

MEETING DATE:

12/08/08

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

ATTACHMENTS

	<u>Pages</u>
1. Implementation Agreement	1-15

FIRST IMPLEMENTATION AGREEMENT

TO THE

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CULVER CITY REDEVELOPMENT AGENCY

and

AXIS MUNDI RE II, LLC

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

This FIRST IMPLEMENTATION AGREEMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT ("First Implementation Agreement") is dated as of _____, 2008, 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, 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 current turmoil in the national economy, Developer has requested, and the Agency has agreed, to adopt a revised development and construction schedule for the Project to replace Attachment No. 3 to the DDA, as set forth in the Revised Schedule of Performance, attached hereto as Attachment No. 1.
- C. Developer and Agency additionally agree to adopt the Revised Subterranean Encroachment Agreement to replace Attachment No. 10 to the DDA, in a form approved by the City Engineer and attached hereto as Attachment No. 2.

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 First Implementation Agreement and adopted by the parties to this First Implementation Agreement as true and correct.

2. **Schedule Changes**

The Developer's obligations regarding the schedule of development and construction for the Project shall be in accordance with the Revised Schedule of Performance, attached hereto as Attachment No. 1. The Revised Schedule of Performance shall supersede in its entirety the Schedule of Performance attached to the DDA as Attachment No. 3 and any conflicting language in the DDA.

3. Subterranean Encroachment.

The Developer's obligations regarding the subterranean encroachment contemplated by Section 801 of the DDA shall be in accordance with the Revised Subterranean Encroachment Agreement, attached hereto as Attachment No. 2. The Revised Subterranean Encroachment Agreement shall supersede in its entirety the Subterranean Encroachment Agreement attached to the DDA as Attachment No. 10.

4. Binding on Successors and Assigns. This 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.

5. 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.

6. 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 Agreement.

7. Third Party Beneficiaries. The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and Developer, and not for the benefit, directly or indirectly, of any other person or entity.

8. Effectiveness of this Agreement. This Agreement shall not be effective unless and until both of the following conditions have been satisfied:

- a. This Agreement has been duly approved by the Agency; and
- b. This Agreement has been duly executed by the Agency and Developer.

SIGNATURES ON NEXT PAGE

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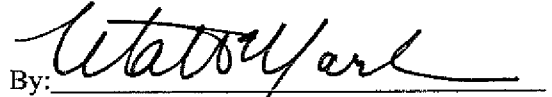
The date of this Agreement shall be the date it is signed by the Agency.

DEVELOPER

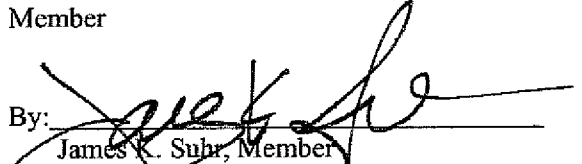
AXIS MUNDI RE II, LLC, a California limited liability company

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

Date: 11/19/08

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

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 **June 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 **March 16, 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 **April 13, 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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|--|--|
| 7. <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. |
| 8. <u>Building Permit.</u> Developer shall obtain a building permit for the Project. | No later than thirty (30) days prior to Close of Escrow. |
| 9. <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. |
| 10. <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. |
| 11. <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. |
| 12. <u>Site Mobilization.</u> Developer shall commence Site mobilization. | Within seven (7) day after Close of Escrow. |
| 13. <u>Site Preparation.</u> Developer shall commence Site preparation, including utility relocation. | Within seven (7) days after Close of Escrow. |
| 14. <u>Commencement of Construction/Site Excavation.</u> Developer shall commence construction and Site excavation. | Within seven (7) day after Close of Escrow. |
| 15. <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. |

ATTACHMENT NO. 2

REVISED SUBTERRANEAN
ENCROACHMENT AGREEMENT

OFFICIAL BUSINESS

Document entitled to free recording
per Government Code Section 6103

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

THE CULVER CITY REDEVELOPMENT AGENCY
9770 Culver Boulevard
Culver City, California 90232-0507
Attention: John Fisanotti

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBTERRANEAN
ENCROACHMENT AGREEMENT

THIS SUBTERRANEAN ENCROACHMENT AGREEMENT ("Agreement") dated as of this ____ day of _____, 2008, is entered into by and between CITY OF CULVER CITY, a public body, corporate and politic ("Grantor"), THE CULVER CITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Owner") and AXIS MUNDI RE II, LLC, a California limited liability company ("Grantee") with reference to the facts set forth below:

RECITALS

A. The Owner is owner in fee of certain real property in the City of Culver City, County of Los Angeles, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Owner's Property").

B. The Grantor is the owner of an easement for public street purposes over a certain portion of the Owner's Property, more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Grantor's Street Easement").

C. Grantee desires a subterranean encroachment over a portion of the Grantor's Street Easement for the purpose of developing a subterranean parking garage ("Parking Garage") in accordance with that certain Disposition and Development Agreement, dated _____, 2008 ("DDA") entered into by and between the Owner ("Agency" therein) and Grantee ("Developer" therein).

D. In connection with the construction of the Parking Garage, Grantee desires to excavate a certain portion of and erect certain structures upon and within the Owner's Property and Grantor's Street Easement.

E. The parties now desire to enter into this Agreement to provide for certain rights with respect to such excavation and construction, and to provide also for the granting of certain rights to Grantee over the Owner's Property and Grantor's Street Easement in connection with the DDA.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the parties hereto do hereby agree as follows:

1. Excavation of Grantor Property. Grantee intends to excavate within the following dimensions _____ below the present surface area of the Owner's Property and Grantor's Street Easement ("Excavation Area"), commencing approximately [date]. Grantee shall construct retaining walls, shoring, underpinning and any other structures, or undertake any other measures reasonably necessary to prevent loss of lateral support to the Grantor's Street Easement and Owner's Property or any structures thereon. Prior to recordation of this Agreement, Grantee shall provide Grantor and Owner with a copy of the shoring plan for such work prior to the commencement thereof. Prior to recordation of this Agreement, Grantee shall also provide to Grantor and Owner an ALTA survey of the Excavation Area performed by a California licensed civil engineer. Prior to recordation of this Agreement, Grantee shall obtain all required approvals and shall pay all expenses in connection with such activities, including, without limitation, payment for removal and relocation of any utilities located within the proposed Excavation Area ("Utilities") and full compensation or indemnification of Grantor and Owner for any property damage or personal injuries resulting therefrom. Grantor and Owner hereby consent to such excavation and the protective measures described herein.

2. Grant of Tieback Easement. Owner and Grantor do hereby create, grant, and convey to Grantee a temporary encroachment in, to, and under the Owner's Property and Grantor's Street Easement for the purpose of installing and maintaining tiebacks which are necessary to be installed in connection with the shoring system being constructed in conjunction with the construction by Grantee of the Parking Garage. Such temporary encroachment shall be referred to herein as the "Tieback Encroachment". Prior to completion of the Parking Garage, Grantee shall de-tension and remove the tiebacks. The location of tiebacks should be shown on a shoring plan to be reviewed and approved by the City Engineer prior to commencement of excavation.

3. Grant of Parking Garage Encroachment. Grantor and Owner do hereby create, grant, and convey to Grantee an irrevocable, exclusive right in, to, over, and under the Owner's Property and Grantor's Street Easement for the purpose of constructing, installing, maintaining, and using the Parking Garage; provided, however, that Grantor reserves the right, on behalf of itself and the owner(s) of any Utilities removed and relocated by Grantee within the Excavation Area (Utilities"), to install the Utilities within the Parking Garage and have reasonable access in, to, over, and under the Parking Garage, at no cost to Grantor or the owner(s) of the Utilities, for the purpose of installing and maintaining the Utilities ("Grantor's Reservation"). Such

encroachment, subject to Grantor's Reservation, shall be referred to herein as the "Parking Garage Encroachment."

4. Indemnification. Grantee shall indemnify, defend and save Grantor and Owner harmless from any and all costs, losses, liabilities or damages resulting from bodily injury, property damage or loss of business income suffered by Grantor, Owner, or their respective tenants, guests, invitees, agents, representatives, or employees which may occur on the Grantor's Street Easement or Owner's Property in connection with the Grantee's activities within the Excavation Area or the grant of any encroachment hereunder, except to the extent such costs, losses, liability or damages are the result of the intentional or negligent actions of Grantor, Owner or their respective tenants, guests, invitees, representatives, agents or employees.

5. Miscellaneous Provisions.

(a) All of the rights and obligations and covenants, agreements and conditions contained in this Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee and Owner, their respective heirs, successors and assigns, devisees, administrators, representatives, tenants and all other persons acquiring either the Grantor's Street Easement and/or the Owner's Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever and all of the easements, rights and obligations and covenants, agreements and conditions contained in this Agreement shall run with the land and shall be enforceable in accordance with applicable law, including, but not limited to, the law of contracts, easements, equitable servitudes and the provisions of Section 1468 of the California Civil Code.

(b) All of the provisions of this Agreement shall be covenants running with the land pursuant to applicable law.

(c) Nothing in this Agreement is intended nor shall it be construed as creating any rights in or for the benefit of the general public, and each owner of the properties affected hereby retains the right to take any action as may be reasonably necessary to avoid the accrual of any rights in the general public by easement, prescription, adverse possession, or otherwise with respect to the Grantor's Street Easement or the Owner's Property.

(d) In the event that any term, covenant, condition, provision, or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, provision or agreement is invalid, void or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, provision or agreement herein contained.

(e) No breach of any term, covenant, condition, restriction, provision or agreement herein contained, nor the enforceability of any provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any duly recorded mortgage or deed of trust made in good faith and for value encumbering either the Grantee's Street Easement or the Owner's Property, but all of said terms, covenants, conditions, restrictions, provisions and agreements shall be binding upon and effective against any person whose title to either of such properties is derived through foreclosure or trustee's sale.

(f) This Agreement is not intended to create a joint venture, partnership, or agency relationship between or among the parties hereto, nor is it intended to create joint ownership by the parties hereto of either the Grantee's Street Easement or the Owner's Property, nor is it intended to create or constitute a "condominium project" or other "common interest development" as defined by applicable law.

(g) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(h) The waiver of or failure to enforce any breach or violation of any covenant herein contained shall not be deemed to be a waiver or abandonment of such covenant, or any waiver of the right to enforce any subsequent breach or violation of such covenant.

(i) In the event of any litigation or dispute between the parties hereto or the institution of any action or proceeding to interpret or enforce this Agreement, or arising out of the subject matter of this Agreement or the transactions contemplated hereby, the prevailing party shall be entitled to recover its actual expenses, its actual attorneys' fees and costs, including professional or expert consultation or testimony, in-house counsel fees and paralegal fees.

SIGNATURES ON NEXT PAGE

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Grantor:

CITY OF CULVER CITY,
a public, non-profit corporation

Owner:

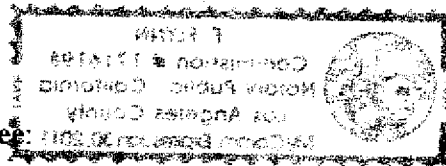
CULVER CITY REDEVELOPMENT
AGENCY

By: _____
Name: _____
Title: _____

By: _____
Jerry B. Fulwood
Executive Director

By: _____
Name: _____
Title: _____

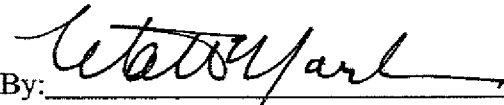
Grantee:



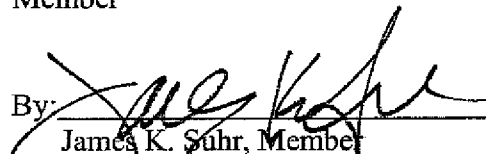
AXIS MUNDI RE II, LLC, a California limited
liability company

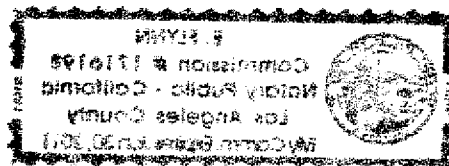
By: Walter N. Marks Realty Company,
a California corporation, Member

Date: 11/19/08

By: 
Walter N. Marks, III, President

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

By: 
James K. Suhr, Member

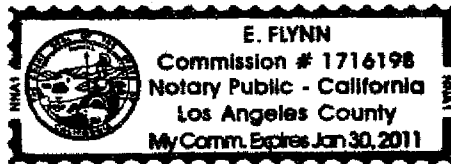


State of California)
)
County of Los Angeles)

On NOV. 19, 2008 before me, E. FLYNN (here insert name of the officer), Notary Public, personally appeared WALTER M. MARKS III, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Seal]

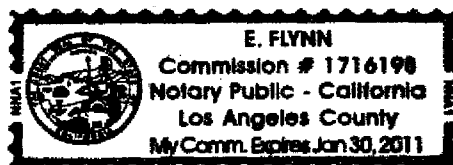
E. Flynn
Signature of Notary Public

State of California)
)
County of Los Angeles)

On NOV. 19, 2008 before me, E. FLYNN (here insert name of the officer), Notary Public, personally appeared JAMES K. SUHR, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Seal]

E. Flynn
Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF OWNER'S PROPERTY

Real property in the City of Culver City, County of Los Angeles, State of California, described as follows:

LOTS 55, 56, 57, 58, 59, 60, 61, 62 and 63 of TRACT NO. 5951, IN THE CITY OF CULVER CITY, AS PER MAP RECORDED IN BOOK 77 PAGE 72 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 4236-021-007; 4236-021-008; 4236-021-009; 4236-021-010 (Old APN)
4236-021-900; 4236-021-901; 4236-021-902; 4326-021-903 (Current APN)

EXHIBIT "B"

DESCRIPTION OF GRANTOR'S PROPERTY

The north half of Washington Boulevard, between Moore and Meier Streets, and the east half of Moore Street and the west half of Meier Street, bounded by Washington Boulevard to the south and the City of Culver City boundary to the north, all within the City of Culver City, County of Los Angeles, State of California, as shown on Tract No. 5951 recorded on Book 77, Page 72 of Maps.