

Re:

Subject: Re:

From: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Date: Mon, 7 Jan 2013 19:50:47 -0800 (PST)

To: Matthew Reid <matt.reid@landanddesign.com>

CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Are you ok with the proposed City Deal Revenue Structure lets discuss tomorrow
City attorney ned to incorporate into draft Agreement. If you called my cell

phone didnt get the call phone is missing.

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Original Message -----

From: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>

To: "Matthew Reid" <matt.reid@landanddesign.com>

Sent: Wednesday, December 19, 2012 5:58:18 PM

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

Re:

Subject: Re:

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Tue, 8 Jan 2013 07:11:21 -0800

To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Still reviewing... I'll call you later today or tomorrow.

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

On Jan 7, 2013, at 7:50 PM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

Are you ok with the proposed City Deal Revenue Structure lets discuss tomorrow City attorney ned to incorporate into draft Agreement. If you called my cell

phone didnt get the call phone is missing.

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Original Message -----

From: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>

To: "Matthew Reid" <matt.reid@landanddesign.com>

Sent: Wednesday, December 19, 2012 5:58:18 PM

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

Subject: Entitlement Documents
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 22 Jan 2013 15:08:42 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Greg,

I'm assembling Due Diligence information for the investment groups we are speaking with. The CD you sent me containing the Entitlement Documents all have DRAFT on them. Non of them are final documents. I can't use these when speaking with Investors if they have the words DRAFT all over them.

Can I contact Wendy to get the final docs?

Also, I need a copy of the resolution signed by the City for the entitlements.
Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Google voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

Subject: Re: Entitlement Documents
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 22 Jan 2013 15:13:10 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

I meant Jayna from AECOM.

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

On Jan 22, 2013, at 3:08 PM, Matthew Reid <matt.reid@landanddesign.com> wrote:

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Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

Subject: WQMP Attachment T
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 22 Jan 2013 16:21:49 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Greg,

Contained within the WQMP (Water Quality Management Plan) is an Attachment T. It is password protected and I can't open it. Please send me this attachment without a password.

Thanks

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Subject: Fwd: WQMP Attachment T
From: Greg Blodgett <greg1@ci.garden-grove.ca.us>
Date: Tue, 22 Jan 2013 16:29:25 -0800 (PST)
To: Paul Guerrero <paulg@ci.garden-grove.ca.us>

Matthew Reid
Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 G o o g l e voice | 858.735.1858 c
619.462.4144 fax
Skype - matthew.reid.ca
matt.reid@landanddesign.com

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Forwarded Message -----
From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Tuesday, January 22, 2013 4:21:49 PM
Subject: WQMP Attachment T

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Matthew Reid
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3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 G o o g l e voice | 858.735.1858 c
619.462.4144 fax
Skype - matthew.reid.ca
matt.reid@landanddesign.com

Subject: Site C Official Documents

From: Paul Guerrero <paulg@ci.garden-grove.ca.us>

Date: Tue, 22 Jan 2013 16:44:56 -0800 (PST)

To: matt.reid@landanddesign.com, Greg Blodgett <greg1@ci.garden-grove.ca.us>

Matt,

Attached are the following official documents:

1. November 27, 2012 Excerpt from the Minutes (City Council Meeting)
2. November 27, 2012 Ordinance No. 2824
3. November 28, 2012 Recorded Notice of Determination

Hope you get well soon.

Paul

Site C November 27, 2012 Excerpt from the Minutes.pdf	Content-Type: application/pdf Content-Encoding: base64
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— Site C November 27, 2012 Ordinance No. 2824.pdf —

Site C November 27, 2012 Ordinance No. 2824.pdf	Content-Type: application/pdf Content-Encoding: base64
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— Site C November 28, 2012 Recorded Notice of Determination.pdf —

Site C November 28, 2012 Recorded Notice of Determination.pdf	Content-Type: application/pdf Content-Encoding: base64
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EXCERPT FROM THE MINUTES

GARDEN GROVE CITY COUNCIL MEETING OF NOVEMBER 27, 2012

A Regular Meeting of the City Council of the City of Garden Grove was called to order in the Council Chamber of the Community Meeting Center, 11300 Stanford Avenue, Garden Grove, on Tuesday, November 27, 2012, at 7:11 p.m.

ROLL CALL: PRESENT: (5) MAYOR DALTON, COUNCIL MEMBERS BEARD,
BROADWATER, JONES, NGUYEN

ABSENT: (0) NONE

SECOND READING OF ORDINANCE NO. 2824 - GENERAL PLAN AMENDMENT NO. GPA-2-12(B), PLANNED UNIT DEVELOPMENT NO. PUD-128-12. DESIGNATION OF RESIDENTIAL PROPERTIES FROM LOW DENSITY RESIDENTIAL TO INTERNATIONAL WEST MIXED USE; AND ESTABLISHING ZONING AND DEVELOPMENT STANDARDS FOR A HOTEL RESORT ON A 5.2-ACRE SITE (F: 20.GPA-2-12(B)) (XR: 116.PUD-128-12)

It was moved by Council Member Jones, seconded by Mayor Dalton, and carried by unanimous vote that full reading of all Ordinances listed for consideration of adoption be waived.

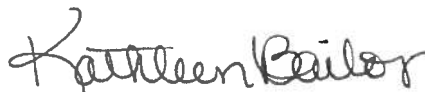
ORDINANCE NO. 2824 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING PLANNED UNIT DEVELOPMENT NO. PUD-128-12, ESTABLISHING PLANNED UNIT DEVELOPMENT ZONING REGULATIONS AND DEVELOPMENT STANDARDS FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HARBOR BOULEVARD AND TWINTREE LANE, WEST OF CHOISSER ROAD, AT 12222, 12202, 12252, 12262, 12272, 12292, AND 12302 HARBOR BOULEVARD, GARDEN GROVE, 12511, 12531, 12551, AND 12571 TWINTREE LANE, 12233, 12235, 12237, AND 12239 CHOISSER ROAD, GARDEN GROVE

Following the reading of the Ordinance title, it was moved by Council Member Beard, seconded by Council Member Nguyen, and carried by unanimous vote that Ordinance No. 2824 be and hereby is declared adopted.

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, California, do hereby certify that the foregoing is a true, full, and correct copy of the Minute Entry on record in this office.

IN WITNESS WHEREOF, I hereunto set my hand seal this 22nd day of January 2013.



KATHLEEN BAILOR, CMC
CITY CLERK

ORDINANCE NO. 2824

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING PLANNED UNIT DEVELOPMENT NO. PUD-128-12, ESTABLISHING PLANNED UNIT DEVELOPMENT ZONING REGULATIONS AND DEVELOPMENT STANDARDS FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HARBOR BOULEVARD AND TWINTREE LANE, WEST OF CHOISSER ROAD, AT 12222, 12202, 12252, 12262, 12272, 12292, AND 12302 HARBOR BOULEVARD, GARDEN GROVE, 12511, 12531, 12551, AND 12571 TWINTREE LANE, 12233, 12235, 12237, AND 12239 CHOISSER ROAD, GARDEN GROVE (ASSESSOR PARCEL NUMBERS 231-491-20 AND 21, 231-521-01, 02, 03, 04, 05, 06, 07, 08, 09, AND 10, 231-491-12, 13, 14, 15, 16, 17, 18, AND 19)

City Attorney Summary

This Ordinance approves the establishment of Planned Unit Development zoning regulations and development standards on an approximately 5.8 acre site at the northeast corner of Harbor Boulevard and Twintree Lane, west of Choisser Road, covering property identified as 12222, 12202, 12252, 12262, 12272, 12292, and 12302 Harbor Boulevard, Garden Grove, 12511, 12531, 12551, and 12571 Twintree Lane, and 12233, 12235, 12237, and 12239 Choisser Road, Garden Grove (Assessor Parcel Numbers 231-491-20 and 21, 231-521-01, 02, 03, 04, 05, 06, 07, 08, 09, and 10, 231-491-12, 13, 14, 15, 16, 17, 18, and 19), in order to permit and facilitate the potential future development of a hotel project that consists of a total of a maximum of 769 rooms within one (1) full-service and two (2) limited service resort hotels, with up to 39,000 square feet of conference/meeting/banquet space, a maximum of 20,000 square feet of interior restaurant/bar space within the hotels, up to 45,000 square feet of restaurant/entertainment space included on site via freestanding pads, and up to two parking structures with approximately 1,297 parking spaces.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY FINDS AND DETERMINES AS FOLLOWS:

WHEREAS, the City of Garden Grove proposes to establish Planned Unit Development No. PUD-128-12, a Planned Unit Development zoning, on an approximately 5.8-acre site in an urbanized area located at the northeast corner of Harbor Boulevard and Twintree Lane, west of Choisser Road at 12222, 12202, 12252, 12262, 12272, 12292, and 12302 Harbor Boulevard, Garden Grove; 12511, 12531, 12551, and 12571 Twintree Lane, Garden Grove; 12233, 12235, 12237, and 12239 Choisser Road, Garden Grove (Assessor Parcel Numbers: 231-491-20 and 21, 231-521-01, 02, 03, 04, 05, 06, 07, 08, 09, and 10; 231-491-12, 13, 14, 15, 16, 17, 18, and 19) and to establish development standards to facilitate the future development of a hotel project consisting of a maximum of 769 rooms within one (1) full-service and two (2) limited service resort hotels with approximately 39,000 square feet of conference/meeting/banquet space and 45,000 square feet of

restaurant/entertainment space included on-site via freestanding pads, and two parking structures with 1,297 parking spaces;

WHEREAS, pursuant to Resolution No. 5779-12, the Planning Commission, at a Public Hearing held on October 4, 2012, recommended approval of Planned Unit Development No. PUD-128-12;

WHEREAS, pursuant to a legal notice, a Public Hearing was held by the City Council on November 13, 2012, and all interested persons were given an opportunity to be heard;

WHEREAS, the City Council approved Resolution No. 9153-12 during its meeting on November 13, 2012, adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the International West Hotel – Harbor East (Site C) Project (the "Project") pursuant to the California Environmental Quality Act, California Public Resources Section 21000 et seq. ("CEQA") and CEQA's implementing guidelines, California Code of Regulations, Title 14, Sections 15000 et seq.;

WHEREAS, the General Plan land use designation of the subject property is International West Mixed Use; and

WHEREAS, the establishment of Planned Unit Development No. PUD-128-12 over the subject property is consistent with the objectives, policies, general land uses, and programs specified in the General Plan, which collectively promote the development of hotels, resorts, amusement facilities, and restaurants along Harbor Boulevard within the International West Mixed Use area.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals. The City Council finds that the above recitals are true and correct.

Section 2. Environmental Review. City Council Resolution No. 9153-12 adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Project is incorporated herein by reference with the same force and effect as if set forth in full.

Section 3. Findings Incorporated by Reference. The findings, facts, and reasons stated in Planning Commission Resolution No. 5779-12 recommending approval of Planned Unit Development No. PUD-128-12, a copy of which is on file in the City Clerk's Office, is incorporated herein by reference with the same force and effect as if set forth in full herein.

Section 4. Approval. Planned Unit Development No. PUD-128-12 is hereby approved, subject to the provisions and development standards set forth in Planning Commission Resolution No. 5779-12 and the mitigation measures and performance standards attached thereto, as modified pursuant to Section 5, below.

Section 5. Modification. Notwithstanding any contrary provisions, development standards, or performance standards for Planned Unit Development No. PUD-128-12 provided for in Planning Commission Resolution No. 5779-12, in the event that the property located at 12202 Harbor Boulevard and identified as Assessor's Parcel No. 231-491-21 (the "Sunbelt Property") is not developed as part of a unified project with the remainder of the project site (the "Hotel Property"), whether independently developed by the Sunbelt Property owner or developed by the Hotel developer, then prior to the issuance of any grading or building permits for the development of the Hotel Property, the owner(s) of the Hotel Property shall ensure that full access to and from the Sunbelt Property is adequately maintained, as determined by the Community Development Director, in his or her reasonable discretion, through, either (i) the granting of an access easement to the owners(s) of the Sunbelt Property from the main access point for the Hotel Property on Harbor Boulevard to the Sunbelt Property, or (ii) design and construction of the Hotel Property project in a manner that preserves direct vehicle access to and from the Sunbelt Property from Harbor Boulevard for both northbound and southbound traffic traveling on Harbor Boulevard.

Section 6. Zoning. The property shown on the map attached hereto is hereby zoned to the Planned Unit Development No. PUD-128-12 zone as shown thereon. Zone Map parts S-10 and S-11 are amended accordingly.

Section 7. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each other section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 8. Effective Date. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 27th day of November 2012.

ATTEST:

/s/ WILLIAM J. DALTON
MAYOR

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on November 13, 2012, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BEARD, BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

and was passed on November 27, 2012, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

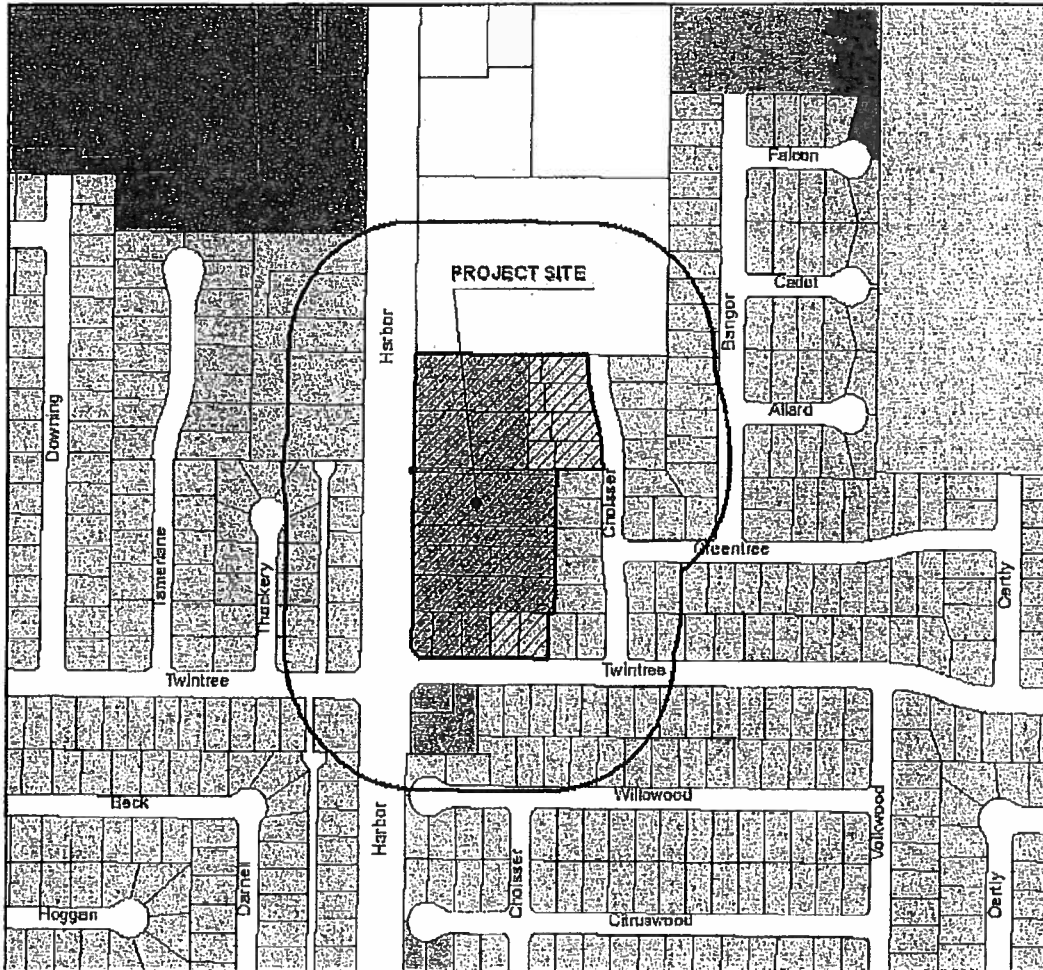
I declare under penalty of perjury that the foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST: Teresa Pomeroy
TERESA POMEROY, Deputy City Clerk
City of Garden Grove



DATED: January 22, 2013



**PLANNED UNIT DEVELOPMENT
 NO. PUD-128-12
 GPA-2-12 (B)**



LEGEND

-  PROJECT SITE- 12222,12202,12252,12262,12272,12292,
 12302 HARBOR BLVD; 121511, 12531,
 12551,12571 TWINTREE LANE;
 12233, 12335, 12237, 12239 CHOISSER RD.
-  300 FEET RADIUS

NOTES

1. GENERAL PLAN: INTERNATIONAL WEST MIXED USE AND LOW DENSITY RESIDENTIAL.
2. ZONE: HCSP-TZN (HARBOR CORRIDOR SPECIFIC PLAN TRANSITION ZONE- NORTH) AND R-1 (SINGLE FAMILY RESIDENTIAL)



CITY OF GARDEN GROVE
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 GIS SYSTEM
 AUGUST 2012

PLANNING AND GIS EXHIBITS

I declare under penalty of perjury that the foregoing instrument is a full, true and correct copy of the original on file in this office.

ATTEST: *Teresa Pomeroy*
TERESA POMEROY, Deputy City Clerk
City of Garden Grove

DATED: January 22, 2013

NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT

Project Title: International West Hotel - Harbor East (Site C): General Plan Amendment No. GPA-2-12(B); Planned Unit Development No. PUD-128-12; Tentative Tract Map No. TT-17455; and Development Agreement No. DA-185-12

Project Location: At the northwest corner of Harbor Boulevard and Twintree Lane, south of the Target Shopping Center parking lot, and west of Chossier Road at 12222, 12202, 12252, 12262, 12272, 12292, and 12302 Harbor Boulevard; 12511, 12531, 12551, and 12571 Twintree Lane; and 12233, 12335, 12237, and 12239 Cholsser Road in the City of Garden Grove, County of Orange. See attached map.

Project Description:

The development of one (1) full service hotel and two (2) limited-service hotels that will offer a total of 769 rooms. The project also calls for the development of 39,000 square feet of conference/meeting banquet space, 45,000 square feet of restaurant/entertainment space on free-standing pads, in addition to two parking structures that will provide 1,297 parking spaces. The project will be located on an approximately 5.2-acre site. The project includes the establishment of a Planned Unit Development zoning and corresponding development standards; a General Plan Amendment to change the General Plan Land Use designations of six (6) existing residential properties from Low Density Residential to International West Mixed Use; and a Tentative Tract Map to reconfigure the existing properties. A Development Agreement will also be considered in the future.

Name and Address of Developer or Project Sponsor:

City of Garden Grove
11222 Acadia Parkway
Garden Grove, CA 92840

Phone: (714) 741-5000

Findings:

The City Council of the City of Garden Grove has reviewed the Initial Study for the above-described project and hereby finds:

- A. The project is in conformance with the environmental goals and policies adopted by the community.
- B. The project will not have a significant effect on the environment.

Mitigation Measures (if any, to avoid potentially significant effects):

The mitigation measures for the project are included and implemented through the proposed project and are included in the attached Initial Study.

Reason for Finding of No Significant Effect: The project is consistent with the City's development standards and any environmental concerns noted in the Initial Study have been appropriately addressed for this project.

Contact Person and Phone Number: Maria Parrà (714) 741-5312

Chairman, Planning Coordinating Committee

November 13, 2012

Date

FILED

NOV 28 2012

TOM DALY, CLERK-RECORDER

By Tu DEPUTY

Recorded in Official Records, Orange County
Tom Daly, County Recorder



2101.5C

201285001131 12:10 pm 11/28/12

107 OR02 Z03

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

NOTICE OF DETERMINATION

To: X
Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

From:
City of Garden Grove
P. O. Box 3070
11222 Acacia Parkway
Garden Grove, CA 92842



POSTED

NOV 28 2012

X
Orange County Clerk
Recorder Department
Hall of Finance and Records
12 Civic Center Plaza, Room 106
Santa Ana, CA 92701

TOM DALY, CLERK-RECORDER

Filing of Notice of Determination in compliance with Section ~~21108~~ or ~~21152~~ of the Public Resources Code.

International West Hotel - Harbor East (Site C): General Plan Amendment No. GPA-2-12(B); Planned Unit Development No. PUD-128-12; Tentative Tract Map No. TT-17455; and Development Agreement No. DA-185-12

Project Title

2012081036	Maria Parra, City of Garden Grove	(714)741-5312
State Clearinghouse Number	Lead Agency	Area Code/ Telephone/ Extension
(If submitted to Clearinghouse)	Contact Person	

At the northwest corner of Harbor Boulevard and Twintree Lane, south of the Target Shopping Center parking lot, west of Chossier Road at 12222, 12202, 12252, 12262, 12272, 12292, and 12302 Harbor Boulevard; 12511, 12531, 12551, and 12571 Twintree Lane; and 12233, 12235, 12237, and 12239 Chossier Road in the City of Garden Grove, County of Orange.

Project Location (include county)

Name and Address of Developer/Applicant or Project Sponsor:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Phone: (714) 741-5000

Project Description:

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This is to advise that the City of Garden Grove City Council adopted the Mitigated Negative Declaration, and approved the project on November 27, 2012, and has made the following determinations regarding the above-described project:

1. The project will XX will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. XX A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures XX were were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan was x was not adopted for this project.
5. A statement of Overriding Considerations was XX was not adopted for this project.
6. Findings XX were were not made pursuant to the provisions of CEQA.

This is to certify that the Mitigated Negative Declaration and record of project approval are available to the General Public at: City of Garden Grove, Community Development, 11222 Acacia Parkway, Garden Grove, CA 92842

Paul Hill November 28, 2012 Planning Services Manager
Signature (Public Agency) Date Title

FILED

NOV 28 2012

TOM DALY, CLERK-RECORDER

By  DEPUTY

POSTED

NOV 28 2012

TOM DALY, CLERK-RECORDER

By  DEPUTY

NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT

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Name and Address of Developer or Project Sponsor:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Phone: (714) 741-5000

Findings:

The City Council of the City of Garden Grove has reviewed the Initial Study for the above-described project and hereby finds:

- A. The project is in conformance with the environmental goals and policies adopted by the community.
- B. The project will not have a significant effect on the environment.

Mitigation Measures (if any, to avoid potentially significant effects):

The mitigation measures for the project are included and implemented through the proposed project and are included in the attached Initial Study.

Reason for Finding of No Significant Effect: The project is consistent with the City's development standards and any environmental concerns noted in the Initial Study have been appropriately addressed for this project.

Contact Person and Phone Number: Maria Parra (714) 741-5312



Chairman, Planning Coordinating Committee

November 13, 2012

Date

Subject: Re: WQMP Attachment T
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 22 Jan 2013 16:49:10 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Terrific. Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

On Jan 22, 2013, at 4:32 PM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

we are going to have Jayna Morgan send a FTP file to you tommorow

we will forward city cetrified docs to you today

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Original Message -----

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Tuesday, January 22, 2013 4:21:49 PM
Subject: WQMP Attachment T

Greg,

Contained within the WQMP (Water Quality Managment Plan) is an Attachment T. It is password protected and I can't open it. Please send me this attachment without a password.

Thanks

Matthew Reid
Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 G o o g l e voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

Subject: Re: Site C Official Documents
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 22 Jan 2013 16:59:25 -0800
To: Paul Guerrero <paulg@ci.garden-grove.ca.us>
CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

On Jan 22, 2013, at 4:44 PM, Paul Guerrero <paulg@ci.garden-grove.ca.us> wrote:

Matt,

Attached are the following official documents:

1. November 27, 2012 Excerpt from the Minutes (City Council Meeting)
2. November 27, 2012 Ordinance No. 2824
3. November 28, 2012 Recorded Notice of Determination

Hope you get well soon.

Paul

<Site C November 27, 2012 Excerpt from the Minutes.pdf><Site C November 27, 2012 Ordinance No. 2824.pdf><Site C November 28, 2012 Recorded Notice of Determination.pdf>

Notification: Jayna Morgan has sent you files

Subject: Notification: Jayna Morgan has sent you files

From: "Morgan, Jayna" <Jayna.Morgan@aecom.com>

Date: Wed, 23 Jan 2013 23:25:48 +0000

To: "Matthew Reid (matt.reid@landanddesign.com)" <matt.reid@landanddesign.com>, "Maria Parra (mariap@ci.garden-grove.ca.us)" <mariap@ci.garden-grove.ca.us>, "Paul Guerrero (paulg@ci.garden-grove.ca.us)" <paulg@ci.garden-grove.ca.us>, "Greg Blodgett (greg1@ci.garden-grove.ca.us)" <greg1@ci.garden-grove.ca.us>

CC: "Yang, Wendy" <Wendy.Yang@aecom.com>, "Chang, Jane" <Jane.Chang@aecom.com>

Attached are the Final PUD Plans approved by the City Council on 11/13/12. You should have received the CEQA files earlier today. Let me know if you have any questions.

Jayna Morgan has sent you 1 file using AECOM's File Transfer System.

This file will be available for download until 1/30/2013

<u>File</u>	<u>Description</u>	<u>Size</u>
20130123-GG-PARCEL C-FINAL PUD.pdf		6,513KB

[Download all files \(.zip\)](#)

If you are having trouble accessing the links in this email, you can view this message as a web page by copying the following link and pasting it into your browser:

<https://sendfiles.aecom.com/message.aspx?msgId=40850985-5fb0-4f59-8261-cf379f5076f2&u=jayna.morgan%40aecom.com>

If you have any questions, please contact your project manager.

Subject: Re: Redline of First Draft of Site C City Agreement [IWOV-IMDB1.FID307912]
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Fri, 25 Jan 2013 09:47:07 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Greg,
Please send me the word doc so I can redline and review more easily.
Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

On Jan 24, 2013, at 5:00 PM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

Greg,

Attached for your review, please find a preliminary first Draft of a City Agreement for disposition of the Site C Site and provision of economic assistance. This is a still a work-in-progress, has not undergone extensive proof-reading, has not yet been reviewed by Tom Nixon, and should not be considered a final document by any measure. I wanted to get it into your hands for your thoughts as soon as possible, however. If you decide to provide this Preliminary Draft to the Developer, please emphasize that it is a very preliminary draft, does not constitute a proposal, and is still subject to change by the City.

I've attempted to keep the structure and language of the Original DDA as much as possible; however, as we discussed, some of the terms, definitions, and provisions are different due changed circumstances and this being a City, rather than an Agency, deal. I've also attached a Redline Comparison showing the differences between the DDA and the new City Agreement. As the numbers are still in flux, I have left blanks to be filled in later. I've taken a shot at updating the Schedule of Performance, but it is very preliminary and subject to change pending further review and discussion. Some of the attachments still need to be added as well.

Please review this draft carefully and let me know of any questions and concerns you have. I will be available tomorrow afternoon to discuss it in more detail if you would like.

James ESQ

----- Forwarded Message -----

From: "James H. Eggart" <JEggart@wss-law.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Cc: "Thomas F. Nixon" <TNixon@wss-law.com>, "Omar Sandoval" <OSandoval@wss-law.com>, "Matt Fertal" <mattf@ci.garden-grove.ca.us>
Sent: Wednesday, January 23, 2013 7:00:04 PM
Subject: Redline of First Draft of Site C City Agreement [IWOV-IMDB1.FID307912]

Greg,

Attached is the Redline Comparison document mentioned in my prior email.

James

James H Eggart Esq

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<Redline Comparison Between Site C Agency DDA and Site C City Resort Hotel Development Agreement (Fir.PDF)>

Subject: Re: First Draft of Site C City Agreement [IWOV-IMDB1.FID307912]
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Sun, 27 Jan 2013 21:00:42 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Greg,

Your attorney references a REDLINE document that identifies the changes made between the two.
Please send over the redline as well.
Thanks.

This will save on attorney reviews....

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Google voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

On Jan 25, 2013, at 10:05 AM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Forwarded Message -----

From: "James H. Eggart" <JEggart@wss-law.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Cc: "Thomas F. Nixon" <TNixon@wss-law.com>, "Omar Sandoval" <OSandoval@wss-law.com>, "Matt Fertal" <mattf@ci.garden-grove.ca.us>
Sent: Wednesday, January 23, 2013 6:42:37 PM
Subject: First Draft of Site C City Agreement [IWOV-IMDB1.FID307912]

Greg,

Attached for your review, please find a preliminary first Draft of a City Agreement for disposition of the Site C Site and provision of economic assistance. This is a still a work-in-progress, has not undergone extensive proof-reading, has not yet been reviewed by Tom Nixon, and should not be considered a final document by any measure. I wanted to get it into your hands for your thoughts as soon as possible, however. If you decide to provide this Preliminary Draft to the Developer, please emphasize that it is a very preliminary draft, does not constitute a proposal, and is still subject to change by the City.

I've attempted to keep the structure and language of the Original DDA as much as possible; however, as we discussed, some of the terms, definitions, and provisions are different due changed circumstances and this being a City, rather than an Agency, deal. I've also attached a Redline Comparison showing the differences between the DDA and the new City Agreement. As the numbers are still in flux, I have left blanks to be filled in later. I've taken a shot at updating the Schedule of Performance, but it is very preliminary and subject to change pending further review and discussion. Some of the attachments still need to be added as well.

Please review this draft carefully and let me know of any questions and concerns you have. I will be available tomorrow afternoon to discuss it in more detail if you would like.

James

[PLEASE NOTE THAT I WAS UNABLE TO INCLUDE THE REDLINE AS AN ATTACHMENT TO THIS EMAIL DUE TO SERVER ISSUES. I WILL ATTEMPT TO SEND IT SEPARATELY].

James H Eggart Esq

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<Site C Resort Hotel Agreement (First Draft).DOC>

Meet Friday?

Subject: Meet Friday?

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Mon, 28 Jan 2013 13:17:17 -0800

To: Greg Blodgett <greg1@garden-grove.org>

Can you meet Friday to go over the new agreement and the changes that you are proposing?

Can you meet at 9am?

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Subject: Anaheim Hotels Moving Ahead

From: David Rose <drose3@charter.net>

Date: Thu, 31 Jan 2013 09:12:35 -0800

To: Matt Reid <matt.reid@landanddesign.com>, Greg Blodgett <greg1@ci.garden-grove.ca.us>

CC: Jared Chandler <Jared@chandlerhotelgroup.com>, David Rose <drose3@hotmail.com>

We need to get moving!!!!

Two hotels heading for Disneyland area

<http://m.ocregister.com/entertainment/ground-413768-hotel-hotels.html>

Sent from my iPhone

Please forgive any errors.

Subject: Tomorrow
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Thu, 31 Jan 2013 13:58:50 -0800
To: Greg Blodgett <greg1@garden-grove.org>

My son is having some medical issues and I need to be here.

Can we move our meeting until early next week? Lets tentatively say Monday? What works for you?

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

Re: Tomorrow

Subject: Re: Tomorrow
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Thu, 31 Jan 2013 16:44:36 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Monday 9am?

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

On Jan 31, 2013, at 2:39 PM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

ok

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Original Message -----

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@garden-grove.org>
Sent: Thursday, January 31, 2013 1:58:50 PM
Subject: Tomorrow

My son is having some medical issues and I need to be here.

Can we move our meeting until early next week? Lets tentatively say Monday? What works for you?

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

Subject: Fwd: PKFC; December E-Trends-LA,OC,SD
From: David Rose <drose3@charter.net>
Date: Fri, 1 Feb 2013 18:30:48 -0800
To: Matt Reid <matt.reid@landanddesign.com>
CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>, David Rose <drose3@hotmail.com>

FYI

Sent from my iPhone

Please forgive any errors.

Begin forwarded message:

From: "Trends, LA" <LA.Trends@pkfc.com>
Date: February 1, 2013, 6:10:29 PM PST
To: Undisclosed recipients;;
Subject: PKFC; December E-Trends-LA,OC,SD

Attached is our December issue of Trends®.

Jeff Donnelly
Dir 213 861 3313
Main 213 680 0900 | Fax 213 623 8240
latrends@pkfc.com

PKF Consulting USA
865 S. Figueroa Street, Suite 3500 | Los Angeles, CA 90017
www.pkfc.com

<image001.jpg>

PKF Consulting USA is a division of Colliers International (Nasdaq:FSRV) the third largest commercial real estate services firm in the World operating in 480 offices in 61 countries.

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<LA E-Trends 12-12.pdf>
<OC E-Trends 12-12.pdf>
<SD E-Trends 12-12.pdf>

Subject: New TOT Proposals
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Wed, 6 Feb 2013 09:01:41 -0800
To: Greg Blodgett <greg1@garden-grove.org>
CC: Paul Guerrero <paulg@ci.garden-grove.ca.us>

Take a look at the attached and we can discuss.
I believe this is fair due to the removal of the Sunbelt property.

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

2013_02_01 COMPARISON Site C Covenant Consideration Computation Example 06.07.2011.xls	Content-Type: application/octet-stream Content-Encoding: base64
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Part 1.1.3

Part 1.1.3	Content-Type: text/html Content-Encoding: quoted-printable
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	Original Deal	DRAFT Proposed
Full Service NPV @ .13	\$ 11,602,079 58% TOT for 20 years, 50% of total remaining revenues (after Agency payback) from TIF and Sales Tax Revenues from project	\$ 12,729,628 60% TOT Revenues for 30 Years, 50% Sales Tax Revenues for project for 20 Years
Limited Service NPV @ .13	\$ 4,831,694 50% TOT for 10 years, 50% of remaining revenues (after Agency payback of Land Investment) from TIT and Sales Tax Revenues from project.	\$ 4,752,171 50% of TOT for 15 years, 50% Sales Tax Revenues for project for 20 years.
	\$ 16,433,773	\$ 17,481,799

Subject: Re: Message from "ricoh106"
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Thu, 7 Feb 2013 13:38:41 -0800
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

You have anything in color? Better quality?

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – matthew.reid.ca
matt.reid@landanddesign.com

On Feb 7, 2013, at 11:50 AM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

Greg Blodgett
SR Project Manager
City of Garden Grove
Economic Development

----- Forwarded Message -----

From: "ricoh106" <ricoh106@ci.garden-grove.ca.us>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Thursday, February 7, 2013 11:25:10 AM
Subject: Message from "ricoh106"

This E-mail was sent from "ricoh106" (Aficio MP 6001).

Scan Date: 02.07.2013 11:25:04 (-0800)
Queries to: katrenas@ci.garden-grove.ca.us<20130207112504456.pdf>

Subject: new TOT run
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Mon, 11 Feb 2013 10:39:31 -0800
To: Greg Blodgett <greg1@garden-grove.org>
CC: Paul Guerrero <paulg@garden-grove.org>

Please see the revised Rev Sharing....

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – matthew.reid.ca
matt.reid@landanddesign.com

2013_02_11 COMPARISON Site C Covenant Consideration Computation Example 06.07.2011.xls	Content-Type: application/octet-stream Content-Encoding: base64
--	--

Part 1.1.3

Part 1.1.3	Content-Type: text/html Content-Encoding: quoted-printable
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	Original Deal	DRAFT Proposed
Full Service NPV @ .13	\$ 11,602,079 58% TOT for 20 years, 50% of total remaining revenues (after Agency payback) from TIF and Sales Tax Revenues from project	\$ 12,842,459 63% TOT Revenues for 25 Years, 50% Sales Tax Revenues for project for 20 Years
Limited Service NPV @ .13	\$ 4,831,694 50% TOT for 10 years, 50% of remaining revenues (after Agency payback of Land Investment) from TIT and Sales Tax Revenues from project.	\$ 4,752,171 50% of TOT for 15 years, 50% Sales Tax Revenues for project for 20 years.
Total	\$ 16,433,773	\$ 17,594,630

Subject: Re: Spreadsheet
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Sat, 23 Feb 2013 08:07:51 -0800
To: Greg Blodgett <greg1@garden-grove.org>

Send me this so I can wrap up the calc....

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Google voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

On Feb 21, 2013, at 11:34 PM, Matthew Reid <matt.reid@landanddesign.com> wrote:

Greg,
Would you forward to me the spreadsheet we were looking at with Matt in the meeting?
Thanks.

Send the Excel version....

Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Google voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

Subject: 60% Tot
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Wed, 27 Feb 2013 11:57:16 -0800
To: Greg Blodgett <greg1@garden-grove.org>

Greg,
60% on the TOT sharing is fine for both hotels.
50/50 on Sales Tax

Also we need to remove the requirement for Restaurant SF'g if we don't have the Sunbelt property.

When will we see a new draft from you?

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Google voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

Subject: Agreement

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Fri, 1 Mar 2013 17:12:05 -0800

To: Greg Blodgett <greg1@garden-grove.org>

Greg,

Where is the new draft agreement?

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Subject: Proforma

From: "Florida Booth" <FBooth@HorwathHTL.com>

Date: Tue, 5 Mar 2013 11:55:00 -0800

To: <gregl@ci.garden-grove.ca.us>, <matt.reid@landanddesign.com>

Greg & Matt - Just to make sure we are all on the same page, I am forwarding the proforma that I am using for the current occ/ADR projections. Matt - let me know if you have any changes.

Best Regards,

Florida T Booth, MAI, CCIM / Managing Director



Hotel, Tourism and Leisure

1050 Northgate Dr, Suite 440

San Rafael, CA 94903

Office: 415-925-8800 xt 3 Fax: 415-925-8804 Mobile: 415-902-7567

Email: fbooth@horwathhtl.com

Web: www.horwathhtl.us / www.horwathhtl.com

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Los Angeles · Phoenix · San Francisco

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Florida T Booth, MAI, CCIM <FBooth@HorwathHTL.com>

Managing Director

Horwath Hospitality & Leisure LLC

2010_12_29 REVISIONS proforma.xlsx

Content-Type:

application/vnd.openxmlformats-officedocument.spreadsheetml.sheet

Content-Encoding: base64

FULL SERVICE

Assumptions:

	2013 YR1	2014 YR 2	2015 YR 3	2016 YR 4
Days open	365	365	365	365
No. of rooms	360	360	360	360
Room Nights available	131,400	131,400	131,400	131,400
Occupancy	64%	68%	73%	73%
Room Nights Sold	84,096	89,352	95,922	95,922
Average Daily Rate	170.00	210.00	216.30	216.30
RevPAR	108.80	121.04	153.30	157.90

	\$ Amount	%	\$ PAR	\$ POR	\$ Amount	%	\$ PAR	\$ POR	\$ Amount	%	\$ PAR	\$ POR
Revenues												
Rooms	14,296,320	69.0%	39,712	170.00	15,904,656	69.0%	44,180	178.00	20,747,929	71.7%	57,633	216.30
F&B	5,213,952	25.2%	14,483	62.00	5,807,880	25.2%	16,133	65.00	6,718,377	23.2%	18,662	70.04
Telecommunications	294,336	1.4%	818	3.50	312,732	1.4%	869	3.50	335,727	1.2%	933	3.50
Spa	420,000	2.0%	1,167	4.99	450,000	2.0%	1,250	5.04	480,000	1.7%	1,333	5.00
Other	504,576	2.4%	1,402	6.00	558,450	2.4%	1,551	6.25	623,493	2.2%	1,732	6.50
Total Revenues	20,729,184	100.0%	57,581	246.49	23,033,718	100.0%	63,983	257.79	28,948,702	100.0%	80,413	301.79
Direct Expenses												
Rooms	3,717,043	26.0%	10,325	44.20	3,817,117	24.0%	10,603	45.39	4,230,160	21.0%	11,750	50.30
F&B	4,275,441	82.0%	11,876	50.84	4,646,304	80.0%	12,906	55.25	5,087,703	78.0%	14,133	60.50
Telecommunications	332,600	113.0%	924	3.96	322,114	103.0%	895	3.83	339,084	101.0%	942	4.03
Spa	399,000	95.0%	1,108	4.74	360,000	80.0%	1,000	4.28	360,000	75.0%	1,000	4.28
Other	237,151	47.0%	659	2.82	245,718	44.0%	683	2.92	268,102	43.0%	745	3.19
Total Direct Expenses	8,961,234	43.2%	24,892	106.56	9,391,253	40.8%	26,087	111.67	10,285,049	36.6%	28,570	122.30
HOTEL PROFIT	11,767,950	56.8%	32,689	139.93	13,642,465	59.2%	37,896	146.11	17,820,487	63.4%	49,501	170.70
Undistributed Operating Expenses												
Administrative and General	1,658,335	8.0%	4,606	19.72	1,727,529	7.5%	4,799	19.33	1,967,388	7.0%	5,465	20.51
Marketing	1,388,855	6.7%	3,858	16.52	1,428,091	6.2%	3,967	15.98	1,686,332	6.0%	4,684	17.58
Franchise Fees	870,626	4.2%	2,418	10.35	1,151,686	5.0%	3,199	12.89	1,630,121	5.8%	4,528	16.99
Banquet Sales	207,292	1.0%	576	2.46	230,337	1.0%	640	2.58	281,055	1.0%	781	2.93
Property Ops & Maintenance	725,521	3.5%	2,015	8.63	783,146	3.4%	2,175	8.76	1,038,905	3.7%	2,889	10.84
Utilities	787,709	3.8%	2,188	9.37	829,214	3.6%	2,303	9.28	983,694	3.5%	2,732	10.26
Total Undistributed Operating Expenses	5,638,338	27.2%	15,662	67.05	6,150,003	26.7%	17,083	68.83	7,588,495	27.0%	21,079	79.11
Gross Operating Profit	6,129,612	29.6%	17,027	72.89	7,492,462	32.5%	20,812	83.85	10,231,992	36.4%	28,422	106.67
Fixed Expense												
Management Fee	621,876	3.0%	1,727	7.39	691,012	3.0%	1,919	7.73	843,166	3.0%	2,342	8.79
Property Taxes (1.01% of improvements)	1,001,935	4.8%	2,783	11.91	1,001,935	4.3%	2,783	11.21	1,001,935	3.6%	2,783	10.45
FFE & Capital Reserve	518,230	2.5%	1,440	6.16	575,843	2.5%	1,600	6.44	702,638	2.5%	1,952	7.33
Insurance	269,479	1.3%	749	3.20	299,438	1.3%	832	3.35	365,372	1.3%	1,015	3.81
Total Fixed Expenses	2,411,519	11.6%	6,699	28.68	2,568,228	11.1%	7,134	28.74	2,973,111	10.4%	8,092	30.37
NET OPERATING INCOME	3,718,092	17.9%	10,328	44.21	4,924,234	21.4%	13,678	55.11	7,318,881	26.0%	20,330	76.30
Restaurant Rent (NET)	350,000				360,500				371,315			
Hotel Tax Rebate 75%	1,393,891	75.0%			1,550,704				1,964,003			
Property Tax Rebate 70%	701,354				701,354				701,354			
CASH FLOW FROM OPERATIONS	6,163,338	29.7%	17,120	73.29	7,536,793	32.7%	20,936	84.35	10,355,553	36.8%	28,765	107.96
Debt Service	5,368,914	25.9%	14,914	63.84	5,368,914	23.3%	14,914	63.84	5,368,914	19.1%	14,914	63.84
NOI AFTER DEBT SERVICE	794,424	3.8%	2,207	9.45	2,167,879	9.4%	6,022	25.78	4,986,639	17.7%	13,852	59.30
Debt Coverage Ratio	1.15		1.40		1.93		1.93		1.93		1.99	

FULL SERVICE

Assumptions:

	2021 YR 9	2022 YR 10	2023 YR 11
Days open	365	365	365
No. of rooms	360	360	360
Room Nights available	131,400	131,400	131,400
Occupancy	73%	73%	73%
Room Nights Sold	95,922	95,922	95,922
Average Daily Rate	250.75	258.27	266.02
RevPAR	183.05	188.54	194.20

	\$ Amount	%	\$ PAR	\$ POR	\$ Amount	%	\$ PAR	\$ POR	\$ Amount	%	\$ PAR	\$ POR
Revenues												
Rooms	24,052,536	71.7%	66,813	250.75	24,774,112	71.7%	68,817	258.27	25,517,335	71.7%	70,881	266.02
F&B	7,788,440	23.2%	21,635	81.20	8,022,093	23.2%	22,284	83.63	8,262,756	23.2%	22,952	86.14
Telecommunications	400,876	1.2%	1,114	4.18	412,902	1.2%	1,147	4.30	425,289	1.2%	1,181	4.43
Spa	573,145	1.7%	1,592	5.98	590,339	1.7%	1,640	6.15	608,050	1.7%	1,689	6.34
Other	744,483	2.2%	2,068	7.76	766,818	2.2%	2,130	7.99	789,822	2.2%	2,194	8.23
Total Revenues	33,559,480	100.0%	93,221	349.86	34,566,264	100.0%	96,017	360.36	35,603,252	100.0%	98,898	371.17
Direct Expenses												
Rooms	5,051,033	21.0%	14,031	60.06	5,202,563	21.0%	14,452	61.86	5,358,640	21.0%	14,885	63.72
F&B	6,074,983	78.0%	16,875	72.24	6,257,233	78.0%	17,381	74.41	6,444,950	78.0%	17,903	76.64
Telecommunications	404,884	101.0%	1,125	4.81	417,031	101.0%	1,158	4.96	429,542	101.0%	1,193	5.11
Spa	429,859	75.0%	1,194	5.11	442,755	75.0%	1,230	5.26	456,037	75.0%	1,267	5.42
Other	320,128	43.0%	889	3.81	329,732	43.0%	916	3.92	339,624	43.0%	943	4.04
Total Direct Expenses	12,280,887	36.6%	34,114	146.03	12,649,313	36.6%	35,137	150.42	13,028,793	36.6%	36,191	154.93
HOTEL PROFIT	21,278,593	63.4%	59,107	203.83	21,916,951	63.4%	60,880	209.94	22,574,459	63.4%	62,707	216.24
Undistributed Operating Expenses												
Administrative and General	2,349,164	7.0%	6,525	24.49	2,419,638	7.0%	6,721	25.23	2,492,228	7.0%	6,923	25.98
Marketing	2,013,569	6.0%	5,593	20.99	2,073,976	6.0%	5,761	21.62	2,136,195	6.0%	5,934	22.27
Franchise Fees	1,946,450	5.8%	5,407	20.29	2,004,843	5.8%	5,569	20.90	2,064,989	5.8%	5,736	21.53
Banquet Sales	335,595	1.0%	932	3.50	345,663	1.0%	960	3.60	356,033	1.0%	989	3.71
Property Ops & Maintenance	1,241,701	3.7%	3,449	12.94	1,278,952	3.7%	3,553	13.33	1,317,320	3.7%	3,659	13.73
Utilities	1,174,582	3.5%	3,263	12.25	1,209,819	3.5%	3,361	12.61	1,246,114	3.5%	3,461	12.99
Total Undistributed Operating Expenses	9,061,060	27.0%	25,170	94.46	9,332,891	27.0%	25,925	97.30	9,612,878	27.0%	26,702	100.22
Gross Operating Profit	12,217,533	36.4%	33,938	127.37	12,584,059	36.4%	34,956	131.19	12,961,581	36.4%	36,004	135.13
Fixed Expense												
Management Fee	1,006,784	3.0%	2,797	11.97	1,036,988	3.0%	2,881	12.33	1,068,098	3.0%	2,967	12.70
Property Taxes (1.01% of improvements)	1,094,841	3.3%	3,041	13.02	1,127,686	3.3%	3,132	13.41	1,161,517	3.3%	3,226	13.81
FFE & Capital Reserve	838,987	2.5%	2,331	8.75	864,157	2.5%	2,400	9.01	890,081	2.5%	2,472	9.28
Insurance	436,273	1.3%	1,212	4.55	449,361	1.3%	1,248	4.68	462,842	1.3%	1,286	4.83
Total Fixed Expenses	3,376,886	10.1%	9,380	35.20	3,478,192	10.1%	9,662	36.26	3,582,538	10.1%	9,951	37.35
NET OPERATING INCOME	8,840,648	26.3%	24,557	92.16	9,105,967	26.3%	25,294	94.93	9,379,043	26.3%	26,053	97.78
Restaurant Rent (NET)	443,370				456,671				470,371			
Hotel Tax Rebate 75%	2,345,122				2,415,476				2,487,940			
Property Tax Rebate 70%	766,389				789,380				813,062			
CASH FLOW FROM OPERATIONS	12,395,528	36.9%	34,432	129.23	12,767,394	36.9%	35,465	133.10	13,150,416	36.9%	36,529	137.09
Debt Service	5,368,914	16.0%	14,914	63.84	5,368,914	15.5%	14,914	63.84	5,368,914	15.1%	14,914	63.84
NOI AFTER DEBT SERVICE	7,026,615	20.9%	19,518	83.55	7,398,480	21.4%	20,551	87.98	7,781,502	21.9%	21,615	92.53
Debt Coverage Ratio	2.31				2.38				2.45			

Subject: Rusty Quave

From: Lance Roberts <lance@twiholdings.com>

Date: Thu, 7 Mar 2013 18:22:04 -0700

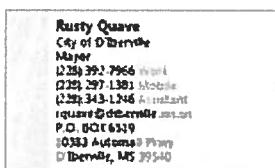
To: David Rose <drose3@hotmail.com>, David Rose <drose3@charter.net>, Matthew Reid <matt.reid@landanddesign.com>, "greg1@ci.garden-grove.ca.us" <greg1@ci.garden-grove.ca.us>, "paulg@ci.garden-grove.ca.us" <paulg@ci.garden-grove.ca.us>

CC: Howard Tribble - TWI <Howard@twiholdings.com>

Hear you all go. Feel free to call him, his cell is your best bet. I will not call him in advance so you can get an unscripted download on what we can do.

FYI, It is possible he may call me to confirm your request, so it may take 2 calls.

Cheers



LANCE ROBERTS

VP OF BUSINESS DEVELOPMENT
C 281 380 1744

TWI HOLDINGS, LLC

3883 HOWARD HUGHES PKWY STE 800
LAS VEGAS NV 89169
O 702 871 7700
F 702 873 7900

TWIHOLDINGS.COM



Rusty Quave <rquave@diberville.ms.us>

Mayor

City of D'Iberville

Re: Rusty Quave

Subject: Re: Rusty Quave

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Thu, 7 Mar 2013 17:31:36 -0800

To: Lance Roberts <lance@twiholdings.com>

CC: David Rose <drose3@hotmail.com>, David Rose <drose3@charter.net>, "greg1@ci.garden-grove.ca.us" <greg1@ci.garden-grove.ca.us>, "paulg@ci.garden-grove.ca.us" <paulg@ci.garden-grove.ca.us>, Howard Tribble - TWI <Howard@twiholdings.com>

Thanks Lance!

Sent from Siri, please excuse the typos.

Matthew Reid

Land & Design, Inc.

4330 Palm Ave

La Mesa, CA. 91942

858.735.1858 direct

Skype: [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

On Mar 7, 2013, at 5:22 PM, Lance Roberts <lance@twiholdings.com> wrote:

Hear you all go. Feel free to call him, his cell is your best bet. I will not call him in advance so you can get an un scripted download on what we can do.

FYI, It is possible he may call me to confirm your request, so it may take 2 calls.

Cheers

<image004.jpg>

LANCE ROBERTS

VP OF BUSINESS DEVELOPMENT

C 281 380 1744

TWI HOLDINGS, LLC

3883 HOWARD HUGHES PKWY STE 800

LAS VEGAS NV 89169

O 702 871 7700

F 702 873 7900

TWIholdings.com

<image002.png>

<Rusty Quave.vcf>

Deal Points for next week

Subject: Deal Points for next week
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Thu, 7 Mar 2013 21:56:40 -0800
To: Greg Blodgett <gregl@garden-grove.org>

Please send me the deal points you are going to present to City Council.
Thanks

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Subject: Quick question

From: "Florida Booth" <FBooth@HorwathHTL.com>

Date: Mon, 11 Mar 2013 15:22:42 -0700

To: "Matthew W Reid" <matt.reid@landanddesign.com>

CC: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>

Matt - Just wanted to verify that your upper upscale property is 360 rooms, and your 2 other properties are a 150 room suites oriented hotel and a 150 room select service property. These were the numbers I used in my 2011 33433, which are not the same room counts originally projected in your proformas - I just want to make sure we are on the same page and these are the final room counts. Thanks.

Best Regards,

Florida T Booth, MAI, CCIM / Managing Director



Hotel, Tourism and Leisure

1050 Northgate Dr, Suite 440

San Rafael, CA 94903

Office: 415-925-8800 xt 3 Fax: 415-925-8804 Mobile: 415-902-7567

Email: fbooth@horwathhtl.com

Web: www.horwathhtl.us / www.horwathhtl.com

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Florida T Booth, MAI, CCIM <FBooth@HorwathHTL.com>

Managing Director

Horwath Hospitality & Leisure LLC

Re: Quick question

Subject: Re: Quick question
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Mon, 11 Mar 2013 16:57:45 -0700
To: Florida Booth <FBooth@HorwathHTL.com>
CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>

For the purposes of your study, the numbers should be the same right? Regardless of what is built...
Reality is 300 full serve, 200/200 Ltd serve.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

On Mar 11, 2013, at 3:22 PM, "Florida Booth" <FBooth@HorwathHTL.com> wrote:

Matt - Just wanted to verify that your upper upscale property is 360 rooms, and your 2 other properties are a 150 room suites oriented hotel and a 150 room select service property. These were the numbers I used in my 2011 33433, which are not the same room counts originally projected in your proformas - I just want to make sure we are on the same page and these are the final room counts. Thanks.

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<Florida T Booth, MAI, CCIM.vcf>

Re: Quick question

Subject: Re: Quick question
From: "Florida Booth" <FBooth@HorwathHTL.com>
Date: Mon, 11 Mar 2013 17:06:24 -0700
To: "Matthew Reid" <matt.reid@landanddesign.com>
CC: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>

Greg - For the purposes of my study, should I be using the numbers I used before then?

----- Original Message -----

From: [Matthew Reid](#)
To: [Florida Booth](#)
Cc: [Greg Blodgett](#)
Sent: Monday, March 11, 2013 4:57 PM
Subject: Re: Quick question

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Reality is 300 full serve, 200/200 Ltd serve.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](#)

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<Florida T Booth, MAI, CCIM.vcf>

No virus found in this message.

Re: Quick question

Checked by AVG - www.avg.com

Version: 2012.0.2240 / Virus Database: 2641/5664 - Release Date: 03/11/13

Re: Quick question

Subject: Re: Quick question
From: "Florida Booth" <FBooth@HorwathHTL.com>
Date: Mon, 11 Mar 2013 17:22:31 -0700
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>

Thanks - I figured as much, but just wanted to verify.

----- Original Message ----- From: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
To: "Florida Booth" <FBooth@HorwathHTL.com>
Sent: Monday, March 11, 2013 5:16 PM
Subject: Re: Quick question

yes

----- Original Message -----
From: "Florida Booth" <FBooth@HorwathHTL.com>
To: "Matthew Reid" <matt.reid@landanddesign.com>
Cc: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Monday, March 11, 2013 5:06:24 PM
Subject: Re: Quick question

Greg - For the purposes of my study, should I be using the numbers I used before then?

----- Original Message ----- From: Matthew Reid
To: Florida Booth
Cc: Greg Blodgett
Sent: Monday, March 11, 2013 4:57 PM
Subject: Re: Quick question

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Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: matthew.reid.ca

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Re: Quick question

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<Florida T Booth, MAI, CCIM.vcf>

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2240 / Virus Database: 2641/5664 - Release Date: 03/11/13

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2240 / Virus Database: 2641/5664 - Release Date: 03/11/13

Subject: LOI attached
From: "Florida Booth" <FBooth@HorwathHTL.com>
Date: Tue, 12 Mar 2013 10:38:44 -0700
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>

Greg - I pulled this off our web site <http://www.htlhospitalityadvisors.com/hotels-for-sale/> , so if it looks weird, that's why. If you go to the web site, hit any of the hotels, it gives you the option to pull up the LOI to fill out.

----- Original Message ----- From: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
To: "Florida Booth" <FBooth@HorwathHTL.com>
Sent: Monday, March 11, 2013 5:16 PM
Subject: Re: Quick question

yes

----- Original Message -----
From: "Florida Booth" <FBooth@HorwathHTL.com>
To: "Matthew Reid" <matt.reid@landanddesign.com>
Cc: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Monday, March 11, 2013 5:06:24 PM
Subject: Re: Quick question

Greg - For the purposes of my study, should I be using the numbers I used before then?

----- Original Message ----- From: Matthew Reid
To: Florida Booth
Cc: Greg Blodgett
Sent: Monday, March 11, 2013 4:57 PM
Subject: Re: Quick question

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858.735.1858 direct
Skype: matthew.reid.ca

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Email: fbooth@horwathhtl.com
Web: www.horwathhtl.us / www.horwathhtl.com

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HTL Hospitality Advisors

Brokerage, Management and Consulting

HTL Hospitality Advisors NON-BINDING LETTER OF INTENT

Please submit an offer to purchase by completing the following Letter of Intent form. If you have questions or need assistance with the form, please contact the Listing Broker.

March 12, 2013 at 10:30AM PDT

Joel W. Hiser
HTL Hospitality Advisors LLC
1050 Northgate Dr, Suite 440
San Rafael, CA 93903

RE: Microtel Inn & Suites, Sidney, MT - 1500 S. Central Avenue, Sidney, Montana, 59270, United States

Dear Joel W. Hiser:

This letter of intent ("LOI") shall serve as the parties' statement of their intent to negotiate and enter into a written purchase and sale agreement ("Agreement"), with no financing contingency and only usual and ordinary title and due diligence contingencies, for Purchaser to purchase and Seller to sell the **Microtel Inn & Suites, Sidney, MT - 1500 S. Central Avenue, Sidney, Montana, 59270, United States** and all related assets ("the Property") according to the following terms and conditions:

1. **Property Description:**

The Microtel Inn & Suites Sidney was completed and opened in late April 2012 with 76 spacious guest rooms, including 13 suites. Also included as part of the purchase are all of the furniture, furnishings, fixtures, machinery, signage and equipment utilized in the operation of the Property; and all assignable contracts and agreements benefiting the Property.

2. **Purchaser:**

A newly formed entity with _____ * as one of the principals. This Letter of Intent and the Agreement may be assigned to any entity directly or indirectly owned or controlled by Purchaser with the consent of the Seller, which approval shall not be unreasonably withheld.

3. **Seller:** Presidential Hospitality, LLC

4. **Purchase Price:** \$ _____ *

5. **Financing Terms:** All cash at closing.
6. **Seller Acceptance of LOI:** Not later than 5:00 p.m. (local Property time) on the seventh day following acceptance by Purchaser.
7. **Agreement:**
 - A. Seller's counsel shall generate the first draft of a purchase and sale agreement consistent with the foregoing terms, which shall be on an 'as-is' basis with all faults, and forward the same to Purchaser and the parties shall expeditiously and in good faith negotiate the final purchase and sale agreement ("Agreement"). This letter does not legally bind either party with the foregoing terms, and is subject to full execution of a mutually agreeable contract for the purchase and sale of the Property. The parties acknowledge that the foregoing does not encompass all terms that will be included in the final Agreement. The Agreement shall be executed no later than 45 days from the execution of this document.
 - B. Seller shall deliver the Property free and clear of any encumbrance or obligation under any management agreement, if desired by Purchaser.
8. **Closing Date:**

The parties shall be ready, willing, and able to close within thirty (30) calendar days after expiration of the Due Diligence Period or all contingencies are satisfied or waived by Purchaser.
9. **Closing Costs:**

Seller shall pay the cost of the title search however the basic cost for the issuance of the Owner's Title Policy, including the binder and premium, and preparation and recordation of curative title documents and the cost of any endorsement or additional coverage shall be paid by the Purchaser. Seller shall pay for the preparation and recordation of the deed, and all documentary stamps on the deed. Seller shall further pay all then-due installments of any existing special assessments and all delinquent real estate taxes, as well as any additional taxes assessed for a period prior to closing resulting from changes in the Property's use or ownership. Current real estate taxes, utility costs, and other pro-ratable expenses shall be pro-rated between the parties at the closing. Purchaser shall pay at closing the cost of recording any mortgages and mortgage taxes or documentary stamps applicable to Purchaser's lender. Seller and Purchaser shall split equally any escrow fees and miscellaneous closing costs. Each party shall be responsible for the payment of its own attorney fees. Any costs not expressly identified shall be paid according to local custom.
10. **Broker's Commission:**

The parties acknowledge that HTL Hospitality Advisors represents the Seller in this transaction and is the only real estate broker receiving a broker's fee involved in the contemplated transaction. Seller shall be liable for all real estate commissions and other amounts due and payable to HTL Hospitality Advisors as set forth in a separate agreement with Seller. Both Seller and Purchaser acknowledge that they have not dealt with any other broker, other than HTL Hospitality Advisors.

11. Title and Due Diligence:

The Agreement shall be contingent only upon Purchaser's title and due diligence review of the Property. Seller shall provide and/or allow the following:

- A. Physical inspection by Purchaser, at its expense, regarding the real property and physical improvements and related systems, including without limitation, environmental, mechanical and electrical. Seller, at its expense, shall provide Purchaser with true, complete and correct copies of all environmental, engineering and inspection reports in Seller's custody, control or otherwise available to Seller.
- B. An ALTA survey of the Property, in Seller's custody, control or otherwise available to Seller.
- C. A Preliminary Title Report and Commitment for Title Insurance which shall be issued through a title insurer acceptable to and required by Purchaser, in the amount of the purchase price at Seller's expense. The actual cost of the title insurance policy and any ALTA extended coverage including Purchaser requested endorsements, shall be at Purchaser's expense.
- D. Seller, at its expense, shall provide copies of all leases, contracts, and agreements of whatever nature affecting the Property and its operation.
- E. Seller, at its expense, shall provide an itemized list of all furniture, fixtures, equipment and personal property involved in the operation of or otherwise regarding the Property, to be included in this transaction, free of claim or encumbrance.
- F. Seller agrees to maintain the current inventory of supplies and materials involved in the normal operation of the Property, with consideration for seasonal fluctuations, to be included in this transaction, free of claim or encumbrance.
- G. Seller, at its expense, shall deliver or make available all of the foregoing information and documentation within fifteen (15) calendar days of the parties' execution of the Agreement.
- H. Purchaser shall have _____ * days (such period of time is referred to as the "Due Diligence Period") to complete its due diligence efforts with respect to the Property. Purchaser agrees and acknowledges that within a specified period following the execution of the Agreement Purchaser shall (i) submit a franchise application and all related documents; and (ii) submit an application(s) for financing to facilitate the transaction set forth herein, if applicable.

Purchaser shall give Seller reasonable advance notice prior to entry by Purchaser or its representatives or independent contractors on the Property and shall not enter the Property until it has received Seller's prior approval. Purchaser shall not discuss the sale of the Property with the hotel general manager or any hotel employees until it has received Seller's approval for such discussions.

12. Earnest Money Deposits:

Upon the parties' execution of the Agreement, Purchaser shall provide a total Deposit

of \$ _____ * ("Earnest Money Deposit"). The Earnest Money Deposit shall be deposited as follows:

- A. An initial Earnest Money Deposit equal to one half of the total Earnest Money Deposit is to be placed in an interest bearing, federally insured account with a mutually acceptable escrow, trust or title company, which shall be applied toward the purchase price but shall be refundable at Purchaser's option until expiration of Due Diligence or all contingencies are satisfied or waived pursuant to the Agreement; thereafter,
- B. The initial Earnest Money Deposit shall be increased by an amount equal to the initial Earnest Money Deposit and the resulting total deposit shall apply to the purchase price but shall not be refundable to Purchaser unless the purchase does not timely close due to a breach by Seller or circumstances beyond Purchaser's control or as otherwise provided in the Agreement.

13. Other Items:

- A. All receipts from sales up to 12:01 a.m. (local time) on the day of closing shall be collected by Seller. Seller shall pay all operation costs, including cleaning of rooms, on the day of closing for which Seller is entitled to receive income.
- B. All prepaid rentals, room rental deposits and all other deposits for advance registration, banquets or future services, for periods after the closing, shall be paid to Purchaser at closing.
- C. All house banks and accounts receivable will be purchased from Seller by the Purchaser at a price to be negotiated and set forth in the Agreement.
- D. Any expenses pro-rations that cannot be completed at closing will be completed between the parties no later than thirty (30) days after closing date.

14. Confidentiality:

The terms and provisions of this Letter of Intent shall remain confidential and shall not be disclosed to any third party other than select lenders, accountants, and other experts working on behalf of Purchaser, provided that Purchaser shall instruct such parties of the confidential nature of this proposed transaction prior to providing any such information to such parties.

If this Letter of Intent meets with your approval, please indicate by completing the form below and submitting it.

Sincerely,

All fields with an * are required. **PURCHASER:**

Purchaser _____

By * _____

Its * _____

Date March 12, 2013 at 10:30AM PDT _____

Address * _____

City *

State *

Zip *

Country *

Phone *

E-mail *

Agreed and accepted as of the date of this correspondence

Submit

SELLER:

By:

Its:

Dated:

Friday

Subject: Friday

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Wed, 13 Mar 2013 11:04:16 -0700

To: Greg Blodgett <Greg1@ci.garden-grove.ca.us>

We have to reschedule the meeting with Warner Gaming Friday.

Bill Warner can't make it. They are rescheduling.

I'll let you know.

Sent from Siri, please excuse the typos.

Matthew Reid

Land & Design, Inc.

4330 Palm Ave

La Mesa, CA. 91942

858.735.1858 direct

Skype: [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

Re: Friday

Subject: Re: Friday
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Wed, 13 Mar 2013 14:58:32 -0700
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>
CC: "mattf@ci.garden-grove.ca.us" <mattf@ci.garden-grove.ca.us>

It's not a negative.... Bill Warner had something unexpected happen... Sounded like maybe a family issue.

They remain VERY excited about the project and will reschedule shortly.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

On Mar 13, 2013, at 2:54 PM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

ok

----- Original Message -----

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <Greg1@ci.garden-grove.ca.us>
Sent: Wednesday, March 13, 2013 11:04:16 AM
Subject: Friday

We have to reschedule the meeting with Warner Gaming Friday.

Bill Warner can't make it. They are rescheduling.

I'll let you know.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

Subject: Comments on Agreement
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Thu, 14 Mar 2013 11:32:04 -0700
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>, James Eggart <JEggart@wss-law.com>

Here are our comments to the agreement.
Look forward to our discussion today at 3pm.

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

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Part 1.1.3

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**GARDEN GROVE "SITE C" CONFERENCE HOTEL/RESORT
DEVELOPMENT AGREEMENT**

By and Between

CITY OF GARDEN GROVE

and

LAND & DESIGN, INC.

DRAFT

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DRAFT

CONFERENCE HOTEL DEVELOPMENT AGREEMENT

This **CONFERENCE HOTEL DEVELOPMENT AGREEMENT** (this "Agreement") dated for purposes of identification only as of March __, 2013 (the "Date of this Agreement"), is entered into by and between the **CITY OF GARDEN GROVE**, a municipal corporation (the "City"), and **LAND & DESIGN, INC.**, a California corporation (the "Developer") or its assignee.

RECITALS

A. The property which is the subject of this Agreement is approximately five acres (5) acres located at the northeast corner of Harbor Boulevard and Twintree Lane in the City of Garden Grove and is comprised of certain property owned by the City ("City Property"), certain property currently owned by the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Agency Property"), and certain property currently privately owned by third parties, but which the Developer may purchase or lease in the future ("Third Party Property"). The City Property and the Agency Property are collectively referred to herein as the "Site." The Third Party Property is adjacent to the Site and, if purchased or leased by the Developer, may be added to the Site for purposes of construction and operation of the Project contemplated by this Agreement. The City Property, the Agency Property, and the Third Party Property are shown on the Site Map (Exhibit A) and legally described in the Legal Description (Exhibit B).

B. The Developer has proposed a development project for the Site generally consisting of a combination of hotels, retail, restaurant, and entertainment venues, and related parking facilities, and specifically including the following components:

1. One (1) full-service upper upscale hotel ("Upper Upscale Hotel") containing no less than three hundred (300) rooms and not less than ten thousand (10,000) square feet of event/meeting space, and (ii) up to two (2) limited/select/focused service/suites/extended stay type hotels (collectively, the "Limited Service Hotels" and each a "Limited Service Hotel"), containing no less than 125 rooms each;

2. A minimum of five ten-thousand (450,000) and a maximum of sixty-five thousand (65,000) square feet of retail/restaurant/entertainment establishments, including one (1) or more restaurants (the "Retail/Restaurant/Entertainment Component"); and

3. Adequate Structured Parking as required ~~Two (2) Parking Structures~~.

The Upper Upscale Hotel, the Limited Service Hotels, Retail/Restaurant/Entertainment Component, Parking Structures, and the other improvements required and/or contemplated to be constructed on the Site pursuant to this Agreement and the Land Use Approvals are collectively referred to herein as the "Developer Improvements" or "Project," and individually as the "Separate Component(s)." The Project is more specifically described in the Scope of Development (Exhibit C). ~~NEED TO BE SURE THE CONCEPT OF 2 FULL SERVICE HOTELS IS INCORPORATED INTO THE DOCUMENT.~~

C. The City previously approved General Plan Amendment No. GPA-2-12(B) (the "General Plan Amendment") and Planned Unit Development No. PUD-128-12 (the "PUD") to facilitate the development and operation of the Project on the Site and the Third Party Property. The City also previously adopted a Mitigated Negative Declaration and Mitigation Monitoring Program for the GPA, the PUD, and the additional future entitlements necessary to implement the Project (the "MND"). The General Plan Amendment, the PUD, and the MND are collectively referred to herein as the "Existing Land Use Approvals." The provisions and development standards of the PUD authorize the development of a hotel development that consists of an aggregate total of a maximum of 769 rooms within one (1) full-service and up to two (2) limited service hotels, with up to 39,000 square feet of conference/meeting/banquet space, a maximum of 20,000 aggregate square feet of interior restaurant/bar space within the three (3) hotels, up to 45,000 square feet of restaurant/entertainment space constructed on freestanding pads, and ~~two~~ parking structures containing approximately 1,200~~97~~ parking spaces. **OPTION OF BUILDING TWO FULL SERVICE HOTELS?** Pursuant to the provisions of the PUD, if the City determines that the Developer's submittal of development plans are in substantial compliance with the provisions of the PUD and in similar shape, form and configuration with the conceptual site plans included with the City's approval of the PUD, the Developer may proceed to securing the appropriate building permits for constructing the Project (other than the restaurants and/or entertainment venues on freestanding pads) without further discretionary site plan approvals. In order to fully implement the Project, however, certain additional discretionary land use entitlements will be necessary, including, without limitation, a subdivision map to consolidate the properties within the Site and/or to permit development of the Parking Structure(s) across legal lot lines (the "Subdivision Map"), a statutory development agreement between the City and the Developer (the "Development Agreement"), conditional use permits to allow for the sale of alcoholic beverages in the Separate Components, conditional use permit(s) to allow for the operation of a health club(s), spa(s), and/or gym(s) on the Site, and approvals of site plans for each freestanding pad to be constructed as part of the Retail/Restaurant/Entertainment Component.

D. In connection with the development and initial operation of the Project, to assist in creating future financial feasibility necessary to allow the construction and operation of the Project to proceed, the Developer has requested certain financial assistance from the City in the form of the conveyance of the City Property and Agency Property to the Developer, the construction of certain Offsite Infrastructure, payment of the costs associated with preparation of the Subdivision Map, and financial assistance consisting of rebates of a portion of the Transient Occupancy Tax Revenues and Sales Tax Revenues generated by the Project over a period of twenty (20) years (the "Tax Rebate Payments"). Conveyance of the Site, the construction of certain Offsite Infrastructure, the payment of the costs associated with preparation of the Subdivision Map, and the payment of the Tax Rebate Payments is collectively referred to herein as the "Covenants Consideration." In return for the Covenants Consideration, the Developer agrees to construct the Project as provided herein and, for so long as the City is providing any Covenants Consideration, to operate the Separate Components of the Project in accordance with the Covenants established by this Agreement. The City has determined that the Project would not be able to be developed and operated without the assistance provided by this Agreement and that this Agreement will result in only that assistance to the Developer which is necessary to fund the economic feasibility gap created by the quality of the Project required by this Agreement.

E. On June 28, 2011, Parts 1.8 and 1.85 of Division 24 of the Community Redevelopment Law ("CRL"), California Health and Safety Code Sections 33000, *et seq.*, were added by Assembly Bill X1 26 ("RDA Dissolution Act"). The RDA Dissolution Act provides for the statewide dissolution of all redevelopment agencies as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of redevelopment agencies and otherwise wind up their affairs. The City became the Successor Agency to the former Garden Grove Agency for Community Development pursuant to Part 1.85 of the CRL. On December 29, 2011, in *California Redevelopment Association v. Matosantos*, Case No. S194861, the California Supreme Court upheld the RDA Dissolution Act and extended the deadlines in the RDA Dissolution Act by four months.

F. On June 27, 2012, the State Legislature passed AB 1484 as part of the budget trailer bill for the 2011-2012 Legislative Session, amending the RDA Dissolution Act to clarify certain provisions of the RDA Dissolution Act and to provide for new regulations pertaining to the disposition of real estate held by successor agencies. AB 1484 added sections 34179.5 through 34179.7 to the California Health & Safety Code to require due diligence reviews or audits of successor agency assets to determine amounts in cash available for distribution to taxing agencies. If a successor agency remits available cash assets to County auditor-controllers for distribution to taxing agencies pursuant to the new requirements, such successor agency is to be issued a "finding of completion" certifying that such agency has complied with the due diligence requirements. As of the date of this Agreement, the Agency has not yet been issued a "finding of completion." SHOULD HAVE A TIMELINE FOR THIS.

G. AB 1484 further added a new Chapter 9 to Part 1.85 of the Health & Safety Code, commencing with Section 34191.1, applicable to successor agencies that receive a "finding of completion." Chapter 9 authorizes a successor agency that receives a "finding of completion" to prepare a long-range property management plan to address the use and disposition of the real property of the former redevelopment agency. If approved by the oversight board of the successor agency and the Department of Finance, the plan may provide for, among other things, the retention of such property for future development and/or transfer of such property to the city for such purposes. As of the date of this Agreement, a long-range property management plan has not yet been approved by the Agency, the Oversight Board, or the Department of Finance. SHOULD HAVE A TIMELINE FOR THIS.

H. Provided a long-range property management plan, which the City shall use its best commercial efforts towards getting approved, providing for transfer of the Agency Property to the City at no cost for development purposes is approved by the Agency, the Oversight Board, and the Department of Finance, the City and the Developer desire by this Agreement, and subject to its terms and provisions, (1) for the City to provide the Covenants Consideration to Developer, and (2) for the Developer (a) to acquire the Site, (b) to process the Additional Land Use Approvals, and (c) to construct and operate the Developer Improvements in accordance with the Covenants.

I. The City has established a special zone along Harbor Boulevard south of the City of Anaheim border marketed as the "Grove District." The City markets the Grove District as Southern California's premier resort destination, within the heart of Orange County's largest tourist center, with easy access to the most popular Southern California attractions like

Disneyland, Disney's California Adventure, Knott's Berry Farm, Universal Studios, Sea World, and miles of Orange County beaches. The Grove District includes modern hotels that offer a variety of room sizes and rates, plus entertainment and dining to meet every tourist and business traveler's needs. The Project will add additional hotel(s), meeting space, restaurant and entertainment amenities to the Grove District brand.

J. The development and operation of the Project on the Site, as provided in this Agreement, is in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws. Without limiting the foregoing, development and operation of the Project will result in substantial benefits to the City, which include (i) additional Grove District branding, (ii) job creation and enhanced revenues to the City resulting from construction and operation of the Project, including property taxes, sales taxes, and transient occupancy taxes, (iii) enhanced marketability that is likely to extend out-of-town leisure and convention visitors' lengths of stay in the City as a result of additional attractions and high-quality retail shopping and dining opportunities, and (iv) additional high-quality entertainment, restaurant and retail opportunities for the residents of Garden Grove and the surrounding area(s). The City further finds that the benefits provided by the Project will result in substantially more benefits to the City than the costs to the City of providing the Covenants Consideration.

NOW, THEREFORE, the City and the Developer hereby agree as follows:

100. INTRODUCTORY PROVISIONS

101. Definitions. Capitalized terms within this Agreement shall have the meanings set forth below, or if not defined in this Section 101, shall have the meaning ascribed thereto when such terms are first used herein:

"Additional Land Use Approvals" means all Land Use Approvals other than Existing Land Use Approvals.

"Agency" means the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development, a public body formed pursuant to Part 1.85 of the CRL and the RDA Dissolution Act.

"Agency Property" means that certain property identified as Agency Property on the Site Map and described in the Legal Description.

"Agreement" means this ~~Conference~~ Hotel Development Agreement by and between the City and Developer, including all exhibits, and all amendments and modifications hereto.

"ALTA Policies and Endorsements" is defined in Section 203.

"Amendment/Estoppel Costs" is defined in Section 621.

"Applicable Covenants Consideration Period" means, with respect to any portion of the Site and/or Developer Improvements, the period during which any of the Tax Rebate Payments

with respect to the applicable portion of the Site and/or Developer Improvements is required to be paid pursuant to Section 408.

"Assignment and Assumption Agreement" is attached hereto as Exhibit E and incorporated herein by reference.

"Breach" is defined in Section 501.

"CFD" means a community facilities district formed pursuant to Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*).

"CFD Bonds" means bonds issued by a CFD.

"CFD Financing" is defined in Section 301.3.

"City" means the City of Garden Grove, a California municipal corporation, and any assignee of or successor to its rights, powers and responsibilities.

"City Improvements" is defined in Section 301.2.

"City Improvement Costs" is defined in Section 301.2.

"City Manager" means the City Manager of the City, or his or her designee.

"City Property" means that certain property identified as City Property on the Site Map and described in the Legal Description

"City's Conditions Precedent" is defined in Section 205.1.

"Closing" or **"Close of Escrow"** is defined in Section 201.5.

"Closing Date" is the date upon which conveyance of the Site is consummated in accordance with Section 201.3 hereof.

"CLTA Policy" is defined in Section 203.

"Commence Construction" or **"Commencement of Construction"** means the commencement of construction of the applicable portion of the Developer Improvements pursuant to a validly issued building permit, it being agreed that the pouring of foundations for such portion of the Developer Improvements constitutes commencement of construction thereof (without limiting other indicia of such commencement).

"Community Redevelopment Law" or **"CRL"** means California Health and Safety Code Sections 33000, *et seq.* as the same now exists or may hereafter be amended.

"Completion of Construction" or **"Complete(s) Construction"** or **"Completed Construction"** or **"Completing Construction"** means the completion of construction of the Developer Improvements, or any of the Separate Components thereof, as evidenced by a final Certificate of Occupancy issued by the City, certification by the Project Architect and the City

Manager that such Developer Improvements are complete in accordance with the Land Use Approvals and, in the case of a Hotel, the Hotel and all its rooms are open and available to the public.

"Conceptual Site Plan" means that certain conceptual site plan approved by the City in conjunction with Planned Unit Development No. PUD-128-12 generally depicting the proposed development and use of the Site, which is attached hereto as Exhibit J and incorporated herein by reference.

"Conditions Precedent" shall mean the City's Conditions Precedent and Developer's Conditions Precedent set forth in Section 205.

"Construction Commencement Date" means the date that is set forth in the Schedule of Performance as the date upon which the Commencement of Construction is to occur.

"Construction Drawings" is defined in Section 302.

"Construction Financing" is defined in Section 311.1 hereof.

"Construction Lender" is defined in Section 311.

"Conveyance" means the conveyance of the Site to the Developer by Grant Deed.

"Cost Reimbursement Deposit" is defined in Section 201.1.

"Covenants" means the covenants, obligations and promises of Developer hereunder, including without limitation the covenants, obligations and promises set forth in Section 102.2, 103, 204.2, 204.3, 301, 303 through 309, inclusive, 400, 503 and 603, which Covenants shall survive the Closing, run with the land and be binding upon heirs, successors and assigns of Developer.

"Covenants Consideration" means, collectively, the economic assistance to be provided by the City to the Developer as provided in Section 407 hereof.

"Date of this Agreement" means the date of approval of the Agreement by the City.

"Declaration" means a Declaration of Covenants, Conditions and Restrictions to be recorded against the Site which will be mutually agreed to by the City and the Developer prior to Closing, which Declaration shall address the management, operation, rules of conduct, security and access rights and other easements with respect to the Project.

"Default" is defined in Section 501.

"Department of Finance" or **"DOF"** means the California Department of Finance.

"Deposit" is defined in Section 201.3.

"Developer" means Land & Design, Inc., a California corporation, and any affiliate, assignee or successor thereto permitted pursuant to the terms of this Agreement. As of the date

of this Agreement, Matthew Reid and David Rose have, in the aggregate, has (i) at least a fifty-one percent (51%) ownership interest in Land & Design, Inc., and (ii) subject to the customary rights of other non-managerial members, partners or shareholders, as applicable, operational and managerial control of Developer and, subject to Section 103 hereof, will retain same until the issuance of Release of Construction Covenants.

"Developer Improvements" means the Hotels, the Retail/Restaurant Entertainment Component, the Parking Structures, each as generally described in Recital B above and/or more particularly described herein and in the Scope of Development, and such other related improvements required and/or contemplated to be constructed on the Site pursuant to this Agreement and the Land Use Approvals.

"Developer Parties" means collectively Developer and Matthew Reid and David Rose.

"Developer/City Request" is defined in Section 621.

"Developer's Conditions Precedent" is defined in Section 205.2.

"Development Agreement" means a development agreement pursuant to Government Code Section 65864 *et seq.*

"Due Diligence Date" means ninety (90) days following the later of (a) Date of this Agreement or (b) the date the City has fee title to all of the Site.

"Enforced Delay" is defined in Section 602.

"Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 USC §§ 1801 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended (42 USC §§ 6901 *et seq.*), the Toxic Substances Control Act (15 USC §§ 2601 *et seq.*), the Insecticide, Fungicide, Rodenticide Act (7 USC §§ 136 *et seq.*), the Superfund Amendments and Reauthorization Act (42 USC §§ 6901 *et seq.*), the Clean Air Act (42 USC §§ 7401 *et seq.*), the Safe Drinking Water Act (42 USC §§ 300f *et seq.*), the Solid Waste Disposal Act (42 USC §§ 6901 *et seq.*), the Surface Mining Control and Reclamation Act (30 USC §§ 1201 *et seq.*), the Emergency Planning and Community Right to Know Act (42 USC §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 USC §§ 655 and 657), the California Underground Storage of Hazardous Substances Act (Health and Safety Code §§ 25280 *et seq.*), the California Hazardous Substances Account Act (Health & Safety Code §§ 25300 *et seq.*), the Porter-Cologne Water Quality Act (Water Code §§ 13000 *et seq.*), together with any amendments of or regulations promulgated thereunder and any other federal, state, and local laws, statutes, ordinances, or regulations now in effect that pertain to environmental protection, occupational health or industrial hygiene.

"Escrow" is defined in Section 201.3.

"Escrow Agent" is defined in Section 201.3.

"Existing Land Use Approvals" means (i) General Plan Amendment No. GPA-2-12(B), approved by the Garden Grove City Council on November 13, 2012; (ii) Planned Unit Development No. PUD-128-12, adopted by the Garden Grove City Council on November 27, 2012; and (iii) the International West Hotel – Harbor East (Site C) Mitigated Negative Declaration and Mitigation Monitoring Program adopted by the Garden Grove City Council on November 13, 2012.

"Finding of Completion" means a certification issued to the Agency by the Department of Finance pursuant to California Health & Safety Code Section 34179.7.

"Franchisor" or "Franchisors" is defined in Section 103.6.

"Franchise Agreement" or "Franchise Agreements" is defined in Section 103.6.

"Full Service Hotel" means those Hotels, the characteristics and the minimum standards for which are described in Recital B, in Section 301.1, and in Scope of Development. **"Full Service Hotel"** means one of the Full Service Hotels.

"Governmental Requirement(s)" means all valid and enforceable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County of Orange, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer or the Site, including, without limitation, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation (to the extent applicable), Labor Code Sections 1770 *et seq.*, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 1135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

"Grant Deed" or "Grant Deeds" means one or more grant deeds in the form of Exhibit F attached hereto and incorporated herein by reference, by which the City shall convey fee title to the City Property and the Agency Property to the Developer.

"Hazardous Materials" means any toxic substance, material, or waste which is now regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Law including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) a petroleum

or refined petroleum product, including without limitation petroleum-based paints and solvents, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether (MTBE); (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, (xii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, (xiii) any flammable or explosive materials, (xiv) a radioactive material, or (x) lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds and including any different products and materials which have been found to have adverse effects on the environment or the health and safety of persons.

"Holder" is defined in Section 311.2.

"Hotels" means the Upper Upscale Hotel(s) and the Limited and/or Full Service Hotel(s), and **"Hotel"** means any one (1) of the Upper Upscale Hotel(s) and the Limited and/or Full Service Hotels.

"Hotel Operator" or **"Hotel Operators"** is defined in Section 103.6.

"Indemnify" means indemnify, defend, pay for and hold harmless.

"Indemnitees" means the City and the Agency, and their respective representatives, officers and employees.

"Insurance" is defined in Section 306 *et seq.*

"Land Use Approvals" means the Existing Land Use Approvals, the Subdivision Map, the Development Agreement, conditional use permits to allow for the sale of alcoholic beverages in the Separate Components, conditional use permit(s) to allow for the operation of a health club(s), spa(s), and/or gym(s) on the Site, site plan approvals for each freestanding pad to be constructed as part of the Retail/Restaurant/Entertainment Component, grading permits, building permits, plumbing permits, electrical permits, and any and all land use and/or other entitlements, permits, or approvals required by the Governmental Requirements in connection with construction and operation of the Developer Improvements.

"Legal Description" means the legal description of the Site attached hereto as Exhibit B and incorporated herein by reference.

"Liabilities" means liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines, and monetary sanctions), giving rise to losses, costs or expenses (including, without limitation, consultants' fees, and reasonable attorneys' fees) of any kind or nature and for any damages, including damages to property or injuries to person, including accidental death, (including reasonable attorneys' fees and costs in connection therewith).

"Limited Service Hotels" means those Hotels, the characteristics and the minimum standards for which are described in Recital B, in Section 301.1, and in Scope of Development. **"Limited Service Hotel"** means one of the Limited Service Hotels. WE NEED TO ADJUST THE DOCUMENT TO APPLY TO THE 2ND FULL SERVICE HOTEL CONCEPT AT THE HIGHT LEVEL OF TOT REBATES....

"Loan Balance" means, with respect to any Holder and its mortgage or deed of trust, the sum of the following amounts: (a) the aggregate unpaid amount (including, but not limited to, principal, protective advances, interest, fees, costs and expenses) owing to the Holder under the loan documents ("Holder Loan Documents") secured by such Holder's mortgage or deed of trust upon the Site (or any part thereof) immediately prior to the revesting of title in City (referred to herein as "Revesting") in accordance with this Agreement, whether City exercises such right of Revesting prior to such Holder's acquisition of Site (or portion thereof) by foreclosure or deed in lieu of foreclosure, or after completion of a foreclosure under such Holder's mortgage or deed of trust (or acceptance and recordation of a deed-in-lieu of such foreclosure); plus (b) all third party costs and expenses reasonably incurred by such Holder (and/or such Holder's Nominee) under, or in connection with the enforcement of the applicable Holder Loan Documents, including, without limitation, foreclosure costs and expenses (or deed-in-lieu of foreclosure costs and expenses) (such costs and expenses to include, but not be limited to, title charges, default interest, appraisals, environmental assessments and reasonable attorneys' fees and expenses); plus (c) if City commences the exercise of its Revesting after such Holder's (or its Nominee's) acquisition of the Site (or any portion thereof) by foreclosure or deed-in-lieu of foreclosure, all third party costs and expenses, if any, reasonably incurred by such Holder (and/or such Holder's Nominee) in connection with the management and operation of the Site subsequent to the date upon which a foreclosure under such mortgage or deed of trust is completed [or such Holder or its Nominee accepts a deed in lieu of foreclosure]; plus (d) all third party costs and expenses reasonably incurred by such Holder (and/or such Holder's Nominee) in connection with the construction, Developer Improvements (including tenant improvements), restoration, repair and equipping of the Site (or any portion thereof); plus (e) if City commences the exercise of its right of Revesting after such Holder's (or its Nominee's) acquisition of the Site (or any portion thereof) by foreclosure or deed-in-lieu of foreclosure, an amount equal to the interest that would have accrued on the aggregate of the amounts described above under the Holder Loan Documents had all such amounts become part of the debt secured by such Holder's mortgage or deed of trust and had such debt continued in existence from the date of such foreclosure (or acceptance of a deed-in-lieu of foreclosure) by such Holder or its Nominee to the date the Revesting occurs and City reenters in accordance with this Agreement. (For purposes of this definition, the City's right to Revest in accordance with this Agreement shall not be deemed to have occurred prior to the date the Loan Balance is paid to the Holder (or its Nominee) in accordance with the Agreement). Each Holder (or its Nominee) shall provide City with its calculations of the Loan Balance and documents in support thereof within ten (10) days after written demand therefore by the City.

"Long Range Property Management Plan" means the long-range property management plan authorized by California Health and Safety Code Section 34191.5.

"Memorandum of Agreement" is attached hereto as Exhibit K and incorporated herein by reference.

"MND" means the International West Hotel – Harbor East (Site C) Mitigated Negative Declaration and Mitigation Monitoring Program adopted by the Garden Grove City Council on November 13, 2012 pursuant to Resolution No. 9153-12.

"Negotiated Purchase Agreement" is defined in Section 201.1.

"Nominee" means an entity which is owned and controlled by any Holder.

"Notice" is defined in Section 601.

"Official Records" means the official records of the Office of the Registrar Recorder of Orange County, California.

"Offsite Infrastructure" means the traffic signal and raised median improvements described in Performance Standards Nos. 8 and 9, respectively, of the PUD, and such other public improvements required to be constructed and/or installed in the public right-of-way pursuant to the Land Use Approvals (excluding any sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscaping, and/or other improvements to be constructed from the back of the curb face by Developer pursuant to the Scope of Development), including any required environmental mitigation measures directly related to the construction and/or installation of such public improvements.

"Oversight Board" means the oversight board to the Agency created and existing pursuant to the CRL and the RDA Dissolution Act (as amended by AB 1484).

"Parcel(s)" means one or more of the parcels into which the Site is divided pursuant to the Subdivision Map.

"Parking Structures" are the multi-level parking structures described in the Scope of Development.

"Permitted Transfer[s]" is defined in Section 103.2.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association or other entity.

"Phase 1 Environmental Assessment" means an assessment to identify Recognized Environmental Concerns defined under ASTM Standards E-1527-00 as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, past release, or material threat of a release of any hazardous substance or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

"Phase II Environmental Assessment" means an evaluation of the Recognized Environmental Concerns identified in the Phase I Environmental Site Assessment for the purpose of providing sufficient information regarding the nature and extent of contamination.

"Pre-Approved Limited Service Flag(s)/Operator(s)" is attached hereto as Exhibit L and incorporated herein by reference.

"Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s)" is attached hereto as Exhibit L and incorporated herein by reference.

"Pre-Approved Upper-Upscale Flag(s)/Operator(s)" is attached hereto as Exhibit L and incorporated herein by reference.

"Presence" means the presence, release, use, generation, discharge, storage and disposal of any Hazardous Materials.

"Prevailing Wage and Public Works Requirements" are attached hereto as Exhibit I and incorporated herein by reference.

"Project" means the development and operation of the Developer Improvements.

"Project Architect" means the architect retained by the Developer to prepare the Construction Drawings and supervise construction of the Project.

"PUD" means Planned Unit Development No. PUD-128-12, approved by the Garden Grove City Council on November 27, 2012 pursuant to Ordinance No. 2824.

"Recognized Environmental Concerns" means the presence or possible presence of any hazardous substances or petroleum products on the Site under conditions that indicate an existing or possible release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the Site or into the ground, ground water, or surface water of the Site. The term is not intended to include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not Recognized Environmental Conditions.

"Release of Construction Covenants" means the document which evidences Developer's satisfactory Completion of Construction of the Developer Improvements, or a part thereof, as set forth in Section 310, in the form of Exhibit G attached hereto and incorporated herein by reference.

"Remaining Revenues" is defined in Section 4.09(b) THIS SECTION DOES NOT EXIST?.

"Retail/Restaurant/Entertainment Component" is defined in Recital B and, as provided therein, means the retail/restaurant/entertainment portion of the Project, consisting of a minimum of five thousand (5,000) square feet and a maximum of sixty-five thousand (65,000) square feet, including at least one (1) restaurant.

"Revesting" is defined in the definition of "Loan Balance."

"Right of Entry" is described in Section 204 hereof and attached hereto as Exhibit H and incorporated herein by reference.

"Sales Tax Revenues" means those sales tax revenues received by the City pursuant to the Bradley Burns Uniform Sales and Use Tax Law (California Revenue and Taxation Code Section 7200 *et. seq.*) due to operation of the Separate Components of the Developer Improvements.

"Schedule of Performance" means that certain Schedule of Performance attached hereto as Exhibit D and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time due to the application of Section 602 hereof and as set forth therein or as otherwise mutually agreed upon in writing between Developer and the City Manager, and the City Manager is authorized to make such revisions as he deems reasonably necessary.

"Scope of Development" means that certain Scope of Development attached hereto as Exhibit C, which describes the scope, amount and quality of development of the Developer Improvements to be completed by Developer and City Improvements to be completed by City pursuant to the terms and conditions of this Agreement.

"Separate Components of the Developer Improvements" or **"Separate Components"** means each Hotel, the Retail/Restaurant/Entertainment Component and the Parking Structures, and/or the separate parcels comprising each.

"Site" means, collectively, the City Property and the Agency Property, and, if the Developer elects to so add it to the Site pursuant to Section 301.4 hereof, the Third Party Property.

"Site Condition" is defined in Section 204.2.

"Site Map" means the map of the Site and the Sunbelt Property which is attached hereto as Exhibit A and incorporated herein by reference.

"State" means the State of California.

"Subdivision Map" means a tract map, parcel map, condominium map, lot line adjustment and/or other subdivision in compliance with all applicable laws, consolidating the Site and creating separate legal parcels for some or all of the Separate Components to the extent and in size and location required by Developer and approved by the City.

"Tax Rebate Payments" means, collectively, the aggregate amounts to be paid to Developer pursuant to Section 408 hereof. As used in this Agreement, the term "Tax Rebate Payments" shall be deemed to mean payment to the Developer of an amount of money as measured by City revenue from a category of taxes (i.e., Transient Occupancy Tax Revenues and/or Sales Tax Revenues). Under no circumstances shall the term "Tax Rebate Payments" be construed to mean payment to the Developer of an amount of money from a specific source or fund.

"Tenant(s)" mean the business(es) occupying the Retail/Restaurant/Entertainment Component, regardless of whether the interest of the owner(s) of such business(es) in the applicable portion(s) of the Site is that of an owner(s), tenant(s), or licensee(s).

"Third Party Property" means that certain property owned by third parties and identified on the Site Map as the Third Party Property and described in the Legal Description, which Developer may, at Developer's sole cost and expense, elect to purchase, lease or otherwise acquire and to add to the Site for purposes of development and operation of a portion of the Retail/Restaurant/Entertainment Component.

"Title Company" is defined in Section 202 hereof.

"Title Policies" means the CLTA Policy and the ALTA Policies and Endorsements as defined in Section 203 hereof.

"Title Report" is defined in Section 202.

"Transfer" means any total or partial sale, transfer, conveyance, assignment, subdivision, financing, refinancing, lease, sublease, or license of the Site or any portion thereof.

"Transferee" means a voluntary or involuntary successor in interest to the Developer.

"Transient Occupancy Tax Revenues" means those revenues imposed and collected by the City with respect to the Hotels pursuant to Chapter 3.12 of Title 3 of the Garden Grove Municipal Code.

"Upper Upscale Hotel(s)" means a Hotel, the characteristics and minimum standards for which are described in Recital B, in Section 301.1, and in the Scope of Development.

"Vacation Ownership Resort (Timeshare)" A timeshare facility in which a person or entity receives the right in perpetuity, for life or for a specific period of time, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, space, or portion of real property for a period of time which has been or will be allocated from the use or occupancy periods into which the facility has been divided. A vacation ownership resort interest may be coupled with an estate in real property, or it may entail a license, contract, membership, or other right of occupancy not coupled with an estate in the real property.

102. Representations, Warranties and Covenants.

102.1 City Representations Warranties and Covenants. The City hereby makes the representations, warranties and covenants contained below in this Section 102.1. All of the representations and warranties set forth in this Section 102.1 are effective as of the Date of this Agreement, are true in all material respects as of the Date of this Agreement, and shall be true in all material respects as of the Closing Date, and each shall survive the execution of this Agreement without limitation as to time.

(a) The City is a municipal corporation of the State of California, existing pursuant to the general laws and Constitution of the State of California. The execution and delivery of this Agreement by the City has been fully authorized by all requisite actions.

(b) The City's execution and delivery of this Agreement does not violate any applicable laws, regulations, or rules nor to the best of City's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which the City is a party, or any judicial or regulatory decree or order to which the City is a party or by which it is bound; provided however that while City believes this Agreement to be enforceable in accordance with its terms, City makes no representations or warranties regarding the enforceability hereof.

(c) The City has not made an assignment for benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating to the City under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against the City any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to the City under the Federal Bankruptcy Code.

(d) All documents, instruments and other information delivered by the City to Developer pursuant to this Agreement, other than documents, instruments and other information received by City from third parties, are, to the best of City's knowledge, true, accurate, correct and complete in all material respects.

(e) The City has taken all legally required actions, and no further consent, approval, or authorization of any third person is required with respect to the City's execution, delivery, and performance of this Agreement, other than consents, approvals, and authorizations which have already been unconditionally given or which are otherwise expressly contemplated by this Agreement and/or are conditions precedent to City's performance under this Agreement.

(f) The City is not a "foreign person" within the parameters of Foreign Investors in U.S. Real Property Tax Act ("FIRPTA"), or is exempt from the provisions of FIRPTA, or the City has complied and will comply with all the requirements under FIRPTA.

(g) Until the Closing Date and thereafter, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.1 not to be true as of the Closing Date, give written notice of such fact or condition to Developer as soon as is reasonably practicable.

Each of the foregoing items (a) through (g), inclusive shall be deemed to be ongoing representations, warranties and covenants.

102.2 Developer's Representations, Warranties and Covenants. Developer hereby makes the representations, warranties and covenants contained below in this Section 102.2. All of the representations and warranties set forth in this Section 102.2 are effective as of the Date of this Agreement, are true in all material respects as of the Date of this Agreement, and shall be true in all material respects as of the Closing Date, and each shall survive the execution of this Agreement without limitation as to time.

(a) Developer is a duly organized California corporation and in good standing under the laws of the State of California and is authorized to carry on its business in California as such business is now conducted and to own and operate its properties and assets now owned and being operated by it, and as set forth in and anticipated by this Agreement. Developer has full right, power and lawful authority to enter into this Agreement and the execution and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer. Developer has provided the City with true and correct copies of documentation reasonably acceptable to the City Manager, or his/her designee, designating the party authorized to execute this Agreement on behalf of Developer.

(b) Developer's execution, delivery and performance of its obligations under this Agreement will not violate any applicable laws, regulations, or rules nor to the best of Developer's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which Developer is a party, or any judicial or regulatory decree or order to which Developer is a party or by which it is bound.

(c) Developer has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating to Developer under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against Developer any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to Developer under the Federal Bankruptcy Code.

(d) All documents, instruments, and other information delivered by Developer to the City pursuant to this Agreement are, to the best of Developer's knowledge, true, accurate, correct and complete in all material respects.

(e) This Agreement and all documents to be delivered by Developer pursuant to this Agreement, when executed by Developer and delivered, shall constitute the legal, valid and binding obligation of Developer. The Developer has taken all legally required actions, and no further consent, approval, or authorization of any third person is required with respect to the Developer's execution, delivery, and performance of this Agreement, other than consents, approvals, and authorizations which have already been unconditionally given.

(f) Until the Closing Date and thereafter, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.2 not to be true as of the Closing Date, immediately give written notice of such fact or conditions to the City.

Each of the foregoing items (a) to (f), inclusive shall be deemed to be ongoing representations, warranties and covenants.

103. Transfers of Interest in Site or Agreement and/or Change in Ownership and/or Control of Developer.

103.1 Prohibition Against Transfers and/or Change in Ownership and/or Control of Developer Prior to Release of Construction Covenants.

(a) As of the date of this Agreement, Developer represents and warrants that Matthew Reid and David Rose have, in the aggregate ~~has~~ (i) at least a fifty-one percent (51%) ownership interest in Developer and (ii) subject to the customary rights of other non-managerial members, partners or shareholders, as applicable, operational and managerial control of Developer and, subject to this Section 103, shall retain same until the issuance of Release of Construction Covenants. Notwithstanding the foregoing, a Transfer to an entity in which Matthew Reid and David Rose has not less than ten percent (10%) ownership interest, or the subsequent reduction of the ownership interest held by Matthew Reid and David Rose in any entity, shall be permitted with City's approval, which approval may be granted or withheld in the sole and absolute discretion of the City, if such Transfer or reduction is required by an equity participant or joint venture partner as a condition to providing additional funds for the development of the Developer Improvements or applicable portion thereof.

(b) In addition to the foregoing, except as expressly set forth in Section 103.2 below, for the period commencing upon the Date of this Agreement and until the issuance of the Release of Construction Covenants, no Transferee shall acquire any rights or powers under this Agreement, nor shall Developer make any Transfer, of the whole of the Site or any part, of the Developer Improvements without the prior written approval of the City, which approval may be granted or withheld in the sole and absolute discretion of the City.

(c) Following the issuance of the Release of Construction Covenants, any Transfer shall be governed by Section 103.3. City and Developer hereby acknowledge that, subject to Section 103.2 below, Developer likely will form separate legal entities to own and develop the separate components (i.e., each Hotel, the Parking Structure, the separate pads comprising the Retail/Restaurant/Entertainment Component, etc.) of the Developer Improvements.

103.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, both before and after the issuance of the Release of Construction Covenants, the City approval of an assignment of this Agreement or Transfer of the Site (or any portion thereof), shall not be required in connection with any of the following (each of which shall be "Permitted Transfer"):

(a) The conveyance or dedication of any portion of the Site to the City, City or other appropriate governmental agency, or for the purpose of the granting of easements, permits or similar rights to facilitate construction, use and/or operation of the Developer Improvements.

(b) Any Transfer for Construction Financing purposes (subject to such Construction Financing being in compliance with Section 311.1 herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Developer Improvements, as applicable.

(c) Any collateral assignment of the Tax Rebate Payments for purposes of borrowing money to be used on the Project.

(d) Notwithstanding the foregoing, aAny Transfer to an entity in which (i) Developer and/or Matthew Reid and Dave Rose retain operational control over the management, development and construction of the Developer Improvements (subject to the right of non-managerial members, partners, or shareholders, as applicable, to exercise voting rights with respect to

so-called "major decisions") and (ii) Developer and/or Matthew Reid and Dave Rose in the aggregate have not less than fifty-one percent (51%) ownership interest.

(e) Any Transfer to a Holder, or its Nominee by foreclosure or deed in lieu of foreclosure, or to a third party purchaser at a foreclosure sale or after foreclosure by the Holder or its Nominee.

(f) Any Transfer to a lessee or sublessee of a portion of the Project that is incidental to the primary purpose of the Developer Improvements (by example only, and not as a limitation, lease of restaurant space), provided such lessee or sublessee is consistent with the overall purposes of the Development Improvements, this Agreement, and the Covenants.

(g) Any Transfer of a separate legal parcel within the Site and the Hotel(s) thereon after the Applicable Covenants Consideration Period with respect thereto has expired.

103.3 City Consideration of Requested Transfer After Release of Construction Covenants. Subject to City's rights pursuant to Section 103.6, below, and without limiting Developer's rights under Section 103.2 above, all Transfers following issuance of a Release of Construction Covenants (and prior to expiration of the Applicable Covenants Consideration Period) shall be in accordance with the provisions of this Section 103.3. In the event of any proposed Transfer following the issuance of a Release of Construction Covenants (and prior to expiration of the Applicable Covenants Consideration Period) with respect to any or all of the Developer Improvements, Developer shall deliver written Notice to City requesting approval of such Transfer, which Notice shall be accompanied by sufficient evidence regarding the proposed Transferee's net worth, development and operational qualifications and experience, and its financial resources, in sufficient detail to enable the City to evaluate the proposed Transferee pursuant to the criteria set forth hereinbelow and as reasonably determined by the City. In this regard, the City agrees that it will not unreasonably withhold approval of a request of a Transfer made after the issuance of the Release of Construction Covenants with respect to the applicable portion of the Site. The City shall evaluate each proposed Transferee over which City has approval rights on the basis of its qualifications and experience, and its financial commitments and resources. City may not disapprove any such proposed Transferee that demonstrates to the reasonable satisfaction of the City that the transferee/assignee or its guarantor has a net worth sufficient to provide the requisite equity and access to debt offered by an institutional commercial real estate lender so as to permit the financing of the acquisition and operation of the Developer Improvements located on the applicable portion of the Site and transferee/assignee and/or its contract manager or the individual within the contract management entity responsible for management of such Developer Improvements has at least ten (10) years recent experience owning or operating hotel/retail/restaurant projects similar to such Hotel(s). Nothing in this Section 103.3 shall limit City's rights to approve the selection and/or change of all Hotel Operators, Franchisors, and Tenants pursuant to Section 103.6, below.

103.4 Assignment and Assumption Agreement. For so long as City is required to provide any Covenants Consideration, an executed Assignment and Assumption Agreement (or a document effecting a Transfer that includes the substantive provisions of the Assignment and Assumption Agreement) shall be required for all proposed Transfers with respect to the portion of the Site so transferred, whether or not City's consent is required with respect to such Transfer. If the Transfer involves the obligation of the Transferee to construct specific Developer Improvements, City is hereby granted the right to compel Developer to enforce any such construction obligation.

Upon the full execution of an Assignment and Assumption Agreement, the Transferee thereafter shall have all of the rights and obligations of the Developer under this Agreement with respect to the portion of the Site and the Developer Improvements Transferred thereto and/or developed thereby.

103.5 City Action Regarding Requested Transfer. Within thirty (30) days after the receipt of a written Notice requesting City approval of a Transfer pursuant to Sections 103.3 and 103.7, the City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to the City such further information as may be reasonably requested.

103.6 Initial Selection and/or Subsequent Changes or Transfers with Respect to the Hotel Operator, Franchisor, and Tenants; Approval of the Franchise Agreement. The selection of the operator for each Hotel (separately, the "Hotel Operator" and, collectively, the "Hotel Operators") and brand or franchisor for each Hotel (separately, the "Franchisor" and, collectively, the "Franchisors"), as well as the franchise agreement or management agreement between the Franchisor and Developer for each Hotel (separately, the "Franchise Agreement" and, collectively, the "Franchise Agreements"), shall be subject to approval by the City, acting in its reasonable discretion and based on consistency with the quality of the Hotels as described in Section 301.1 and the Scope of Development both initially and until expiration of the Applicable Covenants Consideration Period for each Hotel. Both initially and during the Applicable Covenants Consideration Period, City shall also have the right to approve, acting in its reasonable discretion, all Tenants based on consistency with the quality of the Upper-Upscale Hotel as required herein. Notwithstanding anything to the contrary contained herein, the Pre-Approved Upper-Upscale Flag(s)/Operator(s), Pre-Approved Limited Service Flag(s)/Operator(s) and Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s) are each hereby approved by the City for all purposes of this Agreement.

103.7 Transfer of Covenant Consideration. Notwithstanding anything herein to the contrary (i) both before and after the issuance of the Release of Construction Covenants, except as to a collateral assignment described in Section 103.3(c), the approval of an assignment of the Tax Rebate Payments, or any portion thereof, separate and apart from a Transfer of the Site or the corresponding part thereof (i.e., an assignment of the Tax Rebate Payments not in conjunction with the Transfer of the applicable portion of the Site and Hotel(s)), shall require the consent of the City which consent shall be granted or withheld in the absolute discretion of the City; and (ii) no separate or additional approval of an assignment of the applicable Tax Rebate Payments, or a portion thereof, that is made in conjunction with a Transfer of the Site or the corresponding part thereof shall be required from the City.

103.8 Purpose and Effect of Restrictions on Transfers and/or Change in Ownership and/or Control of Developer.

(a) The restrictions contained in this Section 103 are imposed because qualifications and identity of Developer are of particular concern to the City, and it is because of those qualifications and identity that the City has entered into this Agreement with Developer. The Parties specifically affirm City's reliance upon the qualifications and identity of Developer to undertake and perform the items set forth in the Agreement in exchange for City's economic assistance, which assistance Developer intends to employ to generate additional income from the Hotel(s), and that Developer's qualifications and performance under this Agreement were specifically

bargained for by the City in exchange for City's assistance. Developer hereby agrees that no voluntary or involuntary successor to any interest of Developer under a Transfer or a change in ownership and/or control of Developer not permitted by this Agreement shall acquire any rights pursuant to this Agreement, and any purported Transfer or change of ownership and/or control of Developer in violation of the provisions set forth herein shall be of no legal force and effect.

(b) Notwithstanding anything in this Agreement which is or appears to be to the contrary, Developer agrees that, in addition to all other City rights with respect to Transfers subject to City approval under this Agreement, the City shall have the right to refuse to consent to any Transfer if Developer is then in Breach or Default of any of its obligations under this Agreement; provided, that if such Breach or Default is a non-monetary Breach or Default for which the cure has commenced and which will be cured on or prior to the effectiveness of such proposed Transfer, City may, rather than withholding consent to the proposed Transfer solely because of such Breach or Default, condition such consent upon the complete cure of such Breach or Default on or prior to the effectiveness of the Transfer; and, provided further, that City's waiver of this restriction on Transfer shall not be construed as a waiver of any Breach or Default or of City's remedies arising therefrom, nor shall any Transfer in any way restrict or limit City's rights and remedies arising from any Breach or Default hereunder, whether such Breach or Default occurred prior to or after such Transfer.

(c) The provisions of this Section 103 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Developer under the terms set forth herein.

200. DISPOSITION OF THE SITE

201. Conveyance of the Site to Developer. Subject to the satisfaction of the Conditions Precedent set forth hereinbelow, on or before the date set forth in the Schedule of Performance, the City shall cause the Conveyance of the Site to Developer in the condition described in Sections 201.2, 204.2 and 301.2 and the Scope of Development in consideration for compliance with the terms and conditions of this Agreement, and Developer shall accept Conveyance in accordance with the terms hereof. Developer expressly acknowledges and agrees that City has no duty or obligation to acquire and/or convey the Third Party Property to Developer, and that, if Developer desires to add the Third Party Property to the Site for purposes of constructing a portion of the Project thereon, then Developer, and not City, shall be responsible for any and all costs of acquiring the necessary rights and interests in the Third Party Property.

201.1 [LEFT BLANK INTENTIONALLY] ~~Consideration for Site.~~ The consideration for the Conveyance will be the Developer's construction and operation of the Project in accordance with this Agreement, and its promise to otherwise be bound by the Covenants set forth herein; provided however, Developer has deposited with the City, within thirty (30) days of the Date of this Agreement, the sum of Fifty Thousand Dollars (\$50,000) ("Cost Reimbursement Deposit"), which Cost Reimbursement Deposit the City may use to pay for costs incurred by City in connection with the implementation of the Agreement. Developer will be refunded the unexpended portion of the Cost Reimbursement Deposit in the event that Developer acquires the Site pursuant to this Agreement (in which case the unexpended portion of the Cost Reimbursement Deposit will be refunded to Developer upon the Commencement of the Developer Improvements) or this Agreement is terminated (in which case the unexpended portion of the Cost Reimbursement Deposit will be refunded to Developer upon the termination of this Agreement) other than due to a Default by Developer.

201.2 Condition of Site. EXCEPT AS SET FORTH IN SECTIONS 204 AND 301.2, DEVELOPER HAS AGREED TO ACCEPT POSSESSION OF THE SITE ON THE CLOSING DATE ON AN "AS IS" BASIS. CITY AND DEVELOPER AGREE THAT, SUBJECT TO SECTIONS 204 AND 301.2 HEREOF, THE PROPERTY SHALL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET OFF OR REDUCTION IN CONSIDERATION, AND, EXCEPT AS SET FORTH IN SECTIONS 204 AND 301.2 HEREOF, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND SELLER DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY.

201.3 Opening and Close of Escrow. The Conveyance of the Site shall be consummated on the date ("Closing Date") set forth in the Schedule of Performance but in no event later than September 1, 2015 ("Closing" or "Close of Escrow"), through an escrow (the "Escrow") established at ~~First American Title/Escrow (Jim Sardo) West Coast Escrow or another escrow company mutually agreeable to the parties~~ (the "Escrow Agent") which Escrow shall be opened within thirty (30) days following the Date of this Agreement. The scheduled Closing of September 1, 2015, is an outside date, Section 602 notwithstanding, but is subject to extension as provided in the Schedule of Performance. Escrow Agent is hereby authorized to effect the Closing upon satisfaction of the Conditions to Closing set forth in Section 205 by taking the following actions:

(a) Current real property taxes, personal property taxes, and installments of assessments and all items of income (if any) and expense regarding the Site shall be prorated as of the Closing.

(b) Concurrently with the Closing of Escrow, Escrow Agent shall cause the Title Company to issue the Title Policy, as described in Section 203.

(c) Escrow Agent shall pay and charge: (i) Developer for the following: (aa) the recording cost of the Grant Deeds and other closing documents, (bb) the premium for the CLTA Policy, (cc) the additional premium for the ALTA Policies and Endorsements (as hereinafter defined), if any, (dd) half of the escrow fees charged by the Escrow Agent, (ee) Developer's share of proration; and (ii) City for the following: (ff) City's share of prorations and (gg) any transfer taxes or fees.

(d) Escrow Agent shall record, in the following order, the following documents:

- (i) The Declaration;
- (ii) The Grant Deeds; and
- (iii) The Memorandum of Agreement.

all duly executed and acknowledged by the appropriate party.

201.4 Submittal of Documents.

(a) At least two (2) days prior to the Close of Escrow, Developer shall execute and submit to Escrow Agent the following:

(i) Two (2) originals, duly executed by Developer and acknowledged, of the Grant Deeds accepting title subject to the covenants set forth therein.

(ii) Two (2) originals of the Declaration and Memorandum of Agreement duly executed by Developer and acknowledged.

(iii) Any documents to be recorded as part of Developer's financing of the Project which City has approved in writing pursuant to Section 311, along with a request for notice of default executed by the City.

(b) At least two (2) days prior to the Close of Escrow, City shall execute and deliver to Escrow the following:

(i) Two (2) originals of the Grant Deeds duly executed by City and acknowledged; and

(ii) Two (2) originals of the Declaration and Memorandum of Agreement duly executed by City and acknowledged.

201.5 Post-Closing Deliveries by Escrow.

(a) After the Close of Escrow, the Developer shall be delivered the following documents:

(i) The Grant Deeds duly executed by the appropriate party or parties and recorded in the Official Records of Orange County.

(ii) A non-foreign affidavit in a form reasonably acceptable to Developer.

(iii) A conformed copy of the Declaration.

(iv) A conformed copy of the Memorandum of Agreement.

(b) After the Close of Escrow, City shall be delivered the following documents:

(i) A conformed copy of the recorded Grant Deeds and this Agreement.

(ii) The recorded original of the Declaration.

(iii) The recorded original of the Memorandum of Agreement.

(iv) The recorded original of the request for notice of default.

(c) At Close of Escrow, the City and Developer shall each execute counterpart closing statements in customary form together with such other documents as are reasonably necessary to consummate the Closing.

201.6 Payment of Escrow Costs. At Close of Escrow, both parties shall pay their respective costs by wire transfer, or by cashier's check drawn on a bank reasonably acceptable to the Escrow Agent. In the event of termination of this Agreement prior to the Close of Escrow due to failure of a condition set forth in Section 205, the parties shall each be responsible for one-half of any Escrow cancellation costs. In the case of termination prior to the Close of Escrow due to a default by one of the parties hereto, such defaulting party shall pay one hundred percent (100%) of all Escrow Cancellation Costs.

202. Review of Title. Within ten (10) days after the opening of Escrow, City shall cause First American Title Insurance Company, or another title company mutually agreeable to both parties (the "Title Company"), to deliver to Developer a preliminary title report (the "Title Report") with respect to the Site, together with legible copies of all documents underlying the exceptions ("Exceptions") set forth in the Title Report. Developer shall cause the preparation, at its cost and expense, of a ALTA Survey prepared by a California licensed surveyor (the "ALTA Survey"). Developer shall have thirty (30) days from its receipt of the Title Report and ALTA Survey within which to give written notice to City of Developer's approval or disapproval of any of such Exceptions. No deeds of trust, mortgages or other liens (all of which shall be removed by City prior to Closing), except for the lien of property taxes and assessments not yet due, shall be approved Exceptions. If Developer notifies City of its disapproval of any Exceptions in the Title Report or ALTA Survey, City shall have thirty (30) days from City's receipt of such notification to advise Developer that it will use commercially reasonable efforts or provide assurances satisfactory to Developer that such Exception(s) will be removed on or before the Closing. If City does not provide assurances satisfactory to the Developer that such Exception(s) will be removed on or before the Closing, Developer shall have thirty (30) days after the expiration of such thirty (30) day period to either give the City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions and conditions set forth in the ALTA Survey (and conditioned upon the issuance of any endorsements necessary to render title acceptable to Developer), or to give the City written notice that the Developer elects to terminate this Agreement in which event, the City and Developer shall each be responsible for one-half of any Escrow cancellation charges and neither Developer nor City shall have any further rights or obligations hereunder except as set forth in Section 307. The Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company or conditions set forth on the ALTA Survey after Developer has approved the condition of title for the Property hereunder. The foregoing periods of time shall be reasonably extended if any updates in the Title Report are provided to Developer after Developer approval of the Exceptions. City shall not voluntarily create any new exceptions to title following the Date of this Agreement, except for the recordation of documents in connection with the Closing as required herein. The Developer shall assume all non-delinquent assessments and taxes not specifically disapproved as provided herein.

203. Title Policy. At the Closing, the Title Company, as insurer, shall issue in favor of Developer, as insured, a CLTA owner's standard coverage policy or policies of title insurance with endorsements, if any, as may be required in Section 202 hereof with liability in an amount equal to the value of the Site as determined by the parties prior to Closing but not to exceed Ten Million Dollars (\$10,000,000) ("CLTA Policy"), or, at Developer's option and expense, an ALTA extended policy of title insurance and/or lender's policy of title insurance with any endorsements and/or

increased coverage amounts requested by Developer or its lender ("ALTA Policies and Endorsements") (collectively, the "Title Policies"), subject to the following:

(a) All nondelinquent general and special real property taxes and assessments for the current fiscal year; and

(b) If a CLTA policy is issued, the standard printed conditions and exceptions contained in the CLTA standard owner's policy of title insurance regularly issued by the Title Company.

(c) The provisions of this Agreement, the Grant Deeds and the Declaration.

(d) Any Exceptions to title approved by Developer pursuant to Section 202.

The Title Policies shall be combined with a policy insuring the personal property (Eagle 9 policy from the Title Company) with tie-in endorsements to cover the full insurable cost of the Project paid for by Developer.

204. Studies, Reports.

204.1 Site Investigation. Representatives of the Developer and any prospective users, following execution of the Right of Entry Agreement, shall have the right of access to the City Property, and to the Agency Property at such time, if ever, as City has the right of access to the Agency Property, for the purpose of making necessary or appropriate inspections, including geological, soils and/or additional environmental assessments. If Developer determines that there are Hazardous Materials in, on, under or about the Site, including the groundwater, or that the Site is or may be in violation of any Environmental Law, or that the condition of the Site is otherwise unacceptable to Developer, then the Developer shall notify the City and Escrow Holder prior to the Due Diligence Date. City and Developer shall thereafter have thirty (30) days to negotiate an agreement with respect to remediation of the Site, pursuant to which City shall commit to expend up to Two Hundred Fifty Thousand Dollars (\$250,000) for Site remediation. If, at the end of such thirty (30) day period, Developer and City have not come to an agreement with respect to remediation of the Site, Developer shall, within three (3) days thereafter, notify City whether it elects to go forward with the acquisition of the Site and pay all remediation costs in excess of Two Hundred Fifty Thousand Dollars (\$250,000), or whether it elects to terminate this Agreement, in which event the Developer and City shall each be responsible for one-half of any Escrow cancellation charges and neither Developer nor City shall have any further rights or obligations hereunder except as set forth in Section 307.

204.2 As-Is Environmental Condition. Subject to the terms of this Agreement, if the Developer elects to proceed with Close of Escrow, the Site shall be conveyed to the Developer in an "as is" environmental condition, with no warranty, express or implied by the City, as to the condition of the Site, the soil, its geology, the Presence of known or unknown faults, the suitability of soils for the intended purposes or the presence of known or unknown Hazardous Materials or toxic substances.

204.3 Indemnities and Release Re Hazardous Material.

(a) **Developer Indemnity.** As of the Closing, Developer, on behalf of itself and its successors in interest, hereby agrees and hereby shall Indemnify the Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of (i) the Presence of Hazardous Materials on the Site (excluding Public Streets) which Presence first occurred either before or after Close of Escrow, and (ii) the Presence of Hazardous Materials on the Site, which Hazardous Materials were not Hazardous Materials at the time of the Close of Escrow, but became Hazardous Materials after Close of Escrow as a result of an amendment to, or interpretation of, the Environmental Law; provided, that none of the same were directly and proximately caused by City or any of its agents, employees or contractors. City shall cooperate with Developer to ensure that City has assigned to Developer any and all rights that City acquired in its acquisition of the Site or any portion thereof to permit Developer's prosecution of claims against any third parties who are potentially responsible for such Hazardous Materials.

(b) **Developer Release.** As of the Closing, Developer, on behalf of itself and its successors in interest, agrees to and hereby shall release the Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of (i) the Presence of Hazardous Materials on the Site that first existed on the Site as of the Close of Escrow, but were discovered after Close of Escrow, and (ii) the Presence of Hazardous Materials on the Site, which Hazardous Materials were not identified and/or defined as such under the Environmental Laws at the time of Close of Escrow, but became Hazardous Materials after Close of Escrow as a result an amendment to, or interpretation of, the Environmental Law. Notwithstanding the foregoing, Developer is not releasing any person or entity other than the Indemnitees.

205. Conditions to Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions, which the parties shall exercise their best efforts to satisfy, within the times designated below:

205.1 City's Conditions Precedent. City's obligation to proceed with the Closing is subject to the fulfillment or waiver in writing by City of each and all of the conditions precedent described below ("City's Conditions Precedent"), which are solely for the benefit of City, and which shall be fulfilled or waived by the time periods provided for herein:

(a) **No Default.** Prior to the Close of Escrow, Developer shall not be in Default in any of its obligations under the terms of this Agreement.

(b) **Execution of Documents.** The Developer shall have executed any documents required hereunder and delivered such documents into Escrow.

(c) **Payment of Funds.** Prior to the Close of Escrow, Developer shall have paid all required costs of Closing into Escrow in accordance with Section 201.3 hereof.

(d) **Land Use Approvals.** The Developer shall have received approval for all Additional Land Use Approvals.

(e) **Insurance.** The Developer shall have provided proof of insurance as required by Section 306 hereof.

(f) **Financing.** The City shall have approved the Construction Financing as defined in Section 311.1 hereof, for construction of the Developer Improvements as provided in

Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing in substantial accordance with the commitment for Construction Financing.

(g) Declaration. The parties shall have mutually agreed upon the terms of the Declaration and the same shall be ready for recordation concurrently with the Close of Escrow.

(h) Agency's Conveyance of the Agency Property to City. Agency shall have transferred and conveyed fee simple interest in all of the Agency Property to City at no cost and/or upon terms acceptable to City, in its sole and absolute discretion. In this regard, Developer acknowledges that Agency's ability to transfer the Agency Property to City is subject to, and contingent upon, (i) Agency's receipt of a Finding of Completion; (ii) Approval by the Agency, Oversight Board, and Department of Finance of a Long-Range Property Management Plan providing for disposition of the Agency Property to the City for the Project; and (iii) approval of such disposition by the Agency, the Oversight Board, and/or the Department of Finance.

(i) Approval of Hotel Operators, Franchisors and Franchise Agreements. To the extent required by this Agreement, including, but not limited to, Section 103.6 hereof, the City shall have approved the initial Hotel Operators, Franchisors, and Franchise Agreements.

(j) Pre-leasing and Approval of Tenant. The City shall have approved the initial Tenant(s), unless included in the list of Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s).

205.2 Developer's Conditions Precedent. Developer's obligation to proceed with the Closing is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, City shall not be in default in any of its obligations under the terms of this Agreement.

(b) Execution of Documents. The City shall have executed the Grant Deeds and any other documents required hereunder and delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the condition of title of the Site, as provided in Section 202 hereof.

(d) Site Condition. Developer shall have determined, in its sole and absolute discretion, and advised City in writing that, to Developer's knowledge, the Site Condition is satisfactory in accordance with Sections 201.2, 204 and 301.2 hereof.

(e) Relocation, Demolition and Clearance of the Site. The City shall have relocated occupants and demolished and cleared the Site and removed all above ground structures located thereon and all substructures under existing buildings as required by Section 301.2. Notwithstanding anything to the contrary contained herein, this Condition Precedent shall not be deemed satisfied until such time as (i) any such relocation has been approved officially by the appropriate governmental authorities through duly authorized and appropriate action and all administrative appeals periods related thereto shall have expired, and (ii) if any litigation or

administrative challenge of such relocation shall have been filed relating thereto, there has been a final non-appealable resolution of any such litigation or challenge affirming the validity of such action by the City.

(f) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide to the Developer the Title Policy for the Site upon the Close of Escrow, in accordance with Section 203 hereof.

(g) Land Use Approvals. The Developer shall have received approval for all Additional Land Use Approvals.

(h) Financing. The Developer shall have obtained the Construction Financing as provided in Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing in substantial accordance with the commitment for Construction Financing.

(i) Adverse Conditions. No lawsuit (including by private parties), moratoria, or similar judicial or administrative proceeding or government action shall exist which would materially delay or significantly increase the cost of constructing the City Improvements.

(j) Approval of Hotel Operators, Franchisors, and Franchise Agreements. To the extent required by this Agreement, including, but not limited to, Section 103.6 hereof, the City shall have approved the initial Hotel Operators, Franchisors, and Franchise Agreements.

(k) Pre-leasing and Approval of Tenant(s). The City shall have approved the initial Tenant(s), unless included in the list of Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s).

(l) Declaration. The parties shall have mutually agreed upon the terms of the Declaration and the same shall be ready for recordation concurrently with the Close of Escrow.

(m) Development Agreement. Developer and City have executed a Development Agreement. Developer acknowledges that this Agreement does not obligate City to approve or enter into a Development Agreement.

205.3 Termination of Agreement Due to Failure of Conditions Precedent. In the event Escrow does not Close due to a failure of any of the conditions precedent set forth in this Section 205, either party may terminate this Agreement by written notice to the other party, and, upon such termination, except with respect to the payment of Escrow cancellation costs pursuant to Section 201.6 hereof, the parties' respective indemnity obligations hereunder, and/or any other provisions of this Agreement that expressly survive termination, neither party shall have any further rights or obligations under this Agreement.

300. DEVELOPMENT OF THE SITE

301. Scope of Development.

301.1 Improvements. Developer shall develop the Site in conformance with the Land Use Approvals, the Scope of Development, the Governmental Requirements, and the terms and provisions of this Agreement within the time periods set forth in the Schedule of Performance.

Developer shall improve the Site with the Developer Improvements. The physical quality of the Developer Improvements, including, without limitation, construction quality, finish material, lighting, landscaping and site amenities shall be (a) comparable, at a minimum, to each of the chosen Hotels and/or retail/restaurant/entertainment establishment's respective brand standards; (b) as set forth in the Scope of Development; and (c) consistent with the Land Use Approvals and the Governmental Requirements. Following the issuance of the Release of Construction Covenants for the Developer Improvements and thereafter until the expiration or termination of the Applicable Covenants Consideration Period, each Separate Component of the Developer Improvements and repair and maintenance thereof shall remain comparable in terms of quality and level of amenities to such Separate Component as of the date of issuance of the Release of Construction Covenants; provided the foregoing is not intended to require Developer to take any action that might cause a violation of any Governmental Requirement, including without limitation, any regulations or building codes or, as a result of changes in laws, regulations or codes or other changed circumstances, require Developer to take any action to comply with the same that would make performance of the foregoing obligations commercially infeasible.

Notwithstanding anything to the contrary contained herein, in lieu of the combination of Hotels described in Recital B and the Scope of Development, Developer may, in the alternative, elect to develop either a single, larger, Upper Upscale Hotel, or a combination of two (2) Upper Upscale Hotels, which, in the aggregate, contain no less than four hundred fifty (450) rooms, not less than fifteen thousand (15,000) square feet of meeting space, and two full-service restaurants, and which otherwise satisfy the hotel furniture, fixture and equipment standards for an Upper Upscale Hotel set forth in Section I(B) of Exhibit C attached hereto, in which event the provisions of Section 408.1 hereof shall apply to each such Upper Upscale Hotel. The Developer expressly acknowledges and agrees that any and all Additional Land Use Approvals necessary for the development of the Hotels described in the foregoing alternative, including, without limitation, all additional environmental review, if any, determined by City to be required pursuant to the California Environmental Quality Act ("CEQA"), shall be secured at the Developer's sole cost and expense within the time periods set forth in the Schedule of Performance, and shall be subject to the discretionary approval of the City, acting in its municipal capacity and exercising its police powers.

301.2 City Improvements. City shall cause, at its cost and expense, the following within the time set forth in the Schedule of Performance:

(a) Relocation of all occupants of the City Property and/or Agency Property in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation, as applicable;

(b) The demolition and removal of all existing structures and improvements including foundations, and, subject to and as provided in Section 204, remediation of any Hazardous Materials on the City Property and/or Agency Property, the proper disposal and mitigation of lead-based paint, asbestos and other environmental hazards pursuant to the requirements of the Department of Health Services in compliance with all applicable federal, state and local laws and regulations with respect to demolition and/or disposal and mitigation as described above; and

(c) Installation and completion of all Offsite Infrastructure; provided, however, that the City, acting in its sole and absolute discretion, has approved the expenditure of funds for the infrastructure required by this subsection (c) of Section 301.2.

301.3 Parking Structures. The Developer Improvements will include one or more Parking Structures, as described more fully in the Scope of Development and generally shown on the Conceptual Site Plan ("Parking Structures"), which will serve the Project. ONLY in the event CFD Financing is utilized for the Parking Structure, the Developer shall require the Parking Structures to shall remain open and available to the public subject to Developer's right to impose parking charges and fees to the extent not prohibited by Governmental Requirements and/or the CFD Financing. If CFD Financing is NOT utilized for the Parking Structure, the Developer shall NOT be obligated in any way to provide for public parking.

The financing for the Parking Structures may be (i) part of the Construction Financing or (ii) financed through CFD Bonds ("CFD Financing"). In the case of CFD Financing, if so requested by Developer, and if economically and legally feasible, the City will undertake the requisite actions to cause CFD Bonds to be issued with respect to the financing of the Parking Structures, provided that (i) the City's City Council, acting in its sole discretion in accordance with its legislative authority, has approved the formation of a CFD and the issuance of the CFD Bonds; (ii) the Developer (or an agent engaged by Developer and reasonably approved by the City) provides completion guarantees and/or credit enhancements (conditioned upon receipt of the CFD Financing funds) in a form, amount, and quality reasonably acceptable to City; (iii) the CFD Bonds will be rated not less than BBB or its equivalent; and (iv) issuance of the CFD Bonds will be at no cost to the City. In the event of CFD Financing, the parties will mutually determine the manner in which the Parking Structures will be constructed, operated and maintained as public parking structures.

301.4 Third Party Property. Developer may, at Developer's sole cost and expense, elect to purchase, lease, or otherwise acquire sufficient right and interest in the Third Party Property and add the Third Party Property to the Site for purposes of development and operation of a portion of the Upper Upscale Hotel(s), Limited and/or Full Service Hotel(s) and/or Retail/Restaurant/Entertainment Component until expiration of the Applicable Covenant Consideration Period. Within the time periods set forth in the Schedule of Performance, Developer shall notify City of its election of whether to add the Third Party Property to the Site and, if applicable, provide City with all documentation and/or information reasonably requested by City to verify Developer's rights and interests in the Third Party Property. If Developer acquires sufficient rights and interests in the Third Party Property and elects to add the Third Party Property to the Site for purposes of development and operation of a portion of the Upper Upscale Hotel(s), Limited and/or Full Service Hotel(s) and/or Retail/Restaurant/Entertainment Component, then the Third Party Property shall thereafter be deemed to be a portion of the "Site" for purposes of Developer's obligations under this Agreement and shall be subject to the Covenants.

302. Construction Drawings and Related Documents. The Developer shall submit, within the time frames set forth in the Schedule of Performance, and the City Manager or his designee shall approve, within the time periods set forth in the Schedule of Performance, preliminary building elevations, final building elevations, construction drawings, landscape plans, and related documents required for the development of the respective portions of the Site (individually and collectively, the "Construction Drawings"). The City shall have the right to review and approve all Construction Drawings as to their compliance with the description of the applicable Developer Improvements as set forth herein, and their consistency with the Governmental Requirements and the Land Use Approvals.

303. Land Use Approvals. Except as otherwise expressly set forth herein, prior to Commencement of Construction and/or operation of the Separate Components, as applicable,

Developer shall, at its sole cost and expense, separately apply for and obtain any and all Additional Land Use Approvals required in connection with the construction and operation of the Developer Improvements. The Developer specifically acknowledges that, notwithstanding anything in this Agreement which is or appears to be to the contrary, any City approval under this Agreement shall not waive or eliminate the requirement for review and approval of such Additional Land Use Approvals by the City in accordance with those Governmental Requirements, acting in City's municipal capacity and exercising its police powers. City agrees to cooperate with Developer to coordinate the Additional Land Use Approvals; provided that the City shall not incur any expenses or costs in connection therewith. The Developer shall, without limitation, pay all costs, charges and fees associated therewith, including, without limitation, City's customary development fees. Notwithstanding the foregoing, provided the final proposed Project is substantially consistent with the Conceptual Site Plan, City shall pay for all costs associated with preparation of the Subdivision Map. Except as to the City Improvements, costs of any Project related on-site (as described in Paragraph I.E. of the Scope of Development) California Environmental Quality Act ("CEQA") mitigation required by the Land Use Approvals shall be borne by Developer. Developer acknowledges that compliance with any such CEQA mitigation shall be a condition under applicable law for proceeding with the Project. Notwithstanding anything to the contrary contained herein, the Additional Land Use Approvals shall not be deemed obtained or secured until such time as (i) Developer has agreed to comply with all conditions, exactions and impositions related thereto, in Developer's sole discretion, and (ii) the Additional Land Use Approvals: (a) have been approved officially by the appropriate governmental authorities through duly authorized and appropriate action and all administrative appeals periods related thereto shall have expired, (b) are not subject to any further discretionary approvals of any kind, and (c) if any litigation or administrative challenge shall have been filed relating thereto, there has been a final non-appealable resolution of any such litigation or challenge affirming the validity of the Land Use Approvals.

304. Schedule of Performance. Provided that the City has timely met its respective obligations under the Schedule of Performance and subject to the application of Section 602 hereof, Developer shall submit the Construction Drawings, Commence Construction and Complete Construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement which are the obligation of Developer within the times established therefor in the Schedule of Performance. The Schedule of Performance is subject to revision from time-to-time as provided therein and as otherwise mutually agreed upon in writing by Developer and the City Manager.

305. Cost of Construction. Except as otherwise expressly set forth herein, including Sections 201, 204, 301 and 303 and costs relating to City Improvements, all of the cost of planning, designing, developing and constructing all of the Developer Improvements, including but not limited to payment or other satisfaction of development impact and processing fees payable in connection with the Developer Improvements, shall be borne solely by Developer. Notwithstanding the foregoing, to the extent the City designs and/or constructs any site improvements defined herein as Developer Improvements, for which City receives partial reimbursement from local, state, and/or federal grant funds, the Developer shall be responsible only for that unreimbursed portion of the costs incurred by the City in the design and/or construction of such improvements.

306. Insurance Requirements. Developer shall obtain and maintain at its sole cost and expense, or shall cause its contractor or contractors to obtain and maintain at their sole cost and expense, until the issuance of the Release of Construction Covenants pursuant to Section 310 of this

Agreement, the insurance coverages described in this Section 306, with the coverage limits, conditions, and endorsements defined herein.

306.1 Insurance Coverage. Prior to the earlier to occur of the (i) Developer's exercise of a right of entry under the Right of Entry Agreement or (ii) the approval of building permits, the following policies, in a form reasonably acceptable to the City, shall be obtained and maintained by Developer or its contractor or contractors covering all activities relating to construction of Developer Improvements at the Site:

(a) Comprehensive general liability insurance in the amount no less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in the aggregate for claims arising out of bodily injury, personal injury and property damage. Coverage will include contractual, owners, contractors' protective policy and products and completed operations. In addition, an excess policy in an amount of Four Million Dollars (\$4,000,000) covering the same terms and conditions will remain in force during the term of the Project.

(b) Comprehensive automobile liability insurance in the amount of no less than One Million Dollars (\$1,000,000), combined single limit per occurrence (bodily injury and property damage liability), including coverage for liability arising out of the use of owned, non-owned, leased, or hired automobiles for performance of the work. As used herein the term "automobile" means any vehicle licensed or required to be licensed under the California or any other applicable state vehicle code. Such insurance shall apply to all operations of Developer or its contractors and subcontractors both on and away from the Site. In the event that any drivers are excluded from coverage, such drivers will not be permitted to drive in connection with construction of the Developer Improvements.

(c) Workers' compensation insurance as required by law.

Except for workers compensation insurance, which shall be placed with The State Compensation Fund, acceptable insurance coverage shall be placed with carriers admitted to write insurance in California, or carriers with a rating of or equivalent to A:VII by A.M. Best Company. Any deviation from this rule shall require specific approval in writing from the City's Finance Director. Any deductibles or self-insured retentions in excess of \$250,000 must be declared to and approved the City.

306.2 Policy Provisions. A certificate or certificates evidencing coverage described in subsections (a) through (c) above (the "Insurance") shall be submitted to the City prior to execution of a Right of Entry Agreement or issuance of building permits for and Commencement of Construction of the Developer Improvements, which certificates shall be accompanied by appropriate policy endorsements stating that:

(a) The Insurance shall be primary insurance for losses at the Site, and will be noncontributing with respect to any other insurance carried by Developer or its contractor(s) with respect to any losses which do not arise out of the construction of Developer Improvements, and any other insurance carried by the City or Agency which may be applicable shall be deemed to be excess insurance and the Insurance shall be primary for all purposes despite any conflicting provision in the Insurance to the contrary;

(b) Not less than ten (10) days advance notice shall be given in writing to the City and the Agency prior to any cancellation or termination of the Insurance;

(c) Except for Worker's Compensation coverage, the Indemnitees are named as additional insureds.

(d) Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by the City or the Agency.

(e) The policies shall include a waiver of subrogation.

Upon request by City, Developer shall provide City with copies of complete insurance policies and endorsements evidencing coverage as required herein. Certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. If required by City, Developer shall, from time to time, increase the limits of its general and automobile liability insurance to reasonable amounts customary for owners of improvements similar to those on the Site.

Notwithstanding anything to the contrary set forth in this Section, Developer's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Developer or its affiliate; provided, however, (i) that the Indemnitees shall be named as additional insureds as their interests may appear and (ii) that the coverage afforded City, Agency, and Indemnitees, will not be reduced or diminished by reason of the use of such blanket policy of insurance, and (iii) that the requirements set forth herein are otherwise satisfied.

306.3 Mutual Waivers. Except as otherwise set forth in Section 307 hereof, City and Developer hereby waive any rights each may have against the other, on account of any loss or damage occasioned to City and any additional insured parties and Developer, as the case may be, or the Site, arising from any loss generally covered by all-risk insurance; and the parties each, on behalf of their respective insurance companies insuring the property of either City and Developer against any such loss, waive any right of subrogation that such insurer or insurers may have against City and Developer, as the case may be. The foregoing mutual waivers of subrogation shall be mutually operative only so long as available in the state in which the Site is situated and provided further that no such policy is invalidated thereby.

307. Developer's Indemnity; City Indemnity. Except as set forth in Section 204 and except to the extent caused by a failure of City's warranties or representations herein or Default by City hereunder, Developer shall Indemnify (with one (1) counsel reasonably acceptable to the City, unless there is a conflict of interest by, among or between any of the Indemnitees, whether individuals or entities in which case separate counsel shall be provided by Developer for each such Indemnitee) the Indemnitees from and against any and all Liabilities which result from the performance of this Agreement by Developer or Developer's ownership, development, use, or operation of the Site or any portion thereof excepting those Liabilities which are caused by the Indemnitees' (or any of them) gross negligence or willful misconduct. The City and Developer agree to fully cooperate with one another in any case where no conflict of interest between the parties is apparent. Without limiting the generality of the foregoing, Developer specifically agrees to indemnify, defend and hold harmless Agency and City from any Liabilities resulting from Developer's failure to comply with all applicable laws in accordance with Section 309 hereof. City

shall Indemnify (with one (1) counsel reasonably acceptable to Developer) the Developer Parties from and against any and all Liabilities which result from the City's relocation of the occupants as required by this Agreement. The parties' respective indemnity obligations hereunder shall survive termination of this Agreement.

308. Rights of Access. Representatives of the City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Developer Improvements and so long as City representatives comply with all safety rules and do not unreasonably interfere with the work of Developer. City shall defend, indemnify, assume all responsibility for and hold the Developer Parties harmless from and against any and all third party liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, and reasonable attorneys' fees of any kind or nature and for any damages, including damages to property or injuries to persons, including accidental death (including reasonable attorneys' fees and costs), which result from the exercise of such entry. Representatives of the Developer shall have the right of access to those portions of the Site owned by City without charges or fees during normal construction hours for the purpose of Investigation and Grading (as those terms are defined in the Right of Entry Agreement).

309. Compliance with Governmental Requirements. Developer shall carry out the design, construction and operation of the Project in conformity with all Governmental Requirements.

309.1 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, with respect to the construction and operation of the Project, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, *et seq.*, the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of the City access to its employment records related to this Agreement during regular business hours at Developer's principal office in Garden Grove, California to verify compliance with these provisions when so requested by the City.

310. Release of Construction Covenants. Following Completion of Construction of the Developer Improvements in conformity with this Agreement and within thirty (30) calendar days following receipt of a written request from Developer, the City shall furnish Developer with a Release of Construction Covenants for the completed Developer Improvements or portion thereof. The City shall not unreasonably withhold or delay such Release of Construction Covenants. The Release of Construction Covenants shall be conclusive determination of satisfactory Completion of Construction of the Developer Improvements (or the part thereof identified in the Release of Construction Covenants) and the Release of Construction Covenants shall so state. If the City

refuses or fails to furnish the Release of Construction Covenants for the Site (or part thereof) after written request from Developer, the City shall, within thirty (30) working days of receiving such written request, provide Developer with a written statement setting forth the reasons the City has refused or failed to furnish the Release of Construction Covenants for the Site (or part thereof). The statement shall also contain a list of the actions Developer must take to obtain a Release of Construction Covenants, which list shall be based on the applicable requirements set forth in this Agreement and the Construction Drawings, and/or of the Land Use Approvals and Governmental Requirements. If the reason for the City's refusal to issue the Release of Construction Covenants is due to lack of availability of specific landscape and/or finish materials, the Developer may provide a completion bond reasonably acceptable to the City, in which case the Developer shall thereby become entitled to the Release of Construction Covenants.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. Such Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code, Section 3093.

311. Financing of the Developer Improvements

311.1 Approval of Financing. Prior to the Close of Escrow and in accordance with the Schedule of Performance, Developer shall have submitted evidence to the City that Developer has equity capital and/or a written lender commitment(s) from one (1) or more institutional lender(s) (individually and collectively, the "Construction Lender") for the construction of the Developer Improvements in accordance with this Agreement ("Construction Financing"). In addition, such Construction Financing shall be funded or to fund at the Closing in accordance with the Schedule of Performance as provided in accordance with Sections 205.1(f) and 205.2(h) hereof. City shall have the right to review and approve, which shall not be unreasonably withheld, any such Construction Lender and the Construction Financing in its reasonable discretion. The City shall approve Construction Financing if the debt portion, if any, is issued by an institutional lender, together with Developer's equity (and, if applicable, the commitment of a Tenant to reimburse the Developer for all or any portion of the costs of the Developer Improvements), is in an amount not less than the cost of the Developer Improvements and conditioned only upon Closing and other customary construction loan closing and funding requirements. Developer and City agree that Developer shall be solely responsible for all financial obligations under such financing. Except with respect to Permitted Transfer pursuant to Section 103.2, prior to issuance of the final Release of Construction Covenants with respect to the Site, or applicable portion thereof, the Developer shall not place or suffer to be placed any lien or encumbrance on the Site, or any portion thereof, unless approved in writing by the City, in its sole and absolute discretion.

311.2 Holder Not Obligated to Construct Developer Improvements. The holder of any mortgage or deed of trust authorized by this Agreement (a "Holder") shall not be obligated by the provisions of this Agreement to construct or Complete the Construction of the Developer Improvements or any portion thereof, or to guarantee such construction or Completion of Construction; nor shall any covenant or any other provision in this Agreement be construed so to obligate such Holder. Nothing in this Agreement shall be construed or deemed to permit or authorize any such Holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or Developer Improvements provided for or authorized by this Agreement.

311.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.

With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the City delivers any notice of default ("Notice of Default") or demand to Developer with respect to any Breach or Default by Developer in the construction of the Developer Improvements, and if Developer fails to cure the Default within the time set forth in Section 501, the City shall deliver to each Holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such Holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such Default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however if the Holder is legally prevented from curing such default because of a bankruptcy by the Developer or because such cure requires physical possession of the Site then the thirty (30) day period shall be tolled until such bankruptcy is confirmed, rejected or otherwise resolved or the Holder has obtained lawful physical possession of the Site. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of Construction of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to the City by written agreement reasonably satisfactory to the City, which election to assume may be made within ninety (90) days following Holder's securing of title to the Property. Such assumption shall not have the effect of causing the Holder to be responsible for any prior damage obligations of Developer to the City. The Holder, in that event, must agree to Complete Construction, in the manner provided in this Agreement, of the Developer Improvements. Any such Holder properly Completing the Construction of the Developer Improvements or portion thereof shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a Holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such Holder has within such thirty (30) day period commenced foreclosure proceedings to obtain title and/or possession and thereafter the Holder diligently pursues such proceedings to completion and cures or remedies the default.

311.4 Failure of Holder to Complete the Construction of the Developer Improvements. In any case where, thirty (30) days after the Holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a Notice of Default by Developer in Completion of Construction of any of the Developer Improvements under this Agreement, and the Holder has not exercised the option to construct as set forth in Section 311.3, or if it has exercised the option but has defaulted thereunder and failed to timely cure such default, the City may, by giving written notice to the Holder, purchase the mortgage or deed of trust by payment to the Holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the Holder, the City, if it so desires, shall be entitled to a conveyance of title to the Site or such portion thereof from the Holder to the City upon payment to the Holder of an amount equal to the sum of the following:

(a) The unpaid mortgage or deed of trust debt at the time title became vested in the Holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The net expense, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any Developer Improvements made by such Holder;
- (e) Any prepayment charges, default interest, and/or late charges imposed pursuant to the loan documents and agreed to by Developer; and
- (f) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

311.5 Right of the City to Cure Mortgage or Deed of Trust Default. In the event Developer receives a notice of default on any mortgage or deed of trust prior to the Completion of Construction of the Developer Improvements and issuance of a total Release of Construction Covenants, Developer shall immediately deliver to the City a copy of such notice of default. If the Holder of any mortgage or deed of trust has not exercised its option to construct, the City shall have the right but not the obligation to cure the default. The City shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements.

400. COVENANTS AND RESTRICTIONS

401. Covenant to Develop, Use and Operate the Site in Accordance with Land Use Approvals and this Agreement. For so long as City is required to provide any Covenants Consideration, Developer covenants and agrees for itself and its successors, assigns, and every successor in interest to the Site, or any part thereof, that Developer and such successors and assignees shall use and operate the Site in accordance with the Land Use Approvals and this Agreement, and except for a Holder who, pursuant to Section 311, has not elected to assume Developer's obligations hereunder to construct, shall construct and Complete Construction of the Developer Improvements in accordance with the Land Use Approvals, Scope of Development, all applicable Governmental Requirements, Section 301.1 hereof, and the Schedule of Performance.

402. Maintenance and Security Covenants. Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain, at Developer's sole cost and expense, the Site and all Developer Improvements thereon, in compliance with the terms of the Declaration, the Land Use Approvals and with all applicable Governmental Requirements. The operation, use, security and maintenance of the Site, shall be accomplished in accordance with the Covenants and Declaration (to be approved by the parties prior to Closing) consistent with other first-class hotel/retail/restaurant projects in Orange County, and shall include regular landscape maintenance, graffiti removal, and trash and debris removal.

403. Nondiscrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy,

tenure or enjoyment of the Developer Improvements or the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or the Site. The foregoing covenants shall run with the land.

All deeds, leases or contracts with respect to the Project or the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. **In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

b. **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be

construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

c. **In contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

404. Prevailing Wages. With respect to the construction of the Developer Improvements on the Site as set forth herein and in the Scope of Development, Developer and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Such requirements are set forth in greater detail in Exhibit J attached hereto and incorporated herein by reference. The referenced Labor Code sections and Exhibit J are referred to herein collectively as the "Prevailing Wage Requirements." Upon the periodic request of the City, the Developer shall certify to the City that it is in compliance with the requirements of this Section 405. Notwithstanding anything to the contrary contained in this Agreement, Developer shall not be required to comply with the Prevailing Wage Requirements with respect to any discreet portions of the Developer Improvements if and to the extent the Prevailing Wage Requirements are inapplicable to such discreet portions. Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the

same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 405, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion of Construction of the Developer Improvements by the Developer.

405. Point of Sale and/or Use. The Developer, for itself and for its general contractor and subcontractor, agrees to obtain a State Board of Equalization sub-permit for the jobsite and allocate all eligible use tax payments to the City and provide the City with either a copy of the sub-permit or a statement that the use tax does not apply to this portion of the job, to insure that the City is the point of sale and/or use under the Bradley Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code, as amended from time to time).

406. Effect of Violation of the Terms and Provisions of this Agreement. The City is deemed the beneficiary of the terms and provisions of this Agreement and of the Covenants, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the Covenants have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site. The City shall have the right (subject to Section 501 below), upon a Default by Developer of this Agreement, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and Covenants may be entitled. Except as otherwise provided therein, the Covenants contained in Sections 103, 301, 309, and 401, 402, and 405, and the Declaration shall survive Closing and remain in effect for so long as City is required to provide any Covenants Consideration pursuant to this Agreement. The Covenants set forth in Sections 204.2, 204.3, 307, 403, and 603 shall survive Closing and remain in effect in perpetuity. The Covenants described in Sections 303, 304, 305, 306, 308, 404 and 503 shall survive Closing and remain in effect with respect to a portion of the Site until the issuance of a Release of Construction Covenants with respect to such portion of the Site and so long thereafter as shall be necessary to enforce a Default(s) thereunder. The Covenants set forth in Sections 407, 408, and 409 shall survive Closing and remain in effect in accordance with the terms set forth therein.

407. Covenants Consideration (City Assistance). In consideration for the granting of the Covenants by the Developer to the City, City agrees to provide the following economic assistance towards defraying the cost of the Project's development and operation ("Covenants Consideration"):

- (a) Conveyance of the Site to Developer pursuant to Section 200; and
- (b) Payment of the costs of the City Improvements pursuant to Section 301.2; and
- (c) Payment of the costs associated with preparation of the Subdivision Map pursuant to Section 303; and
- (d) Payment to Developer of the Tax Rebate Payments described in Section 408.

408. Tax Rebate Payments. The Covenants Consideration shall include the annual payments described in this Section 408.

408.1 Upper Upscale Hotel Tax Rebate Payments. With respect to each Upper Upscale Hotel, City shall pay to Developer annually, from the date on which Completion of Construction of each the Upper Upscale Hotel occurs, and for a period of twenty (20) years thereafter, an amount equal to: (i) sixty percent (60%) of the Transient Occupancy Tax Revenues which have been paid to and received by the City in each calendar year during such period with respect to each the Upper Upscale Hotel(s); and (ii) fifty percent (50%) of the Sales Tax Revenues attributable to the operation of each the Upper Upscale Hotel(s).

408.2 Limited Service Hotel Tax Rebate Payments. With respect to each Limited Service Hotel, City shall pay to the Developer annually, for the period commencing on the date on which Completion of Construction of the Limited Service Hotel has occurred and for a period of ten (10) years thereafter, an amount equal to: (i) fifty percent (50%) of the Transient Occupancy Tax Revenues which have been paid to and received by the City in each calendar year during such period with respect to the Limited Service Hotel(s); and (ii) for a period of twenty (20) years, fifty percent (50%) of the Sales Tax Revenues attributable to the operation of the Limited Service Hotel(s).

408.3 Retail/Restaurant/Entertainment Component Tax Rebate Payments. With respect to each separate portion of the Retail/Restaurant/Entertainment Component, City shall pay to the Developer annually, for the period commencing on the date on which Completion of Construction of each such portion of the Retail/Restaurant/Entertainment Component has occurred and for a period of twenty (20) years thereafter, an amount equal to fifty percent (50%) of the Sales Tax Revenues attributable to each such portion of the Retail/Restaurant/Entertainment Component (i.e., there shall be separate 20-year payment periods for each such portion of the Retail/Restaurant/Entertainment Component).

408.4 Timing of Tax Rebate Payments. City shall remit the Tax Rebate Payments to Developer annually, no later than thirty ninety (90) days after the end of the City's Fiscal Year (July 1-June 30).

408.5 Conditions Precedent to Remittance of Tax Rebate Payments. The City's obligation to pay the Tax Rebate Payments pursuant to this Section 408 is conditioned upon all of the following conditions precedent, which shall be satisfied on the date of the applicable disbursement: (i) this Agreement shall remain in full force and effect and not have been terminated, and (ii) there shall be no Default by the Developer under the Agreement which remains uncured on the date such Tax Rebate Payments, or applicable portion thereof, would otherwise be made to the Developer, including, without limitation, Completion of Construction prior to the time set forth in the Schedule of Performance and operation of the Project consistent with the Covenants and Scope of Development.

408.6 Tax Revenues Not Security for Tax Rebate Payments. Developer acknowledges and agrees that neither the Transient Occupancy Tax Revenues, the Sales Tax Revenues, nor any other general or special funds of the City, are pledged or otherwise encumbered, hypothecated to or given as security for the Tax Rebate Payments. THIS DOESN'T MAKE SENSE...

409. Allocation of Tax Rebate Payments. Notwithstanding the allocations of Tax Rebate Payments described in Section 408, above, the Developer may, without the approval of the City, reallocate the Tax Rebate Payments between and among the separate development entities who own the Separate Components, as described in Section 103.2.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to Enforced Delay and compliance with the provisions of this Agreement which provide for the protection of Mortgagee rights, including the provisions of Section 311 of this Agreement, failure or delay by either party to perform any material term or provision of this Agreement (a "Breach") following notice and failure to cure as described hereafter constitutes a "Default" under this Agreement.

The nondefaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the nondefaulting party ("Notice of Default"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion ("Cure Period"). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a "Default" hereunder.

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

CITY SHALL ALSO BE REQUIRED TO SEND NOTICES OF DEFAULT TO EACH MORTGAGEE FOR WHICH CITY HAS RECEIVED A MORTGAGEE NOTICE.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California. Notwithstanding the foregoing or any other provision of this Agreement, in no event shall monetary damages of any kind be available as a remedy for breach of this Agreement or any provision thereof.

503. Re-entry and Revesting of Title in the City After the Closing and Prior to Completion of Construction. Without limiting the rights as set forth in Section 311, and without affecting the priority of the lien of the Holder's deed of trust or mortgage, the City has the right, at its election, to reenter and take possession of any portion of the Site with all Developer Improvements thereon, and terminate and Revest in the City the estate conveyed to the Developer with respect to such portion of the Site only if after the Closing and prior to the issuance of the final Release of Construction Covenants with respect to such portion of the Site, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Developer Improvements on such portion of the Site as required by this Agreement for a period of ninety (90) days after Notice thereof from the City subject to extension pursuant to Section 602; or

(b) abandon or substantially suspend construction of the Developer Improvements on such portion of the Site required by this Agreement for a period of ninety (90) days after Notice thereof from the City subject to extension pursuant to Section 602; or

(c) contrary to the provisions of Sections 101 or 103 hereof, Transfer or suffer any involuntary Transfer in violation of this Agreement, and such Transfer, if it is a Transfer requiring approval by the City, is not rescinded within thirty (30) days of Notice thereof from City to Developer.

Such right to reenter, terminate and Revest is subject to the quiet enjoyment, and, if applicable, the right to continue to complete construction by (i) Tenants or other occupants who have (a) executed leases or subleases and (b) incurred substantial expenses in connection with the design and/or construction of improvements required to be constructed by such Tenant under such lease or sublease and (ii) a Holder, in the case where the Developer is in Default and, *vis à vis* a Holder, shall be exercisable only if:

1. Such Holder (or its Nominee) (a) shall have failed to cure any Default within the applicable cure periods granted to such Holder (or its Nominee), or (b) shall have given City written notice that it will not cure any such Default or condition or that it will otherwise not comply with the terms and conditions of this Agreement; and

2. City, within ninety (90) days after the occurrence of any events described in subparagraph 1. immediately above, shall commence the exercise of its right of entry and shall pay to Holder (or its Nominee) in immediately available funds, the Loan Balance prior to Revesting.

In the event of a failure or refusal to cure a Default, as described in subparagraph 1. above, City's sole remedy *vis à vis* Holder shall be the exercise of the re-entry right and Revesting in accordance herewith.

The conditions to the commencement of the exercise of the City's right to re-enter and Revest as described above shall be applicable whether the re-entry and Revesting occurs (a) prior to foreclosure (or deed in lieu of foreclosure) by the Holder (or its Nominee) under its mortgage or deed of trust; or (b) after Holder (or its Nominee) acquires title to the Site by foreclosure (or deed-in-lieu of foreclosure) under its mortgage or deed of trust.

The applicable Grant Deeds shall contain appropriate reference and provision to give effect to the City's right as set forth in this Section 503, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and Revest in the City the estate conveyed to the Developer. Upon the Revesting in the City of title to the Site, as provided in this Section 503, the City shall use its reasonable efforts to resell the Site, or portion thereof, as soon and in such manner as the City shall find feasible and consistent with this Agreement and the Scope of Development to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of constructing or completing the Developer Improvements, or such improvements in their stead as

shall be satisfactory to the City and in accordance with Scope of Development. Upon such resale of the Site, the net proceeds thereof, shall be applied:

(i) First, to reimburse the City all costs and expenses incurred by the City, excluding in-house City staff costs, but specifically, including, but not limited to, any expenditures by the City in connection with the recapture, management and resale of the Site, or part thereof (but less any income derived by the City from the Site, or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site, or part thereof, which the Developer has not paid (or, in the event that the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site, or part thereof, at the time of Revesting of title thereto in the City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the constructing or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the City, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) actual and direct third party costs incurred by the Developer for the Developer Improvements existing on the Site, at the time of the re-entry and possession, less (b) any gains or net income received by the Developer from the Site, or the improvements thereon.

(iii) Any balance remaining after such reimbursements shall be retained by the City as its property. The rights established in this Section 503, except as may otherwise be provided in this Section 503, are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the City will have conveyed the City Property and the Agency Property and provided other financial assistance to the Developer for development of a high quality hotel project, particularly for development and operation of the Project, and not for speculation in undeveloped land.

504. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

505. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

506. Applicable Law. The laws of the State shall govern the interpretation and enforcement of this Agreement.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefore is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy, or email or overnight delivery service to:

To City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

with a copy to: Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, California 92840

To Developer: Land & Design, Inc.
3755 Avocado ~~8130 La Mesa Boulevard, #516808~~
La Mesa, California 91941
Attention: Matthew Reid

with a copy to: Allen Matkins Leck Gamble Mallory & Natsis, LLP
501 West Broadway, 15th Floor
San Diego, California 92101
Attention: Tom Crosbie

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

602. Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to ("Enforced Delay"): litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; actions in connection with the remediation of Hazardous Materials, including groundwater contamination; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; unanticipated subsurface conditions that delay performance; lack of transportation; governmental restrictions or priority; building moratoria; unusually severe weather; or acts or omissions of the other party; acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City); or during the pendency of any dispute between City or Developer, regarding Developer's construction obligations hereunder provided that the party claiming the right to an extension of time is determined to be the prevailing party in such dispute. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period reasonably attributable to the Enforced Delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the later of commencement of the cause or such party's discovery of such cause. Times of performance under this Agreement may also be extended in

writing by the mutual agreement of the City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to Complete Construction of the Developer Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Non Liability of Officials and Employees of City and Developer. No member, official, shareholder or employee of either party shall be personally liable to the other party, or any successor in interest, in the event of any Default or Breach by the either party or for any amount which may become due to either party or their successors, or on any obligations under the terms of this Agreement.

604. Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and Developer is not that of a partnership or joint venture and that the City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Exhibits hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site.

605. City Approvals and Actions Through City Manager. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

606. Commencement of City Review Period. The time periods set forth herein and in the Schedule of Performance for the City's approval of agreements, plans, drawings, or other information submitted to the City by Developer and for any other City consideration and approval hereunder which is contingent upon documentation required to be submitted by Developer shall only apply and commence upon the submittal of all the reasonably required information. In no event shall a materially incomplete submittal by Developer trigger any of the City's obligations of review and/or approval hereunder; provided, however, that the City shall notify Developer of an incomplete submittal as soon as is practicable.

607. Successors and Assigns. All of the terms, covenants, conditions, representations, and warranties, of this Agreement shall be binding upon City and Developer and their respective permitted successors and assigns. Whenever the term "Developer" or "City," as the case may be, is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

608. Assignment by City. The City may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld.

609. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

610. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation

of any and all facts such party deems material. This Agreement includes pages 1 through 48 (includes signature page) and Exhibits A through L, (each such Exhibit incorporated in this Agreement as if fully set forth herein) which together constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

611. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Costs recoverable for enforcement of any judgment shall be deemed to include reasonable attorneys' fees.

612. Administration. This Agreement shall be administered and executed by the City Manager, or his/her designated representative, following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City Manager (or his/her authorized representative). The City Manager shall have the authority but not the obligation to issue interpretations, waive provisions, approve the Declaration, extend time limits, make minor modifications to prior City design approvals, and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the City as specified herein as agreed to by the City Council, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the City Council.

613. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to Section numbers are to sections in this Agreement, unless expressly stated otherwise.

614. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

615. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

616. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

617. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

618. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded in which case such day is the day following the excluded day(s). The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time.

619. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

620. Time of Essence. Time is expressly made of the essence with respect to the performance by the City and Developer of each and every obligation and condition of this Agreement.

621. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement. In this regard, Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement and/or other estoppel documents. The party making the request shall be responsible for the costs incurred by the other party, including without limitation attorneys' fees, (the "Amendment/Estoppel Costs") in connection with any amendments to this Agreement and/or estoppel documents which are requested by such party (the "Developer/City Request") regardless of the outcome of the Developer/City Request.

622. Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

623. Time for Acceptance of Agreement by the City. This Agreement, when executed by Developer and delivered to the City, must be authorized, executed and delivered by the City on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

624. Consideration of Agreement Modification. The Parties recognize that due to the changing economic conditions as it relates to hotel development, there is a possibility that the terms described herein will need to be modified based on requirements of the Franchisor(s), Hotel Operator(s) and/or Construction Lender and/or other debt or equity contributors. With this in mind, the parties agree that in such event, the Parties agree that they will discuss any such requested modifications with the idea in mind of modifying or amending this Agreement, if required, with each

Party acting in their sole and absolute discretion and without any commitment to the other to agree to any such requested modification or revision.

625. Recordation of Memorandum of Agreement. The Memorandum of Agreement shall be recorded concurrently with the Full Execution of this Agreement ~~Close of Escrow~~ and the terms hereof shall survive Closing and run with the land for the period of time set forth herein.

626. Repudiation of DDA Between Developer and Agency. Developer hereby acknowledges and agrees that, upon the Conveyance of the City Property and the Agency Property to Developer pursuant to this Agreement, that certain Disposition and Development Agreement pertaining to the Site ("DDA") entered into on or about June 14, 2011, by and between Developer and the former Garden Grove Agency for Community Development shall be deemed terminated, void and of no further force and effect. as it relates to the Agency and/or City. Developer also agrees that, for so long as this Agreement remains in effect, it will not attempt to enforce the DDA against the Agency.

[SIGNATURES ON NEXT PAGE]

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____, 2013

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Thomas F. Nixon
City Attorney

DEVELOPER

LAND & DESIGN, INC., a California corporation

Dated: _____, 2013

By: _____

Matthew Reid, _____

Dated: _____, 2013

By: _____

DRAFT

EXHIBIT A

SITE MAP

DRAFT

EXHIBIT B

LEGAL DESCRIPTION

DRAFT

EXHIBIT C

SCOPE OF DEVELOPMENT

Unless otherwise specified herein, all capitalized terms in the Scope of Development shall have the meaning(s) set forth for the same in the Conference Hotel Development Agreement (CHDA) to which this Scope of Development is attached.

I. DEVELOPER IMPROVEMENTS

A. Retail/Restaurant/Entertainment

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct on the Site the Retail/Restaurant/Entertainment Component(s) consisting of a minimum of ten thousand (10,000) square feet of gross leaseable area and required parking (subject to Parking Structures). Exhibit L, contained herein, shall be considered the City pre-approved list of Retail/Restaurant and Entertainment uses. The Developer, from time to time, may submit additional lists of possible restaurants for City review and approval, which shall not be unreasonably withheld.

The design and architecture of the improvements for the restaurant(s) shall follow the City's General Plan, the Land Use Approvals, and all other requirements and provisions of this Agreement, as applicable.

B. Hotels

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct an the Upper Upscale Hotel consisting of a minimum of three hundred (300) rooms and not less than ten thousand (10,000) square feet of meeting and business space. This Upper Upscale Hotel shall also include required parking, as well as a central lobby, full-service/specialty restaurant (with room service), cocktail bar, spa, gift shop(s), business center, fitness center, and concierge service consistent in quality with those hotels include on the list of Pre-Approved Upper-Upscale Flag(s)/Operator(s) (Exhibit L). Exhibit L, contained herein, shall be considered the pre-approved list of Upper Upscale Hotel Flags. The Developer, from time to time, may submit additional lists of possible Upper Upscale Hotel Flags/Operators for City review and approval, which shall not be unreasonably withheld.

Per Section 301.1, Improvements, the Developer can also, at its sole and absolute discretion, develop additional Upper Upscale Hotel(s), which need only contain a minimum of one hundred fifty (150) rooms, 5,000 square feet of event and/or meeting space and a full service restaurant.

Similarly, all guest rooms shall range in size from 300 gross square feet to over 400 gross square feet. All rooms will include flat screen TV's and high speed internet access, and other standard items such as alarm clocks, hair dryer, iron and ironing board. A limited number of larger suites will provide separate bedrooms, private bathrooms, and separate seating/living areas. There will also be luxury suites with king beds, flat screen televisions and wireless internet access. The CHDA and this Scope of Development shall not be interpreted to prohibit the Developer from developing and/or designating a portion of the Upper Upscale Hotel(s) as a timeshare project, *provided that* (i) any such development and/or designation of a portion of the Upper Upscale Hotel(s) as a timeshare project is consistent with the Land Use Approvals and applicable Governmental Requirements, *and* (ii) the City and the Developer reach an agreement acceptable to the City, in its sole and absolute discretion, providing for payment by Developer to City of an amount approximately equivalent to the amount of Transient Occupancy Tax Revenues, if any, that would be collected by City if such portion of the Upper Upscale Hotel(s) was not developed and/or designated as a timeshare project.

The Developer shall construct the Limited Service Hotels consisting of a minimum of one hundred twenty-five (125) rooms each. The Limited Service Hotels shall also include required parking, as well as a central lobby, business center, and fitness center consistent in quality with those hotels include on the list of Pre-Approved Limited Service Flag(s)/Operator(s) (Exhibit L. Exhibit L, contained herein, shall be considered the pre-approved list of Limited Service Hotel Flags. The Developer, from time to time, may submit additional lists of possible Limited Service Hotel Flags/Operators for City review and approval, which shall not be unreasonably withheld.

Similarly, all guest rooms range in size from 300 gross square feet to over 400 gross square feet. All rooms will include flat screen TV's and high speed internet access, and other standard items such as alarm clocks, hair dryer, iron and ironing board.

The design and architecture of the Limited Service Hotels shall comply with the City's General Plan, the Land Use Approvals, and the all other requirements and provisions of the CHDA, as applicable, and shall be consistent with the cost estimates for construction provided in the Developer's Pro Forma, the Basic Concept and Design Development Drawings and the Construction Plans and Drawings. Particular attention shall be paid to massing, scale, color, and materials.

In addition to the minimum standards for the Hotel(s) associated with the Pre-Approved Limited Service Flag(s)/Operator(s) and Pre-Approved

EXHIBIT C

Upper Upscale Flag(s)/Operator(s), (i) the standards attached hereto as Attachment No. 1 shall also apply to the Hotel(s), and (ii) notwithstanding anything to the contrary contained in the CHDA or this Exhibit C, (a) the finishes, standards and quality of the Upper Upscale Hotel(s) shall equal or exceed those of the Westin Pasadena as of the date of the CHDA, and (b) the finishes, standards and quality of the Limited Service Hotel(s) shall equal or exceed those of the Homewood Suites Garden Grove as of the date of the CHDA.

C. Parking Structures

The following shall be the sole cost and expense of the Developer, except to the extent otherwise funded through CFD Financing pursuant to Section 301.3 of the CHDA:

1. The Developer shall construct, maintain and operate the Parking Structures as shown on the Conceptual Site Plan and/or any subsequent Additional Land Use Approvals approved by the City.

The vehicular entry points to the Parking Structures shall be located as shown on the Conceptual Site Plan and/or any subsequent Additional Land Use Approvals approved by the City.

The Parking Structures shall be designed for ease of operations and patron convenience with one-way traffic lanes, angled parking stalls, no parking on ramps, two lanes of continuous vertical traffic flow, and separated inbound/outbound lanes.

D. Site Improvements

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct all improvements from the back of the curb face, including sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscape (but excluding traffic or pedestrian or traffic signal poles which are the responsibility of the City). All such improvements shall be constructed in accordance with the Harbor Boulevard Streetscape Improvement Plan, the Land Use Approvals, and the Governmental Requirements. Improvements include the east side of Harbor Boulevard from the most south boundary portion of the Site to the most north boundary portion of the Site.

E. Tentative and Final Map

Except as otherwise expressly provided below and in the CHDA, the Developer shall, at the sole cost and expense of the Developer, apply for and obtain any and all Additional Land Use approvals required in connection with the construction and operation of the Project, including, without limitation, a tentative and final

Subdivision Map for the Site. Notwithstanding the foregoing sentence, provided the final proposed Project is substantially consistent with the Conceptual Site Plan, City shall pay for the costs associated with preparation of the tentative and final Subdivision Map. In the event the final proposed Project is not substantially consistent with the Conceptual Site Plan, the Developer shall be responsible for all costs and expenses associated with preparation of the tentative and final Subdivision Map.

- F. The Developer, at its sole and absolute discretion shall be permitted to phase the development of the Project as required for both Construction means and methods and financing purposes. The City shall not require any portion of the project be constructed and/or operated prior to other portions of the project being constructed and/or operated. The Developer shall, in every phase, comply will all codes and standards for each phase of the project.

II. CITY IMPROVEMENTS

The following shall be the sole cost and expense of the City:

1. Relocation of all occupants of the Site in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation, as applicable;
2. The demolition and removal of all existing structures and improvements, including foundations, and, subject to and as provided in Section 204, remediation of any Hazardous Materials on the City Property and the Agency Property, the proper disposal and mitigation of lead-based paint, asbestos and other environmental hazards pursuant to the requirements of the Department of Health Services in compliance with all applicable federal, state and local laws and regulations with respect to demolition and/or disposal and mitigation as described above; and
3. Installation and completion of all Offsite Infrastructure (i.e., the traffic signal and raised median improvements described in Performance Standards Nos. 8 and 9, respectively, of the PUD, and such other public improvements required to be constructed and/or installed in the public right-of-way pursuant to the Land Use Approvals, but excluding any sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscaping, and/or other improvements to be constructed from the back of the curb face by Developer, including any required environmental mitigation measures directly related to the construction and/or installation of such public improvements).

III. ARCHITECTURE AND DESIGN

A. Building Design

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop construction plans and design documents, which shall be developed in compliance with the Land Use Approvals. The architecture is expected to create a unique identity with a cohesive, integrated architectural style that complements the surrounding developments. Particular attention shall be paid to massing, scale, color, and materials in order to articulate the buildings elevations. The elevations shall, to extent as possible, avoid flat or one-dimensional elevations. Architectural attention shall be given to the main entrance/lobby of the Hotel(s), which shall include a porte-cochere that complements the main building.

B. Building Service, Project Traffic and Management

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop a building service, project traffic and management plan. The plan shall be included within the Declaration and shall, at a minimum, include the following:
 - (a) A service plan that includes general times for deliveries, trash collection, street cleaning and the agreed upon routing for such service-vehicles. This plan shall include routing and stopping for patron drop-off and small service-vehicles including mail, overnight delivery and messengers as well as conference facility deliveries. This plan shall also include routing and marked areas for emergency services.
 - (b) A traffic plan that includes the Developer's commitment to pay for traffic control officers at the entrances to the Parking Structure(s) during holiday peak periods and for special events that are expected to generate large volumes of traffic.
 - (c) A maintenance and management plan that includes cleaning and refuse policing, no visibility into service areas from public streets, degreasing and deodorizing (particularly for the service, trash and garbage areas), re-stripping, re-painting, re-lighting, drainage cleaning, signage, graffiti management and security.
 - (d) Repair and maintenance of the Project in accordance with Section 301.1 of the CHDA.

C. Landscaping

All areas of the Site that are not used for buildings, sidewalks, driveways or other hardscape improvements shall be landscaped in accordance with the Land Use Approvals and a landscaping plan to be approved by the City. The Developer, at its sole cost and expense, shall be responsible for all these areas. Landscaping shall consist of ground cover, trees, potted plants, and fountains, pools, or other water features, if applicable. A permanent automatic water sprinkler system shall be provided in all landscaped areas as required for adequate coverage/maintenance.

D. Refuse

Refuse areas shall be provided in accordance with the requirements of the Land Use Approvals.

E. Signs

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop a sign program. The Project shall have a comprehensive graphics/logos and sign program that shall govern the entire Project; all signs shall conform as to location, size, shape, illumination system, cabinet and copy face colors, letter style, shall be complementary to the overall architectural theme, and comply with the high standards of Underwriter Laboratories. The sign program must be approved by the City.

F. Utilities

The following shall be the sole cost and expense of the Developer:

The Developer shall be responsible for utility installations for the Project and hookups to public utility lines. All utility service for the Project shall be installed underground or concealed within buildings and any mechanical, electrical, fire sprinkler or plumbing equipment that may be at ground level shall be aesthetically screened except where not permitted by the Garden Grove Municipal Code.

ATTACHMENT NO. 1

HOTEL STANDARDS

Upper Upscale Hotel Prototype Summary

Cast in place concrete or steel frame construction

Program room mix - to be determined after significant market analysis and research with specificity to the Anaheim Resort Areas market needs

Swimming pool with spa

Exterior sun deck

~~Upper Upscale Hotel Workout area~~

Porte-cochere sized to accommodate multiple vehicles

Efficient layout with a cost effective FTE requirement

Linen chute

In house food and beverage operations

In and/or Out of House Laundry operations

~~Upper-Upscale Hotel Executive Club Lounge, if applicable~~

Elevators - 3 guest, 1 service; all traction with a gearless upgrade option

Public Area Features

Full designed Urban Bar & Eatery concept for the food and beverage outlets

Flexible private dining area

Outlet seating; Eatery - 82 / Bar - 37, exact seating based upon market demand

Wireless high speed internet access throughout all public and function space

Free standing front desk POD design

Movable partitions with a 54 STC rating

Separate function space arrival area

Meeting space minimum pursuant to scope of work, divisible into independent rooms, full back serviced

Pre-function space as required including exterior pre-function area

Audio/Visual system

Full designed, FF&E specified, sourced and priced

Self-service sundry/business center area adjoining the front desk

Upper-Upscale Hotel's express checkout service

Guestroom Features

The Upper-Upscale Hotel Bed in accordance with Flag specified bed

Mixture of Large, three and four-fixture Baths

Upper-Upscale Hotel designed model room

Guestroom HVAC - 2-pipe specified with a 4-pipe option and digital wall thermostats

Two, two-line phone handsets and High Speed Internet Access

Large flat panel LCD television

Pay per view movie system

In room refreshment center

In room safe

Upper-Upscale Hotel Green Program

Electronic card key locks

Full designed, FF&E specified, sourced and priced

Upper-Upscale Hotel brand standard OS&E; specified, sourced and priced

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EXHIBIT D

SCHEDULE OF PERFORMANCE – CONDENSED SCHEDULE

PERFORMANCE ITEM	DATE
1. City and Developer execute CHDA.	On or before April 15, 2013.
2. City and Developer open Escrow.	Within thirty (30) days after Date of Agreement.
3. Developer deposits Cost Reimbursement Deposit with City.	Within thirty (30) days after Date of Agreement.
4. City accepts conveyance of fee title to all Agency Property.	On or before September 1, 2013.*
5. Developer completes its Site Investigation pursuant to Section 204.	On or before the Due Diligence Date.
6. Developer notifies City of election of whether to include Third Party Property in Project and add to Site and, if applicable, provides City with evidence of acquisition of necessary interest in Third Party Property.	On or before January 1, 2014.
7. Developer submits completed application for tentative Subdivision Map, Development Agreement, and other necessary or desired Land Use Approvals.	On or before January 1, 2014.
8. Developer submits and obtains City approval of the identity of the Hotel Operators, Franchisors, and Franchise Agreements and Developer executes the approved Franchise Agreements.	On or before October 1, 2014.
9. City approves, conditionally approves or rejects tentative Subdivision Map, Development Agreement, and other necessary or desired Land Use Approvals.	On or before May 1, 2014.

* If the City has not acquired fee title to all of the Agency Property by such date, then each subsequent date set forth in this Schedule of Performance will be extended on a day-for-day basis for each day after September 1, 2013 through and including the date upon which City acquires fee title to all of the Agency Property.

PERFORMANCE ITEM	DATE
10. Developer completes Construction Drawings	On or before February 1, 2015.
11. Developer provides evidence of financing.	On or before May 1, 2015.
12. City completes demolition, Site clearance and remediation, if applicable, pursuant to Paragraph II.1. of the Scope of Development	On or before August 1, 2015.
13. Developer and City Close Escrow and Developer commences grading.	On or before September 1, 2015. ¹
14. Construction Commencement Date.	On or before September 1, 2015.
15. Offsite Infrastructure Completed by City	Concurrently with completion of the Developer Improvements.
16. Developer Completes Construction of the Developer Improvements	Within twenty six (26) months after Close of Escrow.

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¹ Although the outside date for the Closing of September 1, 2015, may not be extended for the events described in Section 602, the Closing may be extended until March 1, 2016 provided that, as of September 1, 2015, the Franchise Agreement for the Upper Upscale Hotel is still operative and neither the Developer nor the Franchisor is in breach or default thereunder. The Closing may also be extended until September 1, 2016 if on March 1, 2016, the Franchise Agreement for the Upper Upscale Hotel is still operative and neither the Developer nor Franchisor is in breach or default thereunder.

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is hereby made as of _____, 20____, by and between _____, a _____ ("_____"), and _____, a _____ ("Assignee").

RECITALS

A. Assignor and the City of Garden Grove (the "City") have entered a Conference Hotel Development Agreement dated _____, 2013 (the "CHDA"). Pursuant to the CHDA, the City agreed to convey [or conveyed] to the Assignor a parcel of real property referred to in the CHDA as the "Site," and the Assignor agreed to construct [among other things] _____ thereon.

B. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of its rights and obligations under the CHDA [with respect to the portion of the Site described on Exhibit "A" hereto] and for Assignee to accept such assignment and assume all rights and obligations thereunder [with respect to such portion of the Site].

C. Pursuant to Section 103 of the CHDA, City approval of a Transfer of Assignor's interest in the Agreement is required in connection with the construction of _____.

D. The parties also desire for City to consent to such assignment and assumption, and acknowledge that such assignment and assumption is permitted pursuant to Section 103 of the CHDA.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption.** Assignor hereby assigns to Assignee all of its right, title and interest in and to the CHDA [with respect to the portion of the Site described on Exhibit "A" hereto], and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the CHDA [with respect to such portion of the Site], from and after the date hereof with respect to _____. From and after the date hereof, Assignor shall be released from and have no further obligations under the DDA [with respect to such portion of the Site], excluding actual claims of Default which City made against Assignor in writing prior to the date hereof, the responsibility for which claims have not been assumed by Assignee.

2. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee, their respective successors and assigns and City as third party beneficiary hereof.

3. **Governing Law.** This Assignment has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California.

4. **Further Assurances.** Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

NOW, THEREFORE, the parties hereto have executed this Assignment as of the date set forth above.

ASSIGNOR:

_____,
a _____

By: _____

Its: _____

By: _____

Its: _____

ASSIGNEE:

_____, a

By: _____

Its: _____

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CONSENT OF CITY TO ASSIGNMENT

City hereby acknowledges and consents to the above assignment, and releases Assignor from any further liability under the CHDA, except in Assignor's capacity as a member of Assignee.

CITY OF GARDEN GROVE,
a municipal corporation

By: _____

ATTEST:

City Clerk

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EXHIBIT F

GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103 and 27383.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The CITY OF GARDEN GROVE, a municipal corporation (the "Grantor") hereby grants to LAND & DESIGN, INC., a California corporation (the "Grantee"), the real property described in Exhibit A attached hereto and incorporated herein (the "Property"), subject to existing easements, restrictions and covenants of record and further subject to the provisions of this Grant Deed set forth below.

1. Reservation of Mineral Rights. Grantor excepts and reserves from the conveyance herein described all interest of the Grantor in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the property lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said property or other lands, but without, however, any right to use either the surface of the Property or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the property in such a manner as to create a disturbance to the use or enjoyment of the Property.

2. Conveyance in Accordance with Conference Hotel Development Agreement. The Grantor's grant of the Property to the Grantee is made in accordance with and subject to that certain Conference Hotel Development Agreement, dated _____, 2013, by and between Grantor and Grantee (the "Conference Hotel Development Agreement"), which is incorporated herein by reference. The Conference Hotel Development Agreement generally requires the Grantee to construct certain Hotels, Parking Structures, and a Retail/Restaurant/Entertainment Component (collectively, the "Developer Improvements") as more particularly described in the Conference Hotel Development Agreement and to operate and maintain such Developer Improvements in accordance with the requirements set forth therein for the Applicable

Covenants Consideration Period. All capitalized terms not herein defined shall have the meanings defined in the Conference Hotel Development Agreement.

3. Permitted Uses. The Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that the Grantee shall develop, use, operate, and maintain the Property and the Development Improvements thereon in accordance with the Conference Hotel Development Agreement for the periods of time specified therein. The foregoing covenants shall run with the land.

4. Restrictions on Transfer. The Grantee further agrees as follows:

(A) For the period commencing upon the date of this Grant Deed and until expiration of the Applicable Covenants Consideration Period, no voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under the Conference Hotel Development Agreement or this Grant Deed, nor shall the Grantee make any total or partial sale, transfer, conveyance, assignment, subdivision, financing, refinancing, lease, sublease, or license of the whole or any part of the Property without the prior written approval of the Grantor pursuant to Sections 103.1 and 103.3 of the Conference Hotel Development Agreement, except for a Permitted Transfer pursuant to Section 102 of the Conference Hotel Agreement. The Grantee further agrees that any right to transfer is subject to the provisions of this Grant Deed.

(B) Except with respect to Permitted Transfer pursuant to Section 103.2 of the Conference Hotel Agreement, prior to recordation of the final Release of Construction Covenants with respect to the Property, or applicable portion thereof, the Developer shall not place or suffer to be placed on the Property, or any portion thereof, any lien or encumbrance other than mortgages, deeds of trust, or other forms of conveyance required for the Construction Financing, unless approved in writing by the Grantor, in its sole and absolute discretion.

5. Grantor Right of Reentry.

(A) In accordance with Section 503 of the Conference Hotel Development Agreement, the Grantor has the right, at its election, to reenter and take possession of the Property, with all improvements thereon, and terminate and Revest in the Grantor the estate conveyed to the Grantee if after the Close of Escrow and prior to the issuance of the final Release of Construction Covenants with respect to the Property, or applicable portion thereof, the Grantee (or its successors in interest) shall:

(1) fail to start the construction of the Project as required by the Conference Hotel Development Agreement for a period of ninety (90) days after written notice thereof from the City; or

(2) abandon or substantially suspend construction of the Project required by the Conference Hotel Development Agreement for a period of ninety (90) days after written notice thereof from the Grantor; or

(3) contrary to the provisions of Sections 101 or 103 of the Conference Hotel Development Agreement, Transfer or suffer any involuntary Transfer in violation of the same, and such Transfer, if it is a Transfer requiring approval by the Grantor, is not rescinded within thirty (30) days of Notice thereof from the Grantor to the Grantee.

(B) Such right to reenter, terminate and Revest is subject to the quiet enjoyment, and, if applicable, the right to continue to complete construction by (i) Tenants or other occupants who have (a) executed leases or subleases and (b) incurred substantial expenses in connection with the design and/or construction of improvements required to be constructed by such Tenant under such lease or sublease and (ii) a Holder, in the case where the Developer is in Default and, *vis à vis* a Holder, shall be exercisable only if:

(1) Such Holder (or its Nominee) (a) shall have failed to cure any Default within the applicable cure periods granted to such Holder (or its Nominee), or (b) shall have given City written notice that it will not cure any such Default or condition or that it will otherwise not comply with the terms and conditions of this Agreement, and

(2) The Grantor, within ninety (90) days after the occurrence of any events described in subparagraph (1) immediately above, shall commence the exercise of its right of entry and shall pay to Holder (or its Nominee) in immediately available funds, the Loan Balance prior to Revesting.

In the event of a failure or refusal to cure a Default, as described in subparagraph (b)(1), above, Grantor's sole remedy *vis à vis* Holder shall be the exercise of the re-entry right and Revesting in accordance herewith.

The conditions to the commencement of the exercise of the Grantor's right to re-enter and Revest as described above shall be applicable whether the re-entry and Revesting occurs (a) prior to foreclosure (or deed in lieu of foreclosure) by the Holder (or its Nominee) under its mortgage or deed of trust; or (b) after Holder (or its Nominee) acquires title to the Property by foreclosure (or deed-in-lieu of foreclosure) under its mortgage or deed of trust.

(C) Upon the revesting in the Grantor of title to the Property, as provided in this section, the Grantor shall use its reasonable efforts to resell the Property as soon and in such manner as the Grantor shall find feasible and consistent with the Conference Hotel Development Agreement and the Scope of Development to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of constructing or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to the Grantor and in accordance with the Scope of Development. The Grantee acknowledges that there may be substantial delays experienced by the Grantor if the Grantor must remarket the same for operation of a conference hotel following the revesting of the same in the Grantor. Upon such resale of the Property, the net proceeds thereof shall be applied:

(i) First, to reimburse the Grantor all costs and expenses incurred by the Grantor, excluding in-house Grantor staff costs, but specifically, including, but not limited to, any expenditures by the Grantor in connection with the recapture, management and resale of the

Property or part thereof (but less any income derived by the Grantor from the Property or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Property or part thereof which the Grantee has not paid (or, in the event that the Property is exempt from taxation or assessment of such charges during the period of ownership thereof by the Grantor, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time or reversion of title thereto in the Grantor, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Property, or part thereof; and any amounts otherwise owing the Grantor; and, in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Grantee, its successor or transferee, up to the amount equal to the sum of (a) actual and direct third party costs incurred by the Grantee for the Developer Improvements existing on the Property at the time of the re-entry and possession, less (b) any gains or net income received by the Grantee from the Property, or the improvements thereon.

(iii) Any balance remaining after such reimbursements shall be retained by the Grantor as its property. The rights established in this section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or in the Conference Hotel Development Agreement or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Grantor will have conveyed the Property and provided other financial assistance to the Grantee for development of a high quality hotel project, particularly for development and operation of the Project, and not for speculation in undeveloped land.

6. Nondiscrimination.

(A) The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Improvements or the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or the Property. The foregoing covenants shall run with the land.

(B) All deeds, leases or contracts with respect to the Project or the Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

(ii) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens."

Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

(iii) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The Covenants against discrimination set forth in this Section 6 shall continue in effect in perpetuity.

7. Violations Do Not Impair Liens. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by this Grant Deed or the Conference Hotel Development Agreement; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Grant Deed Binding on Successors and Assigns. All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Grantee and the permitted successors and assigns of the Grantee. Whenever the term "Grantee" is used in this Grant Deed, such term shall include any other permitted successors and assigns as herein provided.

9. Covenants Run With Land. All covenants contained in this Grant Deed shall be covenants running with the land.

10. Covenants For Benefit of Grantor. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

11. Revisions to Grant Deed. Both Grantor, its successors and assigns, and Grantee and the successors and assigns of Grantee in and to all or any part of the fee title to the Property shall have the right with the mutual consent of the Grantor to consent and agree to changes in, or to

eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. However, Grantee and Grantor are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this ____ day of _____, 2013.

GRANTOR:
CITY OF GARDEN GROVE,
a municipal corporation

Dated: _____, 2013

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

The undersigned Grantee accepts title subject to the covenants hereinabove set forth.

GRANTEE:

LAND & DESIGN, INC., a California corporation

Dated: _____, 2013

By: _____
Its: _____

Dated: _____, 2013

By: _____
Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

EXHIBIT G

RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____, California _____
Attention: _____

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the CITY OF GARDEN GROVE, a municipal corporation (the "City"), in favor of _____, a _____ (the "Developer"), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Conference Hotel Development Agreement dated _____ (the "CHDA") concerning the redevelopment of certain real property situated in the City of Garden Grove, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

B. As referenced in Section 310 of the CHDA, the City is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in Section 100 of the CHDA) upon completion of construction of the Developer Improvements (as defined in Section 100 of the CHDA) or a portion thereof, which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Orange County. This Release is conclusive determination of satisfactory completion of the construction and development required by the CHDA of the Developer Improvements or such portion thereof as described in Exhibit "A" attached hereto and incorporated herein by reference.

C. The City has conclusively determined that such construction and development of that portion of the Developer Improvements described in Exhibit "A" has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. Those Developer Improvements described in Exhibit "A" to be constructed by the Developer have been fully and satisfactorily completed in conformance with the CHDA and are free of any claims and/or liens by City. Any operating requirements and all use, maintenance, security or nondiscrimination covenants contained in the CHDA and other documents executed

and recorded pursuant to the CHDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the CHDA.

IN WITNESS WHEREOF, the City has executed this Release this ____ day of _____, 20__.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

DEVELOPER

a _____

Dated: _____

By: _____
Its: _____

Dated: _____

By: _____
Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary
Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

EXHIBIT H

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT (the "Agreement") is entered into _____, 20__, by and between LAND & DESIGN, INC., a California corporation ("GRANTEE") and the CITY OF GARDEN GROVE, a municipal corporation ("GRANTOR").

RECITALS

A. GRANTOR, as "City," and GRANTEE, as "Developer," entered into that certain Conference Hotel Development Agreement dated _____ (the "CHDA"), pursuant to which the GRANTOR agreed, subject to the fulfillment of the City's Conditions Precedent to convey the Site to the GRANTEE and GRANTEE agreed, subject to Developer's Conditions Precedent to accept Conveyance of the Site and construct the Developer Improvements thereon. All capitalized terms not defined herein shall have the meaning set forth in the CHDA, unless the context dictates otherwise.

B. GRANTOR currently owns the City Parcels and is in the process of acquiring the Agency Property. If and to the extent the GRANTOR acquires the Agency Property or is granted the right of entry with respect to the Agency Property such Agency Property shall be deemed to be part of the City Parcels hereunder.

RIGHT OF ENTRY AGREEMENT

1. Grant of Right of Entry. The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, subcontractors, agents, tenants, purchasers, and designees, permission to enter upon the City Parcels ("Right of Entry") for the purpose of performing or causing to be performed environmental, soils, and/or topographical tests and surveys ("Investigation") and for the purpose of clearing, demolishing and rough grading ("Grading").

2. Termination. This Agreement shall terminate upon the earlier to occur of (i) _____, 20__, (ii) the Closing or (iii) termination of the CHDA, unless otherwise extended by mutual agreement of the parties.

3. Assumption of Risk. GRANTEE enters the City Parcels and performs or causes to be performed the Investigation, at its own risk and subject to whatever hazards or conditions may exist on the City Parcels.

4. Condition of City Parcels Upon Termination of CHDA Prior to Conveyance. If the CHDA and this Agreement are terminated prior to Conveyance (a) in the case of Investigation, GRANTEE shall repair or replace any landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by Grantee's employees, contractors, subcontractors, agents and designees, and (b) in the case of Grading of the City Parcels, the Developer shall provide a rough graded level site.

5. Indemnification and hold harmless. GRANTEE shall indemnify, defend and hold harmless the GRANTOR and City, their officers, directors, employees, contractors,

EXHIBIT H

subcontractors, agents, and volunteers ("Indemnitees") from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the GRANTEE or any person directly or indirectly employed by or acting as agent for GRANTEE in the performance of this Right of Entry, except that such indemnity shall not apply to the extent such matters are caused by the negligence or willful misconduct of the GRANTOR, its officers, agents, employees or volunteers.

It is understood that the duty of GRANTEE to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Right of Entry does not relieve GRANTEE from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

6. Insurance. During the term of this Right of Entry, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker's compensation and shall provide insurance in accordance with the CHDA.

7. Recording. Neither GRANTOR nor GRANTEE shall record this Right of Entry.

8. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Right of Entry is brought by either party to this Right of Entry, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

9. Notices. All notices required or permitted under the terms of this CHDA shall be in writing and sent to:

To Grantor: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

with a copy to: Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, California 92840

To Grantee: Matthew Reid
Land & Design, Inc.
8130 La Mesa Boulevard #808
La Mesa, California 91942

With a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor

EXHIBIT H

San Diego, California 92101
Attention: Tom Crosbie

10. Time is of the Essence; Entire Agreement. Time is of the essence of the terms and provisions of this Right of Entry. This Right of Entry constitutes the entire agreement between GRANTEE and GRANTOR with respect to the matters contained herein, and no alteration, amendment or any part thereof shall be effective unless in writing signed by parties sought to be charged or bound thereby.

11. Assignment. This Agreement shall be assignable as security to Grantee's Holder for the purposes and with the limitations set forth herein.

APPROVED BY:

GRANTEE

LAND & DESIGN, INC.,
a California corporation

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

GRANTOR:

CITY OF GARDEN GROVE, a municipal
corporation

Dated: _____

By: _____

Its: _____

DRAFT

EXHIBIT I

PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS

I. Developer's Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a pre-acceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers' compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

EXHIBIT I

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.

DRAFT

EXHIBIT J

CONCEPTUAL SITE PLAN

DRAFT

EXHIBIT K

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (the "Agreement") is entered into as of _____, 2013 by and between the **CITY OF GARDEN GROVE**, a municipal corporation (the "City"), and **LAND & DESIGN, INC.**, a California corporation (hereinafter referred to as "Developer").

RECITALS

1. Recordation of Memorandum of Agreement. This Memorandum of Agreement evidences that certain Conference Hotel Development Agreement between the City and the Developer dated _____ ("CHDA"). Capitalized terms not defined herein shall have the meaning set forth in the CHDA. When recorded at the Closing the CHDA is a burden against Developer's fee simple interest in the Site which Site is more particularly described in Attachment No. 1 attached hereto and incorporated herein by reference. The CHDA provides, among other things, and subject to the fulfillment of certain Conditions Precedent, for a conveyance of the Site to the Developer and for the development and operation by Developer thereon of Hotels, a Retail/Restaurant/Entertainment Component, and Parking Structures. The Covenants shall run with the land and be binding upon the heirs, successors and assigns of Developer.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement as of the ____ day of _____, 2013.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____, 2013

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DEVELOPER

LAND & DESIGN, INC., a California corporation

Dated: _____, 2013

By: _____
Its: _____

Dated: _____, 2013

By: _____
Its: _____

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

ATTACHMENT NO. 1 TO EXHIBIT K

LEGAL DESCRIPTION

DRAFT

EXHIBIT L

**PRE-APPROVED HOTEL FRANCHISES / FLAGS/OPERATORS AND
RETAIL/RESTAURANT/ENTERTAINMENT TENANT(S)COMPONENT
TENANTS/OPERATORS**

Pre-Approved Limited Service Hotels

Aloft (Starwood)
Cambria Suites (Choice Hotels)
Coast Hotels and Resorts
Country Inn and Suites (Carlson)
Courtyard (Marriott)
Doubletree Hotel (Hilton)
Drury Suites
Element (Starwood)
Fairfield Inn and Suites (Marriott)
Four Points by Sheraton (Starwood)
Grand Pacific Resorts
Hawthorne Suites
Hilton Grand Vacations
Hilton Hotel
Holiday Inn (IHG)
Holiday Inn Club Vacations (IHG)
Hotel Indigo (IHG)
Hyatt Place (Hyatt)
Hyatt Vacation Club
Landry's Restaurant Themed Hotel
Marriott Hotel(s)
Marriott Vacation Club
Nickelodeon Hotel
Radisson Hotel (Carlson)
Red Lion Hotel
Springhill Suites (Marriott)
Staybridge Suites (IHG)
Summerfield Suites (Hyatt)
Towne Place Suites (Marriott)
Wyndham Hotel
Wingate (Wyndham)
Worldmark by Wyndham
Wyndham Garden

DRAFT

Pre Approved Upper Upscale Hotels

Autograph Collection (Marriott)
Destination Hotels and Resorts
Doral Hotel and Resorts
Dreamworks Hotel
Fairmont
Four Seasons
Grand Pacific Resorts

Inter-Continental Hotel
Hard Rock Hotel
Hilton Grand Vacations
Hilton Hotel
Holiday Inn Resort
Hyatt Hotel
Hyatt Vacation Club
Joie de Vivre Hotels
Jumeira Hotels
JW Marriott
Kessler Collection
KSL Resorts
Kimpton Hotel
Langham Hotel
Landry's Hotel(s)
Le Méridien
Loews
Luxury Collection (Starwood)
Mandarin Oriental Hotel
Marriott Hotels
Marriott Vacation Club
MGM Hotel
Millenium Hotels
Montage
Morgans Hotels Group
Nickelodeon Hotel
Omni Hotel and Resorts
Outrigger Hotels
Pan Pacific Hotel
Paramount Hotel
Peabody Hotel
Planet Hollywood Hotel
Radisson Blu
Renaissance
Rosen Hotel
Sheraton Hotel
Sol Melia Hotels
Sonesta
Taj Hotel(s)
Thompson Hotel
Trump Hotel
Universal Hotel
W Hotels
Westin
Wyndham Collection/Resort

DRAFT

Pre-Approved List of Full-Service Restaurants:

Applebees
Bahama Breeze
Bahama Breeze

BJ's Restaurant and Brewery
Black Angus
Bonefish Grill
Buffalo Wild Wings Grill and Bar
Burgerville USA
California Pizza Kitchen
Capital Grill
Carrabba's Italian Grill
Cheeseburger in Paradise
Chevy's
Chili's Grill and Bar
Chuy's Mesquite Broiler
Claim Jumper
Daily Grill
Daily Grill/The Grill
Elephant Bar
Emerill's
Famous Dave's
Farrell's
Fleming's Steakhouse
Gladstones
Golden Corral
Grand Luxe Cafe
Granite City Food and Brewery
Hard Rock Café
Houston's
Il Fornaio Cucina Italiano
Islands
Johnny Carino's
Johnny Rockets
King's Fish House
Landry's Seafood
Laundry's Aquarium Restaurant
Logan's Roadhouse
Lone Star Steakhouse
LongHorn Steakhouse
Lucilles BBQ
Maggiano's/Corner Bakery Café
Maloney's
Margaritaville
Marie Callendar's/Babe's BBQ
Moe's Southwest Grill
Nascar Café
Nobu
Old Chicago
Olive Garden
On the Border
Panda Inn
Papa Bello
Pat and Oscars
Pizzeria Uno

DRAFT

Prego
Qdoba Mexican Grill
RA Sushi Bar
Roadhouse Grill
RockSugar
Romano's Macaroni Grill
Ruby Tuesday's
Ruby's Diner
Season's 52
Sevilla
Smith & Wollensky
Smokey Bones BBQ
Spaghetti Factory
Texas Roadhouse
TGI Fridays
T-Rex
Uno Chicago
Wolfgang Pucks
Yard House
Z Tejas Grill

Pre-Approved List of Quick-Service Restaurants/Retail:

Crepe Café
Earl of Sandwich
Five Guys Hamburgers
Jerry Woodfired Hot Dogs
Panda Express
Panera Bread
Pink's Famous Hot Dogs
Portillos
Quiznos
Subway
The Hat
Togo's
Tommy's World Famous Hamburgers

DRAFT

Pre-Approved List of Specialty Restaurants:

California Welcome Center (official State of California Retail Storefront)
Coffee Bean
Coffee Bean and Tea Leaf
Dunkin Donuts
Ghirardelli Soda Fountain & Chocolate Shop
Haagen Dazs
Jamba Juice
Lego Store
Peet's Coffee
Pink Berry
Sea World Store
Southern Maid Donut Shops
Starbucks
Universal Studios Store
Wetzels Pretzels
Yogurt Land

Pre-Approved List of Entertainment Uses

B.B. King's Blues Cafe
Fox Sports Grill
House of Blues
Howl at the Moon
Improv
Jillians
Landry's Aquarium
Laugh Out Loud Comedy
Madame Tussauds
NBA Café/City
Ripley's Aquarium
Ripley's Believe It or Not (or similar Ripley's Entertainment Venue)
Sea Life Centre
Warren and Annabelle's Magic Show or affiliate
Wonderworks

Subject: Re: Comments on Agreement

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Thu, 14 Mar 2013 14:59:07 -0700

To: Greg Blodgett <greg1@ci.garden-grove.ca.us>, James Eggart <JEggart@wss-law.com>

Call into my conf line:
712.775.7300, 764078#

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

On Mar 14, 2013, at 11:32 AM, Matthew Reid <matt.reid@landanddesign.com> wrote:

Here are our comments to the agreement.
Look forward to our discussion today at 3pm.

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

<2013_03_14 MR COMMENTS Site C Conference Hotel Agreement (Third Draft).doc>

Subject: RE: Comments on Agreement

From: "James H. Eggart" <JEggart@wss-law.com>

Date: Thu, 14 Mar 2013 16:50:51 -0700

To: "Matthew Reid" <matt.reid@landanddesign.com>, Greg Blodgett <greg1@ci.garden-grove.ca.us>

Matt,

Per your request, attached is the Third Draft version of the Agreement with the changes to the insurance language requested by the City's Risk Management Department shown in track changes format. This version does not reflect the changes we discussed today and is transmitted merely for purposes of providing you with the proposed changes to Section 306.

I am working on a fourth Draft version of the Agreement to incorporate the changes we discussed today.

Regards.

 James H. Eggart, Esq. Woodruff Spradlin & Smart (714) 415-1062 Direct Dial (714) 865-4853 Mobile (714) 415-1162 Direct Fax JEggart@wss-law.com 555 Anton Boulevard, Suite 1200 Costa Mesa, CA 92626-7670 http://www.wss-law.com

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From: Matthew Reid [mailto:matt.reid@landanddesign.com]

Sent: Thursday, March 14, 2013 2:59 PM

To: Greg Blodgett; James H. Eggart

Subject: Re: Comments on Agreement

Call into my conf line:
712.775.7300, 764078#

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

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matt.reid@landanddesign.com

On Mar 14, 2013, at 11:32 AM, Matthew Reid <matt.reid@landanddesign.com> wrote:

Here are our comments to the agreement.
Look forward to our discussion today at 3pm.

Matthew Reid

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<2013_03_14 MR COMMENTS Site C Conference Hotel Agreement (Third Draft).doc>

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CONFERENCE HOTEL DEVELOPMENT AGREEMENT

By and Between

CITY OF GARDEN GROVE

and

LAND & DESIGN, INC.

DRAFT

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DRAFT

CONFERENCE HOTEL DEVELOPMENT AGREEMENT

This **CONFERENCE HOTEL DEVELOPMENT AGREEMENT** (this "Agreement") dated for purposes of identification only as of March __, 2013 (the "Date of this Agreement"), is entered into by and between the **CITY OF GARDEN GROVE**, a municipal corporation (the "City"), and **LAND & DESIGN, INC.**, a California corporation (the "Developer").

RECITALS

A. The property which is the subject of this Agreement is approximately five acres (5) acres located at the northeast corner of Harbor Boulevard and Twintree Lane in the City of Garden Grove and is comprised of certain property owned by the City ("City Property"), certain property currently owned by the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Agency Property"), and certain property currently privately owned by third parties, but which the Developer may purchase or lease in the future ("Third Party Property"). The City Property and the Agency Property are collectively referred to herein as the "Site." The Third Party Property is adjacent to the Site and, if purchased or leased by the Developer, may be added to the Site for purposes of construction and operation of the Project contemplated by this Agreement. The City Property, the Agency Property, and the Third Party Property are shown on the Site Map (Exhibit A) and legally described in the Legal Description (Exhibit B).

B. The Developer has proposed a development project for the Site generally consisting of a combination of hotels, retail, restaurant, and entertainment venues, and related parking facilities, and specifically including the following components:

1. One (1) full-service upper upscale hotel ("Upper Upscale Hotel") containing no less than three hundred (300) rooms and not less than ten thousand (10,000) square feet of meeting space, and (ii) two (2) limited/select/focused service/suites/extended stay type hotels (collectively, the "Limited Service Hotels" and each a "Limited Service Hotel"), containing no less than 125 rooms each;

2. A minimum of ten thousand (10,000) and a maximum of sixty-five thousand (65,000) square feet of retail/restaurant/entertainment establishments, including one (1) or more restaurants (the "Retail/Restaurant/Entertainment Component"); and

3. Two (2) Parking Structures.

The Upper Upscale Hotel, the Limited Service Hotels, Retail/Restaurant/Entertainment Component, Parking Structures, and the other improvements required and/or contemplated to be constructed on the Site pursuant to this Agreement and the Land Use Approvals are collectively referred to herein as the "Developer Improvements" or "Project," and individually as the "Separate Component(s)." The Project is more specifically described in the Scope of Development (Exhibit C).

C. The City previously approved General Plan Amendment No. GPA-2-12(B) (the "General Plan Amendment") and Planned Unit Development No. PUD-128-12 (the "PUD") to

facilitate the development and operation of the Project on the Site and the Third Party Property. The City also previously adopted a Mitigated Negative Declaration and Mitigation Monitoring Program for the GPA, the PUD, and the additional future entitlements necessary to implement the Project (the "MND"). The General Plan Amendment, the PUD, and the MND are collectively referred to herein as the "Existing Land Use Approvals." The provisions and development standards of the PUD authorize the development of a hotel development that consists of an aggregate total of a maximum of 769 rooms within one (1) full-service and two (2) limited service hotels, with up to 39,000 square feet of conference/meeting/banquet space, a maximum of 20,000 aggregate square feet of interior restaurant/bar space within the three (3) hotels, up to 45,000 square feet of restaurant/entertainment space constructed on free-standing pads, and two parking structures containing approximately 1,297 parking spaces. Pursuant to the provisions of the PUD, if the City determines that the Developer's submittal of development plans are in substantial compliance with the provisions of the PUD and in similar shape, form and configuration with the conceptual site plans included with the City's approval of the PUD, the Developer may proceed to securing the appropriate building permits for constructing the Project (other than the restaurants and/or entertainment venues on freestanding pads) without further discretionary site plan approvals. In order to fully implement the Project, however, certain additional discretionary land use entitlements will be necessary, including, without limitation, a subdivision map to consolidate the properties within the Site and/or to permit development of the Parking Structure(s) across legal lot lines (the "Subdivision Map"), a statutory development agreement between the City and the Developer (the "Development Agreement"), conditional use permits to allow for the sale of alcoholic beverages in the Separate Components, conditional use permit(s) to allow for the operation of a health club(s), spa(s), and/or gym(s) on the Site, and approvals of site plans for each freestanding pad to be constructed as part of the Retail/Restaurant/Entertainment Component.

D. In connection with the development and initial operation of the Project, to assist in creating future financial feasibility necessary to allow the construction and operation of the Project to proceed, the Developer has requested certain financial assistance from the City in the form of the conveyance of the City Property and Agency Property to the Developer, the construction of certain Offsite Infrastructure, payment of the costs associated with preparation of the Subdivision Map, and financial assistance consisting of rebates of a portion of the Transient Occupancy Tax Revenues and Sales Tax Revenues generated by the Project over a period of twenty (20) years (the "Tax Rebate Payments"). Conveyance of the Site, the construction of certain Offsite Infrastructure, the payment of the costs associated with preparation of the Subdivision Map, and the payment of the Tax Rebate Payments is collectively referred to herein as the "Covenants Consideration." In return for the Covenants Consideration, the Developer agrees to construct the Project as provided herein and, for so long as the City is providing any Covenants Consideration, to operate the Separate Components of the Project in accordance with the Covenants established by this Agreement. The City has determined that the Project would not be able to be developed and operated without the assistance provided by this Agreement and that this Agreement will result in only that assistance to the Developer which is necessary to fund the economic feasibility gap created by the quality of the Project required by this Agreement.

E. On June 28, 2011, Parts 1.8 and 1.85 of Division 24 of the Community Redevelopment Law ("CRL"), California Health and Safety Code Sections 33000, *et seq.*, were added by Assembly Bill X1 26 ("RDA Dissolution Act"). The RDA Dissolution Act provides

for the statewide dissolution of all redevelopment agencies as of October 1, 2011, and provides that, thereafter, a successor agency will administer the enforceable obligations of redevelopment agencies and otherwise wind up their affairs. The City became the Successor Agency to the former Garden Grove Agency for Community Development pursuant to Part 1.85 of the CRL. On December 29, 2011, in *California Redevelopment Association v. Matosantos*, Case No. S194861, the California Supreme Court upheld the RDA Dissolution Act and extended the deadlines in the RDA Dissolution Act by four months.

F. On June 27, 2012, the State Legislature passed AB 1484 as part of the budget trailer bill for the 2011-2012 Legislative Session, amending the RDA Dissolution Act to clarify certain provisions of the RDA Dissolution Act and to provide for new regulations pertaining to the disposition of real estate held by successor agencies. AB 1484 added sections 34179.5 through 34179.7 to the California Health & Safety Code to require due diligence reviews or audits of successor agency assets to determine amounts in cash available for distribution to taxing agencies. If a successor agency remits available cash assets to County auditor-controllers for distribution to taxing agencies pursuant to the new requirements, such successor agency is to be issued a "finding of completion" certifying that such agency has complied with the due diligence requirements. As of the date of this Agreement, the Agency has not yet been issued a "finding of completion."

G. AB 1484 further added a new Chapter 9 to Part 1.85 of the Health & Safety Code, commencing with Section 34191.1, applicable to successor agencies that receive a "finding of completion." Chapter 9 authorizes a successor agency that receives a "finding of completion" to prepare a long-range property management plan to address the use and disposition of the real property of the former redevelopment agency. If approved by the oversight board of the successor agency and the Department of Finance, the plan may provide for, among other things, the retention of such property for future development and/or transfer of such property to the city for such purposes. As of the date of this Agreement, a long-range property management plan has not yet been approved by the Agency, the Oversight Board, or the Department of Finance.

H. Provided a long-range property management plan providing for transfer of the Agency Property to the City at no cost for development purposes is approved by the Agency, the Oversight Board, and the Department of Finance, the City and the Developer desire by this Agreement, and subject to its terms and provisions, (1) for the City to provide the Covenants Consideration to Developer, and (2) for the Developer (a) to acquire the Site, (b) to process the Additional Land Use Approvals, and (c) to construct and operate the Developer Improvements in accordance with the Covenants.

I. The City has established a special zone along Harbor Boulevard south of the City of Anaheim border marketed as the "Grove District." The City markets the Grove District as Southern California's premier resort destination, within the heart of Orange County's largest tourist center, with easy access to the most popular Southern California attractions like Disneyland, Disney's California Adventure, Knott's Berry Farm, Universal Studios, Sea World, and miles of Orange County beaches. The Grove District includes modern hotels that offer a variety of room sizes and rates, plus entertainment and dining to meet every tourist and business traveler's needs. The Project will add additional hotel and entertainment amenities to the Grove District brand.

J. The development and operation of the Project on the Site, as provided in this Agreement, is in the vital and best interest of the City and the welfare of its residents and is in accordance with the public purposes and provisions of applicable state and local laws. Without limiting the foregoing, development and operation of the Project will result in substantial benefits to the City, which include (i) additional Grove District branding, (ii) job creation and enhanced revenues to the City resulting from construction and operation of the Project, including property taxes, sales taxes, and transient occupancy taxes, (iii) enhanced marketability that is likely to extend out-of-town leisure and convention visitors' lengths of stay in the City as a result of additional attractions and high-quality retail shopping and dining opportunities, and (iv) additional high-quality entertainment, restaurant and retail opportunities for the residents of Garden Grove and the surrounding area(s). The City further finds that the benefits provided by the Project will result in substantially more benefits to the City than the costs to the City of providing the Covenants Consideration.

NOW, THEREFORE, the City and the Developer hereby agree as follows:

100. INTRODUCTORY PROVISIONS

101. Definitions. Capitalized terms within this Agreement shall have the meanings set forth below, or if not defined in this Section 101, shall have the meaning ascribed thereto when such terms are first used herein:

"Additional Land Use Approvals" means all Land Use Approvals other than Existing Land Use Approvals.

"Agency" means the City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development, a public body formed pursuant to pursuant to Part 1.85 of the CRL and the RDA Dissolution Act.

"Agency Property" means that certain property identified as Agency Property on the Site Map and described in the Legal Description.

"Agreement" means this Conference Hotel Development Agreement by and between the City and Developer, including all exhibits, and all amendments and modifications hereto.

"ALTA Policies and Endorsements" is defined in Section 203.

"Amendment/Estoppel Costs" is defined in Section 621.

"Applicable Covenants Consideration Period" means, with respect to any portion of the Site and/or Developer Improvements, the period during which any of the Tax Rebate Payments with respect to the applicable portion of the Site and/or Developer Improvements is required to be paid pursuant to Section 408.

"Assignment and Assumption Agreement" is attached hereto as Exhibit E and incorporated herein by reference.

"Breach" is defined in Section 501.

"CFD" means a community facilities district formed pursuant to Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*).

"CFD Bonds" means bonds issued by a CFD.

"CFD Financing" is defined in Section 301.3.

"City" means the City of Garden Grove, a California municipal corporation, and any assignee of or successor to its rights, powers and responsibilities.

"City Improvements" is defined in Section 301.2.

"City Improvement Costs" is defined in Section 301.2.

"City Manager" means the City Manager of the City, or his or her designee.

"City Property" means that certain property identified as City Property on the Site Map and described in the Legal Description

"City's Conditions Precedent" is defined in Section 205.1.

"Closing" or "Close of Escrow" is defined in Section 201.5.

"Closing Date" is the date upon which conveyance of the Site is consummated in accordance with Section 201.3 hereof.

"CLTA Policy" is defined in Section 203.

"Commence Construction" or "Commencement of Construction" means the commencement of construction of the applicable portion of the Developer Improvements pursuant to a validly issued building permit, it being agreed that the pouring of foundations for such portion of the Developer Improvements constitutes commencement of construction thereof (without limiting other indicia of such commencement).

"Community Redevelopment Law" or "CRL" means California Health and Safety Code Sections 33000, *et seq.* as the same now exists or may hereafter be amended.

"Completion of Construction" or "Complete(s) Construction" or "Completed Construction" or "Completing Construction" means the completion of construction of the Developer Improvements, or any of the Separate Components thereof, as evidenced by a final Certificate of Occupancy issued by the City, certification by the Project Architect and the City Manager that such Developer Improvements are complete in accordance with the Land Use Approvals and, in the case of a Hotel, the Hotel and all its rooms are open and available to the public.

"Conceptual Site Plan" means that certain conceptual site plan approved by the City in conjunction with Planned Unit Development No. PUD-128-12 generally depicting the proposed

development and use of the Site, which is attached hereto as Exhibit J and incorporated herein by reference.

"Conditions Precedent" shall mean the City's Conditions Precedent and Developer's Conditions Precedent set forth in Section 205.

"Construction Commencement Date" means the date that is set forth in the Schedule of Performance as the date upon which the Commencement of Construction is to occur.

"Construction Drawings" is defined in Section 302.

"Construction Financing" is defined in Section 311.1 hereof.

"Construction Lender" is defined in Section 311.

"Conveyance" means the conveyance of the Site to the Developer by Grant Deed.

"Cost Reimbursement Deposit" is defined in Section 201.1.

"Covenants" means the covenants, obligations and promises of Developer hereunder, including without limitation the covenants, obligations and promises set forth in Section 102.2, 103, 204.2, 204.3, 301, 303 through 309, inclusive, 400, 503 and 603, which Covenants shall survive the Closing, run with the land and be binding upon heirs, successors and assigns of Developer.

"Covenants Consideration" means, collectively, the economic assistance to be provided by the City to the Developer as provided in Section 407 hereof.

"Date of this Agreement" means the date of approval of the Agreement by the City.

"Declaration" means a Declaration of Covenants, Conditions and Restrictions to be recorded against the Site which will be mutually agreed to by the City and the Developer prior to Closing, which Declaration shall address the management, operation, rules of conduct, security and access rights and other easements with respect to the Project.

"Default" is defined in Section 501.

"Department of Finance" or **"DOF"** means the California Department of Finance.

"Deposit" is defined in Section 201.3.

"Developer" means Land & Design, Inc., a California corporation, and any affiliate, assignee or successor thereto permitted pursuant to the terms of this Agreement. As of the date of this Agreement, Matthew Reid has (i) at least a fifty-one percent (51%) ownership interest in Land & Design, Inc., and (ii) subject to the customary rights of other non-managerial members, partners or shareholders, as applicable, operational and managerial control of Developer and, subject to Section 103 hereof, will retain same until the issuance of Release of Construction Covenants.

"Developer Improvements" means the Hotels, the Retail/Restaurant Entertainment Component, the Parking Structures, each as generally described in Recital B above and/or more particularly described herein and in the Scope of Development, and such other related improvements required and/or contemplated to be constructed on the Site pursuant to this Agreement and the Land Use Approvals.

"Developer Parties" means collectively Developer and Matthew Reid.

"Developer/City Request" is defined in Section 621.

"Developer's Conditions Precedent" is defined in Section 205.2.

"Development Agreement" means a development agreement pursuant to Government Code Section 65864 *et seq.*

"Due Diligence Date" means ninety (90) days following the later of (a) Date of this Agreement or (b) the date the City has fee title to all of the Site.

"Enforced Delay" is defined in Section 602.

"Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 USC §§ 1801 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended (42 USC §§ 6901 *et seq.*), the Toxic Substances Control Act (15 USC §§ 2601 *et seq.*), the Insecticide, Fungicide, Rodenticide Act (7 USC §§ 136 *et seq.*), the Superfund Amendments and Reauthorization Act (42 USC §§ 6901 *et seq.*), the Clean Air Act (42 USC §§ 7401 *et seq.*), the Safe Drinking Water Act (42 USC §§ 300f *et seq.*), the Solid Waste Disposal Act (42 USC §§ 6901 *et seq.*), the Surface Mining Control and Reclamation Act (30 USC §§ 1201 *et seq.*), the Emergency Planning and Community Right to Know Act (42 USC §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 USC §§ 655 and 657), the California Underground Storage of Hazardous Substances Act (Health and Safety Code §§ 25280 *et seq.*), the California Hazardous Substances Account Act (Health & Safety Code §§ 25300 *et seq.*), the Porter-Cologne Water Quality Act (Water Code §§ 13000 *et seq.*), together with any amendments of or regulations promulgated thereunder and any other federal, state, and local laws, statutes, ordinances, or regulations now in effect that pertain to environmental protection, occupational health or industrial hygiene.

"Escrow" is defined in Section 201.3.

"Escrow Agent" is defined in Section 201.3.

"Existing Land Use Approvals" means (i) General Plan Amendment No. GPA-2-12(B), approved by the Garden Grove City Council on November 13, 2012; (ii) Planned Unit Development No. PUD-128-12, adopted by the Garden Grove City Council on November 27, 2012; and (iii) the International West Hotel – Harbor East (Site C) Mitigated Negative Declaration and Mitigation Monitoring Program adopted by the Garden Grove City Council on November 13, 2012.

"Finding of Completion" means a certification issued to the Agency by the Department of Finance pursuant to California Health & Safety Code Section 34179.7.

"Franchisor" or "Franchisors" is defined in Section 103.6.

"Franchise Agreement" or "Franchise Agreements" is defined in Section 103.6.

"Governmental Requirement(s)" means all valid and enforceable laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County of Orange, the City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer or the Site, including, without limitation, all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation (to the extent applicable), Labor Code Sections 1770 *et seq.*, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

"Grant Deed" or "Grant Deeds" means one or more grant deeds in the form of Exhibit F attached hereto and incorporated herein by reference, by which the City shall convey fee title to the City Property and the Agency Property to the Developer.

"Hazardous Materials" means any toxic substance, material, or waste which is now regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Law including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) a petroleum or refined petroleum product, including without limitation petroleum-based paints and solvents, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether (MTBE); (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, (xii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, (xiii) any flammable or explosive materials, (xiv) a radioactive material, or (x) lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds and including any different

products and materials which have been found to have adverse effects on the environment or the health and safety of persons.

"Holder" is defined in Section 311.2.

"Hotels" means the Upper Upscale Hotel(s) and the Limited Service Hotels, and **"Hotel"** means any one (1) of the Upper Upscale Hotel(s) and the Limited Service Hotels.

"Hotel Operator" or **"Hotel Operators"** is defined in Section 103.6.

"Indemnify" means indemnify, defend, pay for and hold harmless.

"Indemnitees" means the City and the Agency, and their respective representatives, officers, officials, agents, and employees, representatives, and volunteers.

"Insurance" is defined in Section 306 *et seq.*

"Land Use Approvals" means the Existing Land Use Approvals, the Subdivision Map, the Development Agreement, conditional use permits to allow for the sale of alcoholic beverages in the Separate Components, conditional use permit(s) to allow for the operation of a health club(s), spa(s), and/or gym(s) on the Site, site plan approvals for each freestanding pad to be constructed as part of the Retail/Restaurant/Entertainment Component, grading permits, building permits, plumbing permits, electrical permits, and any and all land use and/or other entitlements, permits, or approvals required by the Governmental Requirements in connection with construction and operation of the Developer Improvements.

"Legal Description" means the legal description of the Site attached hereto as Exhibit B and incorporated herein by reference.

"Liabilities" means liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines, and monetary sanctions), giving rise to losses, costs or expenses (including, without limitation, consultants' fees, and reasonable attorneys' fees) of any kind or nature and for any damages, including damages to property or injuries to person, including accidental death, (including reasonable attorneys' fees and costs in connection therewith).

"Limited Service Hotels" means those Hotels, the characteristics and the minimum standards for which are described in Recital B, in Section 301.1, and in Scope of Development. **"Limited Service Hotel"** means one of the Limited Service Hotels.

"Loan Balance" means, with respect to any Holder and its mortgage or deed of trust, the sum of the following amounts: (a) the aggregate unpaid amount (including, but not limited to, principal, protective advances, interest, fees, costs and expenses) owing to the Holder under the loan documents ("Holder Loan Documents") secured by such Holder's mortgage or deed of trust upon the Site (or any part thereof) immediately prior to the revesting of title in City (referred to herein as "Revesting") in accordance with this Agreement, whether City exercises such right of Revesting prior to such Holder's acquisition of Site (or portion thereof) by foreclosure or deed in lieu of foreclosure, or after completion of a foreclosure under such Holder's mortgage or deed of

trust (or acceptance and recordation of a deed-in-lieu of such foreclosure); plus (b) all third party costs and expenses reasonably incurred by such Holder (and/or such Holder's Nominee) under, or in connection with the enforcement of the applicable Holder Loan Documents, including, without limitation, foreclosure costs and expenses (or deed-in-lieu of foreclosure costs and expenses) (such costs and expenses to include, but not be limited to, title charges, default interest, appraisals, environmental assessments and reasonable attorneys' fees and expenses); plus (c) if City commences the exercise of its Revesting after such Holder's (or its Nominee's) acquisition of the Site (or any portion thereof) by foreclosure or deed-in-lieu of foreclosure, all third party costs and expenses, if any, reasonably incurred by such Holder (and/or such Holder's Nominee) in connection with the management and operation of the Site subsequent to the date upon which a foreclosure under such mortgage or deed of trust is completed [or such Holder or its Nominee accepts a deed in lieu of foreclosure]; plus (d) all third party costs and expenses reasonably incurred by such Holder (and/or such Holder's Nominee) in connection with the construction, Developer Improvements (including tenant improvements), restoration, repair and equipping of the Site (or any portion thereof); plus (e) if City commences the exercise of its right of Revesting after such Holder's (or its Nominee's) acquisition of the Site (or any portion thereof) by foreclosure or deed-in-lieu of foreclosure, an amount equal to the interest that would have accrued on the aggregate of the amounts described above under the Holder Loan Documents had all such amounts become part of the debt secured by such Holder's mortgage or deed of trust and had such debt continued in existence from the date of such foreclosure (or acceptance of a deed-in-lieu of foreclosure) by such Holder or its Nominee to the date the Revesting occurs and City reenters in accordance with this Agreement. (For purposes of this definition, the City's right to Revest in accordance with this Agreement shall not be deemed to have occurred prior to the date the Loan Balance is paid to the Holder (or its Nominee) in accordance with the Agreement). Each Holder (or its Nominee) shall provide City with its calculations of the Loan Balance and documents in support thereof within ten (10) days after written demand therefore by the City.

"Long Range Property Management Plan" means the long-range property management plan authorized by California Health and Safety Code Section 34191.5.

"Memorandum of Agreement" is attached hereto as Exhibit K and incorporated herein by reference.

"MND" means the International West Hotel – Harbor East (Site C) Mitigated Negative Declaration and Mitigation Monitoring Program adopted by the Garden Grove City Council on November 13, 2012 pursuant to Resolution No. 9153-12.

"Negotiated Purchase Agreement" is defined in Section 201.1.

"Nominee" means an entity which is owned and controlled by any Holder.

"Notice" is defined in Section 601.

"Official Records" means the official records of the Office of the Registrar Recorder of Orange County, California.

"Offsite Infrastructure" means the traffic signal and raised median improvements described in Performance Standards Nos. 8 and 9, respectively, of the PUD, and such other

public improvements required to be constructed and/or installed in the public right-of-way pursuant to the Land Use Approvals (excluding any sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscaping, and/or other improvements to be constructed from the back of the curb face by Developer pursuant to the Scope of Development), including any required environmental mitigation measures directly related to the construction and/or installation of such public improvements.

"Oversight Board" means the oversight board to the Agency created and existing pursuant to the CRL and the RDA Dissolution Act (as amended by AB 1484).

"Parcel(s)" means one or more of the parcels into which the Site is divided pursuant to the Subdivision Map.

"Parking Structures" are the multi-level parking structures described in the Scope of Development.

"Permitted Transfer[s]" is defined in Section 103.2.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association or other entity.

"Phase I Environmental Assessment" means an assessment to identify Recognized Environmental Concerns defined under ASTM Standards E-1527-00 as the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, past release, or material threat of a release of any hazardous substance or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.

"Phase II Environmental Assessment" means an evaluation of the Recognized Environmental Concerns identified in the Phase I Environmental Site Assessment for the purpose of providing sufficient information regarding the nature and extent of contamination.

"Pre-Approved Limited Service Flag(s)/Operator(s)" is attached hereto as Exhibit L and incorporated herein by reference.

"Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s)" is attached hereto as Exhibit L and incorporated herein by reference.

"Pre-Approved Upper-Upscale Flag(s)/Operator(s)" is attached hereto as Exhibit L and incorporated herein by reference.

"Presence" means the presence, release, use, generation, discharge, storage and disposal of any Hazardous Materials.

"Prevailing Wage and Public Works Requirements" are attached hereto as Exhibit I and incorporated herein by reference.

"Project" means the development and operation of the Developer Improvements.

"Project Architect" means the architect retained by the Developer to prepare the Construction Drawings and supervise construction of the Project.

"PUD" means Planned Unit Development No. PUD-128-12, approved by the Garden Grove City Council on November 27, 2012 pursuant to Ordinance No. 2824.

"Recognized Environmental Concerns" means the presence or possible presence of any hazardous substances or petroleum products on the Site under conditions that indicate an existing or possible release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the Site or into the ground, ground water, or surface water of the Site. The term is not intended to include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not Recognized Environmental Conditions.

"Release of Construction Covenants" means the document which evidences Developer's satisfactory Completion of Construction of the Developer Improvements, or a part thereof, as set forth in Section 310, in the form of Exhibit G attached hereto and incorporated herein by reference.

"Remaining Revenues" is defined in Section 4.09(b).

"Retail/Restaurant/Entertainment Component" is defined in Recital B and, as provided therein, means the retail/restaurant/entertainment portion of the Project, consisting of a minimum of ten thousand (10,000) square feet and a maximum of sixty-five thousand (65,000) square feet, including at least one (1) restaurant.

"Revesting" is defined in the definition of "Loan Balance."

"Right of Entry" is described in Section 204 hereof and attached hereto as Exhibit H and incorporated herein by reference.

"Sales Tax Revenues" means those sales tax revenues received by the City pursuant to the Bradley Burns Uniform Sales and Use Tax Law (California Revenue and Taxation Code Section 7200 *et. seq.*) due to operation of the Separate Components of the Developer Improvements.

"Schedule of Performance" means that certain Schedule of Performance attached hereto as Exhibit D and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is subject to revision from time to time due to the application of Section 602 hereof and as set forth therein or as otherwise mutually agreed upon in writing between Developer and the City Manager, and the City Manager is authorized to make such revisions as he deems reasonably necessary.

"Scope of Development" means that certain Scope of Development attached hereto as Exhibit C, which describes the scope, amount and quality of development of the Developer

Improvements to be completed by Developer and City Improvements to be completed by City pursuant to the terms and conditions of this Agreement.

"Separate Components of the Developer Improvements" or **"Separate Components"** means each Hotel, the Retail/Restaurant/Entertainment Component and the Parking Structures, and/or the separate parcels comprising each.

"Site" means, collectively, the City Property and the Agency Property, and, if the Developer elects to so add it to the Site pursuant to Section 301.4 hereof, the Third Party Property.

"Site Condition" is defined in Section 204.2.

"Site Map" means the map of the Site and the Sunbelt Property which is attached hereto as Exhibit A and incorporated herein by reference.

"State" means the State of California.

"Subdivision Map" means a tract map, parcel map, condominium map, lot line adjustment and/or other subdivision in compliance with all applicable laws, consolidating the Site and creating separate legal parcels for some or all of the Separate Components to the extent and in size and location required by Developer and approved by the City.

"Tax Rebate Payments" means, collectively, the aggregate amounts to be paid to Developer pursuant to Section 408 hereof. As used in this Agreement, the term "Tax Rebate Payments" shall be deemed to mean payment to the Developer of an amount of money as measured by City revenue from a category of taxes (i.e., Transient Occupancy Tax Revenues and/or Sales Tax Revenues). Under no circumstances shall the term "Tax Rebate Payments" be construed to mean payment to the Developer of an amount of money from a specific source or fund.

"Tenant(s)" mean the business(es) occupying the Retail/Restaurant/Entertainment Component, regardless of whether the interest of the owner(s) of such business(es) in the applicable portion(s) of the Site is that of an owner(s), tenant(s), or licensee(s).

"Third Party Property" means that certain property owned by third parties and identified on the Site Map as the Third Party Property and described in the Legal Description, which Developer may, at Developer's sole cost and expense, elect to purchase, lease or otherwise acquire and to add to the Site for purposes of development and operation of a portion of the Retail/Restaurant/Entertainment Component.

"Title Company" is defined in Section 202 hereof.

"Title Policies" means the CLTA Policy and the ALTA Policies and Endorsements as defined in Section 203 hereof.

"Title Report" is defined in Section 202.

"Transfer" means any total or partial sale, transfer, conveyance, assignment, subdivision, financing, refinancing, lease, sublease, or license of the Site or any portion thereof.

"Transferee" means a voluntary or involuntary successor in interest to the Developer.

"Transient Occupancy Tax Revenues" means those revenues imposed and collected by the City with respect to the Hotels pursuant to Chapter 3.12 of Title 3 of the Garden Grove Municipal Code.

"Upper Upscale Hotel" means a Hotel, the characteristics and minimum standards for which are described in Recital B, in Section 301.1, and in the Scope of Development.

102. Representations, Warranties and Covenants.

102.1 City Representations Warranties and Covenants. The City hereby makes the representations, warranties and covenants contained below in this Section 102.1. All of the representations and warranties set forth in this Section 102.1 are effective as of the Date of this Agreement, are true in all material respects as of the Date of this Agreement, and shall be true in all material respects as of the Closing Date, and each shall survive the execution of this Agreement without limitation as to time.

(a) The City is a municipal corporation of the State of California, existing pursuant to the general laws and Constitution of the State of California. The execution and delivery of this Agreement by the City has been fully authorized by all requisite actions.

(b) The City's execution and delivery of this Agreement does not violate any applicable laws, regulations, or rules nor to the best of City's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which the City is a party, or any judicial or regulatory decree or order to which the City is a party or by which it is bound; provided however that while City believes this Agreement to be enforceable in accordance with its terms, City makes no representations or warranties regarding the enforceability hereof.

(c) The City has not made an assignment for benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating to the City under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against the City any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to the City under the Federal Bankruptcy Code.

(d) All documents, instruments and other information delivered by the City to Developer pursuant to this Agreement, other than documents, instruments and other information received by City from third parties, are, to the best of City's knowledge, true, accurate, correct and complete in all material respects.

(e) The City has taken all legally required actions, and no further consent, approval, or authorization of any third person is required with respect to the City's execution, delivery, and performance of this Agreement, other than consents, approvals, and authorizations

which have already been unconditionally given or which are otherwise expressly contemplated by this Agreement and/or are conditions precedent to City's performance under this Agreement.

(f) The City is not a "foreign person" within the parameters of Foreign Investors in U.S. Real Property Tax Act ("FIRPTA"), or is exempt from the provisions of FIRPTA, or the City has complied and will comply with all the requirements under FIRPTA.

(g) Until the Closing Date and thereafter, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.1 not to be true as of the Closing Date, give written notice of such fact or condition to Developer as soon as is reasonably practicable.

Each of the foregoing items (a) through (g), inclusive shall be deemed to be ongoing representations, warranties and covenants.

102.2 Developer's Representations, Warranties and Covenants. Developer hereby makes the representations, warranties and covenants contained below in this Section 102.2. All of the representations and warranties set forth in this Section 102.2 are effective as of the Date of this Agreement, are true in all material respects as of the Date of this Agreement, and shall be true in all material respects as of the Closing Date, and each shall survive the execution of this Agreement without limitation as to time.

(a) Developer is a duly organized California corporation and in good standing under the laws of the State of California and is authorized to carry on its business in California as such business is now conducted and to own and operate its properties and assets now owned and being operated by it, and as set forth in and anticipated by this Agreement. Developer has full right, power and lawful authority to enter into this Agreement and the execution and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer. Developer has provided the City with true and correct copies of documentation reasonably acceptable to the City Manager, or his/her designee, designating the party authorized to execute this Agreement on behalf of Developer.

(b) Developer's execution, delivery and performance of its obligations under this Agreement will not violate any applicable laws, regulations, or rules nor to the best of Developer's knowledge after due inquiry, will it constitute a breach or default under any contract, agreement, or instrument to which Developer is a party, or any judicial or regulatory decree or order to which Developer is a party or by which it is bound.

(c) Developer has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating to Developer under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against Developer any proceeding of the nature described in the first sentence of this subsection (c). No order for relief has been entered with respect to Developer under the Federal Bankruptcy Code.

(d) All documents, instruments, and other information delivered by Developer to the City pursuant to this Agreement are, to the best of Developer's knowledge, true, accurate, correct and complete in all material respects.

(e) This Agreement and all documents to be delivered by Developer pursuant to this Agreement, when executed by Developer and delivered, shall constitute the legal, valid and binding obligation of Developer. The Developer has taken all legally required actions, and no further consent, approval, or authorization of any third person is required with respect to the Developer's execution, delivery, and performance of this Agreement, other than consents, approvals, and authorizations which have already been unconditionally given.

(f) Until the Closing Date and thereafter, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 102.2 not to be true as of the Closing Date, immediately give written notice of such fact or conditions to the City.

Each of the foregoing items (a) to (f), inclusive shall be deemed to be ongoing representations, warranties and covenants.

103. Transfers of Interest in Site or Agreement and/or Change in Ownership and/or Control of Developer.

103.1 Prohibition Against Transfers and/or Change in Ownership and/or Control of Developer Prior to Release of Construction Covenants.

(a) As of the date of this Agreement, Developer represents and warrants that Matthew Reid has (i) at least a fifty-one percent (51%) ownership interest in Developer and (ii) subject to the customary rights of other non-managerial members, partners or shareholders, as applicable, operational and managerial control of Developer and, subject to this Section 103, shall retain same until the issuance of Release of Construction Covenants. Notwithstanding the foregoing, a Transfer to an entity in which Matthew Reid has not less than ten percent (10%) ownership interest, or the subsequent reduction of the ownership interest held by Matthew Reid in any entity, shall be permitted with City's approval, which approval may be granted or withheld in the sole and absolute discretion of the City, if such Transfer or reduction is required by an equity participant or joint venture partner as a condition to providing additional funds for the development of the Developer Improvements or applicable portion thereof.

(b) In addition to the foregoing, except as expressly set forth in Section 103.2 below, for the period commencing upon the Date of this Agreement and until the issuance of the Release of Construction Covenants, no Transferee shall acquire any rights or powers under this Agreement, nor shall Developer make any Transfer, of the whole of the Site or any part, of the Developer Improvements without the prior written approval of the City, which approval may be granted or withheld in the sole and absolute discretion of the City.

(c) Following the issuance of the Release of Construction Covenants, any Transfer shall be governed by Section 103.3. City and Developer hereby acknowledge that, subject to Section 103.2 below, Developer likely will form separate legal entities to own and develop the separate components (i.e., each Hotel, the Parking Structure, the separate pads comprising the Retail/Restaurant/Entertainment Component, etc.) of the Developer Improvements.

103.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, both before and after the issuance of the Release of Construction Covenants, the City approval of an assignment of this Agreement or Transfer of the Site (or any portion thereof), shall not be required in connection with any of the following (each of which shall be "Permitted Transfer"):

(a) The conveyance or dedication of any portion of the Site to the City, City or other appropriate governmental agency, or for the purpose of the granting of easements, permits or similar rights to facilitate construction, use and/or operation of the Developer Improvements.

(b) Any Transfer for Construction Financing purposes (subject to such Construction Financing being in compliance with Section 311.1 herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing of the Developer Improvements, as applicable.

(c) Any collateral assignment of the Tax Rebate Payments for purposes of borrowing money to be used on the Project.

(d) Any Transfer to an entity in which (i) Developer and/or Matthew Reid retain operational control over the management, development and construction of the Developer Improvements (subject to the right of non-managerial members, partners, or shareholders, as applicable, to exercise voting rights with respect to so-called "major decisions") and (ii) Developer and/or Matthew Reid in the aggregate have not less than fifty-one percent (51%) ownership interest.

(e) Any Transfer to a Holder, or its Nominee by foreclosure or deed in lieu of foreclosure, or to a third party purchaser at a foreclosure sale or after foreclosure by the Holder or its Nominee.

(f) Any Transfer to a lessee or sublessee of a portion of the Project that is incidental to the primary purpose of the Developer Improvements (by example only, and not as a limitation, lease of restaurant space), provided such lessee or sublessee is consistent with the overall purposes of the Development Improvements, this Agreement, and the Covenants.

(g) Any Transfer of a separate legal parcel within the Site and the Hotel(s) thereon after the Applicable Covenants Consideration Period with respect thereto has expired.

103.3 City Consideration of Requested Transfer After Release of Construction Covenants. Subject to City's rights pursuant to Section 103.6, below, and without limiting Developer's rights under Section 103.2 above, all Transfers following issuance of a Release of Construction Covenants (and prior to expiration of the Applicable Covenants Consideration Period) shall be in accordance with the provisions of this Section 103.3. In the event of any proposed Transfer following the issuance of a Release of Construction Covenants (and prior to expiration of the Applicable Covenants Consideration Period) with respect to any or all of the Developer Improvements, Developer shall deliver written Notice to City requesting approval of such Transfer, which Notice shall be accompanied by sufficient evidence regarding the proposed Transferee's net worth, development and operational qualifications and experience, and its financial resources, in sufficient detail to enable the City to evaluate the proposed Transferee pursuant to the criteria set

forth hereinbelow and as reasonably determined by the City. In this regard, the City agrees that it will not unreasonably withhold approval of a request of a Transfer made after the issuance of the Release of Construction Covenants with respect to the applicable portion of the Site. The City shall evaluate each proposed Transferee over which City has approval rights on the basis of its qualifications and experience, and its financial commitments and resources. City may not disapprove any such proposed Transferee that demonstrates to the reasonable satisfaction of the City that the transferee/assignee or its guarantor has a net worth sufficient to provide the requisite equity and access to debt offered by an institutional commercial real estate lender so as to permit the financing of the acquisition and operation of the Developer Improvements located on the applicable portion of the Site and transferee/assignee and/or its contract manager or the individual within the contract management entity responsible for management of such Developer Improvements has at least ten (10) years recent experience owning or operating hotel/retail/restaurant projects similar to such Hotel(s). Nothing in this Section 103.3 shall limit City's rights to approve the selection and/or change of all Hotel Operators, Franchisors, and Tenants pursuant to Section 103.6, below.

103.4 Assignment and Assumption Agreement. For so long as City is required to provide any Covenants Consideration, an executed Assignment and Assumption Agreement (or a document effecting a Transfer that includes the substantive provisions of the Assignment and Assumption Agreement) shall be required for all proposed Transfers with respect to the portion of the Site so transferred, whether or not City's consent is required with respect to such Transfer. If the Transfer involves the obligation of the Transferee to construct specific Developer Improvements, City is hereby granted the right to compel Developer to enforce any such construction obligation. Upon the full execution of an Assignment and Assumption Agreement, the Transferee thereafter shall have all of the rights and obligations of the Developer under this Agreement with respect to the portion of the Site and the Developer Improvements Transferred thereto and/or developed thereby.

103.5 City Action Regarding Requested Transfer. Within thirty (30) days after the receipt of a written Notice requesting City approval of a Transfer pursuant to Sections 103.3 and 103.7, the City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to the City such further information as may be reasonably requested.

103.6 Initial Selection and/or Subsequent Changes or Transfers with Respect to the Hotel Operator, Franchisor, and Tenants; Approval of the Franchise Agreement. The selection of the operator for each Hotel (separately, the "Hotel Operator" and, collectively, the "Hotel Operators") and brand or franchisor for each Hotel (separately, the "Franchisor" and, collectively, the "Franchisors"), as well as the franchise agreement or management agreement between the Franchisor and Developer for each Hotel (separately, the "Franchise Agreement" and, collectively, the "Franchise Agreements"), shall be subject to approval by the City, acting in its reasonable discretion and based on consistency with the quality of the Hotels as described in Section 301.1 and the Scope of Development both initially and until expiration of the Applicable Covenants Consideration Period for each Hotel. Both initially and during the Applicable Covenants Consideration Period, City shall also have the right to approve, acting in its reasonable discretion, all Tenants based on consistency with the quality of the Upper-Upscale Hotel as required herein. Notwithstanding anything to the contrary contained herein, the Pre-Approved Upper-Upscale Flag(s)/Operator(s), Pre-Approved Limited Service Flag(s)/Operator(s) and Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s) are each hereby approved by the City for all purposes of this Agreement.

103.7 Transfer of Covenant Consideration. Notwithstanding anything herein to the contrary (i) both before and after the issuance of the Release of Construction Covenants, except as to a collateral assignment described in Section 103.3(c), the approval of an assignment of the Tax Rebate Payments, or any portion thereof, separate and apart from a Transfer of the Site or the corresponding part thereof (i.e., an assignment of the Tax Rebate Payments not in conjunction with the Transfer of the applicable portion of the Site and Hotel(s)), shall require the consent of the City which consent shall be granted or withheld in the absolute discretion of the City; and (ii) no separate or additional approval of an assignment of the applicable Tax Rebate Payments, or a portion thereof, that is made in conjunction with a Transfer of the Site or the corresponding part thereof shall be required from the City.

103.8 Purpose and Effect of Restrictions on Transfers and/or Change in Ownership and/or Control of Developer.

(a) The restrictions contained in this Section 103 are imposed because qualifications and identity of Developer are of particular concern to the City, and it is because of those qualifications and identity that the City has entered into this Agreement with Developer. The Parties specifically affirm City's reliance upon the qualifications and identity of Developer to undertake and perform the items set forth in the Agreement in exchange for City's economic assistance, which assistance Developer intends to employ to generate additional income from the Hotel(s), and that Developer's qualifications and performance under this Agreement were specifically bargained for by the City in exchange for City's assistance. Developer hereby agrees that no voluntary or involuntary successor to any interest of Developer under a Transfer or a change in ownership and/or control of Developer not permitted by this Agreement shall acquire any rights pursuant to this Agreement, and any purported Transfer or change of ownership and/or control of Developer in violation of the provisions set forth herein shall be of no legal force and effect.

(b) Notwithstanding anything in this Agreement which is or appears to be to the contrary, Developer agrees that, in addition to all other City rights with respect to Transfers subject to City approval under this Agreement, the City shall have the right to refuse to consent to any Transfer if Developer is then in Breach or Default of any of its obligations under this Agreement; provided, that if such Breach or Default is a non-monetary Breach or Default for which the cure has commenced and which will be cured on or prior to the effectiveness of such proposed Transfer, City may, rather than withholding consent to the proposed Transfer solely because of such Breach or Default, condition such consent upon the complete cure of such Breach or Default on or prior to the effectiveness of the Transfer; and, provided further, that City's waiver of this restriction on Transfer shall not be construed as a waiver of any Breach or Default or of City's remedies arising therefrom, nor shall any Transfer in any way restrict or limit City's rights and remedies arising from any Breach or Default hereunder, whether such Breach or Default occurred prior to or after such Transfer.

(c) The provisions of this Section 103 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Developer under the terms set forth herein.

200. DISPOSITION OF THE SITE

201. Conveyance of the Site to Developer. Subject to the satisfaction of the Conditions Precedent set forth hereinbelow, on or before the date set forth in the Schedule of Performance, the City shall cause the Conveyance of the Site to Developer in the condition described in Sections 201.2, 204.2 and 301.2 and the Scope of Development in consideration for compliance with the terms and conditions of this Agreement, and Developer shall accept Conveyance in accordance with the terms hereof. Developer expressly acknowledges and agrees that City has no duty or obligation to acquire and/or convey the Third Party Property to Developer, and that, if Developer desires to add the Third Party Property to the Site for purposes of constructing a portion of the Project thereon, then Developer, and not City, shall be responsible for any and all costs of acquiring the necessary rights and interests in the Third Party Property.

201.1 Consideration for Site. The consideration for the Conveyance will be the Developer's construction and operation of the Project in accordance with this Agreement, and its promise to otherwise be bound by the Covenants set forth herein; provided however, Developer has deposited with the City, within thirty (30) days of the Date of this Agreement, the sum of Fifty Thousand Dollars (\$50,000) ("Cost Reimbursement Deposit"), which Cost Reimbursement Deposit the City may use to pay for costs incurred by City in connection with the implementation of the Agreement. Developer will be refunded the unexpended portion of the Cost Reimbursement Deposit in the event that Developer acquires the Site pursuant to this Agreement (in which case the unexpended portion of the Cost Reimbursement Deposit will be refunded to Developer upon the Commencement of the Developer Improvements) or this Agreement is terminated (in which case the unexpended portion of the Cost Reimbursement Deposit will be refunded to Developer upon the termination of this Agreement) other than due to a Default by Developer.

201.2 Condition of Site. EXCEPT AS SET FORTH IN SECTIONS 204 AND 301.2, DEVELOPER HAS AGREED TO ACCEPT POSSESSION OF THE SITE ON THE CLOSING DATE ON AN "AS IS" BASIS. CITY AND DEVELOPER AGREE THAT, SUBJECT TO SECTIONS 204 AND 301.2 HEREOF, THE PROPERTY SHALL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET OFF OR REDUCTION IN CONSIDERATION, AND, EXCEPT AS SET FORTH IN SECTIONS 204 AND 301.2 HEREOF, SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND SELLER DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY.

201.3 Opening and Close of Escrow. The Conveyance of the Site shall be consummated on the date ("Closing Date") set forth in the Schedule of Performance but in no event later than September 1, 2015 ("Closing" or "Close of Escrow"), through an escrow (the "Escrow") established at West Coast Escrow or another escrow company mutually agreeable to the parties (the "Escrow Agent") which Escrow shall be opened within thirty (30) days following the Date of this Agreement. The scheduled Closing of September 1, 2015, is an outside date, Section 602 notwithstanding, but is subject to extension as provided in the Schedule of Performance. Escrow Agent is hereby authorized to effect the Closing upon satisfaction of the Conditions to Closing set forth in Section 205 by taking the following actions:

(a) Current real property taxes, personal property taxes, and installments of assessments and all items of income (if any) and expense regarding the Site shall be prorated as of the Closing.

(b) Concurrently with the Closing of Escrow, Escrow Agent shall cause the Title Company to issue the Title Policy, as described in Section 203.

(c) Escrow Agent shall pay and charge: (i) Developer for the following: (aa) the recording cost of the Grant Deeds and other closing documents, (bb) the premium for the CLTA Policy, (cc) the additional premium for the ALTA Policies and Endorsements (as hereinafter defined), if any, (dd) half of the escrow fees charged by the Escrow Agent, (ee) Developer's share of proration; and (ii) City for the following: (ff) City's share of prorations and (gg) any transfer taxes or fees.

(d) Escrow Agent shall record, in the following order, the following documents:

- (i) The Declaration;
- (ii) The Grant Deeds; and
- (iii) The Memorandum of Agreement.

all duly executed and acknowledged by the appropriate party.

201.4 Submittal of Documents.

(a) At least two (2) days prior to the Close of Escrow, Developer shall execute and submit to Escrow Agent the following:

(i) Two (2) originals, duly executed by Developer and acknowledged, of the Grant Deeds accepting title subject to the covenants set forth therein.

(ii) Two (2) originals of the Declaration and Memorandum of Agreement duly executed by Developer and acknowledged.

(iii) Any documents to be recorded as part of Developer's financing of the Project which City has approved in writing pursuant to Section 311, along with a request for notice of default executed by the City.

(b) At least two (2) days prior to the Close of Escrow, City shall execute and deliver to Escrow the following:

(i) Two (2) originals of the Grant Deeds duly executed by City and acknowledged; and

(ii) Two (2) originals of the Declaration and Memorandum of Agreement duly executed by City and acknowledged.

201.5 Post-Closing Deliveries by Escrow.

(a) After the Close of Escrow, the Developer shall be delivered the following documents:

(i) The Grant Deeds duly executed by the appropriate party or parties and recorded in the Official Records of Orange County.

(ii) A non-foreign affidavit in a form reasonably acceptable to Developer.

(iii) A conformed copy of the Declaration.

(iv) A conformed copy of the Memorandum of Agreement.

(b) After the Close of Escrow, City shall be delivered the following documents:

(i) A conformed copy of the recorded Grant Deeds and this Agreement.

(ii) The recorded original of the Declaration.

(iii) The recorded original of the Memorandum of Agreement.

(iv) The recorded original of the request for notice of default.

(c) At Close of Escrow, the City and Developer shall each execute counterpart closing statements in customary form together with such other documents as are reasonably necessary to consummate the Closing.

201.6 Payment of Escrow Costs. At Close of Escrow, both parties shall pay their respective costs by wire transfer, or by cashier's check drawn on a bank reasonably acceptable to the Escrow Agent. In the event of termination of this Agreement prior to the Close of Escrow due to failure of a condition set forth in Section 205, the parties shall each be responsible for one-half of any Escrow cancellation costs. In the case of termination prior to the Close of Escrow due to a default by one of the parties hereto, such defaulting party shall pay one hundred percent (100%) of all Escrow Cancellation Costs.

202. Review of Title. Within ten (10) days after the opening of Escrow, City shall cause First American Title Insurance Company, or another title company mutually agreeable to both parties (the "Title Company"), to deliver to Developer a preliminary title report (the "Title Report") with respect to the Site, together with legible copies of all documents underlying the exceptions ("Exceptions") set forth in the Title Report. Developer shall cause the preparation, at its cost and expense, of a ALTA Survey prepared by a California licensed surveyor (the "ALTA Survey"). Developer shall have thirty (30) days from its receipt of the Title Report and ALTA Survey within which to give written notice to City of Developer's approval or disapproval of any of such Exceptions. No deeds of trust, mortgages or other liens (all of which shall be removed by City prior to Closing), except for the lien of property taxes and assessments not yet due, shall be approved Exceptions. If Developer notifies City of its disapproval of any Exceptions in the Title Report or ALTA Survey, City shall have thirty (30) days from City's receipt of such notification to advise Developer that it will use commercially reasonable efforts or provide assurances satisfactory to

Developer that such Exception(s) will be removed on or before the Closing. If City does not provide assurances satisfactory to the Developer that such Exception(s) will be removed on or before the Closing, Developer shall have thirty (30) days after the expiration of such thirty (30) day period to either give the City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions and conditions set forth in the ALTA Survey (and conditioned upon the issuance of any endorsements necessary to render title acceptable to Developer), or to give the City written notice that the Developer elects to terminate this Agreement in which event, the City and Developer shall each be responsible for one-half of any Escrow cancellation charges and neither Developer nor City shall have any further rights or obligations hereunder except as set forth in Section 307. The Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company or conditions set forth on the ALTA Survey after Developer has approved the condition of title for the Property hereunder. The foregoing periods of time shall be reasonably extended if any updates in the Title Report are provided to Developer after Developer approval of the Exceptions. City shall not voluntarily create any new exceptions to title following the Date of this Agreement, except for the recordation of documents in connection with the Closing as required herein. The Developer shall assume all non-delinquent assessments and taxes not specifically disapproved as provided herein.

203. Title Policy. At the Closing, the Title Company, as insurer, shall issue in favor of Developer, as insured, a CLTA owner's standard coverage policy or policies of title insurance with endorsements, if any, as may be required in Section 202 hereof with liability in an amount equal to the value of the Site as determined by the parties prior to Closing but not to exceed Ten Million Dollars (\$10,000,000) ("CLTA Policy"), or, at Developer's option and expense, an ALTA extended policy of title insurance and/or lender's policy of title insurance with any endorsements and/or increased coverage amounts requested by Developer or its lender ("ALTA Policies and Endorsements") (collectively, the "Title Policies"), subject to the following:

- (a) All nondelinquent general and special real property taxes and assessments for the current fiscal year; and
- (b) If a CLTA policy is issued, the standard printed conditions and exceptions contained in the CLTA standard owner's policy of title insurance regularly issued by the Title Company.
- (c) The provisions of this Agreement, the Grant Deeds and the Declaration.
- (d) Any Exceptions to title approved by Developer pursuant to Section 202.

The Title Policies shall be combined with a policy insuring the personal property (Eagle 9 policy from the Title Company) with tie-in endorsements to cover the full insurable cost of the Project paid for by Developer.

204. Studies, Reports.

204.1 Site Investigation. Representatives of the Developer and any prospective users, following execution of the Right of Entry Agreement, shall have the right of access to the City Property, and to the Agency Property at such time, if ever, as City has the right of access to the Agency Property, for the purpose of making necessary or appropriate inspections, including geological, soils and/or additional environmental assessments. If Developer determines that there are

Hazardous Materials in, on, under or about the Site, including the groundwater, or that the Site is or may be in violation of any Environmental Law, or that the condition of the Site is otherwise unacceptable to Developer, then the Developer shall notify the City and Escrow Holder prior to the Due Diligence Date. City and Developer shall thereafter have thirty (30) days to negotiate an agreement with respect to remediation of the Site, pursuant to which City shall commit to expend up to Two Hundred Fifty Thousand Dollars (\$250,000) for Site remediation. If, at the end of such thirty (30) day period, Developer and City have not come to an agreement with respect to remediation of the Site, Developer shall, within three (3) days thereafter, notify City whether it elects to go forward with the acquisition of the Site and pay all remediation costs in excess of Two Hundred Fifty Thousand Dollars (\$250,000), or whether it elects to terminate this Agreement, in which event the Developer and City shall each be responsible for one-half of any Escrow cancellation charges and neither Developer nor City shall have any further rights or obligations hereunder except as set forth in Section 307.

204.2 As-Is Environmental Condition. Subject to the terms of this Agreement, if the Developer elects to proceed with Close of Escrow, the Site shall be conveyed to the Developer in an "as is" environmental condition, with no warranty, express or implied by the City, as to the condition of the Site, the soil, its geology, the Presence of known or unknown faults, the suitability of soils for the intended purposes or the presence of known or unknown Hazardous Materials or toxic substances.

204.3 Indemnities and Release Re Hazardous Material.

(a) **Developer Indemnity.** As of the Closing, Developer, on behalf of itself and its successors in interest, hereby agrees and hereby shall Indemnify the Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of (i) the Presence of Hazardous Materials on the Site (excluding Public Streets) which Presence first occurred either before or after Close of Escrow, and (ii) the Presence of Hazardous Materials on the Site, which Hazardous Materials were not Hazardous Materials at the time of the Close of Escrow, but became Hazardous Materials after Close of Escrow as a result of an amendment to, or interpretation of, the Environmental Law; provided, that none of the same were directly and proximately caused by City or any of its agents, employees or contractors. City shall cooperate with Developer to ensure that City has assigned to Developer any and all rights that City acquired in its acquisition of the Site or any portion thereof to permit Developer's prosecution of claims against any third parties who are potentially responsible for such Hazardous Materials.

(b) **Developer Release.** As of the Closing, Developer, on behalf of itself and its successors in interest, agrees to and hereby shall release the Indemnitees from and against all Liabilities arising from, related in any respect to, or as a result of (i) the Presence of Hazardous Materials on the Site that first existed on the Site as of the Close of Escrow, but were discovered after Close of Escrow, and (ii) the Presence of Hazardous Materials on the Site, which Hazardous Materials were not identified and/or defined as such under the Environmental Laws at the time of Close of Escrow, but became Hazardous Materials after Close of Escrow as a result an amendment to, or interpretation of, the Environmental Law. Notwithstanding the foregoing, Developer is not releasing any person or entity other than the Indemnitees.

205. Conditions to Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions, which the parties shall exercise their best efforts to satisfy, within the times designated below:

205.1 City's Conditions Precedent. City's obligation to proceed with the Closing is subject to the fulfillment or waiver in writing by City of each and all of the conditions precedent described below ("City's Conditions Precedent"), which are solely for the benefit of City, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, Developer shall not be in Default in any of its obligations under the terms of this Agreement.

(b) Execution of Documents. The Developer shall have executed any documents required hereunder and delivered such documents into Escrow.

(c) Payment of Funds. Prior to the Close of Escrow, Developer shall have paid all required costs of Closing into Escrow in accordance with Section 201.3 hereof.

(d) Land Use Approvals. The Developer shall have received approval for all Additional Land Use Approvals.

(e) Insurance. The Developer shall have provided proof of insurance as required by Section 306 hereof.

(f) Financing. The City shall have approved the Construction Financing as defined in Section 311.1 hereof, for construction of the Developer Improvements as provided in Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing in substantial accordance with the commitment for Construction Financing.

(g) Declaration. The parties shall have mutually agreed upon the terms of the Declaration and the same shall be ready for recordation concurrently with the Close of Escrow.

(h) Agency's Conveyance of the Agency Property to City. Agency shall have transferred and conveyed fee simple interest in all of the Agency Property to City at no cost and/or upon terms acceptable to City, in its sole and absolute discretion. In this regard, Developer acknowledges that Agency's ability to transfer the Agency Property to City is subject to, and contingent upon, (i) Agency's receipt of a Finding of Completion; (ii) Approval by the Agency, Oversight Board, and Department of Finance of a Long-Range Property Management Plan providing for disposition of the Agency Property to the City for the Project; and (iii) approval of such disposition by the Agency, the Oversight Board, and/or the Department of Finance.

(i) Approval of Hotel Operators, Franchisors and Franchise Agreements. To the extent required by this Agreement, including, but not limited to, Section 103.6 hereof, the City shall have approved the initial Hotel Operators, Franchisors, and Franchise Agreements.

(j) Pre-leasing and Approval of Tenant. The City shall have approved the initial Tenant(s), unless included in the list of Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s).

205.2 Developer's Conditions Precedent. Developer's obligation to proceed with the Closing is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

(a) No Default. Prior to the Close of Escrow, City shall not be in default in any of its obligations under the terms of this Agreement.

(b) Execution of Documents. The City shall have executed the Grant Deeds and any other documents required hereunder and delivered such documents into Escrow.

(c) Review and Approval of Title. Developer shall have reviewed and approved the condition of title of the Site, as provided in Section 202 hereof.

(d) Site Condition. Developer shall have determined, in its sole and absolute discretion, and advised City in writing that, to Developer's knowledge, the Site Condition is satisfactory in accordance with Sections 201.2, 204 and 301.2 hereof.

(e) Relocation, Demolition and Clearance of the Site. The City shall have relocated occupants and demolished and cleared the Site and removed all above ground structures located thereon and all substructures under existing buildings as required by Section 301.2. Notwithstanding anything to the contrary contained herein, this Condition Precedent shall not be deemed satisfied until such time as (i) any such relocation has been approved officially by the appropriate governmental authorities through duly authorized and appropriate action and all administrative appeals periods related thereto shall have expired, and (ii) if any litigation or administrative challenge of such relocation shall have been filed relating thereto, there has been a final non-appealable resolution of any such litigation or challenge affirming the validity of such action by the City.

(f) Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide to the Developer the Title Policy for the Site upon the Close of Escrow, in accordance with Section 203 hereof.

(g) Land Use Approvals. The Developer shall have received approval for all Additional Land Use Approvals.

(h) Financing. The Developer shall have obtained the Construction Financing as provided in Section 311.1 hereof, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing in substantial accordance with the commitment for Construction Financing.

(i) Adverse Conditions. No lawsuit (including by private parties), moratoria, or similar judicial or administrative proceeding or government action shall exist which would materially delay or significantly increase the cost of constructing the City Improvements.

(j) Approval of Hotel Operators, Franchisors, and Franchise Agreements. To the extent required by this Agreement, including, but not limited to, Section 103.6 hereof, the City shall have approved the initial Hotel Operators, Franchisors, and Franchise Agreements.

(k) Pre-leasing and Approval of Tenant(s). The City shall have approved the initial Tenant(s), unless included in the list of Pre-approved Retail/Restaurant/Entertainment Tenant(s)/Operator(s).

(l) Declaration. The parties shall have mutually agreed upon the terms of the Declaration and the same shall be ready for recordation concurrently with the Close of Escrow.

(m) Development Agreement. Developer and City have executed a Development Agreement. Developer acknowledges that this Agreement does not obligate City to approve or enter into a Development Agreement.

205.3 Termination of Agreement Due to Failure of Conditions Precedent. In the event Escrow does not Close due to a failure of any of the conditions precedent set forth in this Section 205, either party may terminate this Agreement by written notice to the other party, and, upon such termination, except with respect to the payment of Escrow cancellation costs pursuant to Section 201.6 hereof, the parties' respective indemnity obligations hereunder, and/or any other provisions of this Agreement that expressly survive termination, neither party shall have any further rights or obligations under this Agreement.

300. DEVELOPMENT OF THE SITE

301. Scope of Development.

301.1 Improvements. Developer shall develop the Site in conformance with the Land Use Approvals, the Scope of Development, the Governmental Requirements, and the terms and provisions of this Agreement within the time periods set forth in the Schedule of Performance. Developer shall improve the Site with the Developer Improvements. The physical quality of the Developer Improvements, including, without limitation, construction quality, finish material, lighting, landscaping and site amenities shall be (a) comparable, at a minimum, to each of the chosen Hotels and/or retail/restaurant/entertainment establishment's respective brand standards; (b) as set forth in the Scope of Development; and (c) consistent with the Land Use Approvals and the Governmental Requirements. Following the issuance of the Release of Construction Covenants for the Developer Improvements and thereafter until the expiration or termination of the Applicable Covenants Consideration Period, each Separate Component of the Developer Improvements and repair and maintenance thereof shall remain comparable in terms of quality and level of amenities to such Separate Component as of the date of issuance of the Release of Construction Covenants; provided the foregoing is not intended to require Developer to take any action that might cause a violation of any Governmental Requirement, including without limitation, any regulations or building codes or, as a result of changes in laws, regulations or codes or other changed circumstances, require Developer to take any action to comply with the same that would make performance of the foregoing obligations commercially infeasible.

Notwithstanding anything to the contrary contained herein, in lieu of the combination of Hotels described in Recital B and the Scope of Development, Developer may, in the alternative, elect to develop either a single, larger, Upper Upscale Hotel, or a combination of two (2) Upper Upscale Hotels, which, in the aggregate, contain no less than four hundred fifty (450) rooms, not less than fifteen thousand (15,000) square feet of meeting space, and two full-service restaurants, and which otherwise satisfy the hotel furniture, fixture and equipment standards for an Upper Upscale Hotel set forth in Section I(B) of Exhibit C attached hereto, in which event the provisions of Section 408.1 hereof shall apply to each such Upper Upscale Hotel. The Developer expressly acknowledges and agrees that any and all Additional Land Use Approvals necessary for the development of the Hotels described in the foregoing alternative, including, without limitation, all additional environmental review, if any, determined by City to be required pursuant to the California Environmental Quality Act ("CEQA"), shall be secured at the Developer's sole cost and expense within the time periods set forth in the Schedule of Performance, and shall be subject to the discretionary approval of the City, acting in its municipal capacity and exercising its police powers.

301.2 City Improvements. City shall cause, at its cost and expense, the following within the time set forth in the Schedule of Performance:

(a) Relocation of all occupants of the City Property and/or Agency Property in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation, as applicable;

(b) The demolition and removal of all existing structures and improvements including foundations, and, subject to and as provided in Section 204, remediation of any Hazardous Materials on the City Property and/or Agency Property, the proper disposal and mitigation of lead-based paint, asbestos and other environmental hazards pursuant to the requirements of the Department of Health Services in compliance with all applicable federal, state and local laws and regulations with respect to demolition and/or disposal and mitigation as described above; and

(c) Installation and completion of all Offsite Infrastructure; provided, however, that the City, acting in its sole and absolute discretion, has approved the expenditure of funds for the infrastructure required by this subsection (c) of Section 301.2.

301.3 Parking Structures. The Developer Improvements will include one or more Parking Structures, as described more fully in the Scope of Development and generally shown on the Conceptual Site Plan ("Parking Structures"), which will serve the Project. The Parking Structures shall remain open and available to the public subject to Developer's right to impose parking charges and fees to the extent not prohibited by Governmental Requirements and/or the CFD Financing.

The financing for the Parking Structures may be (i) part of the Construction Financing or (ii) financed through CFD Bonds ("CFD Financing"). In the case of CFD Financing, if so requested by Developer, and if economically and legally feasible, the City will undertake the requisite actions to cause CFD Bonds to be issued with respect to the financing of the Parking Structures, provided that (i) the City's City Council, acting in its sole discretion in accordance with its legislative authority, has approved the formation of a CFD and the issuance of the CFD Bonds; (ii) the Developer (or an agent engaged by Developer and reasonably approved by the City) provides completion guarantees and/or credit enhancements (conditioned upon receipt of the CFD Financing funds) in a form, amount, and quality reasonably acceptable to City; (iii) the CFD Bonds will be rated not less than BBB or its equivalent; and (iv) issuance of the CFD Bonds will be at no cost to the City. In the event of CFD Financing, the parties will mutually determine the manner in which the Parking Structures will be constructed, operated and maintained as public parking structures.

301.4 Third Party Property. Developer may, at Developer's sole cost and expense, elect to purchase, lease, or otherwise acquire sufficient right and interest in the Third Party Property and add the Third Party Property to the Site for purposes of development and operation of a portion of the Retail/Restaurant/Entertainment Component until expiration of the Applicable Covenant Consideration Period. Within the time periods set forth in the Schedule of Performance, Developer shall notify City of its election of whether to add the Third Party Property to the Site and, if applicable, provide City with all documentation and/or information reasonably requested by City to verify Developer's rights and interests in the Third Party Property. If Developer acquires sufficient rights and interests in the Third Party Property and elects to add the Third Party Property to the Site for purposes of development and operation of a portion of the Retail/Restaurant/Entertainment

Component, then the Third Party Property shall thereafter be deemed to be a portion of the "Site" for purposes of Developer's obligations under this Agreement and shall be subject to the Covenants.

302. Construction Drawings and Related Documents. The Developer shall submit, within the time frames set forth in the Schedule of Performance, and the City Manager or his designee shall approve, within the time periods set forth in the Schedule of Performance, preliminary building elevations, final building elevations, construction drawings, landscape plans, and related documents required for the development of the respective portions of the Site (individually and collectively, the "Construction Drawings"). The City shall have the right to review and approve all Construction Drawings as to their compliance with the description of the applicable Developer Improvements as set forth herein, and their consistency with the Governmental Requirements and the Land Use Approvals.

303. Land Use Approvals. Except as otherwise expressly set forth herein, prior to Commencement of Construction and/or operation of the Separate Components, as applicable, Developer shall, at its sole cost and expense, separately apply for and obtain any and all Additional Land Use Approvals required in connection with the construction and operation of the Developer Improvements. The Developer specifically acknowledges that, notwithstanding anything in this Agreement which is or appears to be to the contrary, any City approval under this Agreement shall not waive or eliminate the requirement for review and approval of such Additional Land Use Approvals by the City in accordance with those Governmental Requirements, acting in City's municipal capacity and exercising its police powers. City agrees to cooperate with Developer to coordinate the Additional Land Use Approvals, provided that the City shall not incur any expenses or costs in connection therewith. The Developer shall, without limitation, pay all costs, charges and fees associated therewith, including, without limitation, City's customary development fees. Notwithstanding the foregoing, provided the final proposed Project is substantially consistent with the Conceptual Site Plan, City shall pay for all costs associated with preparation of the Subdivision Map. Except as to the City Improvements, costs of any Project related on-site (as described in Paragraph I.E. of the Scope of Development) California Environmental Quality Act ("CEQA") mitigation required by the Land Use Approvals shall be borne by Developer. Developer acknowledges that compliance with any such CEQA mitigation shall be a condition under applicable law for proceeding with the Project. Notwithstanding anything to the contrary contained herein, the Additional Land Use Approvals shall not be deemed obtained or secured until such time as (i) Developer has agreed to comply with all conditions, exactions and impositions related thereto, in Developer's sole discretion, and (ii) the Additional Land Use Approvals: (a) have been approved officially by the appropriate governmental authorities through duly authorized and appropriate action and all administrative appeals periods related thereto shall have expired, (b) are not subject to any further discretionary approvals of any kind, and (c) if any litigation or administrative challenge shall have been filed relating thereto, there has been a final non-appealable resolution of any such litigation or challenge affirming the validity of the Land Use Approvals.

304. Schedule of Performance. Provided that the City has timely met its respective obligations under the Schedule of Performance and subject to the application of Section 602 hereof, Developer shall submit the Construction Drawings, Commence Construction and Complete Construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement which are the obligation of Developer within the times established therefor in the Schedule of Performance. The Schedule of Performance is subject to revision from time-to-time as provided therein and as otherwise mutually agreed upon in writing by Developer and the City Manager.

305. Cost of Construction. Except as otherwise expressly set forth herein, including Sections 201, 204, 301 and 303 and costs relating to City Improvements, all of the cost of planning, designing, developing and constructing all of the Developer Improvements, including but not limited to payment or other satisfaction of development impact and processing fees payable in connection with the Developer Improvements, shall be borne solely by Developer. Notwithstanding the foregoing, to the extent the City designs and/or constructs any site improvements defined herein as Developer Improvements, for which City receives partial reimbursement from local, state, and/or federal grant funds, the Developer shall be responsible only for that unreimbursed portion of the costs incurred by the City in the design and/or construction of such improvements.

306. Insurance Requirements. Developer shall obtain and maintain at its sole cost and expense, or shall cause its contractor or contractors to obtain and maintain at their sole cost and expense, until City's—the issuance of the final Release of Construction Covenants pursuant to Section 310 of this Agreement, the insurance coverages described in this Section 306, with the coverage limits, conditions, and endorsements defined herein.

306.1 Insurance Coverage. Prior to the earlier to occur of the (i) Developer's exercise of a right of entry under the Right of Entry Agreement or (ii) the approval of building permits, the following policies, in a form reasonably acceptable to the City, shall be obtained and maintained by Developer and/or its contractor or contractors, as applicable, covering all activities relating to construction of Developer Improvements at the Site:

(a) Comprehensive general liability insurance, not excluding XCU, in the amount no less than ~~Five One Million Dollars (\$1,000,000)~~ per occurrence, ~~Two Million Dollars (\$2,000,000)~~ in the aggregate for claims arising out of bodily injury, personal injury and property damage. Coverage will include contractual, owners, contractors' protective policy and products and completed operations. (Claims made and modified occurrence policies are not acceptable.) In addition, an excess policy in an amount of ~~Four Million Dollars (\$4,000,000)~~ covering the same terms and conditions will remain in force during the term of the Project.

(b) Comprehensive automobile liability insurance, including mobile equipment, in the amount of no less than One Million Dollars (\$1,000,000), combined single limit per occurrence (bodily injury and property damage liability), including coverage for liability arising out of the use of owned, non-owned, leased, or hired automobiles for performance of the work. As used herein the term "automobile" means any vehicle licensed or required to be licensed under the California or any other applicable state vehicle code. Such insurance shall apply to all operations of Developer or its contractors and subcontractors both on and away from the Site. In the event that any drivers are excluded from coverage, such drivers will not be permitted to drive in connection with construction of the Developer Improvements. (Claims made and modified occurrence policies are not acceptable.)

(c) Workers' compensation insurance in the amount and type as required by California law, if applicable. The insurer(s) shall waive its rights of subrogation against the Indemnitees.

(d) Builder's All-Risk property insurance in an amount of not less than one hundred percent (100%) of the full replacement value of the Developer Improvements. (Claims made and modified occurrence policies are not acceptable.)

(e)(e) Follows Form Excess liability coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein. (Claims made and modified occurrence policies are not acceptable.)

~~Except for workers compensation insurance, which shall be placed with The State Compensation Fund, acceptable~~ All insurance coverage shall be placed with carriers admitted to write insurance in California, ~~or carriers with a rating of or equivalent to~~ and with an A.M. Best's Guide Rating of A- class ~~±VII by A.M. Best Company~~ or better. Any deviation from this rule shall require specific approval in writing from the City's Finance Director. Any deductibles or self-insured retentions in excess of \$250,000 must be declared to and approved the City.

306.2 Policy Provisions. A certificate or certificates evidencing coverage described in subsections (a) through (ee) above (the "Insurance") shall be submitted to the City prior to execution of a Right of Entry Agreement or issuance of building permits for and Commencement of Construction of the Developer Improvements, which certificates shall be accompanied by appropriate policy endorsements satisfying the following requirements ~~stating that:~~

(a) The Insurance shall be primary insurance for claims arising from or related to the Project ~~losses at the Site~~, and will be noncontributing with respect to any other insurance ~~carried~~ maintained by Developer or its contractor(s) with respect to any losses which do not arise out of the construction of Developer Improvements, and any other insurance or self-insurance ~~carried~~ maintained by the City or Agency ~~Indemnitees~~ which may be applicable shall be deemed to be excess insurance and shall not contribute, and the Insurance shall be primary for all purposes as respects the Indemnitees despite any conflicting provision in the Insurance to the contrary;

(b) Not less than thirty ~~ten~~ (340) days advance notice shall be given in writing to the City and the Agency prior to any cancellation or termination of the Insurance;

(c) ~~Except for~~ With the exception of the Worker's Compensation coverage policy(ies), the Indemnitees shall be named as additional insureds on all policies, including the excess liability policy(ies), in accordance with the following requirements:-

(i) An Additional Insured Endorsement, ongoing and completed operations, for the policy(ies) required pursuant to Section 306.1(a), Comprehensive General Liability, shall designate the Indemnitees as additional insureds for liability arising out of work or operations performed by or on behalf of the Developer

(ii) An Additional Insured Endorsement for the policy(ies) required pursuant to Section 306.1(b), Automobile Liability, including mobile equipment, if applicable, shall designate the Indemnitees as additional insureds for automobiles owned, leased, hired, or borrowed by the Developer and/or its contractor(s).

(iii) An Additional Insured Endorsement for the policy(ies) required pursuant to Section 306.1(d), Builder's All Risk, shall designate the Indemnitees as additional insureds.

(iv) If any of the underlying policies do not meet policy limits required, and Additional Insured Endorsement for the policy(ies) required pursuant to Section

306.1(e), Excess Liability, shall designate the Indemnitees as additional insureds, and the Developer and/or its contractor(s) shall provide to the City a certificate of insurance stating the excess liability policy follows form and the schedule of the underlying policies for the excess liability policy, with policy numbers.

(e)(d) All certificates and endorsement forms provided shall conform to the City's requirements and are subject to approval by the City.

(d)(e) Coverage provided hereunder by Developer and/or its contractors shall be primary insurance and not be contributing with any insurance maintained by the City or the Agency.

(f) The policies shall include a waiver of subrogation against the Indemnitees.

Upon request by City, Developer shall provide City with copies of complete insurance policies and endorsements evidencing coverage as required herein. Certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. If required by City, Developer and/or its contractor(s) shall, from time to time, increase the limits of its general and automobile liability insurance to reasonable amounts customary for owners of improvements similar to those on the Site.

Notwithstanding anything to the contrary set forth in this Section, Developer's obligations to carry-maintain the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Developer or its affiliate; provided, however, (i) that the Indemnitees shall be named as additional insureds as their interests may appear and (ii) that the coverage afforded City, Agency, and Indemnitees, will not be reduced or diminished by reason of the use of such blanket policy of insurance, and (iii) that the requirements set forth herein are otherwise satisfied.

~~306.3 Mutual Waivers. Except as otherwise set forth in Section 307 hereof, City and Developer hereby waive any rights each may have against the other, on account of any loss or damage occasioned to City and any additional insured parties and Developer, as the case may be, or the Site, arising from any loss generally covered by all-risk insurance; and the parties each, on behalf of their respective insurance companies insuring the property of either City and Developer against any such loss, waive any right of subrogation that such insurer or insurers may have against City and Developer, as the case may be. The foregoing mutual waivers of subrogation shall be mutually operative only so long as available in the state in which the Site is situated and provided further that no such policy is invalidated thereby.~~

307. Developer's Indemnity; City Indemnity. Except as set forth in Section 204 and except to the extent caused by a failure of City's warranties or representations herein or Default by City hereunder, Developer shall Indemnify (with one (1) counsel reasonably acceptable to the City, unless there is a conflict of interest by, among or between any of the Indemnitees, whether individuals or entities in which case separate counsel shall be provided by Developer for each such Indemnitee) the Indemnitees from and against any and all Liabilities which result from the performance of this Agreement by Developer or Developer's ownership, development, use, or operation of the Site or any portion thereof excepting those Liabilities which are caused by the

Indemnitees' (or any of them) gross negligence or willful misconduct. The City and Developer agree to fully cooperate with one another in any case where no conflict of interest between the parties is apparent. Without limiting the generality of the foregoing, Developer specifically agrees to indemnify, defend and hold harmless Agency and City from any Liabilities resulting from Developer's failure to comply with all applicable laws in accordance with Section 309 hereof. City shall Indemnify (with one (1) counsel reasonably acceptable to Developer) the Developer Parties from and against any and all Liabilities which result from the City's relocation of the occupants as required by this Agreement. The parties' respective indemnity obligations hereunder shall survive termination of this Agreement.

308. Rights of Access. Representatives of the City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Developer Improvements and so long as City representatives comply with all safety rules and do not unreasonably interfere with the work of Developer. City shall defend, indemnify, assume all responsibility for and hold the Developer Parties harmless from and against any and all third party liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, and reasonable attorneys' fees of any kind or nature and for any damages, including damages to property or injuries to persons, including accidental death (including reasonable attorneys' fees and costs), which result from the exercise of such entry. Representatives of the Developer shall have the right of access to those portions of the Site owned by City without charges or fees during normal construction hours for the purpose of Investigation and Grading (as those terms are defined in the Right of Entry Agreement).

309. Compliance with Governmental Requirements. Developer shall carry out the design, construction and operation of the Project in conformity with all Governmental Requirements.

309.1 Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, with respect to the construction and operation of the Project, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, *et seq.*, the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of the City access to its employment records related to this Agreement during regular business hours at Developer's principal office in Garden Grove, California to verify compliance with these provisions when so requested by the City.

310. Release of Construction Covenants. Following Completion of Construction of the Developer Improvements in conformity with this Agreement and within thirty (30) calendar days following receipt of a written request from Developer, the City shall furnish Developer with a

Release of Construction Covenants for the completed Developer Improvements or portion thereof. The City shall not unreasonably withhold or delay such Release of Construction Covenants. The Release of Construction Covenants shall be conclusive determination of satisfactory Completion of Construction of the Developer Improvements (or the part thereof identified in the Release of Construction Covenants) and the Release of Construction Covenants shall so state. If the City refuses or fails to furnish the Release of Construction Covenants for the Site (or part thereof) after written request from Developer, the City shall, within thirty (30) working days of receiving such written request, provide Developer with a written statement setting forth the reasons the City has refused or failed to furnish the Release of Construction Covenants for the Site (or part thereof). The statement shall also contain a list of the actions Developer must take to obtain a Release of Construction Covenants, which list shall be based on the applicable requirements set forth in this Agreement and the Construction Drawings, and/or of the Land Use Approvals and Governmental Requirements. If the reason for the City's refusal to issue the Release of Construction Covenants is due to lack of availability of specific landscape and/or finish materials, the Developer may provide a completion bond reasonably acceptable to the City, in which case the Developer shall thereby become entitled to the Release of Construction Covenants.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. Such Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code, Section 3093.

311. Financing of the Developer Improvements.

311.1 Approval of Financing. Prior to the Close of Escrow and in accordance with the Schedule of Performance, Developer shall have submitted evidence to the City that Developer has equity capital and/or a written lender commitment(s) from one (1) or more institutional lender(s) (individually and collectively, the "Construction Lender") for the construction of the Developer Improvements in accordance with this Agreement ("Construction Financing"). In addition, such Construction Financing shall be funded or to fund at the Closing in accordance with the Schedule of Performance as provided in accordance with Sections 205.1(f) and 205.2(h) hereof. City shall have the right to review and approve any such Construction Lender and the Construction Financing in its reasonable discretion. The City shall approve Construction Financing if the debt portion, if any, is issued by an institutional lender, together with Developer's equity (and, if applicable, the commitment of a Tenant to reimburse the Developer for all or any portion of the costs of the Developer Improvements), is in an amount not less than the cost of the Developer Improvements and conditioned only upon Closing and other customary construction loan closing and funding requirements. Developer and City agree that Developer shall be solely responsible for all financial obligations under such financing. Except with respect to Permitted Transfer pursuant to Section 103.2, prior to issuance of the final Release of Construction Covenants with respect to the Site, or applicable portion thereof, the Developer shall not place or suffer to be placed any lien or encumbrance on the Site, or any portion thereof, unless approved in writing by the City, in its sole and absolute discretion.

311.2 Holder Not Obligated to Construct Developer Improvements. The holder of any mortgage or deed of trust authorized by this Agreement (a "Holder") shall not be obligated by the provisions of this Agreement to construct or Complete the Construction of the Developer Improvements or any portion thereof, or to guarantee such construction or Completion of

Construction; nor shall any covenant or any other provision in this Agreement be construed so to obligate such Holder. Nothing in this Agreement shall be construed or deemed to permit or authorize any such Holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or Developer Improvements provided for or authorized by this Agreement.

311.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.

With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the City delivers any notice of default ("Notice of Default") or demand to Developer with respect to any Breach or Default by Developer in the construction of the Developer Improvements, and if Developer fails to cure the Default within the time set forth in Section 501, the City shall deliver to each Holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such Holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such Default and to add the cost thereof to the mortgage debt and the lien of its mortgage; provided, however if the Holder is legally prevented from curing such default because of a bankruptcy by the Developer or because such cure requires physical possession of the Site then the thirty (30) day period shall be tolled until such bankruptcy is confirmed, rejected or otherwise resolved or the Holder has obtained lawful physical possession of the Site. Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of Construction of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to the City by written agreement reasonably satisfactory to the City, which election to assume may be made within ninety (90) days following Holder's securing of title to the Property. Such assumption shall not have the effect of causing the Holder to be responsible for any prior damage obligations of Developer to the City. The Holder, in that event, must agree to Complete Construction, in the manner provided in this Agreement, of the Developer Improvements. Any such Holder properly Completing the Construction of the Developer Improvements or portion thereof shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a Holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such Holder has within such thirty (30) day period commenced foreclosure proceedings to obtain title and/or possession and thereafter the Holder diligently pursues such proceedings to completion and cures or remedies the default.

311.4 Failure of Holder to Complete the Construction of the Developer Improvements. In any case where, thirty (30) days after the Holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a Notice of Default by Developer in Completion of Construction of any of the Developer Improvements under this Agreement, and the Holder has not exercised the option to construct as set forth in Section 311.3, or if it has exercised the option but has defaulted thereunder and failed to timely cure such default, the City may, by giving written notice to the Holder, purchase the mortgage or deed of trust by payment to the Holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the Holder, the City, if it so desires, shall be entitled to a conveyance of title to the Site or such portion thereof from the Holder to the City upon payment to the Holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage or deed of trust debt at the time title became vested in the Holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (b) All expenses with respect to foreclosure including reasonable attorneys' fees;
- (c) The net expense, if any (exclusive of general overhead), incurred by the Holder as a direct result of the subsequent management of the Site or part thereof;
- (d) The costs of any Developer Improvements made by such Holder;
- (e) Any prepayment charges, default interest, and/or late charges imposed pursuant to the loan documents and agreed to by Developer; and
- (f) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

311.5 Right of the City to Cure Mortgage or Deed of Trust Default. In the event Developer receives a notice of default on any mortgage or deed of trust prior to the Completion of Construction of the Developer Improvements and issuance of a total Release of Construction Covenants, Developer shall immediately deliver to the City a copy of such notice of default. If the Holder of any mortgage or deed of trust has not exercised its option to construct, the City shall have the right but not the obligation to cure the default. The City shall be entitled to reimbursement from Developer of all proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Site to the extent of such costs and disbursements.

400. COVENANTS AND RESTRICTIONS

401. Covenant to Develop, Use and Operate the Site in Accordance with Land Use Approvals and this Agreement. For so long as City is required to provide any Covenants Consideration, Developer covenants and agrees for itself and its successors, assigns, and every successor in interest to the Site, or any part thereof, that Developer and such successors and assignees shall use and operate the Site in accordance with the Land Use Approvals and this Agreement, and except for a Holder who, pursuant to Section 311, has not elected to assume Developer's obligations hereunder to construct, shall construct and Complete Construction of the Developer Improvements in accordance with the Land Use Approvals, Scope of Development, all applicable Governmental Requirements, Section 301.1 hereof, and the Schedule of Performance.

402. Maintenance and Security Covenants. Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain, at Developer's sole cost and expense, the Site and all Developer Improvements thereon, in compliance with the terms of the Declaration, the Land Use Approvals and with all applicable Governmental Requirements. The operation, use, security and maintenance of the Site, shall be accomplished in accordance with the Covenants and Declaration (to be approved by the parties prior to Closing) consistent with other first-class hotel/retail/restaurant projects in Orange County, and shall include regular landscape maintenance, graffiti removal, and trash and debris removal.

403. Nondiscrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Improvements or the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or the Site. The foregoing covenants shall run with the land.

All deeds, leases or contracts with respect to the Project or the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. **In deeds:** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

b. **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with

reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

c. **In contracts:** "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

404. Prevailing Wages. With respect to the construction of the Developer Improvements on the Site as set forth herein and in the Scope of Development, Developer and its contractors and subcontractors shall pay prevailing wages and employ apprentices in compliance with Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto. Such requirements are set forth in greater detail in Exhibit J attached hereto and incorporated herein by reference. The referenced Labor Code sections and Exhibit J are referred to herein collectively as the "Prevailing Wage Requirements." Upon the periodic request of the City, the Developer shall certify to the City that it is in compliance with the requirements of this Section 405. Notwithstanding anything to the contrary contained in this Agreement, Developer shall not be required to comply with the Prevailing Wage Requirements with respect to any discreet portions of the Developer Improvements if and to the extent the Prevailing Wage Requirements are inapplicable to such discreet portions. Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction, and/or operation of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required

disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 405, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion of Construction of the Developer Improvements by the Developer.

405. Point of Sale and/or Use. The Developer, for itself and for its general contractor and subcontractor, agrees to obtain a State Board of Equalization sub-permit for the jobsite and allocate all eligible use tax payments to the City and provide the City with either a copy of the sub-permit or a statement that the use tax does not apply to this portion of the job, to insure that the City is the point of sale and/or use under the Bradley Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code, as amended from time to time).

406. Effect of Violation of the Terms and Provisions of this Agreement. The City is deemed the beneficiary of the terms and provisions of this Agreement and of the Covenants, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the Covenants have been provided, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Site. The City shall have the right (subject to Section 501 below), upon a Default by Developer of this Agreement, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and Covenants may be entitled. Except as otherwise provided therein, the Covenants contained in Sections 103, 301, 309, and 401, 402, and 405, and the Declaration shall survive Closing and remain in effect for so long as City is required to provide any Covenants Consideration pursuant to this Agreement. The Covenants set forth in Sections 204.2, 204.3, 307, 403, and 603 shall survive Closing and remain in effect in perpetuity. The Covenants described in Sections 303, 304, 305, 306, 308, 404 and 503 shall survive Closing and remain in effect with respect to a portion of the Site until the issuance of a Release of Construction Covenants with respect to such portion of the Site and so long thereafter as shall be necessary to enforce a Default(s) thereunder. The Covenants set forth in Sections 407, 408, and 409 shall survive Closing and remain in effect in accordance with the terms set forth therein.

407. Covenants Consideration (City Assistance). In consideration for the granting of the Covenants by the Developer to the City, City agrees to provide the following economic assistance towards defraying the cost of the Project's development and operation ("Covenants Consideration"):

- (a) Conveyance of the Site to Developer pursuant to Section 200; and
- (b) Payment of the costs of the City Improvements pursuant to Section 301.2; and
- (c) Payment of the costs associated with preparation of the Subdivision Map pursuant to Section 303; and

(d) Payment to Developer of the Tax Rebate Payments described in Section 408.

408. Tax Rebate Payments. The Covenants Consideration shall include the annual payments described in this Section 408.

408.1 Upper Upscale Hotel Tax Rebate Payments. With respect to each Upper Upscale Hotel, City shall pay to Developer annually, from the date on which Completion of Construction of the Upper Upscale Hotel occurs, and for a period of twenty (20) years thereafter, an amount equal to: (i) sixty percent (60%) of the Transient Occupancy Tax Revenues which have been paid to and received by the City in each calendar year during such period with respect to the Upper Upscale Hotel(s); and (ii) fifty percent (50%) of the Sales Tax Revenues attributable to the operation of the Upper Upscale Hotel.

408.2 Limited Service Hotel Tax Rebate Payments. With respect to each Limited Service Hotel, City shall pay to the Developer annually, for the period commencing on the date on which Completion of Construction of the Limited Service Hotel has occurred and for a period of ten (10) years thereafter, an amount equal to fifty percent (50%) of the Transient Occupancy Tax Revenues which have been paid to and received by the City in each calendar year during such period with respect to the Limited Service Hotel.

408.3 Retail/Restaurant/Entertainment Component Tax Rebate Payments. With respect to each separate portion of the Retail/Restaurant/Entertainment Component, City shall pay to the Developer annually, for the period commencing on the date on which Completion of Construction of each such portion of the Retail/Restaurant/Entertainment Component has occurred and for a period of twenty (20) years thereafter, an amount equal to fifty percent (50%) of the Sales Tax Revenues attributable to each such portion of the Retail/Restaurant/Entertainment Component (i.e., there shall be separate 20-year payment periods for each such portion of the Retail/Restaurant/Entertainment Component).

408.4 Timing of Tax Rebate Payments. City shall remit the Tax Rebate Payments to Developer annually, no later than ninety (90) days after the end of the City's Fiscal Year (July 1- June 30).

408.5 Conditions Precedent to Remittance of Tax Rebate Payments. The City's obligation to pay the Tax Rebate Payments pursuant to this Section 408 is conditioned upon all of the following conditions precedent, which shall be satisfied on the date of the applicable disbursement: (i) this Agreement shall remain in full force and effect and not have been terminated, and (ii) there shall be no Default by the Developer under the Agreement which remains uncured on the date such Tax Rebate Payments, or applicable portion thereof, would otherwise be made to the Developer, including, without limitation, Completion of Construction prior to the time set forth in the Schedule of Performance and operation of the Project consistent with the Covenants and Scope of Development.

408.6 Tax Revenues Not Security for Tax Rebate Payments. Developer acknowledges and agrees that neither the Transient Occupancy Tax Revenues, the Sales Tax Revenues, nor any other general or special funds of the City, are pledged or otherwise encumbered, hypothecated to or given as security for the Tax Rebate Payments.

409. Allocation of Tax Rebate Payments. Notwithstanding the allocations of Tax Rebate Payments described in Section 408, above, the Developer may, without the approval of the City, reallocate the Tax Rebate Payments between and among the separate development entities who own the Separate Components, as described in Section 103.2.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to Enforced Delay and compliance with the provisions of this Agreement which provide for the protection of Mortgagee rights, including the provisions of Section 311 of this Agreement, failure or delay by either party to perform any material term or provision of this Agreement (a "Breach") following notice and failure to cure as described hereafter constitutes a "Default" under this Agreement.

The nondefaulting party shall give written notice of any Breach to the party in Breach, specifying the Breach complained of by the nondefaulting party ("Notice of Default"). Delay in giving such Notice of Default shall not constitute a waiver of any Breach nor shall it change the time of Breach. Upon receipt of the Notice of Default, the party in Breach shall promptly commence to cure the identified Breach at the earliest reasonable time after receipt of the Notice of Default and shall complete the cure of such Breach not later than thirty (30) days after receipt of the Notice of Default, or, if such Breach cannot reasonably be cured within such thirty (30) day period, then as soon thereafter as reasonably possible, provided that the party in Breach shall diligently pursue such cure to completion ("Cure Period"). Failure of the party in Breach to cure the Breach within the Cure Period set forth above shall constitute a "Default" hereunder.

Any failures or delay by either party in asserting any of its rights and remedies as to any Breach or Default shall not operate as a waiver of any Breach or Default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

CITY SHALL ALSO BE REQUIRED TO SEND NOTICES OF DEFAULT TO EACH MORTGAGEE FOR WHICH CITY HAS RECEIVED A MORTGAGEE NOTICE.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Orange, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California. Notwithstanding the foregoing or any other provision of this Agreement, in no event shall monetary damages of any kind be available as a remedy for breach of this Agreement or any provision thereof.

503. Re-entry and Revesting of Title in the City After the Closing and Prior to Completion of Construction. Without limiting the rights as set forth in Section 311, and without affecting the priority of the lien of the Holder's deed of trust or mortgage, the City has the right, at its election, to reenter and take possession of any portion of the Site with all Developer Improvements thereon, and terminate and Revest in the City the estate conveyed to the Developer with respect to such portion of the Site only if after the Closing and prior to the issuance of the final Release of

Construction Covenants with respect to such portion of the Site, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Developer Improvements on such portion of the Site as required by this Agreement for a period of ninety (90) days after Notice thereof from the City subject to extension pursuant to Section 602; or

(b) abandon or substantially suspend construction of the Developer Improvements on such portion of the Site required by this Agreement for a period of ninety (90) days after Notice thereof from the City subject to extension pursuant to Section 602; or

(c) contrary to the provisions of Sections 101 or 103 hereof, Transfer or suffer any involuntary Transfer in violation of this Agreement, and such Transfer, if it is a Transfer requiring approval by the City, is not rescinded within thirty (30) days of Notice thereof from City to Developer.

Such right to reenter, terminate and Revest is subject to the quiet enjoyment, and, if applicable, the right to continue to complete construction by (i) Tenants or other occupants who have (a) executed leases or subleases and (b) incurred substantial expenses in connection with the design and/or construction of improvements required to be constructed by such Tenant under such lease or sublease and (ii) a Holder, in the case where the Developer is in Default and, *vis à vis* a Holder, shall be exercisable only if:

1. Such Holder (or its Nominee) (a) shall have failed to cure any Default within the applicable cure periods granted to such Holder (or its Nominee), or (b) shall have given City written notice that it will not cure any such Default or condition or that it will otherwise not comply with the terms and conditions of this Agreement; and

2. City, within ninety (90) days after the occurrence of any events described in subparagraph 1. immediately above, shall commence the exercise of its right of entry and shall pay to Holder (or its Nominee) in immediately available funds, the Loan Balance prior to Revesting.

In the event of a failure or refusal to cure a Default, as described in subparagraph 1. above, City's sole remedy *vis a vis* Holder shall be the exercise of the re-entry right and Revesting in accordance herewith.

The conditions to the commencement of the exercise of the City's right to re-enter and Revest as described above shall be applicable whether the re-entry and Revesting occurs (a) prior to foreclosure (or deed in lieu of foreclosure) by the Holder (or its Nominee) under its mortgage or deed of trust; or (b) after Holder (or its Nominee) acquires title to the Site by foreclosure (or deed-in-lieu of foreclosure) under its mortgage or deed of trust.

The applicable Grant Deeds shall contain appropriate reference and provision to give effect to the City's right as set forth in this Section 503, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and Revest in the City the estate conveyed to the Developer. Upon the Revesting in the City of title to the Site, as provided in this Section 503, the City shall use its reasonable efforts to resell the Site, or portion thereof, as soon and in such manner

as the City shall find feasible and consistent with this Agreement and the Scope of Development to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of constructing or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to the City and in accordance with Scope of Development. Upon such resale of the Site, the net proceeds thereof, shall be applied:

(i) First, to reimburse the City all costs and expenses incurred by the City, excluding in-house City staff costs, but specifically, including, but not limited to, any expenditures by the City in connection with the recapture, management and resale of the Site, or part thereof (but less any income derived by the City from the Site, or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site, or part thereof, which the Developer has not paid (or, in the event that the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site, or part thereof, at the time of Revesting of title thereto in the City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the constructing or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the City, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) actual and direct third party costs incurred by the Developer for the Developer Improvements existing on the Site, at the time of the re-entry and possession, less (b) any gains or net income received by the Developer from the Site, or the improvements thereon.

(iii) Any balance remaining after such reimbursements shall be retained by the City as its property. The rights established in this Section 503, except as may otherwise be provided in this Section 503, are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the City will have conveyed the City Property and the Agency Property and provided other financial assistance to the Developer for development of a high quality hotel project, particularly for development and operation of the Project, and not for speculation in undeveloped land.

504. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

505. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

506. Applicable Law. The laws of the State shall govern the interpretation and enforcement of this Agreement.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefore is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy, or email or overnight delivery service to:

To City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

with a copy to: Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, California 92840

To Developer: Land & Design, Inc.
8130 La Mesa Boulevard, #808
La Mesa, California 91942
Attention: Matthew Reid

with a copy to: Allen Matkins Leck Gamble Mallory & Natsis, LLP
501 West Broadway, 15th Floor
San Diego, California 92101
Attention: Tom Crosbie

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section.

602. Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays are due to ("Enforced Delay"): litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; actions in connection with the remediation of Hazardous Materials, including groundwater contamination; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; unanticipated subsurface conditions that delay performance; lack of transportation; governmental restrictions or priority; building moratoria; unusually severe weather; or acts or omissions of the other party; acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of the City which shall not excuse performance by the City); or during the pendency of any dispute between City or Developer, regarding Developer's construction obligations hereunder provided that the party claiming the right to an extension of time is determined to be the prevailing party in such dispute. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause

shall be for the period reasonably attributable to the Enforced Delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the later of commencement of the cause or such party's discovery of such cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to Complete Construction of the Developer Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

603. Non Liability of Officials and Employees of City and Developer. No member, official, shareholder or employee of either party shall be personally liable to the other party, or any successor in interest, in the event of any Default or Breach by the either party or for any amount which may become due to either party or their successors, or on any obligations under the terms of this Agreement.

604. Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and Developer is not that of a partnership or joint venture and that the City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Exhibits hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site.

605. City Approvals and Actions Through City Manager. Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

606. Commencement of City Review Period. The time periods set forth herein and in the Schedule of Performance for the City's approval of agreements, plans, drawings, or other information submitted to the City by Developer and for any other City consideration and approval hereunder which is contingent upon documentation required to be submitted by Developer shall only apply and commence upon the submittal of all the reasonably required information. In no event shall a materially incomplete submittal by Developer trigger any of the City's obligations of review and/or approval hereunder; provided, however, that the City shall notify Developer of an incomplete submittal as soon as is practicable.

607. Successors and Assigns. All of the terms, covenants, conditions, representations, and warranties, of this Agreement shall be binding upon City and Developer and their respective permitted successors and assigns. Whenever the term "Developer" or "City," as the case may be, is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

608. Assignment by City. The City may assign or transfer any of its rights or obligations under this Agreement with the approval of Developer, which approval shall not be unreasonably withheld.

609. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

610. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 48 (includes signature page) and Exhibits A through L, (each such Exhibit incorporated in this Agreement as if fully set forth herein) which together constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

611. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees. Costs recoverable for enforcement of any judgment shall be deemed to include reasonable attorneys' fees.

612. Administration. This Agreement shall be administered and executed by the City Manager, or his/her designated representative, following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City Manager (or his/her authorized representative). The City Manager shall have the authority but not the obligation to issue interpretations, waive provisions, approve the Declaration, extend time limits, make minor modifications to prior City design approvals, and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to the City as specified herein as agreed to by the City Council, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the City Council.

613. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to Section numbers are to sections in this Agreement, unless expressly stated otherwise.

614. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

615. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

616. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

617. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the

remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

618. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded in which case such day is the day following the excluded day(s). The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time.

619. Legal Advice. Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

620. Time of Essence. Time is expressly made of the essence with respect to the performance by the City and Developer of each and every obligation and condition of this Agreement.

621. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement. In this regard, Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement and/or other estoppel documents. The party making the request shall be responsible for the costs incurred by the other party, including without limitation attorneys' fees, (the "Amendment/Estoppel Costs") in connection with any amendments to this Agreement and/or estoppel documents which are requested by such party (the "Developer/City Request") regardless of the outcome of the Developer/City Request.

622. Conflicts of Interest. No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

623. Time for Acceptance of Agreement by the City. This Agreement, when executed by Developer and delivered to the City, must be authorized, executed and delivered by the City on or before thirty (30) days after signing and delivery of this Agreement by Developer or this Agreement shall be void, except to the extent that Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

624. Consideration of Agreement Modification. The Parties recognize that due to the changing economic conditions as it relates to hotel development, there is a possibility that the terms described herein will need to be modified based on requirements of the Franchisor(s), Hotel

Operator(s) and/or Construction Lender and/or other debt or equity contributors. With this in mind, the parties agree that in such event, the Parties agree that they will discuss any such requested modifications with the idea in mind of modifying or amending this Agreement, if required, with each Party acting in their sole and absolute discretion and without any commitment to the other to agree to any such requested modification or revision.

625. Recordation of Memorandum of Agreement. The Memorandum of Agreement shall be recorded concurrently with the Close of Escrow and the terms hereof shall survive Closing and run with the land for the period of time set forth herein.

626. Repudiation of DDA Between Developer and Agency. Developer hereby acknowledges and agrees that, upon the Conveyance of the City Property and the Agency Property to Developer pursuant to this Agreement, that certain Disposition and Development Agreement pertaining to the Site ("DDA") entered into on or about June 14, 2011, by and between Developer and the former Garden Grove Agency for Community Development shall be deemed terminated, void and of no further force and effect. Developer also agrees that, for so long as this Agreement remains in effect, it will not attempt to enforce the DDA against the Agency.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____, 2013

By: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Thomas F. Nixon
City Attorney

DEVELOPER

LAND & DESIGN, INC., a California corporation

Dated: _____, 2013

By: _____

Matthew Reid, _____

Dated: _____, 2013

By: _____

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EXHIBIT A

SITE MAP

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EXHIBIT B

LEGAL DESCRIPTION

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EXHIBIT C

SCOPE OF DEVELOPMENT

Unless otherwise specified herein, all capitalized terms in the Scope of Development shall have the meaning(s) set forth for the same in the Conference Hotel Development Agreement (CHDA) to which this Scope of Development is attached.

I. DEVELOPER IMPROVEMENTS

A. Retail/Restaurant/Entertainment

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct on the Site the Retail/Restaurant/Entertainment Component(s) consisting of a minimum of ten thousand (10,000) square feet of gross leaseable area and required parking (subject to Parking Structures). Exhibit L, contained herein, shall be considered the City pre-approved list of Retail/Restaurant and Entertainment uses. The Developer, from time to time, may submit additional lists of possible restaurants for City review and approval, which shall not be unreasonably withheld.

The design and architecture of the improvements for the restaurant(s) shall follow the City's General Plan, the Land Use Approvals, and all other requirements and provisions of this Agreement, as applicable.

B. Hotels

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct the Upper Upscale Hotel consisting of a minimum of three hundred (300) rooms and not less than ten thousand (10,000) square feet of meeting and business space. The Upper Upscale Hotel shall also include required parking, as well as a central lobby, full-service/specialty restaurant (with room service), cocktail bar, spa, gift shop(s), business center, fitness center, and concierge service consistent in quality with those hotels include on the list of Pre-Approved Upper-Upscale Flag(s)/Operator(s) (Exhibit L). Exhibit L, contained herein, shall be considered the pre-approved list of Upper Upscale Hotel Flags. The Developer, from time to time, may submit additional lists of possible Upper Upscale Hotel Flags/Operators for City review and approval, which shall not be unreasonably withheld.

Similarly, all guest rooms shall range in size from 300 gross square feet to over 400 gross square feet. All rooms will include flat screen TV's and high speed internet access, and other standard items such as alarm clocks, hair dryer, iron and ironing board. A limited number of larger suites will

provide separate bedrooms, private bathrooms, and separate seating/living areas. There will also be luxury suites with king beds, flat screen televisions and wireless internet access. The CHDA and this Scope of Development shall not be interpreted to prohibit the Developer from developing and/or designating a portion of the Upper Upscale Hotel(s) as a timeshare project, provided that (i) any such development and/or designation of a portion of the Upper Upscale Hotel(s) as a timeshare project is consistent with the Land Use Approvals and applicable Governmental Requirements, and (ii) the City and the Developer reach an agreement acceptable to the City, in its sole and absolute discretion, providing for payment by Developer to City of an amount approximately equivalent to the amount of Transient Occupancy Tax Revenues, if any, that would be collected by City if such portion of the Upper Upscale Hotel(s) was not developed and/or designated as a timeshare project.

The Developer shall construct the Limited Service Hotels consisting of a minimum of one hundred twenty-five (125) rooms each. The Limited Service Hotels shall also include required parking, as well as a central lobby, business center, and fitness center consistent in quality with those hotels include on the list of Pre-Approved Limited Service Flag(s)/Operator(s) (Exhibit L, Exhibit L, contained herein, shall be considered the pre-approved list of Limited Service Hotel Flags. The Developer, from time to time, may submit additional lists of possible Limited Service Hotel Flags/Operators for City review and approval, which shall not be unreasonably withheld.

Similarly, all guest rooms range in size from 300 gross square feet to over 400 gross square feet. All rooms will include flat screen TV's and high speed internet access, and other standard items such as alarm clocks, hair dryer, iron and ironing board.

The design and architecture of the Limited Service Hotels shall comply with the City's General Plan, the Land Use Approvals, and the all other requirements and provisions of the CHDA, as applicable, and shall be consistent with the cost estimates for construction provided in the Developer's Pro Forma, the Basic Concept and Design Development Drawings and the Construction Plans and Drawings. Particular attention shall be paid to massing, scale, color, and materials.

In addition to the minimum standards for the Hotel(s) associated with the Pre-Approved Limited Service Flag(s)/Operator(s) and Pre-Approved Upper Upscale Flag(s)/Operator(s), (i) the standards attached hereto as Attachment No. 1 shall also apply to the Hotel(s), and (ii) notwithstanding anything to the contrary contained in the CHDA or this Exhibit C, (a) the finishes, standards and quality of the Upper Upscale Hotel(s) shall equal or exceed those of the Westin Pasadena as of the date of the CHDA, and (b) the finishes, standards and quality of the Limited Service Hotel(s) shall

EXHIBIT C

equal or exceed those of the Homewood Suites Garden Grove as of the date of the CHDA.

C. Parking Structures

The following shall be the sole cost and expense of the Developer, except to the extent otherwise funded through CFD Financing pursuant to Section 301.3 of the CHDA:

1. The Developer shall construct, maintain and operate the Parking Structures as shown on the Conceptual Site Plan and/or any subsequent Additional Land Use Approvals approved by the City.

The vehicular entry points to the Parking Structures shall be located as shown on the Conceptual Site Plan and/or any subsequent Additional Land Use Approvals approved by the City.

The Parking Structures shall be designed for ease of operations and patron convenience with one-way traffic lanes, angled parking stalls, no parking on ramps, two lanes of continuous vertical traffic flow, and separated inbound/outbound lanes.

D. Site Improvements

The following shall be the sole cost and expense of the Developer:

1. The Developer shall construct all improvements from the back of the curb face, including sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscape (but excluding traffic or pedestrian or traffic signal poles which are the responsibility of the City). All such improvements shall be constructed in accordance with the Harbor Boulevard Streetscape Improvement Plan, the Land Use Approvals, and the Governmental Requirements. Improvements include the east side of Harbor Boulevard from the most south boundary portion of the Site to the most north boundary portion of the Site.

E. Tentative and Final Map

Except as otherwise expressly provided below and in the CHDA, the Developer shall, at the sole cost and expense of the Developer, apply for and obtain any and all Additional Land Use approvals required in connection with the construction and operation of the Project, including, without limitation, a tentative and final Subdivision Map for the Site. Notwithstanding the foregoing sentence, provided the final proposed Project is substantially consistent with the Conceptual Site Plan, City shall pay for the costs associated with preparation of the tentative and final Subdivision Map. In the event the final proposed Project is not substantially consistent with the Conceptual Site Plan, the Developer shall be responsible for

all costs and expenses associated with preparation of the tentative and final Subdivision Map.

II. CITY IMPROVEMENTS

The following shall be the sole cost and expense of the City:

1. Relocation of all occupants of the Site in compliance with all applicable federal, state and local laws and regulations concerning displacement and relocation, as applicable;
2. The demolition and removal of all existing structures and improvements, including foundations, and, subject to and as provided in Section 204, remediation of any Hazardous Materials on the City Property and the Agency Property, the proper disposal and mitigation of lead-based paint, asbestos and other environmental hazards pursuant to the requirements of the Department of Health Services in compliance with all applicable federal, state and local laws and regulations with respect to demolition and/or disposal and mitigation as described above; and
3. Installation and completion of all Offsite Infrastructure (i.e., the traffic signal and raised median improvements described in Performance Standards Nos. 8 and 9, respectively, of the PUD, and such other public improvements required to be constructed and/or installed in the public right-of-way pursuant to the Land Use Approvals, but excluding any sidewalks, driveways, street lights, pedestrian light standards, signs, parkway landscaping, and/or other improvements to be constructed from the back of the curb face by Developer, including any required environmental mitigation measures directly related to the construction and/or installation of such public improvements).

III. ARCHITECTURE AND DESIGN

A. Building Design

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop construction plans and design documents, which shall be developed in compliance with the Land Use Approvals. The architecture is expected to create a unique identity with a cohesive, integrated architectural style that complements the surrounding developments. Particular attention shall be paid to massing, scale, color, and materials in order to articulate the buildings elevations. The elevations shall, to extent as possible, avoid flat or one-dimensional elevations. Architectural attention shall be given to the main entrance/lobby of the Hotel(s), which shall include a porte-cochere that complements the main building.

B. Building Service, Project Traffic and Management

EXHIBIT C

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop a building service, project traffic and management plan. The plan shall be included within the Declaration and shall, at a minimum, include the following:
 - (a) A service plan that includes general times for deliveries, trash collection, street cleaning and the agreed upon routing for such service-vehicles. This plan shall include routing and stopping for patron drop-off and small service-vehicles including mail, overnight delivery and messengers as well as conference facility deliveries. This plan shall also include routing and marked areas for emergency services.
 - (b) A traffic plan that includes the Developer's commitment to pay for traffic control officers at the entrances to the Parking Structure(s) during holiday peak periods and for special events that are expected to generate large volumes of traffic.
 - (c) A maintenance and management plan that includes cleaning and refuse policing, no visibility into service areas from public streets, degreasing and deodorizing (particularly for the service, trash and garbage areas), re-stripping, re-painting, re-lighting, drainage cleaning, signage, graffiti management and security.
 - (d) Repair and maintenance of the Project in accordance with Section 301.1 of the CHDA.

C. Landscaping

All areas of the Site that are not used for buildings, sidewalks, driveways or other hardscape improvements shall be landscaped in accordance with the Land Use Approvals and a landscaping plan to be approved by the City. The Developer, at its sole cost and expense, shall be responsible for all these areas. Landscaping shall consist of ground cover, trees, potted plants, and fountains, pools, or other water features, if applicable. A permanent automatic water sprinkler system shall be provided in all landscaped areas as required for adequate coverage/maintenance.

D. Refuse

Refuse areas shall be provided in accordance with the requirements of the Land Use Approvals.

E. Signs

The following shall be the sole cost and expense of the Developer:

1. The Developer shall develop a sign program. The Project shall have a comprehensive graphics/logos and sign program that shall govern the entire Project; all signs shall conform as to location, size, shape, illumination system, cabinet and copy face colors, letter style, shall be complementary to the overall architectural theme, and comply with the high standards of Underwriter Laboratories. The sign program must be approved by the City.

F. Utilities

The following shall be the sole cost and expense of the Developer:

The Developer shall be responsible for utility installations for the Project and hookups to public utility lines. All utility service for the Project shall be installed underground or concealed within buildings and any mechanical, electrical, fire sprinkler or plumbing equipment that may be at ground level shall be aesthetically screened except where not permitted by the Garden Grove Municipal Code.

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ATTACHMENT NO. 1

HOTEL STANDARDS

Upper Upscale Hotel Prototype Summary

Cast in place concrete frame construction

Program room mix - to be determined after significant market analysis and research with specificity to the Anaheim Resort Areas market needs

Swimming pool with spa

Exterior sun deck

Upper-Upscale Hotel Workout area

Porte-cochere sized to accommodate multiple vehicles

Efficient layout with a cost effective FTE requirement

Linen chute

In house food and beverage operations

Laundry operations

Upper-Upscale Hotel Executive Club Lounge

Elevators - 3 guest, 1 service; all traction with a gearless upgrade option

Public Area Features

Full designed Urban Bar & Eatery concept for the food and beverage outlets

Flexible private dining area

Outlet seating; Eatery - 82 / Bar – 37, exact seating based upon market demand

Wireless high speed internet access throughout all public and function space

Free standing front desk POD design

Movable partitions with a 54 STC rating

Separate function space arrival area

Meeting space minimum pursuant to scope of work, divisible into independent rooms, full back serviced

Pre-function space as required including exterior pre-function area

Audio/Visual system

Full designed, FF&E specified, sourced and priced

Self-service sundry/business center area adjoining the front desk

Upper-Upscale Hotel's express checkout service

Guestroom Features

The Upper-Upscale Hotel Bed in accordance with Flag specified bed

Mixture of Large, three and four-fixture Baths

Upper-Upscale Hotel designed model room

Guestroom HVAC - 2-pipe specified with a 4-pipe option and digital wall thermostats

Two, two-line phone handsets and High Speed Internet Access

Large flat panel LCD television

Pay per view movie system

In room refreshment center

In room safe

Upper-Upscale Hotel Green Program

Electronic card key locks

Full designed, FF&E specified, sourced and priced

Upper-Upscale Hotel brand standard OS&E; specified, sourced and priced

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EXHIBIT D

SCHEDULE OF PERFORMANCE – CONDENSED SCHEDULE

PERFORMANCE ITEM	DATE
1. City and Developer execute CHDA.	On or before April 15, 2013.
2. City and Developer open Escrow.	Within thirty (30) days after Date of Agreement.
3. Developer deposits Cost Reimbursement Deposit with City.	Within thirty (30) days after Date of Agreement.
4. City accepts conveyance of fee title to all Agency Property.	On or before September 1, 2013.*
5. Developer completes its Site Investigation pursuant to Section 204.	On or before the Due Diligence Date.
6. Developer notifies City of election of whether to include Third Party Property in Project and add to Site and, if applicable, provides City with evidence of acquisition of necessary interest in Third Party Property.	On or before January 1, 2014.
7. Developer submits completed application for tentative Subdivision Map, Development Agreement, and other necessary or desired Land Use Approvals.	On or before January 1, 2014.
8. Developer submits and obtains City approval of the identity of the Hotel Operators, Franchisors, and Franchise Agreements and Developer executes the approved Franchise Agreements.	On or before October 1, 2014.
9. City approves, conditionally approves or rejects tentative Subdivision Map, Development Agreement, and other necessary or desired Land Use Approvals.	On or before May 1, 2014.

* If the City has not acquired fee title to all of the Agency Property by such date, then each subsequent date set forth in this Schedule of Performance will be extended on a day-for-day basis for each day after September 1, 2013 through and including the date upon which City acquires fee title to all of the Agency Property.

PERFORMANCE ITEM	DATE
10. Developer completes Construction Drawings	On or before February 1, 2015.
11. Developer provides evidence of financing.	On or before May 1, 2015.
12. City completes demolition, Site clearance and remediation, if applicable, pursuant to Paragraph II.1. of the Scope of Development	On or before August 1, 2015.
13. Developer and City Close Escrow and Developer commences grading.	On or before September 1, 2015. ¹
14. Construction Commencement Date.	On or before September 1, 2015.
15. Offsite Infrastructure Completed by City	Concurrently with completion of the Developer Improvements.
16. Developer Completes Construction of the Developer Improvements	Within twenty six (26) months after Close of Escrow.

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¹ Although the outside date for the Closing of September 1, 2015, may not be extended for the events described in Section 602, the Closing may be extended until March 1, 2016 provided that, as of September 1, 2015, the Franchise Agreement for the Upper Upscale Hotel is still operative and neither the Developer nor the Franchisor is in breach or default thereunder. The Closing may also be extended until September 1, 2016 if on March 1, 2016, the Franchise Agreement for the Upper Upscale Hotel is still operative and neither the Developer nor Franchisor is in breach or default thereunder.

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is hereby made as of _____, 20____, by and between _____, a _____ ("_____"), and _____, a _____ ("Assignee").

RECITALS

A. Assignor and the City of Garden Grove (the "City") have entered a Conference Hotel Development Agreement dated _____, 2013 (the "CHDA"). Pursuant to the CHDA, the City agreed to convey [or conveyed] to the Assignor a parcel of real property referred to in the CHDA as the "Site," and the Assignor agreed to construct [among other things] _____ thereon.

B. Assignor and Assignee desire to provide by this Assignment for Assignor to assign to Assignee all of its rights and obligations under the CHDA [with respect to the portion of the Site described on Exhibit "A" hereto] and for Assignee to accept such assignment and assume all rights and obligations thereunder [with respect to such portion of the Site].

C. Pursuant to Section 103 of the CHDA, City approval of a Transfer of Assignor's interest in the Agreement is required in connection with the construction of _____.

D. The parties also desire for City to consent to such assignment and assumption, and acknowledge that such assignment and assumption is permitted pursuant to Section 103 of the CHDA.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption.** Assignor hereby assigns to Assignee all of its right, title and interest in and to the CHDA [with respect to the portion of the Site described on Exhibit "A" hereto], and Assignee hereby accepts such assignment and assumes performance of all terms, covenants and conditions on the part of Assignor to be performed, occurring or arising under the CHDA [with respect to such portion of the Site], from and after the date hereof with respect to _____. From and after the date hereof, Assignor shall be released from and have no further obligations under the DDA [with respect to such portion of the Site], excluding actual claims of Default which City made against Assignor in writing prior to the date hereof, the responsibility for which claims have not been assumed by Assignee.

2. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee, their respective successors and assigns and City as third party beneficiary hereof.

3. **Governing Law.** This Assignment has been entered into, is to be performed entirely within, and shall be governed by and construed in accordance with the laws of the State of California.

4. **Further Assurances.** Each party hereto covenants and agrees to perform all acts and things, and to prepare, execute, and deliver such written agreements, documents, and instruments as may be reasonably necessary to carry out the terms and provisions of this Assignment.

NOW, THEREFORE, the parties hereto have executed this Assignment as of the date set forth above.

ASSIGNOR:

_____,
a _____

By: _____

Its: _____

By: _____

Its: _____

ASSIGNEE:

_____, a

By: _____

Its: _____

DRAFT

CONSENT OF CITY TO ASSIGNMENT

City hereby acknowledges and consents to the above assignment, and releases Assignor from any further liability under the CHDA, except in Assignor's capacity as a member of Assignee.

CITY OF GARDEN GROVE,
a municipal corporation

By: _____

ATTEST:

City Clerk

DRAFT

EXHIBIT F

GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:
City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103 and 27383.

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The CITY OF GARDEN GROVE, a municipal corporation (the "Grantor") hereby grants to LAND & DESIGN, INC., a California corporation (the "Grantee"), the real property described in Exhibit A attached hereto and incorporated herein (the "Property"), subject to existing easements, restrictions and covenants of record and further subject to the provisions of this Grant Deed set forth below.

1. Reservation of Mineral Rights. Grantor excepts and reserves from the conveyance herein described all interest of the Grantor in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the property lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said property or other lands, but without, however, any right to use either the surface of the Property or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the property in such a manner as to create a disturbance to the use or enjoyment of the Property.

2. Conveyance in Accordance with Conference Hotel Development Agreement. The Grantor's grant of the Property to the Grantee is made in accordance with and subject to that certain Conference Hotel Development Agreement, dated _____, 2013, by and between Grantor and Grantee (the "Conference Hotel Development Agreement"), which is incorporated herein by reference. The Conference Hotel Development Agreement generally requires the Grantee to construct certain Hotels, Parking Structures, and a Retail/Restaurant/Entertainment Component (collectively, the "Developer Improvements") as more particularly described in the Conference Hotel Development Agreement and to operate and maintain such Developer Improvements in accordance with the requirements set forth therein for the Applicable

Covenants Consideration Period. All capitalized terms not herein defined shall have the meanings defined in the Conference Hotel Development Agreement.

3. Permitted Uses. The Grantee covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that the Grantee shall develop, use, operate, and maintain the Property and the Development Improvements thereon in accordance with the Conference Hotel Development Agreement for the periods of time specified therein. The foregoing covenants shall run with the land.

4. Restrictions on Transfer. The Grantee further agrees as follows:

(A) For the period commencing upon the date of this Grant Deed and until expiration of the Applicable Covenants Consideration Period, no voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under the Conference Hotel Development Agreement or this Grant Deed, nor shall the Grantee make any total or partial sale, transfer, conveyance, assignment, subdivision, financing, refinancing, lease, sublease, or license of the whole or any part of the Property without the prior written approval of the Grantor pursuant to Sections 103.1 and 103.3 of the Conference Hotel Development Agreement, except for a Permitted Transfer pursuant to Section 102 of the Conference Hotel Agreement. The Grantee further agrees that any right to transfer is subject to the provisions of this Grant Deed.

(B) Except with respect to Permitted Transfer pursuant to Section 103.2 of the Conference Hotel Agreement, prior to recordation of the final Release of Construction Covenants with respect to the Property, or applicable portion thereof, the Developer shall not place or suffer to be placed on the Property, or any portion thereof, any lien or encumbrance other than mortgages, deeds of trust, or other forms of conveyance required for the Construction Financing, unless approved in writing by the Grantor, in its sole and absolute discretion.

5. Grantor Right of Reentry.

(A) In accordance with Section 503 of the Conference Hotel Development Agreement, the Grantor has the right, at its election, to reenter and take possession of the Property, with all improvements thereon, and terminate and Revest in the Grantor the estate conveyed to the Grantee if after the Close of Escrow and prior to the issuance of the final Release of Construction Covenants with respect to the Property, or applicable portion thereof, the Grantee (or its successors in interest) shall:

(1) fail to start the construction of the Project as required by the Conference Hotel Development Agreement for a period of ninety (90) days after written notice thereof from the City; or

(2) abandon or substantially suspend construction of the Project required by the Conference Hotel Development Agreement for a period of ninety (90) days after written notice thereof from the Grantor; or

(3) contrary to the provisions of Sections 101 or 103 of the Conference Hotel Development Agreement, Transfer or suffer any involuntary Transfer in violation of the same, and such Transfer, if it is a Transfer requiring approval by the Grantor, is not rescinded within thirty (30) days of Notice thereof from the Grantor to the Grantee.

(B) Such right to reenter, terminate and Revest is subject to the quiet enjoyment, and, if applicable, the right to continue to complete construction by (i) Tenants or other occupants who have (a) executed leases or subleases and (b) incurred substantial expenses in connection with the design and/or construction of improvements required to be constructed by such Tenant under such lease or sublease and (ii) a Holder, in the case where the Developer is in Default and, *vis à vis* a Holder, shall be exercisable only if:

(1) Such Holder (or its Nominee) (a) shall have failed to cure any Default within the applicable cure periods granted to such Holder (or its Nominee), or (b) shall have given City written notice that it will not cure any such Default or condition or that it will otherwise not comply with the terms and conditions of this Agreement, and

(2) The Grantor, within ninety (90) days after the occurrence of any events described in subparagraph (1) immediately above, shall commence the exercise of its right of entry and shall pay to Holder (or its Nominee) in immediately available funds, the Loan Balance prior to Revesting.

In the event of a failure or refusal to cure a Default, as described in subparagraph (b)(1), above, Grantor's sole remedy *vis à vis* Holder shall be the exercise of the re-entry right and Revesting in accordance herewith.

The conditions to the commencement of the exercise of the Grantor's right to re-enter and Revest as described above shall be applicable whether the re-entry and Revesting occurs (a) prior to foreclosure (or deed in lieu of foreclosure) by the Holder (or its Nominee) under its mortgage or deed of trust or (b) after Holder (or its Nominee) acquires title to the Property by foreclosure (or deed-in-lieu of foreclosure) under its mortgage or deed of trust.

(C) Upon the revesting in the Grantor of title to the Property, as provided in this section, the Grantor shall use its reasonable efforts to resell the Property as soon and in such manner as the Grantor shall find feasible and consistent with the Conference Hotel Development Agreement and the Scope of Development to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of constructing or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to the Grantor and in accordance with the Scope of Development. The Grantee acknowledges that there may be substantial delays experienced by the Grantor if the Grantor must remarket the same for operation of a conference hotel following the revesting of the same in the Grantor. Upon such resale of the Property, the net proceeds thereof shall be applied:

(i) First, to reimburse the Grantor all costs and expenses incurred by the Grantor, excluding in-house Grantor staff costs, but specifically, including, but not limited to, any expenditures by the Grantor in connection with the recapture, management and resale of the

Property or part thereof (but less any income derived by the Grantor from the Property or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Property or part thereof which the Grantee has not paid (or, in the event that the Property is exempt from taxation or assessment of such charges during the period of ownership thereof by the Grantor, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time or reversion of title thereto in the Grantor, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Property, or part thereof; and any amounts otherwise owing the Grantor; and, in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse the Grantee, its successor or transferee, up to the amount equal to the sum of (a) actual and direct third party costs incurred by the Grantee for the Developer Improvements existing on the Property at the time of the re-entry and possession, less (b) any gains or net income received by the Grantee from the Property, or the improvements thereon.

(iii) Any balance remaining after such reimbursements shall be retained by the Grantor as its property. The rights established in this section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or in the Conference Hotel Development Agreement or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Grantor will have conveyed the Property and provided other financial assistance to the Grantee for development of a high quality hotel project, particularly for development and operation of the Project, and not for speculation in undeveloped land.

6. Nondiscrimination.

(A) The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Improvements or the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project or the Property. The foregoing covenants shall run with the land.

(B) All deeds, leases or contracts with respect to the Project or the Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

(ii) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

"Notwithstanding the immediately preceding paragraph, with respect to familial status, the immediately preceding paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the immediately preceding paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens."

Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the immediately preceding paragraph."

(iii) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

The Covenants against discrimination set forth in this Section 6 shall continue in effect in perpetuity.

7. Violations Do Not Impair Liens. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by this Grant Deed or the Conference Hotel Development Agreement; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Grant Deed Binding on Successors and Assigns. All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Grantee and the permitted successors and assigns of the Grantee. Whenever the term "Grantee" is used in this Grant Deed, such term shall include any other permitted successors and assigns as herein provided.

9. Covenants Run With Land. All covenants contained in this Grant Deed shall be covenants running with the land.

10. Covenants For Benefit of Grantor. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, and such covenants shall run in favor of the Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

11. Revisions to Grant Deed. Both Grantor, its successors and assigns, and Grantee and the successors and assigns of Grantee in and to all or any part of the fee title to the Property shall have the right with the mutual consent of the Grantor to consent and agree to changes in, or to

eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property. However, Grantee and Grantor are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized, this ____ day of _____, 2013.

GRANTOR:
CITY OF GARDEN GROVE,
a municipal corporation

Dated: _____, 2013

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

The undersigned Grantee accepts title subject to the covenants hereinabove set forth.

GRANTEE:

LAND & DESIGN, INC., a California corporation

Dated: _____, 2013

By: _____
Its: _____

Dated: _____, 2013

By: _____
Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

EXHIBIT G

RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____, California _____
Attention: _____

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the CITY OF GARDEN GROVE, a municipal corporation (the "City"), in favor of _____, a _____ (the "Developer"), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain Conference Hotel Development Agreement dated _____ (the "CHDA") concerning the redevelopment of certain real property situated in the City of Garden Grove, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

B. As referenced in Section 310 of the CHDA, the City is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in Section 100 of the CHDA) upon completion of construction of the Developer Improvements (as defined in Section 100 of the CHDA) or a portion thereof, which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Orange County. This Release is conclusive determination of satisfactory completion of the construction and development required by the CHDA of the Developer Improvements or such portion thereof as described in Exhibit "A" attached hereto and incorporated herein by reference.

C. The City has conclusively determined that such construction and development of that portion of the Developer Improvements described in Exhibit "A" has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. Those Developer Improvements described in Exhibit "A" to be constructed by the Developer have been fully and satisfactorily completed in conformance with the CHDA and are free of any claims and/or liens by City. Any operating requirements and all use, maintenance, security or nondiscrimination covenants contained in the CHDA and other documents executed

and recorded pursuant to the CHDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the CHDA.

IN WITNESS WHEREOF, the City has executed this Release this ____ day of _____, 20__.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____

By: _____

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DRAFT

DEVELOPER

a _____

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary
Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

EXHIBIT H

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT (the "Agreement") is entered into _____, 20__, by and between LAND & DESIGN, INC., a California corporation ("GRANTEE") and the CITY OF GARDEN GROVE, a municipal corporation ("GRANTOR").

RECITALS

A. GRANTOR, as "City," and GRANTEE, as "Developer," entered into that certain Conference Hotel Development Agreement dated _____ (the "CHDA"), pursuant to which the GRANTOR agreed, subject to the fulfillment of the City's Conditions Precedent to convey the Site to the GRANTEE and GRANTEE agreed, subject to Developer's Conditions Precedent to accept Conveyance of the Site and construct the Developer Improvements thereon. All capitalized terms not defined herein shall have the meaning set forth in the CHDA, unless the context dictates otherwise.

B. GRANTOR currently owns the City Parcels and is in the process of acquiring the Agency Property. If and to the extent the GRANTOR acquires the Agency Property or is granted the right of entry with respect to the Agency Property such Agency Property shall be deemed to be part of the City Parcels hereunder.

RIGHT OF ENTRY AGREEMENT

1. Grant of Right of Entry. The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, subcontractors, agents, tenants, purchasers, and designees, permission to enter upon the City Parcels ("Right of Entry") for the purpose of performing or causing to be performed environmental, soils, and/or topographical tests and surveys ("Investigation") and for the purpose of clearing, demolishing and rough grading ("Grading").

2. Termination. This Agreement shall terminate upon the earlier to occur of (i) _____, 20__, (ii) the Closing or (iii) termination of the CHDA, unless otherwise extended by mutual agreement of the parties.

3. Assumption of Risk. GRANTEE enters the City Parcels and performs or causes to be performed the Investigation, at its own risk and subject to whatever hazards or conditions may exist on the City Parcels.

4. Condition of City Parcels Upon Termination of CHDA Prior to Conveyance. If the CHDA and this Agreement are terminated prior to Conveyance (a) in the case of Investigation, GRANTEE shall repair or replace any landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by Grantee's employees, contractors, subcontractors, agents and designees, and (b) in the case of Grading of the City Parcels, the Developer shall provide a rough graded level site.

5. Indemnification and hold harmless. GRANTEE shall indemnify, defend and hold harmless the GRANTOR and City, their officers, directors, employees, contractors,

EXHIBIT H

subcontractors, agents, and volunteers ("Indemnitees") from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the GRANTEE or any person directly or indirectly employed by or acting as agent for GRANTEE in the performance of this Right of Entry, except that such indemnity shall not apply to the extent such matters are caused by the negligence or willful misconduct of the GRANTOR, its officers, agents, employees or volunteers.

It is understood that the duty of GRANTEE to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Right of Entry does not relieve GRANTEE from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

6. Insurance. During the term of this Right of Entry, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker's compensation and shall provide insurance in accordance with the CHDA.

7. Recording. Neither GRANTOR nor GRANTEE shall record this Right of Entry.

8. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Right of Entry is brought by either party to this Right of Entry, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

9. Notices. All notices required or permitted under the terms of this CHDA shall be in writing and sent to:

To Grantor: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

with a copy to: Garden Grove City Attorney
11222 Acacia Parkway
Garden Grove, California 92840

To Grantee: Matthew Reid
Land & Design, Inc.
8130 La Mesa Boulevard #808
La Mesa, California 91942

With a copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor

EXHIBIT H

San Diego, California 92101
Attention: Tom Crosbie

10. Time is of the Essence; Entire Agreement. Time is of the essence of the terms and provisions of this Right of Entry. This Right of Entry constitutes the entire agreement between GRANTEE and GRANTOR with respect to the matters contained herein, and no alteration, amendment or any part thereof shall be effective unless in writing signed by parties sought to be charged or bound thereby.

11. Assignment. This Agreement shall be assignable as security to Grantee's Holder for the purposes and with the limitations set forth herein.

APPROVED BY:

GRANTEE

LAND & DESIGN, INC.,
a California corporation

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

GRANTOR:

CITY OF GARDEN GROVE, a municipal
corporation

Dated: _____

By: _____

Its: _____

DRAFT

EXHIBIT I

PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS

I. Developer's Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a pre-acceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers' compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

EXHIBIT I

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.

DRAFT

EXHIBIT J

CONCEPTUAL SITE PLAN

DRAFT

EXHIBIT K

MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
AND SEND TAX STATEMENTS TO:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** (the "Agreement") is entered into as of _____, 2013 by and between the **CITY OF GARDEN GROVE**, a municipal corporation (the "City"), and **LAND & DESIGN, INC.**, a California corporation (hereinafter referred to as "Developer").

RECITALS

1. Recordation of Memorandum of Agreement. This Memorandum of Agreement evidences that certain Conference Hotel Development Agreement between the City and the Developer dated _____ ("CHDA"). Capitalized terms not defined herein shall have the meaning set forth in the CHDA. When recorded at the Closing the CHDA is a burden against Developer's fee simple interest in the Site which Site is more particularly described in Attachment No. 1 attached hereto and incorporated herein by reference. The CHDA provides, among other things, and subject to the fulfillment of certain Conditions Precedent, for a conveyance of the Site to the Developer and for the development and operation by Developer thereon of Hotels, a Retail/Restaurant/Entertainment Component, and Parking Structures. The Covenants shall run with the land and be binding upon the heirs, successors and assigns of Developer.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement as of the ____ day of _____, 2013.

CITY:

CITY OF GARDEN GROVE, a municipal corporation

Dated: _____, 2013

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DEVELOPER

LAND & DESIGN, INC., a California corporation

Dated: _____, 2013

By: _____
Its: _____

Dated: _____, 2013

By: _____
Its: _____

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

SIGNATURE OF NOTARY PUBLIC

DRAFT

ATTACHMENT NO. 1 TO EXHIBIT K

LEGAL DESCRIPTION

DRAFT

EXHIBIT L

**PRE-APPROVED HOTEL FLAGS/OPERATORS AND
RETAIL/RESTAURANT/ENTERTAINMENT COMPONENT TENANTS/OPERATORS**

Pre-Approved Limited Service Hotels

Aloft (Starwood)
Cambria Suites (Choice Hotels)
Country Inn and Suites (Carlson)
Courtyard (Marriott)
Element (Starwood)
Fairfield Inn and Suites (Marriott)
Four Points by Sheraton (Starwood)
Hotel Indigo (IHG)
Hyatt Place (Hyatt)
Nickelodeon Hotel
Springhill Suites (Marriott)
Summerfield Suites (Hyatt)
Towne Place Suites (Marriott)
Wingate (Wyndham)

Pre Approved Upper Upscale Hotels

Autograph Collection (Marriott)
Destination Hotels and Resorts
Fairmont
Four Seasons
Inter-Continental Hotel
Joie de Vivre Hotels
Jumeira Hotels
JW Marriott
Kessler Collection
Kimpton Hotel
Le Méridien
Loews
Luxury Collection (Starwood)
Marriott Hotels
MGM Hotel
Nickelodeon Hotel
Omni
Pan Pacific Hotel
Peabody Hotel
Planet Hollywood Hotel
Radisson Blu
Renaissance
Rosen Hotel
Sol Melia Hotels
Sonesta
Taj Hotel(s)
W Hotels

Westin
Wyndham Collection/Resort

Pre-Approved List of Full-Service Restaurants:

Applebees
Bahama Breeze
Bahama Breeze
BJ's Restaurant and Brewery
Black Angus
Bonefish Grill
Buffalo Wild Wings Grill and Bar
Burgerville USA
California Pizza Kitchen
Capital Grill
Carrabba's Italian Grill
Cheeseburger in Paradise
Chevy's
Chili's Grill and Bar
Chuy's Mesquite Broiler
Claim Jumper
Daily Grill
Daily Grill/The Grill
Elephant Bar
Emerill's
Famous Dave's
Farrell's
Fleming's Steakhouse
Gladstones
Golden Corral
Grand Luxe Cafe
Granite City Food and Brewery
Hard Rock Café
Houston's
Il Fornaio Cucina Italiano
Islands
Johnny Carino's
Johnny Rockets
King's Fish House
Landry's Seafood
Landry's Aquarium Restaurant
Logan's Roadhouse
Lone Star Steakhouse
LongHorn Steakhouse
Lucilles BBQ
Maggiano's/Corner Bakery Café
Maloney's
Margaritaville
Marie Callendar's/Babe's BBQ
Moe's Southwest Grill
Nascar Café

DRAFT

EXHIBIT L

Nobu
Old Chicago
Olive Garden
On the Border
Panda Inn
Papa Bello
Pat and Oscars
Pizzeria Uno
Prego
Qdoba Mexican Grill
RA Sushi Bar
Roadhouse Grill
RockSugar
Romano's Macaroni Grill
Ruby Tuesday's
Ruby's Diner
Season's 52
Sevilla
Smith & Wollensky
Smokey Bones BBQ
Spaghetti Factory
Texas Roadhouse
TGI Fridays
T-Rex
Uno Chicago
Wolfgang Pucks
Yard House
Z Tejas Grill

Pre-Approved List of Quick-Service Restaurants/Retail:

Crepe Café
Earl of Sandwich
Five Guys Hamburgers
Jerry Woodfired Hot Dogs
Panda Express
Panera Bread
Pink's Famous Hot Dogs
Portillos
Quiznos
Subway
The Hat
Togo's
Tommy's World Famous Hamburgers

Pre-Approved List of Specialty Restaurants:

California Welcome Center (official State of California Retail Storefront)
Coffee Bean
Coffee Bean and Tea Leaf
Dunkin Donuts
Ghirardelli Soda Fountain & Chocolate Shop
Haagen Dazs
Jamba Juice
Lego Store
Peet's Coffee
Pink Berry
Sea World Store
Southern Maid Donut Shops
Starbucks
Universal Studios Store
Wetzels Pretzels
Yogurt Land

Pre-Approved List of Entertainment Uses

B.B. King's Blues Cafe
Fox Sports Grill
House of Blues
Howl at the Moon
Improv
Jillians
Landry's Aquarium
Laugh Out Loud Comedy
Madame Tussauds
NBA Café/City
Ripley's Aquarium
Ripley's Believe It or Not (or similar Ripley's Entertainment Venue)
Sea Life Centre
Warren and Annabelle's Magic Show or affiliate
Wonderwork

Meet with Warner Gaming in Vegas next Friday

Subject: Meet with Warner Gaming in Vegas next Friday

From: Matthew Reid <matt.reid@landanddesign.com>

Date: Fri, 15 Mar 2013 18:49:39 -0700

To: Greg Blodgett <gregl@ci.garden-grove.ca.us>, Matt Fertal <mattf@ci.garden-grove.ca.us>

Are you able to get to Vegas next Friday to meet with Warner Hospitality and tour properties of theirs?

Let me know.

Thanks

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Re: Meet with Warner Gaming in Vegas next Friday

Subject: Re: Meet with Warner Gaming in Vegas next Friday
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Fri, 15 Mar 2013 20:33:49 -0700
To: Matt Fertal <mattf@ci.garden-grove.ca.us>
CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Great. Go ahead and book you travel, try and arrive around 11 am if possible. I'll rent a car and we can drive together.

I'll be coming out of San Diego.

Thanks.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

On Mar 15, 2013, at 6:54 PM, Matt Fertal <mattf@ci.garden-grove.ca.us> wrote:

Yes, Looks OK.

Matt

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>, "Matt Fertal" <mattf@ci.garden-grove.ca.us>
Sent: Friday, March 15, 2013 6:49:39 PM
Subject: Meet with Warner Gaming in Vegas next Friday

Are you able to get to Vegas next Friday to meet with Warner Hospitality and tour properties of theirs?

Let me know.

Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
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Skype – [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)
matt.reid@landanddesign.com

NOTE: This message was trained as non-spam. If this is wrong, please correct the training as soon as possible.

Spam

Not spam

Forget previous vote

Re: Meet with Warner Gaming in Vegas next Friday

Subject: Re: Meet with Warner Gaming in Vegas next Friday
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Sun, 17 Mar 2013 11:16:34 -0700
To: Matt Fertal <mattf@ci.garden-grove.ca.us>
CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>

See if you can get to Vegas around 10am. Let me know when you have your flight plans...

We'll be meeting/touring with Warner Gaming Execs from 10-2pm.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

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From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>, "Matt Fertal" <mattf@ci.garden-grove.ca.us>
Sent: Friday, March 15, 2013 6:49:39 PM
Subject: Meet with Warner Gaming in Vegas next Friday

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Let me know.

Thanks

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Go gle voice | 858.735.1858 c
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matt.reid@landanddesign.com

NOTE: This message was trained as non-spam. If this is wrong, please correct the training as soon as possible.

Spam

Not spam

Forget previous vote

Re: Meet with Warner Gaming in Vegas next Friday

Subject: Re: Meet with Warner Gaming in Vegas next Friday
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Sun, 17 Mar 2013 19:39:32 -0700
To: Matt Fertal <mattf@ci.garden-grove.ca.us>
CC: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Working on it....Greg are you coming? Need a room?

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

On Mar 17, 2013, at 12:19 PM, Matt Fertal <mattf@ci.garden-grove.ca.us> wrote:

Hi Matt

I am planning driving out Thursday evening with my wife and maybe staying Friday and come home Saturday.

Any chance of getting a room at a reduced price at the Hard Rock?

Matt

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Matt Fertal" <mattf@ci.garden-grove.ca.us>
Cc: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Sunday, March 17, 2013 11:16:34 AM
Subject: Re: Meet with Warner Gaming in Vegas next Friday

See if you can get to Vegas around 10am. Let me know when you have your flight plans...

We'll be meeting/touring with Warner Gaming Execs from 10-2pm.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/user/matthew.reid.ca)

On Mar 15, 2013, at 6:54 PM, Matt Fertal <mattf@ci.garden-grove.ca.us> wrote:

Yes, Looks OK.

Matt

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>, "Matt Fertal" <mattf@ci.garden-grove.ca.us>
Sent: Friday, March 15, 2013 6:49:39 PM
Subject: Meet with Warner Gaming in Vegas next Friday

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Let me know.

Thanks

Matthew Reid

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matt.reid@landanddesign.com

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Spam

Not spam

Forget previous vote

NOTE: This message was trained as non-spam. If this is wrong, please correct the training as soon as possible.

Spam

Not spam

Forget previous vote

Subject: Site C Las Vegas Trip
From: drose3@charter.net
Date: Mon, 25 Mar 2013 20:42:17 -0400 (EDT)
To: mattf@ci.garden-grove.ca.us, greg1@ci.garden-grove.ca.us
CC: Matthew Reid <matt.reid@landanddesign.com>, drose3@hotmail.com

Matt/Greg:

Thank you for taking the time out of your schedules to go to Las Vegas and represent the City in our meetings with Warner Hospitality and TWI.

Your presence definitely made an impact.

We look forward to continuing to work with you on this exciting project.

Thanks again.

Dave

David A. Rose III

NOTICE: This e-mail message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

This communication does not reflect an intention by the sender or the sender's client or principal to conduct a transaction or make any agreement by electronic means. Nothing contained in this message or in any attachment shall satisfy the requirements for a writing, and nothing contained herein shall constitute a contract or electronic signature under the electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions.

Subject: Exhibit L of the Agreement
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 26 Mar 2013 08:39:55 -0700
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

In the 4th draft, exhibit L removed all of the added hotels we listed.....why?

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Subject: Stockholder Documents
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 26 Mar 2013 09:26:35 -0700
To: Greg Blodgett <gregl@ci.garden-grove.ca.us>

Matthew Reid

Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 Google voice | 858.735.1858 c
619.462.4144 fax
Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)
matt.reid@landanddesign.com

Stkhldr Documents.pdf	Content-Type: application/pdf Content-Encoding: base64
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Part 1.1.3

Part 1.1.3	Content-Type: text/html Content-Encoding: quoted-printable
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State of California
Secretary of State



I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

AUG 25 2009

DEBRA BOWEN
Secretary of State

A0695041

**ARTICLES OF INCORPORATION
WITH STATEMENT OF CONVERSION**

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 17 2009

I

The name of this corporation is Land & Design, Inc.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to incorporated by the California Corporations Code.

III

The name and address in this state of the corporation's initial agent for service of process is Jim Ribicic, 8130 La Mesa Blvd, La Mesa, California 91942.

IV

This corporation is authorized to issue two classes of shares designated respectively "Common Stock" and "Preferred Stock". 20,000,000 shares of Common Stock may be issued. 20,000,000 shares of Preferred Stock may be issued.

This corporation is authorized to issue two series of shares, designated respectively "Series A Common Stock" and "Series B Common Stock." The total number of shares of Series A Common Stock which this corporation is authorized to issue is 10,000,000. The total number of shares of Series B Common Stock which this corporation is authorized to issue is 10,000,000. The series A Common Stock has exclusive voting rights on all matters requiring a vote of the shareholders, including election of directors, except as otherwise provided by law. The series B Common Stock has no voting rights, except as otherwise provided by law. Approval of the majority vote of the outstanding shares of both Series A Common Stock and Series B Common Stock shall be sufficient to approve a merger or reorganization involving any greater voting requirements contained in California Corporations Code Sections 1201 or 1201(e).

The board of directors may divide the Preferred Stock into any number of series. The board shall fix the designation and number of shares of each such series. The board may determine and alter the rights, preferences, privileges and restrictions granted to and imposed upon any wholly unissued series of the Preferred Stock. The board of directors (within the limits and restrictions of any resolution adopted by it, originally fixing the number of shares of any series) may increase or decrease the number of shares of any such series after the issue of shares of that series, but not below the number of the outstanding shares of such series.

V

The name of the converting entity is Land & Design, Inc. it is a corporation formed in Nevada. The converting entity's California Secretary of State file number is C2299317. The foreign entity is authorized to effect the conversion by the laws under which it is formed, and it has approved a plan of conversion or other instrument to effect the conversion as required by the laws under which it was formed. The conversion has been approved by the number or percentage of applicable holders of interest of the foreign entity as is required by the laws under which it is formed.

VI

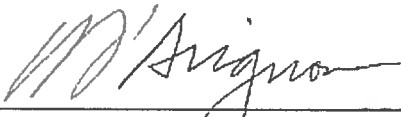
The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

VII

The corporation is authorized to indemnify the directors and officers of the corporation to the fullest extent permissible under California law.

IN WITNESS WHEREOF, the undersigned, being all the persons authorized to have executed these Articles of Incorporation with Statement of Conversion.

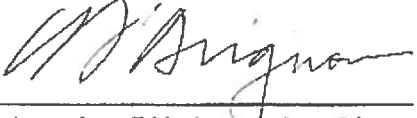
Dated: July 20, 2009



Christopher D'Avignon, President of
Land & Design, Inc. and Incorporator

The undersigned, being all the persons authorized to have executed these Articles of Incorporation with Statement of Conversion, declare that they are the persons who executed the foregoing Articles of Incorporation with Statement of Conversion, which execution is their act and deed.

Dated: July 20, 2009



Christopher D'Avignon, President of
Land & Design, Inc. and Incorporator



RESTATED BYLAWS

of

LAND & DESIGN, INC.

ARTICLE I
OFFICERS

SECTION 1. PRINCIPAL EXECUTIVE OFFICE

The location of the principal executive office of the corporation shall be fixed by the board of directors. It may be located at any place within or outside the state of California. The secretary of this corporation shall keep the original or a copy of these bylaws, as amended to date, at the principal executive office of the corporation if this office is located in California. If this office is located outside California, the bylaws shall be kept at the principal business office of the corporation within California. The officers of this corporation shall cause the corporation to file an annual statement with the Secretary of State of California as required by Section 1502 of the California Corporations Code specifying the street address of the corporation's principal executive office.

SECTION 2. OTHER OFFICES

The corporation may also have offices at such other places as the board of directors may from time to time designate, or as the business of the corporation may require.

ARTICLE II
SHAREHOLDERS' MEETINGS

SECTION 1. PLACE OF MEETINGS

All meetings of the shareholders shall be held at the principal executive office of the corporation or at such other place as may be determined by the board of directors.

SECTION 2. ANNUAL MEETINGS

The annual meeting of the shareholders shall be held each year on March 1st, at which time the shareholders shall elect a board of directors and transact any other proper business. If this date falls on a legal holiday, then the meeting shall be held on the following business day at the same hour.

SECTION 3. SPECIAL MEETINGS

Special meetings of the shareholders may be called by the board of directors, the chairman of the board of directors, the president, or by one or more shareholders holding at least 10 percent of the voting power of the corporation.

SECTION 4. NOTICES OF MEETINGS

Notices of meetings, annual or special, shall be given in writing to shareholders entitled to vote at the meeting by the secretary or an assistant secretary or, if there be no such officer, or in the case of his or her neglect or refusal, by any director or shareholder.

Such notices shall be given either personally or by first-class mail or other means of written communication, addressed to the shareholder at the address of such shareholder appearing on the stock transfer books of the corporation or given by the shareholder to the corporation for the purpose of notice. Notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Such notice shall state the place, date, and hour of the meeting and (1) in the case of a special meeting, the general nature of the business to be transacted, and that no other business may be transacted, or (2) in the case of an annual meeting, those matters which the board at the time of the mailing of the notice, intends to present for action by the shareholders, but, subject to the provisions of Section 6 of this Article, any proper matter may be presented at the annual meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of the nominees which, at the time of the notice, the board of directors intends to present for election. Notice of any adjourned meeting need not be given unless a meeting is adjourned for forty-five (45) days or more from the date set for the original meeting.

SECTION 5. WAIVER OF NOTICE

The transactions of any meeting of shareholders, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present, whether in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers or consents shall be filed with the corporate records or made part of the minutes of the meeting. Whether the business to be transacted at the meeting, nor the purpose of any annual or special meeting of shareholders need be specified in any written waiver of notice, except as provided in Section 6 of this Article.

SECTION 6. SPECIAL NOTICE AND WAIVER OF NOTICE REQUIREMENTS

Except as provided below, any shareholder approval at a meeting, with respect to the following proposals, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting, or in any written waiver of notice:

a. Approval of a contract or other transaction between the corporation and one or more of its directors or between the corporation and any corporation, firm, or association in which one or more of the directors has a material financial interest, pursuant to Section 310 of the California Corporations Code;

b. Amendment of the Articles of Incorporation after any shares have been issued pursuant to Section 902 of the California Corporations Code;

c. Approval of the principal terms of a reorganization pursuant to Section 1201 of the California Corporations Code;

d. Election to voluntarily wind up and dissolve the corporation pursuant to Section 1400 of the California Corporations Code;

e. Approval of a plan of distribution of shares as part of the winding up of the corporation pursuant to Section 2007 of the California Corporations Code.

Approval of the above proposals at a meeting shall be valid with or without such notice, if it is by the unanimous approval of those

entitled to vote at the meeting.

SECTION 7. ACTION WITHOUT MEETING

Any action that may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice if a consent, in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Unless the consents of all shareholders entitled to vote have been solicited in writing, notice of any shareholders' approval, with respect to any one of the following proposals, without a meeting, by less than unanimous written consent shall be given at least ten (10) days before the consummation of the action authorized by such approval:

a. Approval of a contract or other transaction between the corporation and one or more of its directors or another corporation, firm or association in which one or more of its directors has a material financial interest, pursuant to Section 310 of the California Corporations Code;

b. To indemnify an agent of the corporation pursuant to Section 317 of the California Corporations Code;

c. To approve the principal terms of a reorganization, pursuant to Section 1201 of the California Corporations Code; or

d. Approval of a plan of distribution as part of the winding up of the corporation pursuant to Section 2007 of the California Corporations Code.

Prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than a unanimous written consent to those shareholders entitled to vote who have not consented in writing.

Notwithstanding any of the foregoing provisions of this section, and except as provided in Article III, Section 4 of these bylaws, directors may not be elected by written consent except by the unanimous written consent of all shares entitled to vote for the election of directors.

A written consent may be revoked by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the secretary of the corporation, but may not be revoked thereafter. Such revocation is effective upon its receipt by the secretary of the corporation.

SECTION 8. QUORUM AND SHAREHOLDER ACTION

A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of shareholders represented at the meeting and entitled to vote on any matter shall be the act of the shareholders, unless the vote of a greater number is required by law and except as provided in the following paragraphs of this section.

The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action is approved by at least a majority of the shares required to constitute a quorum.

In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but no other business may be transacted except as provided in the foregoing provisions of this section.

SECTION 9. VOTING

Only shareholders of record on the record date fixed for voting purposes by the board of directors pursuant to Article VIII, Section 3 of these bylaws, or, if there be no such date fixed, on the record dates given below, shall be entitled to vote at a meeting.

If no record date is fixed:

a. The record date for determining shareholders entitled to notice of, or to vote, at a meeting of shareholders, shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

b. The record date for determining the shareholders entitled to give consent to corporate actions in writing without a meeting, when no prior action by the board is necessary, shall be the day on which the first written consent is given.

c. The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later.

Every shareholder entitled to vote shall be entitled to one vote for each share held, except as otherwise provided by law, by the Articles of Incorporation or by other provisions of these bylaws. Except with respect to elections of directors, any shareholder entitled to vote may vote part of his or her shares in favor of a proposal and refrain from voting the remaining shares or vote then against the proposal. If a shareholder fails to specify the number of shares he or she is affirmatively voting, it will be conclusively presumed that the shareholder's approving vote is with respect to all shares the shareholder is entitled to vote.

At each election of directors, shareholders shall not be entitled to cumulate votes unless the candidates' names have been placed in nomination before the commencement of the voting and a shareholder has given notice at the meeting, and before the voting has begun, of his or her intention to cumulate votes. If any shareholder has given such notice, then all shareholders entitled to vote may cumulate their votes by giving one candidate a number of votes equal to the number of directors to be elected multiplied by the number of his or her shares or by distributing such votes on the same principle among any number of candidates as he or she thinks fit. The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected. Votes cast against a candidate or which are withheld shall have no effect. Upon the demand of any shareholder made before the voting begins, the election of directors shall be by ballot rather than by voice vote.

SECTION 10. PROXIES

Every person entitled to vote shares may authorize another person or persons to act by proxy with respect to such shares by filing a proxy with the secretary of the corporation. For purposes of these bylaws, a "proxy" means a written authorization signed or an electronic transmission authorized by a shareholder or the shareholder's attorney in fact giving another person or persons power to vote with respect to the shares of the shareholder. "Signed" for the purpose of these bylaws means the placing of the shareholder's name or other authorization on the proxy (whether by manual signature, typewriting, telegraphic, or electronic transmission or otherwise) by the shareholder or the shareholder's attorney in fact. A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the shareholder, or his or her attorney in fact.

A proxy shall not be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall continue in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except

as otherwise provided in Section 705 of the California Corporations Code.

ARTICLE III DIRECTORS

SECTION 1. POWERS

Subject to any limitations in the Articles of Incorporation and to the provisions of the California Corporations Code, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by, or under the direction of, the board of directors.

SECTION 2. NUMBER

The authorized number of directors shall be Three (3).

After issuance of shares, this bylaw may only be amended by approval of a majority of the outstanding shares entitled to vote; provided, however, that a bylaw reducing the fixed number of directors to a number less than three (3) cannot be adopted unless in accordance with the additional requirements of Article IX of these bylaws.

SECTION 3. ELECTION AND TENURE OF OFFICE

The directors shall be elected at the annual meeting of the shareholders and hold office until the next annual meeting and until their successors have been elected and qualified.

SECTION 4. VACANCIES

A vacancy on the board of directors shall exist in the case of death, resignation, or removal of any director or in case the authorized number of directors is increased, or in case the shareholders fail to elect the full authorized number of directors at any annual or special meeting of the shareholders at which any director is elected. The board of directors may declare vacant the office of a director who has been declared of unsound mind by an order of court or who has been convicted of a felony.

Except for a vacancy created by the removal of a director, vacancies on the board of directors may be filled by approval of the board or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with this Article or these bylaws, or (3) a sole remaining director. Vacancies occurring on the board by reason of the removal of directors may be filled only by approval of the shareholders. Each director so elected shall hold office until the next annual meeting of the shareholders and until his or her successor has been elected and qualified.

The shareholders may elect a director at any time to fill a vacancy not filled by the directors. Any such election by written consent other than to fill a vacancy created by the removal of a director requires the consent of a majority of the outstanding shares entitled to vote.

Any director may resign effective upon giving written notice to the chairperson of the board of directors, the president, the secretary or to the board of directors unless the notice specifies a later time for the effectiveness of the resignation. If the resignation is effective at a later time, a successor may be elected to take office when the resignation becomes effective. Any reduction of the authorized number of directors does not remove any director prior to the expiration of such director's term in office.

SECTION 5. REMOVAL

Any or all of the directors may be removed without cause if the removal is approved by a majority of the outstanding shares entitled to vote, subject to the provisions of Section 303 of the California Corporations Code. Except as provided in Sections 302, 303 and 304 of the California Corporations Code, a director may not be removed prior to the expiration of the director's term of office.

The Superior Court of the proper county may, on the suit of shareholders holding at least 10 percent of the number of outstanding shares of any class, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation and may bar from re-election any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

SECTION 6. PLACE OF MEETINGS

Meetings of the board of directors shall be held at any place, within or without the State of California, which has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, at the principal executive office of the corporation or as may be designated from time to time by resolution of the board of directors. Meetings of the board may be held through use of conference telephone or similar communications equipment, as long as all directors participating in the meeting can hear one another.

SECTION 7. ANNUAL, REGULAR AND SPECIAL DIRECTORS' MEETINGS

An annual meeting of the board of directors shall be held without notice immediately after and at the same place as the annual meeting of the shareholders.

Other regular meetings of the board of directors shall be held at such times and places as may be fixed from time to time by the board of directors. Call and notice of these regular meetings shall not be required.

Special meetings of the board of directors may be called by the chairperson of the board, the president, vice president, secretary, or any two directors. Special meetings of the board of directors shall be held upon four (4) days' notice by mail, or forty-eight (48) hours' notice delivered personally or by telephone or telegraph. A notice or waiver of notice need not specify the purpose of any special meeting of the board of directors.

If any meeting is adjourned for more than 24 hours, notice of the adjournment to another time or place shall be given before the time of the resumed meeting to all directors who were not present at the time of adjournment of the original meeting.

SECTION 8. QUORUM AND BOARD ACTION

A quorum for all meetings of the board of directors shall consist of Two (2) of the authorized number of directors until changed by amendment to this article of these bylaws.

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, subject to the provisions of Section 310 (relating to the approval of contracts and transactions in which a director has a material financial interest); the provisions of Section 311 (designation of committees); and Section 317(a) (indemnification of directors) of the California Corporations Code. A meeting at which a quorum is initially present may continue to transact business

notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

A majority of the directors present at a meeting may adjourn any meeting to another time and place, whether or not a quorum is present at the meeting.

SECTION 9. WAIVER OF NOTICE

The transactions of any meeting of the board, however called and noticed or wherever held, are as valid as though undertaken at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Waivers of notice or consents need not specify the purpose of the meeting.

SECTION 10. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent shall have the same force and effect as a unanimous vote of the directors.

SECTION 11. COMPENSATION

No salary shall be paid directors, as such, for their services but, by resolution, the board of directors may allow a reasonable fixed sum and expenses to be paid for attendance at regular or special meetings. Nothing contained herein shall prevent a director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attendance at meetings.

ARTICLE IV OFFICERS

SECTION 1. OFFICERS

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer who shall be the chief financial officer of the corporation. The corporation also may have such other officers with such titles and duties as shall be determined by the board of directors. Any number of offices may be held by the same person.

SECTION 2. ELECTION

All officers of the corporation shall be chosen by, and serve at the pleasure of, the board of directors.

SECTION 3. REMOVAL AND RESIGNATION

An officer may be removed at any time, either with or without cause, by the board. An officer may resign at any time upon written notice to the corporation given to the board, the president, or the secretary of the corporation. Any such resignation shall take effect at the date of receipt of such notice or at any other time specified therein. The removal or resignation of an officer shall be without prejudice to the rights, if any, of the officer or the corporation under any contract of employment to which the officer is a party.

SECTION 4. PRESIDENT

The president shall be the chief executive officer and general manager of the corporation and shall, subject to the direction and control of the board of directors, have general supervision, direction, and control of the business and affairs of the corporation. He or she shall preside at all meetings of the shareholders and directors and be an ex-officio member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the officer of president of a corporation and shall have such other powers and duties as may from time to time be prescribed by the board of directors of these bylaws.

SECTION 5. VICE PRESIDENT

In the absence or disability of the president, the vice presidents, in order of their rank as fixed by the board of directors (or if not ranked, the vice president designated by the board) shall perform all the duties of the president and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the president. Each vice president shall have such other powers and perform such other duties as may from time to time be prescribed by the board of directors or these bylaws.

SECTION 6. SECRETARY

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation, a book of minutes of all meetings of directors and shareholders. The minutes shall state the time and place of holding of all meetings; whether regular or special, and if special, how called or authorized; the notice thereof given or the waivers of notice received; the names of those present at directors' meetings; the number of shares present or represented at shareholders' meetings; and an account of the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation, or at the office of the corporation's transfer agent, a share register, showing the names of the shareholders and their addresses, the number and class of shares held by each, the number and date of certificates issued for shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation, the original or a copy of the bylaws of the corporation, as amended or otherwise altered to date, certified by him or her.

The secretary shall give, or cause to be given, notice of all meetings of shareholders and directors required to be given by law or by the provisions of these bylaws.

The secretary shall have charge of the seal of the corporation and have such other powers and perform such other duties as may from time to time be prescribed by the board or these bylaws.

In the absence or disability of the secretary, the assistant secretaries if any, in order of their rank as fixed by the board of directors (or if not ranked, the assistant secretary designated by the board of directors), shall have all the powers of, and be subject to all the restrictions upon, the secretary. The assistant secretaries, if any, shall have such other powers and perform such other duties as may from time to time be prescribed by the board of directors or these bylaws.

SECTION 7. TREASURER

The treasurer shall be the chief financial officer of the corporation and shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation.

The treasurer shall deposit monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He or she shall disburse the funds of the corporation in payment of the just demands against the corporation as authorized by the board of directors; shall render to the president and directors, whenever they request it, an account of all his or her transactions as treasurer and of the financial condition of the corporation; and shall have such other powers and perform such other duties as may from time to time be prescribed by the board of directors or the bylaws.

In the absence or disability of the treasurer, the assistant treasurer, if any, in order of their rank as fixed by the board of directors (or if not ranked, the assistant treasurer designated by the board of directors), shall perform all the duties of the treasurer and, when so acting, shall have all the powers of and be subject to all the restrictions upon the treasurer. The assistant treasurers, if any, shall have such other powers and perform such other duties as may from time to time be prescribed by the board of directors or these bylaws.

SECTION 8. COMPENSATION

The officers of this corporation shall receive such compensation for their services as may be fixed by resolution of the board of directors.

ARTICLE V EXECUTIVE COMMITTEES

SECTION 1

The board may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, each consisting of two or more directors, to serve at the pleasure of the board. Any such committee, to the extent provided in the resolution of the board, shall have all the authority of the board, except with respect to:

- a. The approval of any action for which the approval of the shareholders or approval of the outstanding shares is also required.
- b. The filling of vacancies on the board or in any committee.
- c. The fixing of compensation of the directors for serving on the board or on any committee.
- d. The amendment or repeal of bylaws or the adoption of new bylaws.
- e. The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.
- f. A distribution to the shareholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the board.
- g. The appointment of other committees of the board or the members thereof.

ARTICLE VI CORPORATE RECORDS AND REPORTS

SECTION 1. INSPECTION BY SHAREHOLDERS

The share register shall be open to inspection and copying by any shareholder or holder of a voting trust certificate at any time during usual business hours upon written demand on the corporation, for a purpose reasonably related to such holder's interest as a shareholder or holder of a voting trust certificate. Such inspection and copying under this section may be made in person or by agent or attorney.

The accounting books and records of the corporation and the minutes of proceedings of the shareholders and the board and committees of the board shall be open to inspection upon the written demand of the corporation by any shareholder or holder of a voting trust certificate at any reasonable time during usual business hours, for any proper purpose reasonably related to such holder's interests as a shareholder or as the holder of such voting trust certificate. Such inspection by a shareholder or holder of voting trust certificate may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts.

Shareholders shall also have the right to inspect the original or copy of these bylaws, as amended to date and kept at the corporation's principal executive office, at all reasonable times during business hours.

SECTION 2. INSPECTION BY DIRECTORS

Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney. The right of inspection includes the right to copy and make extracts.

SECTION 3. RIGHT TO INSPECT WRITTEN RECORDS

If any record subject to inspection pursuant to the California Corporations Code is not maintained in written form, a request for inspection is not complied with unless and until the corporation at its expense makes such record available in written form.

SECTION 4. WAIVER OF ANNUAL REPORT

The annual report to shareholders, described in Section 1501 of the California Corporations Code is hereby expressly waived, as long as this corporation has less than 100 holders of record of its shares. This waiver shall be subject to any provision of law, including Section 1501(c) of the California Corporations Code, allowing shareholders to request the corporation to furnish financial statements.

SECTION 5. CONTRACTS, ETC.

The board of directors, except as otherwise provided in the bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the corporation. Such authority may be general or confined to specific instances. Unless so authorized by the board of directors, no officer, agent, or employee shall have any power or authority to bind the corporation by any contract, or to pledge its credit, or to render it liable for any purpose or to any amount.

ARTICLE VII

INDEMNIFICATION AND INSURANCE OF CORPORATE AGENTS

SECTION 1. INDEMNIFICATION

The directors and officers of the corporation shall be indemnified by the corporation to the fullest extent not prohibited by the California Corporations Code.

SECTION 2. INSURANCE

The corporation shall have the power to purchase and maintain insurance on behalf of any agent (as defined in Section 317 of the California Corporations Code) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of Section 317 of the California Corporations Code.

ARTICLE VIII
SHARES

SECTION 1. CERTIFICATES

The corporation shall issue certificates for its shares when fully paid. Certificates of stock shall be issued in numerical order, and shall state the name of the record holder of the shares represented thereby; the number, designation, if any, and the class or series of shares represented thereby; and contain any statement or summary required by any applicable provision of the California Corporations Code.

Every certificate for shares shall be signed in the name of the corporation by 1) the chairperson or vice chairperson of the board or the president or a vice president and 2) by the treasurer or the secretary or an assistant secretary.

SECTION 2. TRANSFER OF SHARES

Upon surrender to the secretary or transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, it shall be the duty of the secretary of the corporation to issue a new certificate to the person entitled thereto, to cancel the old certificate, and to record the transaction upon the share register of the corporation.

SECTION 3. RECORD DATE

The board of directors may fix a time in the future as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders or entitled to receive payment of any dividend or distribution, or any allotment of rights, or to exercise rights in respect to any other lawful action. The record date so fixed shall not be more than sixty (60) days nor less than ten (10) days prior to the date of the meeting nor more than sixty (60) days prior to any other action. When a record date is so fixed, only shareholders of record on that date are entitled to notice of and to vote at the meeting or to receive the dividend, distribution, or allotment of rights, or to exercise the rights as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date.

ARTICLE IX
AMENDMENT OF BYLAWS

SECTION 1. BY SHAREHOLDERS

Bylaws may be adopted, amended or repealed by the affirmative vote or by the written consent of holders of a majority of the outstanding shares of the corporation entitled to vote. However, a bylaw amendment which reduces the fixed number of directors to a number less than five (5) shall not be effective if the votes cast against the amendment or the shares not consenting to its adoption are equal to more than 16-2/3 percent of the outstanding shares entitled to vote.

SECTION 2. BY DIRECTORS

Subject to the right of shareholders to adopt, amend or repeal bylaws, the directors may adopt, amend or repeal any bylaw, except that a bylaw amendment changing the authorized number of directors may be adopted by the board of directors only if prior to the issuance of shares.

CERTIFICATE

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title thereto and that such Bylaws were duly adopted by the board of directors of the corporation on the date set forth below.

Dated: July 28, 2009


Christopher D'Avignon, Secretary



SECRETARY CERTIFICATE OF STOCK OWNERSHIP

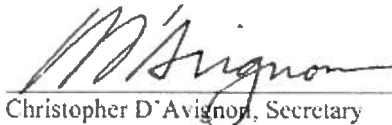
I, Christopher D'Avignon do hereby certify that I am the Secretary of Land & Design, Inc. (Hereinafter the "Corporation;") that the following information is a true and correct account of the stockholder records of the Corporation.

CERTIFICATION

THEREFORE It is certified that Mr. Matthew Reid is the owner of 51.0% of all the issued and outstanding voting stock of the Corporation.

I FURTHER CERTIFY THAT the foregoing account of the corporate stockholder records is correct and has not been amended or modified in any way.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Corporation
this 5th day of February 2013.



Christopher D'Avignon, Secretary



Subject: Fwd: Legal Notice for Friday March 29th
From: Greg Blodgett <greg1@ci.garden-grove.ca.us>
Date: Tue, 26 Mar 2013 14:25:23 -0700 (PDT)
To: Paul Guarrero <paulg@garden-grove.org>
CC: Matthew Reid <matt.reid@landanddesign.com>

Sent from my iPhone

Begin forwarded message:

From: Teresa Pomeroy <teresap@ci.garden-grove.ca.us>
Date: March 26, 2013, 2:18:27 PM PDT
To: Orange County News <ocnlegals@localnewspapers.org>
Cc: James Eggart <jamese@ci.garden-grove.ca.us>, Greg Blodgett <greg1@ci.garden-grove.ca.us>
Subject: Legal Notice for Friday March 29th

Hello Orange County News: Please publish the attached notice in the Orange County News this Friday, March 29th. Please let me know you received this message and thank you for your help.

Best Regards,

Teresa Pomeroy, CMC
Deputy City Clerk
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
714-741-5043
www.ci.garden-grove.ca.us

<Public Hearing Notice for Site C Resort Hotel Development Agreement.DOC>

Subject: Horwath Study
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 26 Mar 2013 16:19:39 -0700
To: Greg Blodgett <gregl@ci.garden-grove.ca.us>

Would you send me the FINAL version of the study?

Matthew Reid

Land & Design, Inc.

3755 Avocado Blvd | #516 | La Mesa, CA 91941

619.335.5896 Google voice | 858.735.1858 c

619.462.4144 fax

Skype – [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

matt.reid@landanddesign.com

Subject: Re: Stockholder Documents [IWOV-IMDB1.FID307912]
From: Matthew Reid <matt.reid@landanddesign.com>
Date: Tue, 26 Mar 2013 20:27:05 -0700
To: Greg Blodgett <greg1@ci.garden-grove.ca.us>

Dave currently doesn't have any interest in LnD. He will have an interest in the assigned SPE that is eventually formed.

Our agreement with the City states that Dave and I, in the aggregate, control 51%. I having this satisfies the agreement.

I will get certified copies and have them sent up to you of the docs.

Sent from Siri, please excuse the typos.

Matthew Reid
Land & Design, Inc.
4330 Palm Ave
La Mesa, CA. 91942
858.735.1858 direct
Skype: [matthew.reid.ca](https://www.skype.com/people/matthew.reid.ca)

On Mar 26, 2013, at 2:59 PM, Greg Blodgett <greg1@ci.garden-grove.ca.us> wrote:

see below

----- Forwarded Message -----

From: "James H. Eggart" <JEggart@wss-law.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Cc: "Thomas F. Nixon" <TNixon@wss-law.com>
Sent: Tuesday, March 26, 2013 2:50:00 PM
Subject: RE: Stockholder Documents [IWOV-IMDB1.FID307912]

Greg,

Matt Reid as provided:

- Articles of Incorporation
- Bylaws
- A certification from the Secretary that Matt Reid owns 51.0% of the corporation.

For purposes of the Agreement, we will need to know the names and titles of the individuals that will be signing on behalf of Land & Design, Inc. Generally, this requires the signature of two officers and would be the President and the Secretary of the corporation. If Land & Design proposes to have only a single individual (i.e., Matt Reid) sign the Agreement, it will need to provide a certified copy of the Resolution of the Board of Directors authorizing that individual to bind the corporation.

Since David Rose is listed in the Agreement, I recommend you also ask them to provide the extent of David Rose's ownership interest.

James

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-----Original Message-----

From: Greg Blodgett [<mailto:greg1@ci.garden-grove.ca.us>]
Sent: Tuesday, March 26, 2013 11:10 AM
To: James Eggart
Subject: Fwd: Stockholder Documents

----- Forwarded Message -----

From: "Matthew Reid" <matt.reid@landanddesign.com>
To: "Greg Blodgett" <greg1@ci.garden-grove.ca.us>
Sent: Tuesday, March 26, 2013 9:26:35 AM
Subject: Stockholder Documents

Matthew Reid
Land & Design, Inc.
3755 Avocado Blvd | #516 | La Mesa, CA 91941
619.335.5896 G o o g l e voice | 858.735.1858 c
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