DISPOSITION AND DEVELOPMENT AGREEMENT
(Seacoast Inn)

by and between

IMPERIAL BEACH REDEVELOPMENT AGENCY,

and

IMPERIAL COAST, L.P., a California limited partnership

DEVELOPER

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement") is entered into by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY (the "Agency") and IMPERIAL COAST, L.P., a California limited partnership (the "Developer") as of Dec. 14, 2010. Agency and Developer agree as follows:

PART 1. SUBJECT OF AGREEMENT

SECTION 101 Purpose of the Agreement

The Developer is the owner of an approximately 49,560 square foot site located at 800 Seacoast Drive, in the City of Imperial Beach, California ("Property"). The purpose of this Agreement is to effectuate the Redevelopment Plan for the Palm/Commercial Redevelopment Project by providing for the following: (i) Agency's purchase of the Property from Developer, (ii) Agency's payment to Developer for certain off-site public improvements ("Public Improvements"), and (iii) Agency's leasing of the Property back to Developer in accordance with the Ground Lease (collectively, "Agency Subsidy"). The Agency Subsidy shall be in consideration for the following: (x) Developer's demolition of existing improvements and construction of a full service hotel on the Property with seventy-eight (78) lodging rooms known as the Seacoast Inn ("the Project"), in accordance with this Agreement, the Development Agreement, and any permits for development by and between Developer and the City; (y) Developer's satisfactory construction of the Public Improvements; and (z) Developer's operation of the Seacoast Inn in accordance with the Ground Lease. The development and use of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Imperial Beach and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state, and local laws and requirements.

SECTION 102 Definitions

For purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Acquisition and Development Costs" means the total cost of acquiring the leasehold interest in the Property and developing and constructing the Improvements thereon, as set forth in the Project Budget.

"Affiliate" means (1) any Person directly or indirectly controlling, controlled by or under common control with another Person; (2) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other Person; or (3) if that other Person is an officer, director, member or partner, any company for which such Person acts in any such capacity. The term "control" as used in the immediately preceding sentence, means the power to direct the management or the power to control election of the board of directors. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise or control, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the

controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity. It shall also be a presumption that the managing General Partner of a limited partnership controls the limited partnership.

"Approved Title Conditions" means title that is subject to current property taxes and assessments, easements and other encumbrances specifically approved by the Executive Director.

"Assignment and Assumption Agreement" means that agreement substantially in the form attached hereto as Attachment No. 16.

"Assignment of Agreements" means that agreement substantially in the form attached hereto as Attachment No. 17.

"Attornment Agreement" means an instrument substantially in the form attached to this Agreement as Attachment No. 12.

"City" means the City of Imperial Beach, California.

"Closing" means the point in time when all conditions precedent to close of escrow for Agency's purchase of the Property from Developer and Agency's conveyance of the Leasehold to Developer have been satisfied, and all Recorded Documents, as set forth in Section 206, have been recorded.

"Closing Date" means the date on which the Closing has occurred.

"Completion" means the point in time when all of the following shall have occurred: (1) issuance of a certificate of occupancy by the City; (2) recordation of a Notice of Completion by Developer or its contractor; (3) certification or equivalent by the project architect that construction of the Improvements (with the exception of minor "punchlist" items) has been completed in a good and workmanlike manner and substantially in accordance with the approved plans and specifications; (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's liens that have been recorded or stop notices that have been delivered; and (5) the Property has been developed in accordance with this Agreement, the Scope of Development and plans approved by the Agency pursuant to this Agreement.

"Construction Lender" means the maker of any Construction Loan or beneficiary of any Construction Loan deed of trust.

"Construction Loan" means, collectively, the Source of Financing in the form of a loan made to the Developer at the time of the Closing for construction of the Improvements, secured against the Leasehold by the Construction Loan Deed of Trust.

"Construction Loan Deed of Trust" means the deed of trust securing the Construction Loan.

"Conversion" means the date upon which the Construction Loan is converted to the Permanent Loan.

"Declaration of CC&Rs" means the Declaration of CC&Rs in form agreed to in writing by Developer and Agency prior to recordation.

"Development Agreement" means the *Development Agreement by and between the City of Imperial Beach and Imperial Coast Limited Partnership Relative to the Development Known as the Seacoast Inn Development Project*, adopted by Ordinance No. 2007-1, and recorded on December 18, 2007 in the San Diego County Recorder's Office as Document No. 2007-0778555.

"Disbursement Agreement" means an agreement substantially in the form attached to this Agreement as Attachment No. 9.

"Effective Date" means the date when this Agreement has been executed by the Agency.

"Environmental Indemnity" means an instrument substantially in the form attached to this Agreement as Attachment No. 8.

"Escrow Agent" means an escrow agent mutually acceptable to Agency and Developer.

"Executive Director" refers to the Executive Director of the Imperial Beach Redevelopment Agency or designee.

"General Partner" means Pacifica – Hospitality Group Inc., a Nevada Corporation, as Managing General Partner, and Pacifica Pima, Inc., a Nevada Corporation, as co-General Partner.

"Grant Deed" means the instrument evidencing the Developer's conveyance of the Property to Agency substantially in the form attached to this Agreement as Attachment No. 7.

"Ground Lease" means the ground lease to be executed by Agency and Developer substantially in the form as attached to this Agreement as Attachment No. 10.

"Guaranty Agreement" means the guaranty agreement to be executed by Ashok Israni substantially in the form as attached to this Agreement as Attachment No. 15.

"Hazardous Substances" shall have the meaning set forth in Section 212.1 and the Environmental Indemnity.

"Improvements" means the improvements more particularly described in the Scope of Development, including the Public Improvements.

"Leasehold" means that leasehold estate in the Property created by the execution of the Ground Lease.

"Leasehold Permitted Exceptions" refers to those permitted exceptions to title as agreed to by Developer and Agency for the Leasehold.

"LEED Certification" means the Leed Certification provided by the U.S. Green Building Council.

"Legal Description" means the legal description of the Property attached to this Agreement as Attachment No. 2.

"Memorandum of Ground Lease" means that document substantially in form attached hereto as Attachment 10A.

"Memorandum of Option to Purchase Leasehold Interest" means that document substantially in form attached hereto as Attachment 11A.

"Method of Financing" means Attachment No. 3 to this Agreement.

"Notice of Completion" shall have the same definition as set forth in California Civil Code section 3093.

"Official Records" means the Official Records of the Office of the County Recorder for San Diego County, California.

"Option to Purchase Leasehold Interest" means the agreement providing Developer with the option to purchase the Leasehold and Improvements, substantially in the form of Attachment No. 11.

"Pedestrian and Vehicular Access Easement Agreement" means the Pedestrian and Vehicular Access Easement Agreement recorded on September 8, 2010 in the San Diego County Recorder's Office as Document No. 2010-0472741.

"Permanent Lender" means the maker of any Permanent Loan or beneficiary of any Permanent Loan deed of trust.

"Permanent Loan" means the Source of Financing in the form of a permanent loan to be made to the Developer at Conversion, secured against the Leasehold by the Permanent Loan Deed of Trust.

"Permanent Loan Deed of Trust" means the deed of trust securing the Permanent Loan.

"Permitted Mortgage" means a mortgage approved by the Agency as a Source of Financing for the Project. For purposes herein, the Construction Loan originated by Wells Fargo Bank for construction of the Improvements constitutes a Permitted Mortgage.

"Permitted Mortgagee" means the holder of a Permitted Mortgage, including the Construction Lender or Permanent Lender.

"Permitted Transfer" means any of the following:

A conveyance of a security interest in the Leasehold in connection with any Permitted Mortgage and any transfer of title by foreclosure, deed or other conveyance in lieu of foreclosure in connection therewith;

A conveyance of the Leasehold to any Affiliate of Developer, including, but not limited to, a conveyance to Developer's General Partner or Affiliate assignee pursuant to an option agreement with Developer;

The admission of limited partners to Developer's limited partnership, or similar mechanism, and the purchase of any such limited partnership interest or interests by the General Partner;

The removal for cause of any General Partner by a limited partner of the Developer's partnership, and the replacement thereof;

The lease for occupancy of all or any part of the Improvements within the Leasehold;

The granting of easements or permits to facilitate the development of the Property in accordance with this Agreement; and

The withdrawal, removal and/or replacement of any limited partner of Developer, provided that any substitute limited partner is reasonably acceptable to Agency and is selected with reasonable promptness.

Any transfer described above shall be subject to the reasonable approval of documentation by the Executive Director for conformance with this Agreement.

"Permitted Transferee" means the transferee of a Permitted Transfer.

"Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

"Project" refers to the construction of the Improvements on the Property.

"Project Budget" means the schedule of sources and uses attached to this Agreement as Attachment No. 6.

"Property" means the real property described in Section 104 of this Agreement.

"Public Improvements" means the off-site public improvements referenced in the Scope of Development.

"Release of Construction Covenants" means the certificate, substantially in form attached hereto as Attachment No. 14, to be to be issued by the Agency upon Completion in accordance with Section 324 of this Agreement.

"Resort Covenants" means those Resort Covenants in form agreed to in writing by the Developer and Agency prior to recordation.

"Schedule of Performance" means the document attached to this Agreement as Attachment No. 5.

"Scope of Development" means the document attached to this Agreement as Attachment No. 4.

"Site Map" means the document which is attached to this Agreement as Attachment No. 1.

"Source of Financing" means a source of financing the Project which has been approved by the Agency, as more specifically described in the Method of Financing.

"Specific Plan" means the Seacoast Inn Specific Plan adopted by Ordinance No. 2007-1060.

"Temporary Encroachment Permit" means the Temporary Encroachment Permit recorded on Feb. 11, ~~2010~~ 2011 in the San Diego County Recorder's Office as Document No. 2011-0096022 ~~2010-~~ 2011

"Title Company" means Chicago Title Company or another title insurance company mutually acceptable to Agency and Developer.

"Title Insurance Policy" means and includes any of the following, as appropriate: (i) a leasehold policy of title insurance in favor of Developer with respect to the Leasehold in an amount as reasonably requested by Developer (the "Leasehold Title Policy"); or (ii) a standard form ALTA owner's policy of title insurance in favor of Agency, together with such endorsements as Agency may reasonably require (the "Agency's Title Policy").

"Title Report" means the Preliminary Title Report, dated September 1, 2010, attached to this Agreement as Attachment No. 13.

SECTION 103 The Redevelopment Plan

This Agreement is subject to the Redevelopment Plan for the Palm/Commercial Redevelopment Project Area, which was approved and adopted on February 6, 1996 by the City Council of the City of Imperial Beach, by Ordinance No. 96-901, as thereafter lawfully amended ("Redevelopment Plan"). The Redevelopment Plan is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 104 The Property

The "Property" is located at 800 Seacoast Drive, in the City of Imperial Beach, California. The Property is depicted on the Site Map attached hereto as Attachment No. 1. The legal description of the Property is set forth in the Legal Description attached hereto as Attachment No. 2. In the event that Developer subdivides the Property into a vertical

subdivision, each parcel within the vertical subdivision shall be subject to the rights and obligations under this Agreement, and the Legal Description referenced herein for the Property shall be modified to reflect the legal descriptions associated with each vertical parcel.

SECTION 105 Agency

a. Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California.

b. The address of the Agency for purposes of receiving notices pursuant to this Agreement shall be:

Imperial Beach Redevelopment Agency
825 Imperial Beach Boulevard
Imperial Beach, California 91932
Attn: Executive Director
Tel: 619-423-0314
Fax: 619-628-1395

With a copy to:
Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, California 90071
Attn: Susan Y. Cola
Tel: 213-617-0480
Fax: 213-625-0931

c. "Agency" as used in this Agreement includes the Imperial Beach Redevelopment Agency and any assignee or successor to its rights, powers and responsibilities.

SECTION 106 Developer

a. Developer is IMPERIAL COAST, L.P., a California limited partnership, whose Managing General Partner is Pacifica – Hospitality Group, Inc., a Nevada Corporation and co-General Partner is Pacifica Pima, Inc., a Nevada Corporation. The address of Developer for purposes of receiving notices pursuant to this Agreement is as follows:

IMPERIAL COAST, L.P.
1785 Hancock Street, Suite 100
San Diego, California 92110
Attn: Ashok Israni
Tel: (619) 296-9000
Fax: (619) 296-9090

b. Whenever the term "Developer" is used herein, such term means and include the Developer as of the date hereof, and any assignee of or successor to its rights, powers and responsibilities permitted by this Agreement.

SECTION 107 Assignments and Transfers

a. Developer represents and agrees that its undertakings pursuant to this Agreement are for the purpose of redeveloping the Property as a full service hotel with seventy-eight (78) hotel rooms, and not for speculation in land holding. Developer further recognizes that the qualifications and identity of Developer are of particular concern to the City and the Agency, in light of the following: (1) the importance of the development of the Property to the general welfare of the community; (2) the public assistance that has been made available by law and by the government for the purpose of making such redevelopment possible; and (3) the fact that a change in ownership or control of Developer or any other act or transaction involving or resulting in a significant change in ownership or control of Developer, is for practical purposes a transfer or disposition of the property then owned by Developer. Developer further recognizes that it is because of such qualifications and identity that the Agency is entering into the Agreement with Developer. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly permitted herein.

b. Prior to Completion, Developer shall not assign all or any part of this Agreement, or any interest herein, without the prior written approval of the Agency. Subject to review of documentation effectuating any such proposed assignment or transfer, the Agency agrees to reasonably give such approval if the assignment is a Permitted Transfer.

c. For the reasons cited above, Developer represents and agrees for itself and any successor in interest that prior to Completion, without the prior written approval of the Agency, there shall be no significant change in the ownership of Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of Developer or the degree thereof, by any method or means, except Permitted Transfers.

d. Any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer, other than certain Permitted Transfers, shall require the approval of the Agency, which shall not be unreasonably withheld. To the extent Agency approval of an assignment or transfer is required by this Agreement, in granting or withholding its approval, Agency shall base its decision upon the relevant experience, financial capability and reputation of the proposed assignee or transferee and the effect, if any, of such proposed transfer on the public purposes of this Agreement ("Transfer Criteria"), including, without limitation, (i) the proposed transferee's current experience in owning and operating a full service hotel comparable in quality and size to the hotel contemplated by the Specific Plan and Development Agreement, and (ii) the proposed transferee's financial commitments and resources are reasonably satisfactory to the Agency. In addition, Agency shall not approve any assignment or transfer of this Agreement or any interest herein or significant change in ownership of Developer that results in payment of consideration to any Person prior to the issuance of the Release of Construction Covenants and that is not conditioned upon the issuance of the Release of Construction Covenants.

e. Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in control of Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Except for Permitted Transfers, this Agreement may be terminated by the Agency if there is any significant change

(voluntary or involuntary) in membership, management or control, of Developer (other than such changes occasioned by the death or incapacity of any individual) prior to Completion.

f. Permitted Transfers and any other assignments or transfers approved by the Agency in conformance with this Agreement shall be evidenced by the Developer's, assignee's, and Agency's execution of an Assignment and Assumption Agreement.

g. The restrictions of this Section 107 shall terminate upon Completion.

PART 2. PURCHASE OF THE PROPERTY, DISPOSITION OF LEASEHOLD AND REIMBURSEMENT FOR PUBLIC IMPROVEMENTS

SECTION 201 Agency's Purchase of the Property from Developer

Subject to the conditions precedent set forth in Section 204, herein, Agency shall purchase the Property from the Developer for the amount of FIVE MILLION SEVEN HUNDRED AND SIXTY THOUSAND DOLLARS AND NO CENTS ($5,760,000.00)("Purchase Price"). The disbursement of the Purchase Price shall occur upon Closing, in accordance with the Disbursement Agreement.

SECTION 202 Agency's Lease of the Property to Developer

Subject to the conditions precedent set forth in Section 204, herein, Agency shall convey the Leasehold to Developer in consideration for and on such terms and conditions as are contained in the Ground Lease. Developer understands, acknowledges and agrees that nothing herein authorizes the Developer, Permitted Mortgagee, or any Person, to pledge the Agency's fee interest as security for any purpose whatsoever.

SECTION 202.1 Option to Purchase Leasehold

Agency and Developer shall enter into that certain Option to Purchase Leasehold Interest and Memorandum of Option to Purchase Leasehold Interest, concurrently with Agency's conveyance of the Leasehold to Developer.

SECTION 202.2 Agency Purchase of Plans

Agency shall purchase from the Developer all Plans (as defined in Section 305, herein) that have been approved by the Agency in accordance with Sections 303 through 306, herein, for an amount not to exceed THREE HUNDRED AND FIFTY-FOUR THOUSAND ONE HUNDRED AND NINETY-THREE DOLLARS AND NO CENTS ($354,193.00)("Plans Price").

SECTION 203 Reimbursement for Public Improvements

Subject to the conditions precedent set forth in Section 204, herein, Agency shall reimburse Developer for the cost of constructing the Public Improvements set forth in the Scope of Development in an amount not to exceed EIGHT HUNDRED AND EIGHTY FIVE THOUSAND SEVEN HUNDRED AND NINETY SEVEN DOLLARS AND NO CENTS

($885,797.00)("Reimbursement Amount"). The Agency's reimbursement shall occur in accordance with the Disbursement Agreement.

SECTION 204 Conditions Precedent to Agency Subsidy

The Agency's obligations to Developer under Sections 201-203, hereunder, constitute the Agency's subsidy for the Project ("Agency Subsidy"). Subject to the notice and cure provisions of Sections 501 through 510, inclusive, of this Agreement and to the enforced delay provisions of Section 602 of this Agreement, the Agency at its option may terminate this Agreement pursuant to Section 510 if any of the following conditions precedent are not satisfied by the Developer or waived in writing by the Agency within the time limits set forth in the Schedule of Performance:

SECTION 204.1 Conditions Precedent to Agency's Purchase of the Property and Plans from Developer and Agency's Conveyance of Leasehold to Developer

For the benefit of the Agency, Closing and disbursement of any proceeds constituting the Agency Subsidy, are conditioned upon the occurrence of each of the following conditions on or prior to the scheduled Closing Date as set forth in the Schedule of Performance:

a. Limited Partnerships. The limited partnership agreement (but only with respect to whether such limited partnership agreement is consistent with this Agreement) has been approved by the Executive Director.

b. Title Insurance Policies. The Title Company shall be committed to issue the Agency's Title Policy in accordance with Section 209, herein.

c. Final Construction Drawings. Developer shall have submitted and Agency shall have approved Final Construction Drawings for all Improvements, in accordance with Section 305, herein.

d. Project Budget. Developer shall have delivered to the Agency final revisions to the Project Budget, which have been approved by the Executive Director and certified by Developer's Construction Lender, demonstrating to the satisfaction of the Agency the availability of sufficient funds to pay all Acquisition and Development Costs ("Final Project Budget").

e. Construction Contract. Developer shall have delivered to the Agency a general construction contract between the Developer and a licensed general contractor, covering all construction required by this Agreement and the approved Final Construction Drawings, in an amount that is consistent with the Final Project Budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of construction and complete fixturization

of the Project, and demonstrating that construction will be completed within the time provided in the Schedule of Performance.

f. Evidence of Financing. Developer shall have submitted and the Executive Director shall have approved evidence relating to all Sources of Financing, and all documents required to be executed in connection with such financing shall have been duly executed, acknowledged and delivered. Such evidence shall include:

(1) a copy of all loan documents relating to the Construction Loan, certified by Developer to be a true and correct copy or copies thereof;

(2) evidence of immediately available funds in a construction escrow account for the Project in the total amount necessary to Complete construction of the Project, including the Public Improvements, in accordance with a Project Budget approved, in writing, by the Agency and certified by the Construction Lender. If the amount necessary to complete the Project is less than the amount indicated in the Project Budget attached hereto as Attachment No. 6, the Agency shall have the option of crediting the difference against the Plans Price so that the Agency benefits from the reduction.

g. Insurance. Developer shall have submitted to the Agency evidence of the insurance policies required by Section 309, herein.

h. Permits. Developer shall have delivered to the Agency a list of all permits required for the construction of the Improvements including, without limitation, the Pedestrian and Vehicular Access Easement Agreement and the Temporary Encroachment Permit, and shall have demonstrated that all variances, entitlements and approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project Budget).

i. Developer's Formation Documents. Developer shall have delivered documentation relating to the corporate, partnership, limited liability or other similar status of Developer and its general partner(s), including, without limitation and as applicable: limited partnership agreements and any amendments thereto; articles of incorporation; Limited Liability Company Articles of Incorporation (LLC-1); Statement of Information and Operating Agreement (including any amendments thereto); copies of all resolutions or other necessary actions taken by such entity to authorize the execution of this Agreement and related documents; a certificate of status issued by the California Secretary of State; and a copy of any Fictitious Business Name Statement, if any, as published and filed with the Clerk of San Diego County.

j. Recording Instructions. Escrow Agent shall have approved such supplemental recording instructions as may have been prepared on behalf of the Agency.

k. Documents. Agency, Developer and/or other parties, as appropriate, shall have executed, and filed or recorded as appropriate, the following documents:

(1) Grant Deed (Attachment No. 7), to be signed and acknowledged by Agency and Developer);

(2) Ground Lease (Attachment No. 10) and Memorandum of Ground Lease (Attachment No. 10A), to be signed and acknowledged by Agency and Developer;

(3) Attornment Agreement (Attachment No. 12), to be signed and acknowledged the Construction Lender;

(4) Environmental Indemnity (Attachment No. 8), to be signed by Developer;

(5) Disbursement Agreement (Attachment No. 9), to be signed by Agency, Developer, and the Construction Lender;

(6) Option to Purchase Leasehold Interest (Attachment No. 11) and Memorandum of Option to Purchase Leasehold Interest (Attachment No.11A), to be signed and acknowledged by Agency and Developer;

(7) Guaranty Agreement (Attachment No. 15), to be signed and acknowledged by Ashok Israni; and

(8) Assignment of Agreements (Attachment No. 17), to be signed by Developer.

l. Current Payment of In-Lieu TOT. Developer shall have paid, by cashier's check or money order, all in-lieu transient occupancy taxes owed to the City, at the rate of $6,666 per month, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Closing.

m. Current Payment of Fees. Developer shall have paid all City's/Agency's staff, consultant, and legal fees to negotiate, draft, and process this Agreement, in accordance with Section 3(f) of the Memorandum of Understanding by and among the City, Agency and Developer, dated April 21, 2010 ("Agency Fees"). If Developer has made any partial payments of Agency Fees, Developer shall pay, as a condition to Closing,

any outstanding amounts of Agency Fees invoiced to Developer prior to Closing.

n. Closing Certificate. When all conditions precedent have been satisfied to the satisfaction of the Executive Director, the Executive Director shall execute and submit to the Escrow Agent a certificate stating that all conditions precedent to recording of the documents have been satisfied or waived, if such be the case.

n. No default. Developer shall not be in default of this Agreement.

SECTION 204.2 Conditions Precedent to Agency's Reimbursement for the Public Improvements

a. Completion. Completion of the Public Improvements to the satisfaction of the City's Public Works Director.

b. Current Payment of In-Lieu TOT. Developer shall have paid, by cashier's check or money order, all in-lieu transient occupancy taxes owed to the City, at the rate of $6,666 per month, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Completion of the Public Improvements. In the event that Developer is current on all payments of in-lieu transient occupancy taxes at the time of Completion of the Public Improvements, Agency shall withhold TWO HUNDRED THOUSAND DOLLARS ($200,000)("Withholding Amount") from the Reimbursement Amount as estimated withholding of in-lieu transient occupancy taxes that will be incurred and paid on a monthly basis to the City by the Agency (on Developer's behalf) during the period from Completion of the Public Improvements through Completion of the Project. In the event that Developer is not current on all payments of in-lieu transient occupancy taxes at the time of Completion of the Public Improvements, Agency shall withhold from the Reimbursement Amount and pay directly to the City the amount of in-lieu transient occupancy taxes owed to the City, beginning from the City's issuance of Developer's demolition permit for the Project through the date of Completion of the Public Improvements plus the Withholding Amount. Within thirty (30) days of Completion of the Project, Agency shall cause to be provided to Developer by the City a written invoice documenting the outstanding amount of in lieu transient occupancy taxes owed to the City at the time of Completion. If any amounts are outstanding, Agency shall withhold the outstanding amount from any remaining Withholding Amount for direct payment to the City and disburse the balance of the Withholding Amount to Developer within ten (10) business days of City's issuance of the written invoice to Developer. If no amounts are outstanding, Agency shall disburse the entire balance of the Withholding Amount to Developer within ten (10) business days of City's issuance of the written invoice to Developer. Developer understands, acknowledges and agrees that that nothing herein shall be construed or interpreted as the Agency's assumption of Developer's obligations to make payments of in-lieu transient occupancy taxes to the City in accordance with the Development Agreement and that in the event the Agency's withholding is not enough to pay for all of the in-lieu transient occupancy taxes owed under the Development Agreement, Developer shall nevertheless be liable for any deficiency amounts. Furthermore, nothing herein shall be deemed to modify or waive the City's

rights to receive in-lieu transient occupancy taxes as provided under the Development Agreement.

c. No default. Developer shall not be in default of this Agreement, including Section 204.1.

SECTION 205 Escrow

Agency agrees to open an escrow in the County of San Diego for the Agency's purchase of the Property from Developer and conveyance of the Leasehold to Developer with Title Company or such other escrow company, escrow department of a bank, or escrow department of a title insurance company first approved by Agency and Developer (the "Escrow Agent"), no later than the applicable dates established in the Schedule of Performance.

Sections 201 through 209 (inclusive) of this Agreement shall constitute the joint escrow instructions of Agency and Developer with respect to the Agency's purchase of the Property from Developer and Agency's conveyance of the Leasehold to Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of the escrow.

Agency and Developer shall provide such additional escrow instructions as shall be necessary to close the escrow with respect to the purchase of the Property and conveyance of the Leasehold, consistent with this Agreement. The Escrow Agent hereby is empowered to act under such instructions, and upon indicating its acceptance thereof in writing, delivered to Agency and to Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

Upon receipt by the Escrow Agent of all executed and acknowledged documents, as required by Section 204, herein, the Escrow Agent shall record all documents in accordance with Section 206 of this Agreement when the fee interest of the Property can be vested in the Agency and the Leasehold can be vested in Developer in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law. Any insurance policies governing the Property or any portion thereof are not to be transferred.

Developer shall pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified Developer of the amount of such fees, charges and costs, but not earlier than three (3) days prior to the Closing Date:

a. Escrow fee;

b. Recording fees;

c. Notary fees;

d. Premiums for the Title Insurance ordered by Agency and Developer as set forth in Section 209 of this Agreement.

e. Costs necessary to place the title in the condition required by the provisions of this Agreement;

g. Ad valorem taxes and any other taxes, assessments or impositions of any kind, if any, attributable to the Property prior to conveyance of the Leasehold.

h. State, county, city or other documentary stamps and transfer taxes, if any.

The Escrow Agent is authorized to:

1. Pay, and charge Agency and Developer, respectively, for any fees, charges and costs payable under this Section 205. Before such payments are made, the Escrow Agent shall notify Developer of such fees, charges and costs;

2. Disburse funds and deliver all documents to the parties entitled thereto when the conditions of the escrow have been fulfilled by Agency and Developer; and

3. Record any instruments delivered through the escrow if necessary or proper to vest the applicable interests in Developer and Agency in accordance with the terms and provisions of this Agreement.

All funds received in the escrow shall be deposited by the Escrow Agent in an interest bearing account for the benefit of the depositing party as directed by the depositing party.

If any escrow is not in condition to close on or before the Closing Date, either party who then shall have fully performed the acts to be performed before the Closing Date may, in writing, demand the return of its money, papers or documents. No demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party at the address of its principal place of business. Objections, if any, shall be raised by written notice to the Escrow Agent and to the other party within the ten- (10) day period. If any objections are raised within the ten- (10) day period, the Escrow Agent is authorized to hold the money, paper and documents until instructed by mutual agreement of the parties or, upon failure thereof, by a court of competent jurisdiction. Notwithstanding the foregoing, the termination rights of Agency and Developer and other rights and remedies on default are governed by Sections 501 through 510, inclusive, of this Agreement, and no demand for such return shall affect such rights or remedies. If no such demands are made, the escrow shall be closed as soon as possible.

The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both Agency and Developer affected thereby, or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

Any amendments to these escrow instructions shall be in writing and signed by both Agency and Developer. At the time of any amendment the Escrow Agent shall agree to carry out its duties as escrow agent under such amendment.

All communications from the Escrow Agent to Agency or Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between Agency and Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 201 through 209, inclusive of this Agreement.

SECTION 206 Recordation of Documents

Agency and Developer, respectively, agree to perform all acts necessary to achieve recordation and delivery of documents in sufficient time for escrow to be closed in accordance with the foregoing provisions.

a. The following documents shall be recorded in the following order ("Recorded Documents"):

ORDER OF RECORDATION	DOCUMENT NAME
1	Grant Deed (Attachment No. 7)
2	Memorandum of Ground Lease (Attachment No. 10A)
3	Construction Loan Security Instruments
4	Attornment Agreement (Attachment No. 12)
5	Memorandum of Option Agreement (Attachment No. 11A)

b. All documents to be recorded shall be recorded in the Official Records.

c. Unless recording against the Agency's fee is required by law, as determined in the reasonable discretion of the Agency and the California Department of Real Estate ("DRE"), Developer shall record the Declaration of CC&Rs and the Resort Covenants against the Leasehold no earlier than Completion of the Improvements and prior to issuance of the Certificate of Occupancy for the Project and as a condition to the Agency's issuance of a Release of Construction Covenants in accordance with Section 324, herein.

d. The Declaration of CC&Rs and Resort Covenants shall be consistent with the provisions of the Development Agreement and Specific Plan. Without limiting the generality of the foregoing sentence, the Declaration of CC&Rs and Resort Covenants shall, at a minimum, contain all of the following provisions:

(i) language mirroring Section 401 herein regarding collection of transient occupancy taxes ("TOT");

(ii) language requiring the City's written consent to any provisions of, or amendments to, the Declaration of CC&Rs and Resort Covenants, before they are final;

(iii) language designating the City as a third party beneficiary; and

(iv) if both the Agency and DRE reasonably determine that recording of the Declaration of the CC&Rs against the fee is required by law, then the Declaration of CC&Rs and the Resort Covenants shall contain provisions that require termination of the Declaration of CC&Rs and the Resort Covenants no later than the end of the 55 year term of the Ground Lease or earlier termination of the Ground Lease, except in the event that Developer exercises the Option.

Developer shall obtain Agency's written approval of the form and content of the Declaration of CC&Rs and Resort Covenants prior to recordation. The Agency's review of the Declaration of CC&Rs and Resort Covenants shall include, but is not limited to, a comparison of the Declaration of CC&Rs and Resort Covenants with the Development Agreement, the Specific Plan and this Agreement (including all attachments) to ensure consistency amongst these documents. The Agency shall not unreasonably withhold such approval. Any changes in form or content to the Declaration of CC&Rs and/or the Resort Covenants shall be subject to Agency's written approval.

SECTION 207 Possession of Leasehold Upon Close of Escrow

Possession of the Leasehold shall be delivered to Developer concurrently with Close of Escrow.

SECTION 208 Condition of Title

Developer shall convey fee title to the Agency free and clear of all liens, encumbrances, covenants, restrictions, easements, leases, taxes and other defects, but subject to (a) the covenants, conditions, restrictions and easements arising out of the provisions of this Agreement; and (b) unless caused to be removed by Developer with the Agency's consent, which shall not be unreasonably or untimely withheld, the following exceptions ("Permitted Exceptions") that are listed in the Title Report (Attachment No. 13): 3, 4.

The Leasehold shall be conveyed free of any possession or right of possession except that of Developer, unless waived in writing by Developer.

SECTION 209 Title Insurance

SECTION 209.1 Agency's Title Insurance

Concurrently with the recordation of the Grant Deed, Title Company shall provide and deliver to Agency a 2006 ALTA owner's policy of Title Insurance, issued by the Title Company, insuring that the fee interest of the Property is vested in Agency in the condition required by Section 208 of this Agreement, together with any endorsements as the Agency may reasonably require ("Agency's Title Policy"). The Title Company shall provide Agency and Developer with

a copy of the Agency's Title Policy. The Agency's Title Policy shall be in the amount of the Purchase Price. If Title Company is unable or unwilling to deliver the Agency's Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Agency, Agency may terminate this Agreement pursuant to Section 510.

SECTION 209.2 Leasehold Title Policy

Concurrently with the recordation of the Memorandum of Ground Lease, Title Company shall provide and deliver to Developer a Title Insurance Policy, issued by Title Company, insuring that the Leasehold is vested in Developer in the condition required by Section 208 of this Agreement, together with any endorsements as the Developer may reasonably require ("Leasehold Title Policy"). The Title Company shall provide Agency and Developer with a copy of the Leasehold Title Policy. The Leasehold Title Policy shall be in the amount of the Purchase Price. If Title Company is unable or unwilling to deliver the Leasehold Title Policy consistent with the provisions of this Agreement, then in addition to any other rights or remedies of Developer, Developer may terminate this Agreement pursuant to Section 509.

SECTION 210 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property

In accordance with California Revenue and Taxation Code section 107.6(a) and California Health and Safety Code section 33673, Agency states that by entering into the Ground Lease, a possessory interest subject to property taxes shall be created. Developer and/or its successors or other party(ies) in whom the possessory interest is vested shall be subject to the payment of property taxes, liens or encumbrances levied on such interest, unless an exemption is otherwise available.

Developer acknowledges and agrees that the Leasehold and/or the Improvements thereon, and any possessory interest therein, shall at all times after the commencement of the Ground Lease, be subject to ad valorem taxes levied, assessed or imposed on such property, and that Developer shall pay taxes upon the assessed value of the entire property unless exempt, and not merely upon the assessed value of its leasehold interest.

SECTION 211 Contests

a. Developer shall refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Property; provided, however, that such prohibition shall not apply to an appeal, challenge or contesting of the erroneous initial assessment for property tax purposes of the Property in the fiscal year of the completion of the Improvements to be constructed pursuant to the Agreement, and further provided that in the absence of transfer of ownership or new construction Developer shall not be prohibited from appealing, challenging or contesting any increases in assessment of the Property for property tax purposes over and above the current 2% per annum permitted amount.

b. Developer agrees that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Developer shall give Agency prompt notice in writing of any such

contest at least ten (10) days before filing any contests. Developer may only exercise its right to contest an imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the imposition so contested, or the sale of the Property, or any part thereof, to satisfy the same, and only if Developer shall, prior to the date such imposition is due and payable, have given such reasonable security as may be required by Agency from time to time in order to insure the payment of such imposition to prevent any sale, foreclosure or forfeiture of the Property, or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Developer, Developer shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Developer and, after such payment and discharge by Developer, Agency will promptly return to Developer such security as Agency shall have received in connection with such contest.

c. Agency shall cooperate reasonably in any such contest permitted by this Section 211, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Developer shall be prosecuted by Developer at Developer's sole cost and expense; and Developer shall indemnify and save harmless Agency against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by Agency in connection therewith.

SECTION 212 Condition of the Property

SECTION 212.1 Hazardous Substances

a. "Hazardous Substance," as used in this Agreement means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful

to the environment or capable of posing a risk of injury to public health and safety. "Hazardous Substances" do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all laws.

b. Developer hereby represents and warrants that the development, construction and uses of the Leasehold permitted under this Agreement (i) will comply with all applicable environmental laws; and (ii) do not require the presence of any Hazardous Substance on the Property.

c. Within five (5) days of request by Agency, Developer shall deliver to Agency, if not previously delivered, all documents relevant to the condition of the Property within the Developer's possession or control, including, without limitation, a preliminary title report with underlying exceptions, environmental reports, studies, surveys, and all other relevant documents within the Agency's possession or control (collectively referenced as "Documents").

SECTION 212.2 Suitability of the Property

a. Prior to Closing, Agency hall have the right to engage, at its sole cost and expense, its own environmental consultant ("Environmental Consultant"), to make such investigations as Agency deems necessary, including without limitation any "Phase 1" and/or "Phase 2" investigations of the Property or any portion thereof, and the Developer shall promptly be provided a copy of all reports and test results provided by the Environmental Consultant (the "Environmental Reports").

b. The Leasehold shall be delivered to Developer in an "as is" physical condition, with no warranty, express or implied by Agency as to the presence of Hazardous Substances, or the condition of the soil, its geology or the presence of known or unknown faults. If the condition of the Leasehold is not in all respects entirely suitable for the use or uses to which such Leasehold will be put, then it is the sole responsibility and obligation of Developer to place the Leasehold in all respects in a condition entirely suitable for the development thereof, solely at Developer's expense.

c. Effective upon Closing, Developer agrees to indemnify, defend and hold harmless Agency and City and their respective members, officers, agents, employees, contractors and consultants, in accordance with the Environmental Indemnity.

d. On and after the Effective Date of this Agreement, Developer hereby waives, releases and discharges the Agency, the City and their respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the use, maintenance, ownership or operation of the Property or any portion thereof, any Hazardous Substances on the Property, or the existence of Hazardous Substances contamination in any state on the Property, however the Hazardous Substances came to be placed there, except that arising out of the gross negligence or willful misconduct of the Agency

or its employees, officers or agents. Developer acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

To the extent of the release set forth in this Section 212.2, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

SECTION 213 Method of Financing

The Acquisition and Development Costs shall be financed with a combination of Sources of Financing as provided in the Method of Financing.

SECTION 214 Evidence of Financing

a. Not later than fifteen (15) days prior to the scheduled Closing Date and in no event later than as provided in the Schedule of Performance, Developer shall submit to the Agency evidence satisfactory to the Executive Director that Developer has obtained the financing necessary for the acquisition and development of the Property in accordance with this Agreement. Such evidence of financing shall include all items referenced under subsection (f) of Section 204.1, herein.

b. The Executive Director shall approve or disapprove such evidence of financing within the time established in the Schedule of Performance (Attachment No. 5). Such approval shall not be unreasonably withheld. If the Agency shall disapprove any such evidence of financing, the Agency shall do so by written notice to Developer stating the reasons for such disapproval.

SECTION 215 Reserved

SECTION 216 Designation as Point of Sale

Developer and its successors and assigns shall maintain such licenses and permits as may be required by any governmental agency to conduct taxable sales arising from any project on the Property and, to the extent permitted by law, shall designate City as the "point of sale" for all taxable sales and lease transactions occurring from any project on the Property in all reports to the California State Board of Equalization in accordance with the Bradley-Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code 72000 *et seq.*), as it may be amended or substituted from time to time, and on sales tax returns to the State of California for all taxable sales occurring at any project on the Property.

PART 3. DEVELOPMENT OF THE PROPERTY

SECTION 301 Land Use Approvals

It is the responsibility of Developer, without cost to Agency, to ensure that zoning of the Property and all applicable City land use requirements will permit development of the Property and construction of the Improvements and the use, operation and maintenance of such Improvements in accordance with the provisions of this Agreement. The following shall be conditions of the Closing and shall be accomplished by the date set forth in the Schedule of Performance: (A) Developer shall submit and Executive Director shall approve complete Final Construction Drawings; (B) Developer shall obtain all entitlements, approvals, variances and permits necessary for the construction of the Improvements and (C) Developer shall satisfy all other conditions precedent to the Closing as set forth in the Method of Financing. Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Property, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Property, or (d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

SECTION 302 Scope of Development

The Property shall be developed in accordance with and within the parameters established in the Scope of Development.

SECTION 303 Basic Concept Drawings

a. Developer has prepared basic concept and schematic drawings and related documents for the development of the Property, which have been approved by the Agency.

b. The Property shall be developed as established in the basic concept and schematic drawings and related documents except as changes may be mutually agreed upon between Developer and the Executive Director. Any such changes shall be within the limitations of the Scope of Development.

SECTION 304 Landscaping and Grading Plans

a. Developer shall prepare and submit to the Agency for its approval preliminary and final landscaping and preliminary and finish grading plans for the Property. These plans shall be prepared and submitted within the times established in the Schedule of Performance.

b. The landscaping plans shall be prepared by a professional landscape architect and the grading plans shall be prepared by a licensed civil engineer. Such landscape architect and/or civil engineer may be the same firm as Developer's architect. Within the times established in the Schedule of Performance, Developer shall submit to the Agency for approval the name and qualifications of its architect, landscape architect and civil engineer.

SECTION 305 Construction Drawings and Related Documents

a. Developer shall prepare and submit construction drawings and related documents (collectively called the "Plans") to the Agency for review (including but not limited to architectural review), and written approval in the times established in the Schedule of Performance. Final Construction Drawings are hereby defined as those in sufficient detail to obtain a building permit.

b. Approval of progressively more detailed Plans will be promptly granted by the Executive Director if developed as a logical evolution of Plans theretofore approved. Any items so submitted and approved by the Executive Director shall not be subject to subsequent disapproval.

c. During the preparation of all Plans, the Executive Director and Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of Plans and related documents by the Executive Director. The Executive Director and Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the Agency can receive prompt and speedy consideration.

d. If any revisions or corrections of Plans approved by the Agency shall be required by any government official, agency, department, or bureau having jurisdiction over the development of the Property, Developer and the Executive Director shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

SECTION 306 Agency Approval of Plans

a. Subject to the terms of this Agreement, the Agency shall have the right to review (including without limitation architectural review) and approve or disapprove all Plans and submissions, including any proposed substantial changes to any such Plans or submissions approved by Agency. Upon receipt of any disapproval, Developer shall revise the Plans, and shall resubmit to the Executive Director as soon as possible after receipt of the notice of disapproval. The Agency shall approve or disapprove the Plans referred to in Sections 303, 304 and 305 of this Agreement within the times established in the Schedule of Performance. Any disapproval shall state in writing the reasons for disapproval and the changes which the Executive Director requests to be made. Such reasons and such changes must be consistent with the Scope of Development and any items previously approved hereunder. Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder shall revise the Plans, and shall resubmit to the Executive Director as soon as possible after receipt of the notice of disapproval.

b. If Developer desires to make any substantial change in the Final Construction Drawings after their approval, such proposed change shall be submitted to the Executive Director for approval. For purposes of this Section, "Substantial" shall mean any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Project. Nothing herein shall be interpreted as altering, modifying, waiving, amending, or reducing any requirements of any governmental permit required by any local, state or federal permitting authority for the development contemplated herein.

SECTION 307 Cost of Construction

Except as expressly provided in Section 203, herein, the cost of demolishing any improvements on the Property and developing the Property and constructing the Improvements, including, without limitation, pre-development costs and any offsite or onsite improvements required by the City in connection therewith, whether Developer has commenced such demolishment, development and/or construction prior to or after Closing, or at any time, shall be the responsibility of Developer, without any cost to Agency.

SECTION 308 Schedule of Performance

a. Each party to this Agreement shall perform the obligations to be performed by such party pursuant to this Agreement within the respective times provided in the Schedule of Performance, and if no such time is provided, within a reasonable time consistent with the Schedule of Performance. The Schedule of Performance shall be subject to amendment from time to time upon the mutual agreement of the Agency and Developer; provided, however, that the Executive Director shall have the authority and discretion, which shall not be unreasonably withheld, to grant two 30-day extensions of the Closing Date in order to effect Closing.

b. After the Closing, Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements as provided herein and in the Scope of Development.

c. During periods of construction, Developer shall submit to the Agency a written report of the progress of construction when and as reasonably requested by the Agency, but not more frequently than once every quarter. The report shall be in such form and detail as may be reasonably required by the Agency and shall include a reasonable number of construction photographs (if requested) taken since the last report by Developer. If Agency utilizes the services of a construction monitor, Developer shall reasonably cooperate with the Agency's monitor to coordinate inspections.

SECTION 309 Indemnification and Insurance

a. Developer's Indemnity. To the maximum extent permitted by law, and in addition to any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the Agency, the City, and their respective officers, employees, contractors and agents, including, without limitation, the Environmental Indemnity and the Ground Lease, Developer agrees to and shall defend, indemnify and hold harmless Agency, the City, and their respective officers, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided Developer shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the Agency, City, or their respective officers, employees, contractors or agents:

1. The existence, release, presence or disposal on, in, or under the Property of any Hazardous Substances resulting from the acts or omissions of Developer, its contractors, subcontractors, agents or other persons acting on Developer's behalf (individually, "Indemnifying Party," and collectively, "Indemnifying Parties");

2. The development, construction, marketing, use, operation or condition of the Property and the Improvements by any Indemnifying Party;

3. Any accident, personal injury or casualty on the Property or the Improvements resulting from the acts or omissions of any Indemnifying Party;

4. Any plans or designs for Improvements (collectively, "Plans") prepared by or on behalf of any Indemnifying Party, including without limitation any errors or omissions with respect to such plans or designs, except in the event that (i) none of the Indemnifying Parties develops the Property pursuant to this Agreement, and (ii) upon assignment of the Plans to Agency, Agency uses the Plans or causes such Plans to be used to develop the Property;

5. Any loss or damage to Agency resulting from any inaccuracy in or breach of any representation or warranty of Developer, or resulting from any breach or default by Developer, under this Agreement; and

6. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the Improvements by the City or the Agency.

The foregoing indemnity obligations shall continue to remain in effect after the Completion. Developer understands, acknowledges and agrees that nothing in this Section shall be deemed or interpreted as a limitation, modification or waiver of any other provisions of this Agreement independently requiring Developer to defend, indemnify, and hold harmless the Agency, the City, and their respective officers, employees, contractors and agents.

b. Insurance Policies.

1. Commencing upon the Closing, and at all times prior to the issuance of the Release of Construction Covenants ("the Term"), Developer shall maintain in effect and deliver to Agency duplicate originals or appropriate certificates of the following insurance policies (the "Insurance Policies"):

(a) All-Risk Policies: Developer shall maintain or cause to be maintained coverage of the type now known as builder's completed value risk insurance, as delineated on an All Risk Builder's Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance, excluding earthquake(s). Such policy shall include (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (2) a "Replacement Cost Endorsement" in amount sufficient to prevent Developer from

becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by Agency, and (3) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property, or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding $25,000 per occurrence;

(b) Liability Insurance: Developer shall maintain or cause to be maintained general liability insurance or an equivalent owner contractors protective policy, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property and the business of Developer on the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Developer, or any person acting for Developer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Developer or its tenants, or any person acting for Developer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect Agency against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: commercial general liability in a general aggregate amount of not less than Four Million Dollars ($4,000,000), Four Million Dollars ($4,000,000) Products and Completed Operations Aggregate, and Two Million Dollars ($2,000,000) each Occurrence. Developer shall deliver to Agency a Certificate of Insurance evidencing such insurance coverage prior to the occurrence of the Closing. Developer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Developer may be held responsible for the indemnification of Agency or the payment of damages to persons or property resulting from Developer's activities, activities of its tenants or the activities of any other person or persons for which Developer is otherwise responsible. To the extent that Developer maintains increased or additional insurance coverage during the Term, in excess of the minimum coverage requirements prescribed by paragraphs (b)(1)(b) and (b)(1)(c) of this Section 309, Developer shall ensure that the additional insureds specified in paragraph (b)(3) of this Section 309 derive the benefit of such increased or additional insurance coverage.

(c) Automobile Insurance: Developer shall maintain or cause to be maintained automobile insurance on any automobiles owned by Developer, maintained in full force and effect in an amount of not less than Two Million Dollars ($2,000,000) per accident.

(d) Workers' Compensation Insurance: Developer shall maintain or cause to be maintained workers' compensation insurance, if required, for any employees of Developer, issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by

Developer in connection with the Property and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Developer. Notwithstanding the foregoing, Developer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Developer shall deliver to Agency evidence that such self-insurance has been approved by the appropriate State authorities.

2. All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) days prior written notice to Agency. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Agency and Developer as insureds, additional insureds, and/or loss payable parties as their interests may appear.

3. The Insurance Policies shall name as additional insureds the following:

"The City of Imperial Beach, the Imperial Beach Redevelopment Agency, and their respective officers, employees, contractors, agents and attorneys."

Developer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit binders or certificates evidencing such insurance to Agency prior to the Closing. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Agency. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

4. If Developer fails or refuses to procure or maintain insurance as required by this Agreement, Agency shall have the right, but not the obligation, at Agency's election, and upon ten (10) days prior notice to Developer, to procure and maintain such insurance. The premiums paid by Agency shall be treated as a loan, due from Developer, to be paid on the first day of the month following the date on which the premiums were paid. Agency shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

SECTION 310 Nondiscrimination

Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of any contractors or consultants, to participate in subcontracting/subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment or other sanctions. After the Effective Date, this language shall be incorporated into all contracts between Developer and any contractor, consultant, subcontractor, subconsultants, vendors and suppliers.

SECTION 311 Local, State and Federal Laws

The Developer shall carry out development and construction (as defined by applicable law) of the Improvements on the Property, including, without limitation, any and all public works, (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the Agency, City, and their respective officers, employees, contractors and agents, with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and/or construction (as defined by applicable law) of the Improvements, including, without limitation, any and all public works (if any) (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of 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 Chapter 804, Statutes of 2003; (3) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (4) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (5) failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to the Developer or its contractor(s) for the Improvements in writing or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720 of the Labor Code. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Improvements, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Chapter 804, Statutes of 2003 and/or Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after Completion and the recordation of the Release of Construction Covenants.

SECTION 312 Notice of Non-Responsibility

Agency shall, at any and all times during the term of this Agreement, have the right to post and maintain on the Property, and record against the Property, as required by law, any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California; provided, however, that Developer shall, on behalf of the Agency, post and maintain on the Property, and record against the Property, all notices of non-responsibility provided for by the mechanics' lien laws of the State of California.

SECTION 313 Permits

Before commencement of demolition, construction or development of any buildings, structures or other work of improvement upon any portion of the Property, Developer shall, at its own expense, secure or cause to be secured, any and all permits which may be required by the City or any other governmental agency with oversight for, or affected by, such construction, development or work.

SECTION 314 Rights of Access

Commencing upon the Closing, representatives of the Agency and the City shall have the reasonable right of access to the Property, upon 24 hours' written notice to Developer (except in the case of an emergency, in which case Agency shall provide such notice as may be practical under the circumstances), 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 Improvements. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency.

The Developer has the right to designate representatives to accompany the Agency or City representatives on such inspections. The Agency agrees to coordinate with Developer to schedule such inspections so that Developer's representative may attend the inspections, in the discretion of Developer.

SECTION 315 Disclaimer of Responsibility by Agency

The Agency neither undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the Property, any person furnishing the same, or otherwise. Developer and all third parties shall rely upon its or their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the Agency in connection with such matter is for the public purpose of redeveloping the Property, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The Agency shall not be responsible for any of the work of construction, improvement or development of the Property.

SECTION 316 Taxes, Assessments, Encumbrances and Liens

Commencing upon the Closing, Developer shall pay when due all real estate taxes and assessments assessed and levied on or against the Property or any portion thereof. Developer shall not place, or allow to be placed, against the Property or any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. In addition, Developer shall remove, or shall have removed, any levy or attachment made on title to the Leasehold and/or Property (or any portion thereof), or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder. Under no circumstances whatsoever shall the Developer allow any security instruments to be recorded against the Agency's fee interest in the Property.

SECTION 317 Reserved.

SECTION 318 No Encumbrances Except Permitted Mortgages

a. Notwithstanding Section 107, upon and after the Closing, Developer shall have the right to encumber the Leasehold with a Permitted Mortgage, but only for the purpose of securing loans of funds to be used for financing and refinancing the Acquisition and Development Costs and other expenditures necessary and appropriate to develop the Property under this Agreement, consistent with the amounts to be financed by Developer per the Method of Financing ("Permitted Financing Purposes"). Developer has no authority to encumber the Agency's fee interest in the Property at any time and for any purpose, whatsoever. The maker of any loan approved by the Agency pursuant to this Section 318 shall not be bound by any amendment, implementation agreement or modification to this Agreement subsequent to its approval without such lender giving its prior written consent.

b. In any event, Developer shall promptly notify the Agency of any security interest created or attached to the Leasehold or Property whether by voluntary act of Developer or otherwise.

c. The words "security interest" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction and land development.

d. Except for the provision that Developer has no authority to encumber the Agency's fee interest in the Property at any time and for any purpose, whatsoever, the requirements of this Section 318 shall not apply following Completion.

SECTION 319 Lender Not Obligated to Construct Improvements

No lender shall be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit, or authorize any such lender to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the Ground Lease.

SECTION 320 Notice of Default to Lenders; Right of Lender to Cure Defaults

Whenever the Agency shall deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Improvements, the Agency shall at the same time deliver the notice or demand to each Permitted Mortgagee that requests such notice or demand, in writing, from the Agency and provides its contact information for the notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of the notice, to cure or remedy, or commence to cure or remedy, any such default and to add the cost thereof to the security interest debt and the lien of its security interest. If such default shall be a default which can only be remedied or cured by such Permitted Mortgagee upon obtaining possession of the Leasehold, such Permitted Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession; provided that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such ninety- (90) day period, such Permitted Mortgagee shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity not to exceed one hundred and eighty (180) days, unless the Agency agrees to further extensions in its reasonable discretion; and provided further that such Permitted Mortgagee shall not be required to remedy or cure any non-curable default of Developer. Any Permitted Mortgagee who forecloses on its Permitted Mortgage, or is assigned or otherwise succeeds to Developer's rights under this Agreement, shall have the right to undertake or continue the construction or completion of the Improvements upon execution of a written agreement with the Agency by which such Permitted Mortgagee expressly assumes Developer's rights and obligations under this Agreement, approval of which agreement shall not be unreasonably withheld by Agency. Any such Permitted Mortgagee properly completing such improvements shall be entitled, upon written request made to the Agency, to a Release of Construction Covenants from the Agency.

SECTION 321 Failure of Lender to Complete Improvements

In any case where, six (6) months after default by Developer, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Leasehold (or portion thereof) has not elected to complete construction of the Improvements, or, if it has elected to complete the Improvements, it has not proceeded diligently with construction, the Agency may purchase the mortgage, deed of trust or other security interest by payment to the holder of the full amount of the unpaid principal debt, plus any accrued and unpaid interest and other charges secured by the mortgage instrument approved by the Agency.

SECTION 322 Right of the Agency to Cure Defaults

In the event of a default or breach by Developer of a Permitted Mortgage prior to Completion and prior to completion of a foreclosure by a Permitted Mortgagee, and the Permitted Mortgagee has not commenced to complete the development, the Agency may cure the default at any time prior to completion by a Permitted Mortgagee of any foreclosure under its security. In such event, the Agency shall be entitled to reimbursement from Developer of all costs and expenses incurred by the Agency in curing the default. The Agency shall also be entitled to a lien

upon the Leasehold, subordinate to the liens of any Permitted Mortgagee, to the extent of such costs and disbursements.

SECTION 323 Right of the Agency to Satisfy Other Liens on the Property

Prior to Completion and after Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on its interest in the Property, the Agency shall have the right, without obligation, to satisfy any such liens or encumbrances. In such event, the Agency shall be entitled to reimbursement from Developer of all costs and expenses incurred by the Agency in satisfying any such liens or encumbrances. The Agency shall also be entitled to a lien upon the Leasehold to the extent of such costs and expenses, subordinate to the liens of any Permitted Mortgagee, to the extent of such costs and expenses.

SECTION 324 Release of Construction Covenants

a. Promptly after Completion of the Improvements as required by this Agreement, and subject to Agency's written approval of the form of the Declaration of CC&Rs and Resort Covenants in conformance with Section 206, herein, Agency shall deliver to Developer a Release of Construction Covenants, upon written request therefor by Developer. The Agency's issuance of the Release of Construction Covenant shall signify Developer's satisfaction of Sections 302 - 308 of this Agreement. The Agency shall not unreasonably withhold any such Release of Construction Covenants. Such Release of Construction Covenants shall be, and shall so state, conclusive determination of satisfactory completion of the Scope of Development required by this Agreement.

b. The Release of Construction Covenants shall be substantially in the form attached hereto as Attachment No. 14 so as to permit it to be recorded in the Official Records.

c. If Agency fails to deliver the Release of Construction Covenants within ten (10) days after written request from Developer, Agency shall provide Developer with a written statement of its reasons (the "Statement of Reasons") within that ten (10)-day period. The statement shall also set forth the steps Developer must take to obtain the Release of Construction Covenants. If the reasons are confined to the immediate unavailability of specific items or materials for landscaping, or to so-called "punch list" items identified by Agency, Agency will issue the Release of Construction Covenants upon the posting of a bond by Developer with Agency in an amount representing Agency's estimate of the cost to complete the work.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any Senior Lender, or any insurer of a mortgage securing money loaned to finance the Improvements, nor any part thereof. Such Release of Construction Covenants is not a Notice of Completion as referred to in Section 3093 of the California Civil Code.

PART 4. USE OF THE PROPERTY

SECTION 401 Uses

a. Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that Developer, such successors and such assignees shall use the Property only for the uses specified in the Specific Plan, Development Agreement, the Pedestrian and Vehicular Access Easement Agreement, the Temporary Encroachment Permit, the Declaration of CC&Rs, the Resort Covenants, the Ground Lease and this Agreement. No change in the use of the Property shall be permitted without the prior written approval of Agency.

b. Notwithstanding the generality of subsection (a), above, Developer, its successors and assigns, shall use the Property and/or Improvements only for the following uses: operation of a four story full service hotel with a minimum of seventy-eight (78) guest rooms ("Hotel"). The Hotel shall be rated not less than three diamonds by AAA or three stars by the Mobile Travel Guide, and shall also have the following characteristics:

a) The Hotel shall contain an on-site, full service (sit down) three-meal restaurant and lounge.

b) The Hotel shall have at least one swimming pool.

c) The Hotel shall have a fully-equipped exercise room/fitness center.

d) The Hotel shall have a business center.

e) The Hotel shall have a minimum of 2,080 square feet of meeting and conference space.

Developer, and/or Hotel owner or Hotel operator ("Developer" for purposes of this section) shall be required to provide for collection and payment of the transient occupancy tax ("TOT") to the City for all guest units/hotel units that are occupied on the Property and/or Improvements, regardless of the occupant's status as guest unit owner, lessee, private guest or guest. If a guest unit/hotel unit is occupied by a guest unit/hotel unit owner, the TOT shall be based upon the nightly rate then in effect for the unit as if it were being occupied by a third party renter. For occupancies of the guest unit/hotel unit other than by a unit owner, the TOT shall be based on the actual rent charged. This requirement to collect and pay TOT to the City exists regardless of whether the unit is booked in person through the Registration System, via telephone or through online means via agents of the Developer. If there is a legal reason why Developer cannot collect the TOT from owner/occupants of a guest unit, the Developer shall be required to provide to the City an amount of TOT equivalent to the amount that should have been collected from the owner/occupant for each night a guest unit is occupied by the owner/occupant.

SECTION 402 Maintenance

Developer shall maintain the Property in accordance with the requirements of the Ground Lease.

SECTION 403 Obligation to Refrain from Discrimination

Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, 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 land, nor shall the transferee itself 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 of the land.

SECTION 404 Form of Nondiscrimination and Nonsegregation Clauses

Developer shall refrain from restricting the rental, sale or lease of the Property and/or Leasehold on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts 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."

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."

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 land, nor shall the transferee itself 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 of the land."

SECTION 405 Effect and Duration of Covenants

The covenants established in this Agreement shall run with the land, without regard to technical classification and designation, and shall be for the benefit and in favor of and enforceable against the original Developer and successors in interest by the Agency or the City. Unless set forth otherwise, the covenants described in this Part 4 shall commence upon the Closing and shall be set forth in the Ground Lease.

PART 5. DEFAULTS AND REMEDIES

SECTION 501 Defaults - General

a. Subject to the extensions of time set forth in Section 602, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

b. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, 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. 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.

c. If a monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default written notice of such default. The party in default shall have a period of thirty (30) calendar days after such notice is received or deemed received within which to cure the default prior to exercise of remedies by the injured party.

d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, the injured party shall give the party in default notice of such default. If the default is reasonably capable of being cured within thirty (30) calendar days after such notice is received or deemed received, the party in default shall have such period to effect a cure prior to exercise of remedies by the injured party. If the default is such that it is not reasonably capable of being cured within thirty (30) days after such notice is received, and the party in default (1) initiates corrective action within said period, and (2) diligently, continually, and in good faith works to effect a cure as soon as possible, then the party in default shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by the injured party, but in any event no more than one hundred and twenty (120) days of receipt of such notice of default from the injured party.

SECTION 502 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either party may institute legal action to cure, correct or remedy any default, to recover damages for 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 San Diego, State of California, in any other appropriate court of that county, or in the United States District Court for the Southern District of California.

SECTION 503 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

SECTION 504 Acceptance of Service of Process

a. In the event that any legal action is commenced by Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against Developer, service of process on Developer shall be made by personal service upon Developer (or upon the General Partner or General Partner's managing member, as applicable, or any officer of the General Partner or General Partner's managing member, as applicable) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

SECTION 505 Rights and Remedies Are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive 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.

SECTION 506 Damages

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the defaulting party shall be liable to the non-defaulting party for any damages caused by such default, and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. Developer shall not be entitled to, and hereby waives, any right to seek special or consequential damages of any kind or nature arising out of or in connection with this Agreement.

SECTION 507 Specific Performance

Subject to the notice and cure provisions of Section 501, if either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured within the time provided in Section 501, the non-defaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Agreement pertaining to such default.

SECTION 508 Reserved.

SECTION 509 Termination by Developer

Prior to the Closing, subject to the notice and cure provisions of Section 501, Developer shall have the right to terminate this Agreement, by providing written notice to the Agency, in the event of a default by Agency pursuant to this Agreement.

SECTION 510 Termination by Agency

a. Prior to the Closing, subject to the notice and cure provisions of Section 501, Agency shall have the right to terminate this Agreement, by providing written notice to the Developer, in the event of a default by Agency pursuant to this Agreement.

b. After the Closing, but before Completion, and subject to the notice and cure provisions of Section 501, Agency shall have the additional right to terminate this Agreement in the event any of the following defaults shall occur:

1. Developer fails to commence construction of the Improvements as required by this Agreement and such breach is not cured within the time provided in Section 501 of this Agreement, provided that Developer shall not have obtained an extension or postponement to which Developer may be entitled pursuant to Section 602 hereof; or

2. Developer abandons or substantially suspends construction of the Improvements and such breach is not cured within the time provided in Section 501 of this Agreement, provided Developer has not obtained an extension or postponement to which Developer may be entitled to pursuant to Section 602 hereof; or

3. Developer assigns or attempts to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement; or

4. Developer otherwise materially breaches this Agreement, and such breach is not cured within the time provided in Section 501 of this Agreement.

PART 6. GENERAL PROVISIONS

SECTION 601 Notices

Formal notices, demands and communications between Agency and Developer shall be deemed sufficiently given if dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of Agency and Developer as set forth in Sections 105 and 106 hereof. 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. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

SECTION 602 Enforced Delay: Extension of Time of Performance

a. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of the City or any other public or governmental agency or entity (except that acts or failure to act of Agency shall not excuse performance of Agency), or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

b. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of 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 knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver

such written notice within thirty (30) days after it obtains actual knowledge of the event. Times of performance under this Agreement may also be extended in writing by the Agency and Developer.

SECTION 603 Conflict of Interest

a. No member, official, or employee of Agency 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 or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

b. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

SECTION 604 Nonliability of Agency Officials and Employees

No member, official, agent, legal counsel or employee of Agency shall be personally liable to Developer, or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

SECTION 605 Inspection of Books and Records

Agency shall have the right at all reasonable times to inspect and copy the books and records of Developer pertaining to the Property as pertinent to the purposes of this Agreement.

SECTION 606 Approvals

a. Except as otherwise expressly provided in this Agreement, approvals required of Agency or Developer in this Agreement, including the attachments hereto, shall not be unreasonably withheld or delayed. All approvals shall be in writing. Failure by either party to approve a matter within the time provided for approval of the matter shall not be deemed a disapproval, and failure by e ither party to disapprove a matter within the time provided for approval of the matter shall not be deemed an approval.

b. Except as otherwise expressly provided in this Agreement, approvals required of the Agency shall be deemed granted by the written approval of the Executive Director. Agency agrees to provide notice to Developer of the name of the Executive Director's designee on a timely basis, and to provide updates from time to time. Notwithstanding the foregoing, the Executive Director may, in his or her sole discretion, refer to the governing body of the Agency any item requiring Agency approval; otherwise, "Agency approval" means and refers to approval by the Executive Director.

SECTION 607 Real Estate Commissions; Finder's Fee

The Agency shall not be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement. The Agency and Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction.

SECTION 608 Construction and Interpretation of Agreement

a. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

b. If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

c. The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

d. References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation, and/or undertaking "herein," "hereunder," or "pursuant hereto" (or language of like import) means, refer to, and include the covenants, obligations, and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, and attachments or other documents affixed to or expressly incorporated by reference in this instrument.

e. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

SECTION 609 Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

SECTION 610 No Partnership

Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or any other similar relationship between the parties hereto or cause Agency to be responsible in any way for the debts or obligations of Developer or any other Person.

SECTION 611 Compliance with Law

Developer agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and the Improvements, as well as operations conducted thereon. The judgment of any court of competent jurisdiction, or the admission of Developer or any lessee or permittee in any action or proceeding against them, or any of them, whether Agency be a party thereto or not, that Developer, lessee or permittee has violated any such ordinance or statute in the development and use of the Property shall be conclusive of that fact as between Agency and Developer.

SECTION 612 Binding Effect

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

SECTION 613 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of Agency and Developer, and not for the benefit, directly or indirectly, of any other person or entity, except for the City, the Senior Lenders and the Tax Credit Equity Investor, and as otherwise expressly provided herein.

SECTION 614 Authority to Sign

Developer hereby represents that the persons executing this Agreement on behalf of Developer have full authority to do so and to bind Developer to perform pursuant to the terms and conditions of this Agreement.

SECTION 615 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

SECTION 616 Counterparts

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

PART 7. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

a. This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including all of the Attachments appended hereto, constitutes the entire understanding and agreement of the parties.

b. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

c. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency or Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Developer.

PART 8. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by Developer and delivered to Agency, must be authorized, executed and delivered by Agency within sixty (60) days after date of signature by Developer or this Agreement may be terminated by Developer upon written notice to Agency.

IN WITNESS WHEREOF, Agency and Owner have signed this Agreement as of the dates set opposite their signatures.

IMPERIAL COAST, L.P.,
a California limited partnership

By: PACIFICA – HOSPITALITY GROUP,
a Nevada corporation

Dated: 12/1/10

By: Signature on File
Ashok Israni, President

IMPERIAL BEACH REDEVELOPMENT AGENCY

Dated: 12/16/10

By: Signature on File
Gary Brown
Executive Director

SIGNATURES CONTINUE ON NEXT PAGE

APPROVED AS TO FORM
AND LEGALITY

Agency General Counsel

Signature on File

By:_____
Jennifer Lyon

KANE, BALLMER & BERKMAN
Agency Special Counsel

Signature on File

By:_____
Susan Y. Cola

ATTACHMENT NO. 1

SITE MAP

[behind this page]