

MEETING DATE:

05/04/09

AGENDA ITEM: Authorization for the Executive Director to Execute a Second Implementation Agreement with Axis Mundi RE II, LLC, for Development of the Baldwin Site (12803-23 West Washington Boulevard.)

ATTACHMENT

	<u>Pages</u>
1. Second Implementation Agreement	1-7

SECOND IMPLEMENTATION AGREEMENT

TO THE

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CULVER CITY REDEVELOPMENT AGENCY

and

AXIS MUNDI RE II, LLC

**SECOND IMPLEMENTATION AGREEMENT TO THE
DISPOSITION AND DEVELOPMENT AGREEMENT**

This SECOND IMPLEMENTATION AGREEMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT ("Second Implementation Agreement") is dated as of _____, 2009, and is entered into by and between the CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and AXIS MUNDI RE II, LLC, a California limited liability company ("Developer"), with reference to the following facts:

RECITALS

- A. The Agency and Developer entered into that certain Disposition and Development Agreement dated as of February 7, 2008, and that First Implementation Agreement to the Disposition and Development Agreement dated as of December 11, 2008, pertaining to the development and construction of a high quality 37,300 square foot commercial/office condominium building ("the Project"). The DDA is incorporated herein by this reference. DDA as used herein shall mean, refer to and include the DDA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference). Any capitalized term not defined herein shall have the meaning ascribed to such term in the DDA.
- B. Due to the continuing turmoil in the national economy, Developer has requested, and the Agency has agreed, to adopt a revised financing, development and construction schedule for the Project, as set forth in the Second Revised Schedule of Performance, attached hereto as Attachment No. 1.
- C. Developer and Agency additionally agree that the Executive Director shall be authorized to approve an additional three (3) month extension for close of escrow and other milestones in the Second Revised Schedule of Performance, subject to certain conditions as set forth herein.

NOW, THEREFOR, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Recitals. The Recitals and attachments referenced above are hereby incorporated by reference into this Second Implementation Agreement and adopted by the parties to this Second Implementation Agreement as true and correct.
- 2. Schedule Changes. The Developer's obligations regarding the schedule of development and construction of the Project shall be in accordance with the Second Revised Schedule of Performance, attached hereto as Attachment No. 1. The Second Revised Schedule of Performance shall supersede in its entirety the Revised Schedule of Performance attached to the First Implementation Agreement as Attachment No.1 and any conflicting language in the DDA.
- 3. Project Status Review. On or about **October 16, 2009**, Developer must attend a "Project Status Review" meeting with Agency staff at the principal office of the Agency, located at 9770 Culver City Boulevard, Culver City, California 90232-0507, during which time Developer shall disclose to Agency staff the current status of the Project's financing and development.
- 4. Request for Three Month Extension. If Agency staff and Developer mutually conclude that a three

month extension of milestones in the Second Revised Schedule is necessary, then the Executive Director shall be authorized to approve an additional three (3) month extension of milestones in the Second Revised Schedule, subject to the following condition(s) precedent: On or before November 10, 2009, but after the Project Status Review meeting, Developer must submit a written request to the Executive Director of the Agency for the extension ("Request for Extension") along with a copy of the commitment or commitments obtained by the Developer for the mortgage loan or loans (for both construction financing and take out financing, if a condition to funding the construction loan) to assist in financing the cost of the improvements to be developed on the Site in accordance with the Scope of Development ("Construction Loan"), certified by the Developer to be a true and correct copy or copies thereof. The commitment for financing shall be in such form and content acceptable to the Executive Director as reasonably evidences a firm commitment normally issued by an institutional lender. The Executive Director shall approve or disapprove such Request for Extension within ten (10) days of Developer's submittal. Developer acknowledges, understands, and agrees that nothing herein is intended to supersede, modify, replace, reduce or delete any evidence of financing required in the DDA or the Second Revised Schedule of Performance.

5. Binding on Successors and Assigns. This Second Implementation Agreement and all of the terms and conditions herein shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of the parties.
6. DDA in Full Force and Effect. Except as otherwise expressly provided herein, the terms and conditions of the DDA shall remain unmodified and in full force and effect.
7. Further Assurances. The parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Second Implementation Agreement.
8. Third Party Beneficiaries. The parties to this Second Implementation Agreement acknowledge and agree that the provisions of this Second Implementation Agreement are for the sole benefit of Agency and Developer, and not for the benefit, directly or indirectly, of any other person or entity.
9. Effectiveness of this Agreement. This Second Implementation Agreement shall not be effective unless and until both of the following conditions have been satisfied:
 - a. This Second Implementation Agreement has been duly approved by the Agency; and
 - b. This Second Implementation Agreement has been duly executed by the Agency and Developer.

SIGNATURES ON NEXT PAGE

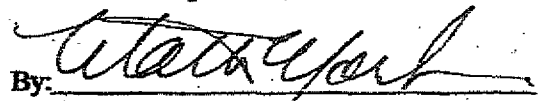
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The date of this Second Implementation Agreement shall be the date it is signed by the Agency.

DEVELOPER

AXIS MUNDI RE II, LLC, a California limited liability company

By: **Walter N. Marks Realty Company,
a California corporation, Member**

By: 
Walter N. Marks, III, President

By: **James Suhr & Associates, LLC,
a California limited liability company,
Member**

By: 
James K. Suhr, Member

CULVER CITY REDEVELOPMENT AGENCY

Date: _____

By: _____
Jerry Fulwood
Executive Director

**APPROVED AS TO FORM:
KANE, BALLMER & BERKMAN**

By: _____
Murray O. Kane
Agency General Counsel

ATTACHMENT NO. 1

SECOND REVISED SCHEDULE OF PERFORMANCE

I. GENERAL PROVISIONS

1. Opening of Escrow. Opening of escrow shall occur. Within five (5) days of the Agency's execution of the DDA.
2. Submission - Architect, Landscape Architect and Civil Engineer. Developer shall submit to Agency for approval of the names and qualifications of its architect, landscape architect, and civil engineer. Within seven (7) days of Agency execution of the DDA.
3. Approval - Architect, Landscape Architect and Civil Engineer. Agency shall approve or disapprove the architect, landscape architect, and civil engineer. Within seven (7) days following receipt by the Agency.

II. ACQUISITION

1. Submission of First Deposit. Developer shall deposit into escrow the First Deposit in the amount of \$160,000. Within five (5) business days after execution of the DDA by the Agency and upon opening of Escrow.
2. Submission of Second Deposit. Developer shall deposit into escrow the Second Deposit in the amount of \$640,000. No later than sixty (60) days prior to Close of Escrow.
3. Submission of Final Deposit. Developer shall deposit into escrow the Second Deposit in the amount of \$2,400,000. At least two (2) business days prior to Close of Escrow.
4. Close of Escrow. Developer shall satisfy all conditions precedent to conveyance of the Site listed under Sections 215(a)(1)-(10) and 216(a)(1)-(5) of the DDA. No later than **December 10, 2009.**

III. DEVELOPMENT

1. Submission - Schematic Level Drawings. Developer shall prepare and submit to Agency the Schematic Level Drawings for the Improvements on the Site. Within thirty (30) days of execution of the DDA by the Agency.

2. Approval - Schematic Level Drawings. Agency shall approve or disapprove the Schematic Level Drawings for the Improvements on the Site. Within seven (7) business days after receipt by Agency.
3. Submission - Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Developer shall prepare and submit to Agency preliminary construction drawings and preliminary landscaping and grading plans for the Improvements on the Site. Within ninety (90) days after Agency's approval of Schematic Level Drawings.
4. Approval - Preliminary Construction Drawings, and Preliminary Landscaping and Grading Plans. Agency shall approve or disapprove the preliminary construction drawings and preliminary landscaping and grading plans for the Site. Within fifteen (15) business days after receipt by Agency.
5. Submission - Local Storm Water Pollution Prevention Plan ("LSWPPP") and Standard Urban Storm Water Mitigation Plan ("SUSMP"). Developer shall obtain written approval from the City Engineer or designee of a LSWPPP and SUSMP for the Improvements on the Site. No later than September 14, 2009.
6. Submission - Final Construction Drawings and Landscaping and Finish Grading Plans. Developer shall prepare and submit the final construction drawings and specifications and the final landscaping and finish grading plans for the Improvements on the Site. No later than October 12, 2009.
7. Approval - Final Construction Drawings and Landscaping and Finish Grading Plans. Agency shall approve or disapprove the final construction drawings and specifications and the final landscaping and finish grading plans for the Improvements on the Site. Within seven (7) business days after receipt by Agency.

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| 8. <u>First Submission of Evidence of Financing.</u> Developer shall submit to Agency for approval the First Submission of evidence of financing in accordance with Section 214 of the DDA. | No later than sixty (60) days prior to Close of Escrow. |
| 9. <u>Building Permit.</u> Developer shall obtain a building permit for the Project. | No later than thirty (30) days prior to Close of Escrow. |
| 10. <u>Approval of Financing.</u> Agency shall approve or disapprove the First Submission of evidence of financing with respect to the Site, and shall so notify Developer. | With respect to the First Submission, within fifteen (15) business days after receipt of such submission by Agency. |
| 11. <u>Second Submission of Evidence of Financing.</u> Developer shall submit to Agency for approval the Second Submission of evidence of financing in accordance with Section 214 of the DDA. | No later than thirty (30) days prior to Close of Escrow. |
| 12. <u>Approval of Financing.</u> Agency shall approve or disapprove the Second Submission of evidence of financing with respect to the Site, and shall so notify Developer. | With respect to the Second Submission, within fifteen (15) business days after receipt of such submission by Agency. |
| 13. <u>Site Mobilization.</u> Developer shall commence Site mobilization. | Within seven (7) day after Close of Escrow. |
| 14. <u>Site Preparation.</u> Developer shall commence Site preparation, including utility relocation. | Within seven (7) days after Close of Escrow. |
| 15. <u>Commencement of Construction/ Site Excavation.</u> Developer shall commence construction and Site excavation. | Within seven (7) day after Close of Escrow. |
| 16. <u>Completion of Construction.</u> Developer shall complete construction of all the Improvements on the Site in accordance with the DDA. | Within twenty-one (21) months after Developer's contractor commences construction. |