from Rotunda Partners II, LLC to make payments due Developer from the Promissory Note directly to Developer. Payments of the assigned portion of the Promissory Note will be made as funds are paid to Agency. All payments of interest and/or principal made by Rotunda Partners II, LLC, under the Promissory note will be allocated one-third (1/3) to Developer and two-thirds (2/3) to Agency.
- (c) Conditions to the Payment of Promissory Note Interest or Principal. Agency's obligation to pay any of the assigned proceeds of the Promissory Note is conditioned on satisfaction of each of the following conditions precedent:
 - (i) No Event of Default (or Unmatured Event of Default) under this Agreement exists on Developer's part on the date such payment is due to be made by Agency;
 - (ii) Rotunda Partners II, LLC is current with all payments of principal and interest on the Promissory Note.
 - (iii) As of the date such payment is due to be made by Agency hereunder, no case under the United States Bankruptcy Code shall then be pending in which Developer is the Debtor, or if any such case is then pending, then either (1) this Agreement is assumed by the Debtor in such case, or (2) this Agreement was not rejected (or deemed rejected) by the Debtor in such case and less than six (6) months passed since the entry of the order for relief in such case;
 - (iv) As of the date such payment is due to be made by Agency hereunder, there is not in effect an injunction or similar order issued by any court of competent jurisdiction enjoining the performance of the material obligations of any of the parties under this Agreement;
- (d) Action to Collect Promissory Note or Foreclosure.

- (i) Legal Action or Foreclosure. In the event Agency takes any legal action or foreclosure to collect amounts due under the Promissory Note, the amount paid to Developer will be one-third (1/3) of any net recovery from the Promissory Note after deducting any and all costs, including attorney's fees, expended by Agency or on Agency's behalf to collect the sums due.
- (ii) Settlement. In the event Agency elects to settle any legal action or threatened legal action to collect on the Promissory Note by accepting payment of less than the amount of principal and interest then due and owing, Agency may settle such action at Agency's sole and absolute discretion and the amount paid to Developer will be one-third (1/3) of any net recovery from the Promissory Note after deducting any and all costs, including attorney's fees, expended by Agency or on Agency's behalf to collect the sums due.
- (iii) No Obligation to Take Legal Action or Foreclose. Agency is under no obligation to bring legal action or foreclose to collect on the Promissory Note and Developer agrees that any action to collect, or refusal or failure to take action to collect is in Agency's sole and absolute discretion.

6.04 Assignment of Financial Assistance.

Developer may not assign or pledge the Financial Assistance to any other person without the Agency's prior approval, which approval Agency may give or deny in Agency's sole and absolute discretion. Notwithstanding the foregoing, Developer may assign the Financial Assistance for purposes of obtaining financing for the construction of the Garage Project with Agency's prior approval, which approval shall not be unreasonably withheld.

6.05 Use of Financial Assistance to Cure Monetary Default.

In the case of an uncured monetary default by Developer, Agency may deduct or offset the amount of such uncured monetary default from any Financial Assistance due Developer.

Article VII Conditions Precedent to Agency's Obligations; Termination Date

7.01 Conditions Precedent to Agency's Obligations To Convey Site.

Agency shall not be obligated to convey the Site to Developer pursuant to Article IV unless and until the conditions and requirements stated in this Section 7.01 have been satisfied.

- (a) Developer shall have executed and delivered to Agency the following documents and instruments:
 - (i) Reversionary grant deeds for Parcels 1, 2, 3, in substantially the form set out in Exhibit I (the "Reversionary Grant Deeds") and the Easements for Parcel 4. The Escrow holder shall be instructed to hold the Reversionary Grant Deeds in Escrow until Agency provides the Escrow holder with further instructions in accordance with Section 18.01(b);