2021-037

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

This **LEASE DISPOSITION AND DEVELOPMENT AGREEMENT** ("Agreement") is dated for identification purposes as of JULY 19, 2021 ("Date of Agreement"), by and between the **CITY OF CARPINTERIA**, a municipal corporation of the State of California (the "City"), and **499 LINDEN MANAGERS LLC**, a California limited liability company (the "Developer"). The Developer and the City are individually referred to as "Party" and collectively as the "Parties" in this Agreement.

RECITALS

The following recitals are a substantive part of this Agreement:

A. The City owns the following three real properties which are described as follows: (i) commonly known as the City's Parking Lot No. 3, located at 499 Linden Avenue, identified with Santa Barbara County Assessor Parcel Number ("APN") 004-105-011 ("Parking Lot Property"); (ii) commonly known as Carpinteria Community Garden, located at 4855 Fifth Street, identified with APN 004-105-016 ("Garden Property"); and (iii) a vacant lot identified with APN 004-105-026 ("Vacant Property"). The Parking Lot Property, Garden Property, and Vacant Property are collectively referred to as "Properties", and are more particularly described in Attachment No. 1 to this Agreement.

B. The Properties are shown on the Properties Map attached hereto as Attachment No. 2. An approximately 30,000 square feet portion of the Parking Lot Property is shown on the Properties Map and referred to as the "Site" in this Agreement.

C. On August 14, 2017, the City issued a Request for Proposals to Lease City owned Site for Development ("RFP") to interested parties to tender submissions and substantiate their qualifications to work with the City to design, build, finance, operate a new inn and related development, and public improvements on the Properties.

D. On December 8, 2017, the City Council authorized an extension of time to receive responses to the RFP.

E. On July 9, 2018, the City Council closed the period for acceptance of responses to the City's RFP and authorized the City's Public Facility Site Acquisition/Development Committee to evaluate the offers received by the City and to return to the City Council with a recommendation for proceeding.

F. On November 18, 2018, the City Council acted on the recommendation of the City's Public Facility Site Acquisition/Development Committee and selected Developer to enter into an Exclusive Negotiation Agreement ("ENA") for future City Council consideration.

G. The Developer and the City entered into an ENA dated as of June 24, 2019, which was extended through the City Council actions on March 9, 2020 and September 14, 2020.

H. Developer has informed City that Developer desires to (i) lease the Site, in its entirety, and to construct thereon an inn with ancillary and related improvements, (ii) to construct on the Vacant Lot Property a new parking lot, trail and relocated restroom facility, and (iii) to expand the number of

spaces in Parking Lot No. 3 on the Parking Lot Property by expanding Parking Lot No. 3 into the Garden Property, as more particularly described in the "Scope of Development" attached to this Agreement as Attachment No. 3.

I. Pursuant to the ENA, the City and Developer desire by this Agreement to provide for, among other things, the circumstances in which the City would permit (i) the lease of the Site as provided hereunder and for Developer to construct, operate and maintain an inn on the Site in accordance with all covenants, conditions, restrictions and declarations, and terms set forth in this Agreement, and (ii) for Developer to construct the Off-Site Improvements.

J. Pursuant to its police power, as well as provisions of the California Government Code, the City is authorized and empowered, to enter into agreements for the lease disposition and development of real property.

K. This Agreement is entered into pursuant to the City's police power and is in the vital and best interest of the City and the health, safety, and welfare of its residents, and in accord with the goals, objectives and public purposes and provisions of applicable state and local laws and requirements.

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

100. DEFINITIONS

"**Actual Knowledge**" of the City means the facts known by the City's Parks, Recreation and Public Facilities Director or the City Manager without a duty of further investigation.

"**Agreement**" means this Lease Disposition and Development Agreement between the City and the Developer.

"**Ballot Measure**" means any ballot measure, voter initiative or any notice to circulate petition regarding the foregoing that may affect the Properties, the Project, or the ability of the Developer to obtain Permits, including, without limitation any voter initiative to change the zoning or General Plan designation of the Properties.

"**Basic Concept Drawings**" is defined in Section 302.2.

"**CEQA**" is defined in Section 205.1(l).

"**City**" means the City of Carpinteria, a California municipal corporation.

"**City Code**" means Carpinteria Municipal Code of the City as it may be amended from time to time.

"**City Conditions Precedent**" means the conditions precedent to the Closing for the benefit of the City, as set forth in Section 205.1.

"**City Council**" means the City Council of the City of Carpinteria.

"**City Development Review**" means the City, acting in its governmental and regulatory capacity pursuant to its police powers, standard development review process, as described in the City

Code, an application to obtain discretionary and ministerial permits, entitlements, findings and approvals, including Environmental Compliance (as defined in Section 303.2), that the City is required to make by applicable federal, state and local law, for all development within the City. Notwithstanding what is stated in any part of the Agreement, the City retains full discretion acting in its governmental capacity pursuant to its police powers to review the Project Application and approve, condition, or deny any elements of the Project pursuant to the City's standard development review process, City Code, and applicable federal, state and local law, including *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 and related jurisprudence.

"**City Engineer**" means the City Engineer of the City or its designee(s).

"**City Manager**" means the City Manager of the City or its designee who shall represent the City in all matters pertaining to this Agreement, except as otherwise provided in this Agreement.

"**City Public Facility Site Acquisition/Development Committee**" means the City Public Facility Site Acquisition/Development Committee of the City of Carpinteria

"**Closing**" or "**Close of Escrow**" means the close of Escrow for the Lease Execution via the Ground Lease described in Section 202.

"**Closing Date**" means the date of the Closing as set forth in Section 202.4.

"**Completion of Construction**" means the point at which the Developer is entitled to a Release of Construction Covenants for the Developer Improvements.

"**Conditions of Approval**" is defined in Section 303.1.

"**Condition of Title**" is defined in Section 203.

"**Conditions Precedent**" means the City Conditions Precedent and/or the Developer Conditions Precedent for the Lease Execution.

"**Conforming Inn**" means the proposed inn that the Developer will submit to the City in accordance with Section 302 and all subparts thereto, which generally conforms to all of the following: (i) be a building with approximately 30,395 square feet and consists of two (2) stories (provided that the elevator, stair tower and ancillary building elements, as shown on the Site Plan in Attachment No. 8, may be above two (2) stories); (ii) have a roof top bar and deck area with food and beverage services; (iii) have a "guest only" roof top area with one or two small splash/plunge pools, a hot tub or other similar feature; (iv) have a ground level restaurant with food and beverage service; (v) have daily contract linen service, (vi) have a 24-hour-a-day staffed front desk; (vii) consist of thirty six (36) rooms and four (4) guest suites; and (viii) be accompanied, including within the public right of way adjacent to the Site, with parking, sidewalks, curbs, gutters, street lights, landscape and hardscape amenities, benches, bike racks, integration of Amtrak platform access and other public amenities further described in the Scope of Development. The quality of the Conforming Inn is important to the Parties and therefore the Parties shall generally agree upon the budget to construct the Conforming Inn, the furniture, fixture, equipment fund, and a maintenance fund, in the Ground Lease. Based on the Basic Concept Drawings, the Conforming Inn is estimated to cost approximately Thirteen Million Dollars ($13,000,000.00) or Three Hundred Twenty-Five Thousand Dollars ($325,000.00) per key, subject to modification during City Development Review. The Conforming Inn is presently proposed to have a

minimum three star rating by the American Automobile Association (AAA) for quality.

"**Construction Drawings**" is defined as any and all detailed engineering and construction plans and drawings for the Developer Improvements, including without limitation a grading plan, all of which shall have been prepared by a registered civil engineer or other appropriate professional..

"**Construction Financing**" means the debt and equity necessary to construct the Developer Improvements, secured by Developer's interest in the Ground Lease.

"**Construction Period**" means the period commencing upon the Closing Date and terminating upon Completion of Construction of the Developer Improvements.

"**Date of Agreement**" is defined in the first paragraph.

"**Default**" means the failure of a Party hereto to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501.

"**Developer**" means 499 Linden Managers, LLC, a California limited liability company, its successors or assigns, pursuant to a Permitted Transfer.

"**Developer Affiliate**" means any of the following: R. W. ("Whitt") Hollis, Jr., Andrew D. Norris, Matthew and James Taylor and/or Jack Theimer and Jeffrey Theimer.

"**Developer Conditions Precedent**" means the conditions precedent to the Closing for the benefit of the Developer, as set forth in Section 205.2.

"**Developer Environmental Consultant**" means the environmental consultant which may be employed by the Developer pursuant to Section 208.2.

"**Developer Improvements**" means the new improvements required to be constructed by the Developer (i) upon the Site as part of the Conforming Inn, and (ii) the Off-Site Improvements, as may be modified by City Development Review.

"**Developer Notice**" is defined in Section 311.

"**Director of Parks, Recreation and Public Facilities**" shall mean the City's Director of Parks, Recreation and Public Facilities or his or her designee.

"**Environmental Liabilities**" is defined in Section 208.2.

"**Environmental Compliance**" is defined in Section 303.2.

"**Environmental Consultant**" is defined in Section 303.2(a).

"**Environmental Deposit**" is defined in Section 303.2(b).

"**Environmental Document**" is defined in Section 303.2(a).

"**Escrow**" is defined in Section 202.

"**Escrow Agent**" is defined in Section 202.

"**Exceptions**" is defined in Section 203.

"**Force Majeure Event**" means war, insurrection, terrorism, strikes, lockouts, riots, floods; earthquakes, fires, casualties, acts of God, acts of the public enemy, pandemics or epidemics where a local government with jurisdiction over the Properties declares a local emergency, freight embargoes, governmental restrictions or priority, government orders and restrictions, or other similar events which are beyond the reasonable control of the Parties. In addition to specific provisions of this Agreement, an extension of time for such events will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the date the Party seeking the extension first experienced the event and such extension of time is not reasonably rejected in writing by the other Party within ten (10) days after receipt of the notice. In no event shall the cumulative extensions exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing.

"**Guarantor**" means the individual or entity identified as "Guarantor" in the Guaranty Agreement.

"**Guaranty Agreement**" means the Guaranty Agreement in substantially the same form as Attachment No. 10 to this Agreement

"**Good Faith Deposit**" is defined in Section 201.1.

"**Governmental Requirements**" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the City, or any other political subdivision in which the Properties are located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the City, the Developer or the Properties, including, without limitation: all applicable state labor standards; the City zoning code, development and design standards; City Development Review, building, plumbing, mechanical and electrical codes; all other provisions of the City Code; all applicable disabled and handicapped access requirements; and all applicable federal, state, and local requirements; including if and to the extent required as a matter of law, the payment of prevailing wages and hiring of apprentices pursuant to Labor Code Section 1720 *et seq.*, the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*, and all other applicable federal, state, and local laws.

"**Ground Lease**" means the Ground Lease between Developer and City in the substantially the same form attached hereto as Attachment No 4, subject to modification, as mutually agreed to between the Parties in writing, in response to comments from City Development Review and Developer's lender prior to Closing.

"**Hazardous Materials**" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302); Hazardous Chemicals as defined in the OSHA Hazard Communication Standard; Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq.; Hazardous

Substances as defined in the Toxic Substances Control Act, 15 U.S.C. § 2601-2671; or listed in any other federal, state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all reauthorizations, pertaining to the protection, preservation, conservation or regulation of human health or the environment, including but not limited to all federal, state, and local laws, ordinances, and regulations relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal, or transportation of any oil, hydrocarbons, flammables, explosives, asbestos, radioactive materials or wastes, or other hazardous, toxic, contaminating, or polluting materials, substances, or wastes, including, without limitation, any hazardous substances that are the subject of any laws, ordinances, or regulations intended to protect the environment or health, safety, and welfare, and all substances now or hereafter designated as "hazardous substances," "hazardous materials," or "toxic substances" under any other federal, state or local laws or in any regulations adopted and publications promulgated pursuant to said laws, and amendments to all such laws and regulations thereto; or such substances, materials, and wastes which are or become regulated under any applicable local, state or federal law.

"**Improvement Plans**" is defined in Section 301.1.

"**Indemnitees**" means the City and its public officials, officers, employees, attorneys, agents, representatives, and consultants.

"**Investigation**" is defined in Section 208.2.

"**Lease Execution**" means the execution of the Ground Lease, in substantially the same form as provided in Attachment No. 4 and as may be modified during City Development Review, to convey a leasehold interest in the Site from the City to the Developer

"**Leasehold Estate**" is defined in Section 312.5.

"**Liabilities**" is defined in Section 207.6.

"**Liquidated Damages**" is defined in Section 201.2.

"**Maintenance Standards**" is defined in Section 401.

"**Memorandum of Ground Lease**" means a memorandum of the Ground Lease in substantially the same form of Attachment No. 5.

"**Notice**" shall mean a notice in the form prescribed by Section 601.

"**Official Records**" means, unless the context otherwise requires, the official records of the County Recorder of the County of Santa Barbara.

"**Off-Site Improvements**" means the construction of improvements upon other portions of the Properties that are not part of the Site which include improvements (i) to the Vacant Property as part of the Public Parking Facility, trail and relocated restroom facility, and (ii) to an approximate 60-foot westward expansion of Parking Lot No. 3, located on the Parking Lot Property, onto the Garden Property, as may be modified and conditioned in response to City Development Review.

"**Other Third Party Action**" is defined in Section 308.2.

"**Outside Date**" means ninety (90) months from the Effective Date or such later date as extended for each day of occurrence of (i) a Force Majeure Event, (ii) any litigation opposing any aspect of the Project which delays the issuance of any Permits for the Project, (iii) any Ballot Measure, or (iv) the City's compliance with, or determination of an exemption from, the Surplus Land Act (California Government Code section 54220, *et seq.*).

"**Permits**" is defined in Section 303.1.

"**Project**" means completion of the Developer Improvements and opening of a Conforming Inn, all as more fully provided in this Agreement. The Parties further acknowledge and agree that the exact scope, size and other aspects of the Project are subject to Developer's receipt of Permits, including accompanying Conditions of Approval, through City Development Review. Notwithstanding what is stated in any part of the Agreement, the operation and maintenance of the Public Parking Facility shall not be part of the Project.

"**Project Application**" is defined in Section 303(a).

"**Proof of Financing Commitments**" shall mean that the Developer has obtained firm and binding commitments for the financing of the development of the Developer Improvements in accordance with this Agreement, as described in more detail in Section 312.1.

"**Proposed Improvement Plans**" means all plans for the Developer Improvements as hereafter submitted by Developer for approval by the City for inclusion in the Project Application.

"**Public Parking Facility**" means a new public parking lot upon the Vacant Property, to be operated and maintained by the City, with parking spaces for the number vehicles determined during City Development Review, and to be constructed as part of the Developer Improvements, and further initially described in the Scope of Development.

"**Related Entity**" means any entity in which an ownership interest is held by the Developer or a Developer Affiliate.

"**Release of Construction Covenants**" means the document which evidences the Developer's satisfactory completion of the Developer Improvements, as set forth in Section 311, in substantially the same form as Attachment No. 9.

"**Report**" means the preliminary title report, as described in Section 203.

"**Right of Entry Agreement**" means a right of entry agreement in substantially the same form as Attachment No. 7.

"**Schedule of Performance**" means Attachment No. 6 to this Agreement. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the City Manager, and the City Manager is authorized to make such revisions as he or she deems reasonably necessary. Notwithstanding what is stated in any provision of this Agreement, any deadline within the Schedule of Performance which cannot be satisfied by Developer due to (i) a

Force Majeure Event, (ii) any litigation opposing any aspect of the Project which delays the issuance of any Permits for the Project, (iii) any Ballot Measure, or (iv) the City's compliance with, or determination of an exemption from, the Surplus Land Act (California Government Code section 54220, *et seq.*) shall be excused until the cessation of any of the foregoing events, and any applicable time frame in the Schedule of Performance shall be extended for the duration of the occurrence of the any of the foregoing events, as reasonably necessary. Each Party shall notify the other of the occurrence of any event that may affect the Schedule of Performance.

"**Scope of Development**" means Attachment No. 3 as may be amended by City Development Review.

"**Site**" is described in Recital A and B as more particularly described as in Attachment Nos. 1 and 2.

"**Properties Map**" means Attachment No. 2.

"**Site Plan**" means the Site Plan for the Conforming Inn attached as Attachment No. 8. The Site Plan is subject to modification in connection with City Development Review as set forth in Section 302.

"**Third Party Action**" is defined in Section 308.1.

"**Title Company**" is defined in Section 203.

"**Title Policy**" or "**Title Policies**" is defined in Section 204.

"**Transfer**" is defined in Section 603.1.

"**Use and Maintenance Covenant Period**" means a period commencing as of the recording of the Memorandum of Ground Lease and ending as of the termination of the Ground Lease.

200. CONVEYANCE OF THE SITE VIA GROUND LEASE

201. Lease of the Site.

201.1 Good Faith Deposit. Within two (2) days after the Date of Agreement, Developer shall remit to City the sum of Ten Thousand Dollars ($10,000) by means of cash, a bank cashier's check made payable to City, or a confirmed wire transfer of funds. The initial sum of Ten Thousand Dollars ($10,000) plus interest, if any earned thereon, is referred to in this Agreement as the "Good Faith Deposit."

201.2 Liquidated Damages. IN THE EVENT OF TERMINATION OF THIS AGREEMENT BY CITY PRIOR TO THE CLOSE OF ESCROW, PURSUANT TO SECTION 503.2(a), (b), (c) OR (e) OF THIS AGREEMENT DUE SOLELY TO DEVELOPER'S DEFAULT AFTER WRITTEN NOTICE TO DEVELOPER AND THE EXPIRATION OF THE CURE PERIOD UNDER THIS AGREEMENT, THE AMOUNT OF THE GOOD FAITH DEPOSIT OF TEN THOUSAND DOLLARS ($10,000) ("LIQUIDATED DAMAGES") SHALL BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY OF THE CITY HEREUNDER, SUBJECT TO ANY ADDITIONAL SUMS EXPRESSLY MADE THE OBLIGATION OF THE DEVELOPER IN THIS AGREEMENT. IN THE EVENT OF SUCH

TERMINATION, THE CITY WOULD SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE COSTS INCURRED BY THE CITY IN CONNECTION WITH THE NEGOTIATION AND PREPARATION OF THIS AGREEMENT, THE DELAY OR FRUSTRATION OF TAX REVENUES THEREFROM TO THE CITY AND LOSS OF OPPORTUNITY TO ENGAGE IN OTHER POTENTIAL TRANSACTIONS, RESULTING IN DAMAGE AND LOSS TO THE CITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD BE APPROXIMATELY THE LIQUIDATED DAMAGES AMOUNT, AND SUCH AMOUNT SHALL BE PAID OVER TO THE CITY OR RETAINED, AS THE CASE MAY BE, UPON TERMINATION OF THIS AGREEMENT UNDER SECTION 503.2 OF THIS AGREEMENT, AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR INITIALS BELOW:

Developer _____ City _____

Except as set forth in the next paragraph, the provisions set forth in this Section 201.2 shall be City's sole and exclusive remedy in the event of termination prior to Close of Escrow and, in such event, City hereby waives the right to specifically enforce this Agreement; provided, however, this liquidated damages provisions shall not limit the City's right to enforce all indemnification and release provisions contained in this Agreement.

Notwithstanding the foregoing provisions of this Section 201.2, in the event Developer contests the validity or the enforceability of the provisions of this Section 201.2, the City shall be entitled to pursue all available remedies including money damages.

201.3 Lease of the Site. The City agrees to lease the Site to Developer and the Developer agrees to lease the Site from the City in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, including the Conditions Precedent as set forth in Section 205 and all Governmental Requirements. The Lease Execution shall be accomplished at Closing. Upon the Closing, a Memorandum of the Ground Lease shall be recorded in substantially the same form as Attachment No. 5.

202. Escrow. The Developer shall open escrow ("Escrow") with First American Title Insurance Company at 3780 State Street Santa Barbara, CA 93105 or another escrow holder mutually satisfactory to both parties (the "Escrow Agent") by depositing one (1) fully executed copy of this Agreement with Escrow Agent.

202.1 Costs of Escrow. Developer shall pay all costs which arise from Escrow with respect to this Agreement.

202.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of the Developer and City, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. All funds received in the Escrow shall, subject to the

Developer providing Escrow Agent with its federal Employer Identification Number assigned by the United States Internal Revenue Service, be deposited in a federally insured interest bearing general escrow account(s) and may be transferred to any other such federally insured interest bearing escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

The Parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when the Conditions Precedent as set forth in Section 205 have been satisfied or waived. Escrow Agent is instructed to release City's escrow closing statement and Developer's escrow closing statement to the respective Parties for their respective prior written approval.

202.3 Authority of Escrow Agent. When the Conditions Precedent have been fulfilled or waived by the Party for whose benefit such conditions are imposed, Escrow Agent is authorized to, and shall, with respect to the Closing:

(a) Pay the Title Company and charge Developer for the premium of the Title Policy and any endorsements thereto as set forth in Section 204;

(b) Pay and charge Developer for any escrow fees, charges, and costs payable under Section 202.1 of this Agreement;

(c) Disburse funds, deliver and record in the following order of priority: the Memorandum of Ground Lease; then any other deeds of trust and other security documents required by the lender providing the debt portion of the Construction Financing with instructions for the Recorder of Santa Barbara County, California to deliver conforming copies to the parties;

(d) Do such other actions as necessary to fulfill its obligations under this Agreement;

(e) Direct City to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. City agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act and comparable forms respecting the State of California as may be required by Escrow Agent, on forms to be supplied by Escrow Agent; and

(f) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

202.4 Closing. The "Closing" or "Close of Escrow" shall occur no later than the Outside Date. The Closing or Close of Escrow shall mean the time and day the Memorandum of Ground Lease is recorded in the Official Records. The "Closing Date" shall mean the day on which the Closing occurs.

202.5 Closing Procedure. Escrow Agent shall close Escrow for the Site as follows:

(a) Record the Memorandum of Ground Lease, then any other deeds of

trust and other security documents required by Developer's lender providing the debt portion of the Construction Financing with instructions for the Recorder of Santa Barbara County, California to deliver conforming copies to the Parties;

(b) Instruct the Title Company to forthwith deliver the Title Policy to Developer with a copy to City;

(c) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(d) Deliver the FIRPTA Certificate and other certificate(s) and statement(s) described in Section 202.3(f), if any, to the Developer;

(e) Disburse any funds and documents as may be held in Escrow following the Closing to the Party entitled thereto; and

(f) Deliver to each of Developer and City a separate accounting of all funds received and disbursed for each Party and conformed copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

203. Review of Title. Prior to the Date of Agreement, the City has caused First American Title Insurance Company (the "Title Company"), to deliver to Developer a standard preliminary title report (the "Report") with respect to title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Report. The Developer shall have the right to approve or disapprove the Exceptions in its sole discretion.

Developer shall have sixty (60) days from the Date of Agreement to obtain, at its expense, an ALTA survey of the Site or portion thereof, and to approve or disapprove the survey and all Exceptions to title shown on the survey. Developer's failure to give written approval of the Report within such time limit shall be deemed disapproval of the Report. If Developer notifies City of its disapproval of any Exceptions in the Report, the City shall have thirty (30) days from the receipt of written notice of disapproval by the Developer to determine whether or not it will undertake the removal of any disapproved Exceptions. If the City elects to remove such Exceptions, it shall diligently proceed to effect the removal of such Exceptions. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have thirty (30) days after the expiration of such thirty (30) day period to either give the City written notice that Developer elects to proceed with the lease of the Site subject to the disapproved Exceptions or to give the City written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by Developer as provided in this Agreement shall be referred to as the "Condition of Title." Developer shall have the right to approve or disapprove any additional and previously unreported Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer), City shall not voluntarily create any new encumbrances on the Site that conflict with use of the Site for the Project following the Date of Agreement without the prior written consent of Developer which consent shall not be unreasonably withheld, conditioned or delayed.

204. Title Insurance.

204.1 Developer Title Policies. Concurrently with recordation of the Memorandum of Ground Lease, there shall be issued by Title Company to Developer, a standard ALTA title insurance policy for the Site ("Title Policy") in the amount of the as reasonably determined by Developer and Title Company, together with such endorsements as are requested by the Developer, insuring that as of the date and time of recordation of such Memorandum of Ground Lease, all right of possession for the Site is vested in Developer in the condition required by Section 203.

The City, at the sole cost of the City, agrees to remove on or before the Closing any deeds of trust or other monetary liens against the Site, which may affect the Ground Lease, that the removal of which shall be a condition to Closing for the benefit of Developer. Any costs regarding the Title Policy shall be borne by the Developer.

205. Conditions Precedent to Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below (collectively "Conditions Precedent"). Except for a breach of one of the Party's obligations under this Agreement, the failure of any Conditions Precedent set forth in this Section 205 to be either satisfied or waived prior to the date specified below shall not constitute a Default pursuant to Section 501, but shall be cause for termination of this Agreement by the Party for whose benefit such condition has been imposed and, unless the failure of satisfaction of Conditions Precedent is caused or contributed to by Developer, upon such termination of this Agreement the Good Faith Deposit shall be returned to Developer.

205.1 City's Conditions Precedent to Closing. The City's obligation to proceed with the Closing is subject to the City Council making a finding of acceptance, fulfillment, or waiver, of each and all of the conditions precedent (a) through (o), inclusive, described below ("City Conditions Precedent"), which are solely for the benefit of City and which shall be (i) accepted, or deemed fulfilled by the City, in its role as property owner, in its reasonable discretion, or (ii) waived by the City in its sole discretion, within the time periods provided for in this Agreement, or if no time frame is provided, before the Outside Date:

(a) No Default. The Developer shall not be in Default.

(b) Execution and Delivery of Documents. The Developer shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required by this Agreement and shall have delivered such documents into Escrow.

(c) Payment of Funds. The Developer has deposited all of Developer's required costs of Closing into Escrow in accordance with Section 202.

(d) Improvement Plans. The City Council shall have approved the Proposed Improvement Plans, and related documents, for inclusion in the Project Application as set forth in Section 302 and all subparts thereto. If and when approved through City Development Review, the Improvement Plans, shall reasonably conform, in the City's reasonable discretion as property owner, to the Proposed Improvement Plans and related documents.

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

(f) Construction Financing. The City shall have approved, which approval shall not be unreasonably withheld or conditioned, the Proof of Financing Commitments. City shall

also have approved the documents evidencing the Construction Financing to confirm that the Construction Financing contains substantially similar terms as the Proof of Financing Commitments. The Construction Financing for the Developer Improvements shall be on substantially similar terms as the approved Proof of Financing Commitments unless otherwise approved by City, which approval shall not be unreasonably withheld or conditioned, and the debt portion of such Construction Financing shall be ready to fund concurrently with the Closing.

(g) Guaranty Agreement. The Developer shall have delivered to Escrow the original executed Guaranty Agreement by Guarantor in substantially the same form as Attachment No. 10 to this Agreement.

(h) Permits. The Developer shall have obtained all necessary final Permits (including related Environmental Compliance) for the construction of the Developer Improvements. Permits shall be considered final once the applicable time periods within which to challenge, either administratively or judicially, have expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge.

(i) General Contractor Contract. The Developer shall have provided or caused to be provided to the City Manager a copy of a valid and binding contract between the Developer and one or more California-licensed general contractors for the construction of the Developer Improvements.

(j) Environmental Condition of the Site. The Developer shall have approved in writing to City the environmental condition of the Site as provided in Section 208.

(k) CEQA. The City, acting in its sole and absolute discretion, shall have completed and certified all necessary findings and determinations required under the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.) ("CEQA") for the Project, and the applicable time periods within which to challenge, either administratively or judicially, has expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge.

(l) Compliance with Applicable Laws and Regulations. The City, acting in its sole and absolute discretion, shall have complied with all applicable federal and state laws and regulations, including but not limited to any and all applicable requirements of the California Government Code (including but not limited to California Government Code section 54220, et seq. and section 65000, et seq.) and the California Public Resources Code, effective on the Closing Date, that are necessary prerequisites for Closing and Lease Execution.

(m) Obligations. The Developer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Developer prior to completion of the Closing.

(n) Adverse Conditions. The Developer is not in violation of any order or decree of any court of competent jurisdiction or, any governmental agency having jurisdiction, and there are no pending or threatened judicial or administrative proceedings, which, if determined adverse to the interests of the Developer or Developer Affiliates, could in the reasonably opinion of the City substantially and materially affect the Developer's ability to construct, develop, operate and maintain the Project as set forth in this Agreement. No lawsuit, moratoria, or similar judicial or administrative proceeding or government action, or Ballot Measure shall exist which would materially delay

construction of the Project, materially increase the cost of constructing the Project, or expose the City to additional substantial and material economic liability.

(o) Developer Representations. All representations and warranties made by the Developer in this Agreement shall be true and correct as of the date of this Agreement and the Close of Escrow subject to the Developer's right to modify its representations as set forth in Section 206.3 below.

Any waiver by the City of any of the preceding conditions must be expressly made in writing, acting in its sole and absolute discretion. Any acceptance or deemed fulfillment by the City of any of the preceding conditions shall be made by the City, in its role as a property owner, in its reasonable discretion and shall not in any way limit the City's authority, acting in its regulatory capacity pursuant to its police powers, to issue Permits in its sole and absolute discretion.

205.2 Developer's Conditions Precedent to Closing. The Developer's obligation to proceed with the Closing is subject to the acceptance, fulfillment, or waiver by Developer of each and all of the conditions precedent (a) through (k), inclusive, described below ("Developer Conditions Precedent"), which are solely for the benefit of Developer, and which shall be (i) accepted or deemed fulfilled by the Developer in its reasonable discretion, or (ii) waived by the Developer in its sole discretion, within the time periods provided for in this Agreement, or if no time is set forth, before the Outside Date:

(a) No Default. The City shall not be in Default.

(b) Execution and Delivery of Documents. The City shall have executed and, as necessary for recordation, shall have had acknowledged, any documents required hereunder and shall have delivered such documents into Escrow.

(c) Review and Approval of Title; Title Policy. The Developer shall have reviewed and approved the Condition of Title of the Site, as provided in Section 203. Title Company shall issue the Title Policy pursuant to the requirements of Sections 203 and 204 above and subject only to the Conditions of Title approved by Developer.

(d) Improvement Plans Approvals. The Developer shall have obtained the City Council's approval of the Proposed Improvement Plans, and related documents, for inclusion in the Project Application as set forth in Section 302 and all subparts thereto. If and when approved through City Development Review, the Improvement Plans shall reasonably conform, in the City's reasonable discretion as property owner, to the Proposed Improvement Plans and related documents.

(e) Construction Financing. The Developer shall have obtained, and the City shall have approved, Construction Financing for the Developer Improvements as provided in Section 312.1, and such Construction Financing shall have closed and funded or be ready to close and fund upon the Closing.

(f) Developer Title Policies. The Title Company shall, upon payment of Title Company's regularly scheduled premium, have irrevocably agreed to issue to the Developer the Title Policy.

(g) Permits. The Developer shall have obtained all necessary final Permits

(including related Environmental Compliance) for the construction of the Developer Improvements. Permits shall be considered final once the applicable time periods within which to challenge, either administratively or judicially, such Permits have expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge, whereupon such Permits shall be deemed to be "final" for the purposes of this Agreement.

(h) Environmental Condition of Site. The Developer shall have approved in writing to City the environmental condition of the Site, and City shall deliver the Site to the Developer in the same environmental condition as approved by Developer pursuant to Section 208.

(i) CEQA. The Developer shall have accepted in writing to City the City's complete and certified findings and determinations under CEQA for the Project, and the applicable time periods within which to challenge, either administratively or judicially, have expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge.

(j) Adverse Conditions. No lawsuit, moratoria, or similar judicial or administrative proceeding or government action, or Ballot Measure shall exist which would substantially and materially delay construction of the Project, materially increase the cost of constructing the Project or expose the Developer to additional economic liability.

(k) City Representations. All representations and warranties made by the City in this Agreement shall be true and correct as of the date of the Agreement and Close of Escrow, subject to the City's right to modify its representations as set forth in Section 206 below.

Any waiver by the Developer of any of the preceding conditions must be expressly made in writing, acting in its sole and absolute discretion.

206. Representations and Warranties.

206.1 City Representations. The City represents and warrants to Developer as follows:

(a) Authority. The City is a California municipal corporation with the obligation to comply with all applicable local, state, and federal laws and regulations and jurisprudence.

(b) No Conflict. The City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(c) Litigation. The City has no Actual Knowledge of, nor has the City received any notice of any actual, threatened or pending litigation or proceeding by any organization, person, individual or governmental agency against the City with respect to the Properties or against the Properties that has not been disclosed to the Developer. In the event the City receives notice of any actual, threatened or pending litigation or proceeding prior to the Closing, the City shall promptly notify Developer thereof, nor does the City have to its Actual Knowledge any grounds on which the City could file suit or threaten litigation with respect to the Site or against the Site.

(d) Notices of Violation. The City has no Actual Knowledge of, nor has the City received any notice of any basis for, any violations of laws, statutes, regulations, ordinances, other legal requirements with respect to the Site (or any part thereof), or with respect to the use, occupancy or construction thereof, or any investigations by any governmental or quasi-governmental authority into potential violations thereof. In the event the City receives notice of any such violations or investigations affecting the Site prior to the Closing, the City promptly shall notify the Developer thereof.

Until Closing, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of the Closing, immediately give written notice of such fact or condition to the Developer. Such exception(s) to a representation or warranty shall not be deemed a breach by the City hereunder, but shall constitute an exception which the Developer shall have a right to approve or disapprove if the Developer, in its sole and absolute discretion, determines such exception would materially adversely affect the value, development, insurability, financing, maintenance, and/or operation of the Site by the Developer or the Developer's exposure to risk or liability with respect to the Site. If the Developer elects, acting in its sole and absolute discretion, to close the Escrow following disclosure of such information, the City's representations and warranties contained in this Agreement shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, the Developer, acting in its sole discretion, elects to not close Escrow, then the Developer shall give notice to the City of such election within thirty (30) days after disclosure of such information, and this Agreement and the Escrow shall thereafter automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 205.1, subject to any such exceptions, shall survive the Closing.

206.2 No City Representation or Warranty for the City Development Review.

The City does not make, and has not made, in this Agreement or otherwise, any representation or warranty that the necessary Permits required for development of the Project can be obtained through City Development Review or otherwise. The City neither expressly nor by implication conveys any position with regard to whether the Project may or may not be approved or as regards to any conditions that may be imposed on the Project. As such, an adverse decision on the Project will not constitute a Default under this Agreement. The Developer acknowledges and agrees that the City has made no representation or warranty, through this Agreement or otherwise, that the necessary Permits required for development of the Project can be obtained through City Development Review or otherwise. The Developer acknowledges and agrees that the City has made no representation or warranty with respect to the City or City Council's consideration or action on any Ballot Measure. The Developer further acknowledges and agrees that although the Project is being developed on property owned by the City, the City, City officials, departments, boards, commissions or agencies responsible for the issuance of such required Permits for the Project within the City's jurisdiction, shall at all times, remain independent in their respective regulatory roles, and that the City shall not be deemed in breach of this Agreement by reason of decisions made by the City, or said City officials, departments, boards, commissions or agencies in such roles, and is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Properties and not as a regulatory agency with additional regulatory authority and obligations over approval of the Project. Consistent with *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, there is no guarantee or presumption that any of the Permits required for the development of the Project will be issued by City or by any other appropriate government agencies, and the City's role as property owner shall in no way

limit the obligation of the Developer to obtain approvals from any government agency which has jurisdiction over the Properties or the Project. The Developer hereby releases and discharges the City from any liability relating to the failure of the City or any government agency to issue Permits required for Closing.

206.3 Developer's Representations. The Developer represents and warrants to the City as follows:

(a) Authority. The Developer is a duly organized limited liability company established within and in good standing under the laws of the State of California, and is authorized to do business in the State of California. The execution, performance and delivery of this Agreement and of all documents contemplated to be executed by Developer has been fully authorized by all requisite actions on the part of the Developer. This Agreement, when executed and delivered by Developer, shall constitute the valid and binding agreement of Developer enforceable against Developer in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws or regulations presently or hereafter in effect which affect the enforcement of creditors' rights generally.

(b) Experience. Developer Affiliates collectively are experienced developers of inn projects similar in size, scope, and quality to the Conforming Inn, as well as larger commercial and residential projects such that the Developer is experienced and qualified to construct the Conforming Inn, Off-Site Improvements, and other elements of the Project.

(c) No Conflict. The Developer's and Developer Affiliates' execution, delivery and performance of its obligations under this Agreement and the other documents contemplated to be executed by said Parties to this Agreement will not (1) constitute a default or a breach under any contract, agreement, lease, note, judgment, writ, injunction, decree or order to which the Developer is a party or by which it is bound, or (2) result in a violation of any Governmental Requirements.

(d) No Developer Bankruptcy. The Developer is not the subject of a bankruptcy proceeding.

Until the Closing, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.3 not to be true as of the Closing, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which City shall have a right to approve or disapprove if City, in its sole discretion, determines that such exception would have an effect on the value and/or operation of the Project. If City, acting in its sole and absolute discretion, elects to Close the Escrow following disclosure of such information, Developer's representations and warranties contained in this Agreement shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, City elects, acting in its sole discretion, to not Close the Escrow, then this Agreement shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.3, subject to such exception(s), shall survive the Closing.

207. Studies and Reports. For a period of one hundred eighty (180) days commencing as

of the Date of the Agreement, The Developer shall, upon reasonable (at least 24 hours' prior written notice to the City) have the right of access to all of the Properties; provided that public access to and from, ingress and egress, over, and parking use of the Properties shall be maintained unless expressly agreed to by the City in writing. Subject to the foregoing, representatives of the Developer shall have the right of access to all portions of the Properties for the purposes of obtaining conducting surveys, soil tests, geotechnical studies (i.e., customary soil testing in advance of development), Phase I Environmental Assessment, engineering feasibility studies, and other tests and studies, reasonably necessary to carry out this Agreement, including without limitation the investigation of the environmental condition of the Site pursuant to Section 207.

Developer's access to the Properties pursuant to this Section 207, shall be done at the sole expense of the Developer and following and subject to Developer's execution of a Right of Entry Agreement attached as Attachment No. 7.

208. Condition of the Site.

208.1 Disclosure. The City hereby represents and warrants to the Developer that the City has no Actual Knowledge, and has not received any notice or communication from any government agency having jurisdiction over the Site, notifying the City of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof, that have not been disclosed to the Developer in writing.

208.2 Investigation of Site. After execution of a Right of Entry Agreement, attached as Attachment No. 7, and consistent with the terms of the Right of Entry Agreement, the Developer shall, at Developer's sole cost, engage an environmental consultant(s) ("Developer's Environmental Consultant") to conduct such investigations and tests as Developer deems necessary to ascertain the environmental condition of the Site and Properties, including a Phase I Environmental Assessment. The Phase I Environmental Assessment shall be addressed to Developer, provided that the Developer shall provide to the City copies of the Phase I Environmental Assessment. At Developer's request, and so long as the Developer agrees to, and does, pay any additional cost incurred by City as a result of such addressing the Phase I Environmental Assessment to the City, the Phase I Environmental Assessment shall be addressed to the City and Developer.

To the extent the Developer deems further investigation or testing necessary to ascertain the environmental condition of the Site and Properties after completion of a Phase I Environmental Assessment (the "Investigations"), the Developer may, at the Developer's sole cost and expense, engage the Developer's Environmental Consultant reasonably acceptable to City to make such Investigations as the Developer reasonably deems necessary to ascertain the environmental condition of the Site and Properties; provided that public access to and from, ingress and egress over, and parking use of the Site shall be maintained unless expressly agreed to by the City in writing. The Developer shall provide or cause to be provided, within ten (10) days after the Developer's receipt thereof, copies of all reports, test results, and other information obtained or produced through such Investigations to the City.

The Developer shall reasonably approve or disapprove of the environmental condition of the Site based on the Investigations within one hundred eighty (180) days after the date this Agreement is approved by the City.

208.3 No Warranties as to Site; Release of City. Except as otherwise expressly

provided in this Agreement, the physical condition of the Site and Properties are and shall be delivered from City to Developer in an "as-is" condition, with no warranty expressed or implied by City, including without limitation, the presence of Hazardous Materials, the existence of refuse, or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site and Properties for the Project. To the extent authorized by contract or law, the City shall assign to the Developer all warranties, indemnities, guaranties, claims and causes of action with respect to the surface and subsurface conditions of the Site and Properties, including without limitation with respect to Hazardous Materials, if any, that the City has received from or has against prior owners or operators of the Site and Properties.

208.4 Developer Condition of Site Release. As of the Close of Escrow, Developer agrees, with respect to the Site and Properties, to release the City from and against any Environmental Liabilities except to the extent of liabilities arising out of the negligence or willful misconduct of the City occurring after the Close of Escrow or occurring prior to the Close of Escrow but discovered after the Close of Escrow. The Developer shall establish, by the preponderance of the evidence, the date that the Environmental Liabilities occurred. At the request of the Developer, the City shall cooperate with and assist the Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that the City shall not be obligated to incur any expense in connection with such cooperation or assistance. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement and, without limiting the foregoing, shall survive the Closing.

The 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

THE DEVELOPER SPECIFICALLY ACKNOWLEDGES THIS RELEASE PROVISION BY THE SIGNATURE BELOW:

Developer

As such relates to this Section 208.4, effective as of the Closing, the Developer waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

208.5 Post-Closing Obligations.

208.5.1 Developer Precautions After Closing. Upon and after the Closing, the Developer shall be responsible for the maintenance of the Site in accordance with the terms of the Ground Lease. Upon and after the Closing, the Developer shall exercise all reasonable precautions in an effort to prevent the release into the environment of any Hazardous Materials in

violation of applicable environmental Governmental Requirements. Such precautions shall include compliance with the Governmental Requirements. Developer further agrees to comply with all Governmental Requirements in connection with the disclosure, storage, use, removal and disposal of any Hazardous Materials.

208.5.2 Developer and City Indemnities. Effective upon the Close of Escrow, Developer agrees, with respect to the Site and Project, to indemnify, defend and hold Indemnitees harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees) by third parties, to the maximum extent permitted by law, for bodily injury or property damage, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, disposal, or migration to neighboring properties of any Hazardous Materials, under, in, about, or from or the transportation of any such Hazardous Materials to or from the Site, to the extent caused or permitted by Developer or its contractors, employees, invitees or agents; (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from the Site or migrating onto or under the Site from neighboring properties or otherwise affecting the Site, to the extent caused or permitted by Developer or its contractors, employees or agents; and (iii) damage to person or property arising out of or related to the Investigations of the Site pursuant to this Section 208.5.2 (collectively "Environmental Liabilities"), except the Environmental Liabilities arising out of the negligence or willful misconduct of the City occurring after the Close of Escrow or occurring prior to the Close of Escrow but discovered after the Close of Escrow. The Developer shall establish with substantial evidence the date that the Environmental Liabilities occurred. This indemnity obligations in this Section 207.5.2 shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment by any third party. At the request of the Developer, but at no cost to City, the City will cooperate with and assist the Developer in its defense of any Environmental Liabilities. The foregoing indemnity obligations in this Section 208.5.2 shall survive the termination, expiration, invalidation, or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing.

300. DEVELOPMENT OF THE SITE

301. Development of the Site.

301.1 Developer's Obligation to Construct Developer Improvements. The Developer Improvements shall generally consist of a Conforming Inn and the Off-Site Improvements as described in more detail in the Scope of Development. Following the Closing, Developer shall develop or cause the development of the Developer Improvements in accordance with the Scope of Development, the City Code, and the plans, drawings and documents submitted by the Developer and approved by the City through City Development Review and as set forth in this Agreement ("Improvement Plans"). The Developer acknowledges that the requirements set forth in the Scope of Development, as modified through City Development Review, and any public improvements, dedications, exactions, or other Conditions of Approval imposed during City Development Review, and the payment of any charges, fees or assessments associated with City Development Review and construction of the Project are material considerations for the City to enter into this Agreement, and

that but for such requirements, the City would not have entered into this Agreement.

301.2 Licenses.

(a) Upon the Closing, City shall provide Developer a license, pursuant to a document substantially in the form of the Right of Entry Agreement, attached as Attachment No. 7, to access (i) all portions of the Vacant Property and (ii) the approximately 6,000 square foot portion of the Garden Property which will be improved by the expanded portion of City Parking Lot No. 3 in order to construct the Off-Site Improvements. Such license shall become automatically effective upon the Closing Date and terminate upon the City's acceptance of the Off-Site Improvements. City's acceptance of construction of Off-Site Improvements shall be deemed to have occurred when a certificate of acceptance is issued by the City Engineer for each specific Off-Site Improvement.

(b) Upon the City' acceptance of all Off-Site Improvements, City shall provide Developer a license, pursuant to a document substantially in the form of the Right of Entry Agreement, to access approximately 11,500 square foot portion of the Parking Lot Property which abuts the Site in order to construct the Conforming Inn. Such license shall become automatically effective upon the City's acceptance of the Off-Site Improvements and terminate upon issue of the Release of Construction Covenants.

(c) Such licenses shall provide, for purposes of assuring compliance with this Agreement, that the representatives of the City, upon at least twenty four (24) hours' notice to Developer or its onsite construction manager, or in case of an emergency, without notice, shall have the right of access to the portion of the Properties subject to each license, 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 Project, so long as City representatives comply with all safety rules and do not in any way interfere with the work or attempt to give instructions or directions to any contractors or workers other than to issue a stop work for a violation of the City Code or Governmental Requirements.

302. Permit Application Review. The Parties agree and acknowledge that, as of Date of Agreement, the final proposed Site Plan, Basic Concept Drawings, Proposed Improvement Plans, and related documents have not been prepared for the Project Application. This section describes the City's role, in its capacity as the owner of the Properties, in review and approval of the Project Application, including but not limited to final proposed Site Plan, Basic Concept Drawings, Proposed Improvement Plans, and related documents for submission to City Development Review. Notwithstanding the foregoing, the description of approvals set forth in this Section 302, including all subparts of this Section 302, concern approvals by the City acting in its capacity as the owner of the Properties and does not describe or set forth standards for the City acting in its regulatory capacity pursuant to its police powers in reviewing the Project Application pursuant to City Development Review. The City retains full discretion acting in its governmental capacity pursuant to its police powers to review the Project Application and approve, condition, or deny any elements of the Project pursuant to City Development Review and/or any applicable provision of the City Code.

302.1 Site Plan. Concurrent with this Agreement the City has approved a conceptual draft Site Plan attached as Attachment No. 8 to this Agreement. The Site Plan is subject to further modification pursuant to Sections 302.3 and 303 below.

302.2 Basic Concept Drawings. The Developer has submitted to City conceptual drawings for the Developer Improvements, including elevations of all four sides of the Developer Improvements, preliminary landscape plans, a traffic and circulation plan a rendered perspective (collectively, the "Basic Concept Drawings"). The Developer agrees and acknowledges that the Basic Concept Drawings shall be further refined, including but not limited to, in response to comments received at the City's November 30, 2020 City Council, Planning Commission and Architectural Review Board Special Joint Meeting, prior to the Developer's submittal of a Project Application, as provided in this Section 302 and all subparts of this Section 302.

302.3 Proposed Improvement Plans. Within the time set forth in the Schedule of Performance, the Developer shall submit to the City the following: all plans and drawings associated with the Developer Improvements that are required to be included in its Project Application (the "Proposed Improvement Plans"). Within thirty (30) days of the Developer's submission of the Proposed Improvement Plans, the City Council shall review the Proposed Improvement Plans for conformance with the RFP, the Basic Concept Drawings and this Agreement and, in its sole discretion, approve or disapprove the Proposed Improvement Plans for inclusion in the Developer's Project Application. Should the City Council disapprove of the Proposed Improvement Plans, the Developer shall revise such portions of the Proposed Improvement Plans and resubmit said plans to the City within thirty (30) days. Developer agrees and acknowledges that City approval of the Proposed Improvement Plans shall not be interpreted or understood as the City providing any representation or warranty to Developer that the Improvement Plans and/or and necessary Permits required for development of the Project can or will be obtained through City Development Review or otherwise.

302.4 Intentionally Omitted.

302.5 Intentionally Omitted.

302.6 Consultation and Coordination. During the preparation of the Proposed Improvement Plans, the Director of Parks, Recreation and Public Facilities and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of the Proposed Improvement Plans by the City. The Director of Parks, Recreation and Public Facilities and the Developer shall communicate and consult as frequently as is necessary to ensure that the formal submittal of any documents to the City can receive prompt and thorough consideration, prior to submission of the Project Application for City Development Review.

302.7 Revisions. If the Developer desires to propose any revisions to the Basic Concept Drawings or Proposed Improvement Plans, prior to completion of City Development Review, it shall submit such proposed changes to the City, and shall also proceed in accordance with any and all federal, state and local laws and regulations, including City Development Review, regarding such revisions, within the time frame set forth in the Schedule of Performance. If the Basic Concept Drawings or Proposed Improvement Plans, as modified by the proposed change, generally and substantially conform to the requirements of this Section 302.7 of this Agreement, the City Public Facility Site Acquisition/Development Committee shall review the proposed change and notify the Developer in writing within thirty (30) days after submission to the City as to whether it recommends that the City Manager approve or disapprove of the proposed change. The City Manager is authorized to approve changes to the Basic Concept Drawings and Proposed Improvement Plans if such changes (a) do not reduce the quality of materials to be used; (b) do not increase the number of stories above two (2) (provided that the elevator, stair tower and ancillary building elements, as shown on the Site Plan in Attachment No. 8, may be above two (2) stories); or number of rooms of the Conforming Inn

above forty (40); (c) do not increase the size, bulk and scale of the Project; and (d) do not reduce the imaginative and unique qualities of the Project. Any and all changes or revisions that do not meet any of the criteria listed in the previous sentence shall only be approved by the City Council. The Public Facility Site Acquisition/Development Committee, in its sole and absolute discretion, also may refer approval of the proposed changes or revisions meeting the criteria in this Section 302.7 to the City Council for its consideration and approval. Any and all change orders or revisions required by the City and its inspectors which are required under the City Code, including without limitation all applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Basic Concept Drawings, or the Proposed Improvement Plans and completed during the construction of the Developer Improvements. Notwithstanding the foregoing, revisions to the Basic Concept Drawings or Proposed Improvement Plans shall be processed through to City Development Review consistent with the City Code.

302.8 Defects in Plans. The City shall not be responsible either to the Developer or to third parties in any way for any defects in the Basic Concept Drawings, the Proposed Improvement Plans, or the Construction Drawings nor for any structural or other defects in any work done according to the approved Basic Concept Drawings, Proposed Improvement Plans, or Construction Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 302. The Developer shall hold harmless, indemnify and defend the City and Indemnitees from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Basic Concept Drawings, the Proposed Improvement Plans, or the Construction Drawings, including without limitation the violation of any laws, and for defects in any work done according to the approved Basic Concept Drawings, Proposed Improvement Plans or Construction Drawings.

302.9 Use of Plans. The City shall not have the right to use any Basic Concept Drawings or Proposed Improvement Plans which are submitted to the City by the Developer pursuant to this Section 302, nor shall the City confer any rights to use such architectural plans to any other person or entity; provided that the City may request permission from the Developer to use Basic Concept Drawings or other images of the Inn Project for notices and materials related to public meetings that are a part of City Development Review. Should the City approve the Basic Concept Drawings and Proposed Improvement Plans through City Development Review as described in Section 303, the City and the Developer hereby provide permission for the Guarantor to utilize any Basic Concept Drawings or Proposed Improvement Plans in furtherance of the Project only after an uncured default of Developer of its obligations under this Agreement has resulted in the City enforcing its rights under the Guaranty Agreement. Notwithstanding the foregoing, the City and the Developer acknowledge that Developer's lender shall likely have a customary lien on the Basic Concept Drawings or Proposed Improvement Plans which are submitted to the City by the Developer, and any exercise of rights by the Guarantor or the Developer shall be subject to the terms of such lender's financing documents.

303. Land Use Approvals. The description of approvals set forth in this Section 303, including all subparts of this Section 303, concern approvals by the City acting in its governmental capacity pursuant to its police powers to review the Project Application. Notwithstanding what is stated in any part of the Agreement, the City retains full discretion acting in its governmental capacity pursuant to its police powers to review the Project Application and approve, condition, or deny any elements of the Project pursuant to its City Development Review, City Code and applicable federal, state and local law, including *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 and related jurisprudence, consistent with this Section. Nothing in this Agreement shall be construed as granting the Developer with an extraordinary privilege or right with respect to City Development Review.

303.1 City Development Review Process. Before the Closing and commencement of construction of the Developer Improvements or other works of improvement associated with the Project, Developer, at its own expense and in compliance with Governmental Requirements and the City Code, shall secure or cause to be secured any and all City and other governmental maps, plans, permits, zoning and land use approvals, building permits or all other forms of discretionary approval, entitlement, permission or concurrence, including Environmental Compliance, necessary for, the construction and development of Developer Improvements and Project that are required by applicable law to be secured from the City, through City Development Review or otherwise, or any other governmental agency with jurisdiction over the Developer Improvements and Project (collectively, "Permits"). The Developer shall, without limitation, apply for and secure, all Permits and pay all fees, charges and assessments required by the City for City Development Review and to construct the Project, and other governmental agencies with jurisdiction over the Project.

(a) Developer Application. The Developer shall submit the Proposed Improvement Plans, approved by the City Council through the process described in Section 302 and the subsections thereto, as well as any other forms, documents, materials, studies or other information required for City Development Review in its application for the Project to receive Permits, consistent with this Agreement ("Project Application").

(b) Conditions of Approval. As has been stated in this Agreement, the City has sole and absolute discretion to consider the Project Application, as well as any Environmental Documents, through City Development Review. Through City Development Review, the City, its staff, boards, commissions, elected or appointed bodies may exercise, consistent with Governmental Requirements, its sole discretion to impose public improvements, dedications, exactions, conditions of approval, mitigation measures for Environmental Compliance, or other requirements on the Project as part of the Project approval ("Conditions of Approval"). The Developer expressly acknowledges and agrees that said Conditions of Approval may require the Developer to modify or revise the Proposed Improvement Plans, such as by reducing the number of stories, the number of rooms, or size, bulk and scale of the Project, in order to obtain approval to construct the Project through City Development Review.

(c) Developer Obligations. Prior to the Closing, the Developer shall secure all Permits, and incorporate any and all Conditions of Approval and Governmental Requirements into the Improvement Plans, which shall be incorporated into and attached to the Ground Lease.

(d) Developer Revisions After City Development Review. If the Developer desires to propose any changes to the Improvement Plans or Project, following completion of City Development Review, it shall first submit such proposed change, along with the appropriate documentation, to the City for approval. The City Public Facility Site Acquisition/Development Committee shall review the proposed change and notify the Developer in writing within thirty (30) days after submission to the City as to whether it recommends that the City Manager approve or disapprove of the proposed change. The City Manager is authorized to approve changes to the Improvement Plans or the Project if such changes (a) do not reduce the quality of materials to be used; (b) do not increase the number of stories or number of rooms in the Improvement Plans; (c) do not increase the size, bulk and scale of the Project; and (4) do not reduce the imaginative and unique qualities of the Project. Any and all changes that do not meet any of the criteria listed in the previous sentence shall only be approved by the City Council. The Public Facility Site Acquisition/Development Committee, in its sole and absolute discretion, also may refer approval of the proposed changes or revisions meeting the criteria in this Section 303.1(d) to the City Council for its consideration and approval. Any and all change orders or revisions required by the City and its

inspectors which are required under the City Code, including without limitation all applicable Uniform Codes (e.g., Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Improvement Plans, or the Construction Drawings and completed during the construction of the Developer Improvements. After receipt of City approval for changes or revisions, the Developer also shall submit said changes to the Improvement Plans or Project for City Development Review, to the extent applicable under the City Code, and in accordance with any and all federal, state and local laws and regulations regarding such revisions.

(e) No Limitation on City Development Review. This Agreement shall not be construed to limit in any manner (i) the authority of any City staff, boards, commissions, elected or appointed bodies, or other governmental agency having jurisdiction, to exercise their sole discretion to approve, condition, or deny the Project, or require public improvements, dedications, exactions, or other conditions of approval in connection with the Project; or (ii) Developer's responsibility to pay for the cost of complying therewith.

303.2 Environmental Compliance. The Parties acknowledge and agree that the decisions of the City, in its regulatory capacity, regarding approval of any and all Permits for the Project shall be conditioned upon the City making all the necessary findings and determinations required by CEQA, in accordance with in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 and related jurisprudence, or otherwise required by applicable federal, state or local law ("Environmental Compliance").

(a) Environmental Document and Consultants. The Parties further acknowledge that the City has not prepared an initial study to determine the Environmental Document (defined below), if any, that may be necessary under CEQA for the Project. If preparation of an Environmental Document is needed based on the initial study, the City shall prepare and distribute invitation of consulting firms to submit their qualifications to prepare any necessary CEQA documents. The City shall select a consultant ("Environmental Consultant") to prepare any necessary CEQA documents ("Environmental Documents") for the Project. Any reference in this Agreement in to an "Environmental Document" shall include any CEQA documents, such as a negative declaration, mitigated negative declaration, or environmental impact report, as appropriate, or other document, study, evaluation, or analysis consistent with CEQA. Final selection of the Environmental Consultant shall be in the City's sole and absolute discretion. The City shall enter into an agreement for the preparation of any necessary Environmental Document with the Environmental Consultant.

(b) Environmental Document and Consultant Costs. Pursuant to the City Development Review, the Developer shall be solely responsible for all fees billed to City for the Environmental Consultant's work and for all costs associated therewith, consistent with the City's standard process for preparation of an Environmental Document as part of City Development Review.

(c) Developer Participation. The Developer shall have the right to review the progress of the Environmental Consultant with respect to the preparation of the Environmental Document, as more particularly described below. Upon completion of a draft of the Environmental Document, the City shall deliver a copy of such work to the Developer, consistent with City's standard practice for City Development Review. The Developer shall have the right to review such work and provide comment to City. Notwithstanding the foregoing, nothing in this Agreement shall limit the City's ability or relieve the City of its obligation to exercise its sole discretion and independent judgment in the preparation and adoption of the Environmental Document.

(d) Cooperation. As directed by City, the Developer shall assist in preparation of all documents necessary to satisfy requirements of CEQA, as well of any related documents, studies, evaluations and analyses, consistent with the City's standard process for preparation of an Environmental Document for Environmental Compliance as part of City

Development Review.

303.3 Developer Land Use Approval Acknowledgment. The Developer understands that the various requirements set forth in detail in this Section 303 and all subparts of Section 303 do not constitute an exhaustive list of such requirements to obtain approval for the Project, and that Developer is responsible for complying with all such requirements, in whatever form they may exist from time to time, regardless of whether or not such requirements are set forth in this Agreement. Developer further understands and agrees that this Agreement does not and shall not be construed to indicate or imply that (i) the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project as contemplated by this Agreement, and (ii) this Agreement contravenes *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 and related jurisprudence.

304. Schedule of Performance. The Developer shall submit all Basic Concept Drawings, Proposed Improvement Plans, and Construction Drawings and shall commence and use reasonable efforts and diligence to complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement, within the times established therefor in the Schedule of Performance as may be extended.

305. Cost of Construction. All of the cost of planning, designing, developing and constructing all of the Developer Improvements, including without limitation fees, charges, assessments, permits, site preparation and grading whether imposed by the City or other government agencies with jurisdiction over the Project, shall be borne solely by the Developer.

306. Insurance Requirements. The Developer shall secure from a company or companies licensed to conduct insurance business in the State of California, pay for, and maintain in full force and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, policies of course of construction and commercial general liability insurance issued by an "A:VI" or better rated insurance carrier as rated by A.M. Best Company as of the date that Developer obtains or renews its insurance policies, on an occurrence basis, in which the City and Indemnitees are named as additional insureds with the Developer. The Developer shall furnish a certificate of insurance to the City prior to the Close of Escrow, and shall furnish complete copies of such policy or policies upon request by the City. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection offered by the policy shall:

(a) Include an endorsement naming the City and Indemnitees as additional insureds;

(b) Provide a combined single limit policy for both personal injury and property damage in the amount of Two Million Dollars ($2,000,000.00), which will be considered equivalent to the required minimum limits;

(c) Bear an endorsement or shall have attached a rider providing that the City shall be notified not less than thirty (30) days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) days after any event of nonpayment of premium; provided, however, if such endorsement or rider is not available from Developer's insurance carrier, then the certificate of insurance shall provide that should the policy be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The Developer shall also file with the City the following signed certification:

> I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work.

The Developer shall comply with Section 3800 of the Labor Code to the extent applicable as a matter of law by securing, paying for and maintaining in full force and effect from and after the Close of Escrow, and continuing for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the City before the commencement of construction. The City, its officers, employees, agents, representatives and attorneys shall not be responsible for any claims in law or equity occasioned by the failure of Developer to comply with this section. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, the City shall be notified, giving the Developer a sufficient time to comply with applicable law, but in no event less than thirty (30) days before such expiration, cancellation, or reduction in coverage is effective or ten (10) days in the event of nonpayment of premium; provided, however, if such endorsement or rider is not available from Developer's insurance carrier, then the certificate of insurance shall provide that should the policy be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

307. Developer Indemnities. The Developer shall defend, indemnify, assume all responsibility for, and hold the Indemnitees, harmless from all claims, demands, damages, defense costs or liability for any damages to property or injuries to persons, including accidental and nonaccidental death (including reasonable attorneys' fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement and/or with respect to the development, leasing, and/or operation of the Project by the Developer, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed, contracted, or acting at the Direction of the Developer and whether such damage shall accrue or be discovered before or after termination or expiration of this Agreement. Notwithstanding the foregoing, the Developer shall not be liable for property damage or bodily injury to the extent caused by the gross negligence or willful misconduct of the City or Indemnitees. This indemnity shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing. The City and Developer acknowledge and agree that the indemnity obligations set forth in this Section 307 shall not apply to (i) the operation of the Public Parking Facility nor (ii) the Environmental Liabilities and that such Environmental Liabilities shall be governed solely by Section 208.5.2 of this Agreement.

308. Third Party Challenges to Lease and/or Development Entitlements.

308.1 Developer Indemnities. In addition to the provisions set forth in Sections 208.5.2 and 307, in the event of any legal action instituted by any third party (not a Party to this Agreement), including but not limited to any person, organization, association, or federal, state or local governmental entity, challenging or affecting the validity, enforceability or implementation of any Permits, entitlement or other approval approved or issued by City (in its regulatory capacity) with respect to the Project, ("Third Party Action") the Parties hereby agree to cooperate in defending said

action; provided, however, Developer shall indemnify, defend (by counsel reasonably acceptable to City), and hold harmless City and Indemnitees from and against all out of pocket litigation expenses (including investigation costs, reasonable attorneys' fees, and court costs), arising therefrom. In the event that such action involves mediation, arbitration, or any other means of alternative dispute resolution, the provisions of this Section shall apply equally thereto. City shall have the right to appoint and designate the City Attorney or independent counsel to represent City and/or any Indemnitees named as parties in any such Third Party Action at Developer's expense, as reasonably determined to be necessary and appropriate by City; provided, that in such event, City shall instruct the City Attorney or other independent counsel to cooperate with counsel retained by Developer to defend the Third Party Action in a manner that avoids unnecessary duplication of expense. Developer shall have the right to settle or compromise any such Third Party Action; provided, however, that no such settlement or compromise shall terminate, modify, alter, or amend (i) any of City's rights or obligations set forth in this Agreement or (ii) with respect to any of the Permits or approvals issued or approved by any other governmental agency with respect to the Site, the Conforming Inn and/or the Project without compliance with any applicable legal procedures and requirements and without City's prior written consent, which consent City may withhold in its sole and absolute discretion. Upon being served with process in any such Third Party Action, the Party so served shall promptly notify the other Party to this Agreement.

308.2 Developer Cooperation. In regard to any legal action arising from or related to a Ballot Measure or legal action instituted by any third party (not a Party to this Agreement) including but not limited to any person, organization, association, or federal, state or local governmental entity, challenging or affecting the validity, enforceability or implementation of (i) this Agreement or any provision hereof, (ii) any action by either City or Developer pursuant to this Agreement, including without limitation any consent or approval issued by City pursuant hereto, or (iii) any Permits, entitlement or other approval approved or issued by any governmental agency (other than the City) with jurisdiction over the Site, the Conforming Inn and/or with respect to the Project ("Other Third Party Action"), the Parties hereby agree to cooperate in defending said action; provided, however, neither Party shall have any obligation to finance the other Party's out of pocket expenses in any Other Third Party Action. Notwithstanding the foregoing, Developer agrees and acknowledges that the City has no duty to defend any Other Third Party Action and releases City from any liability therewith, and may take any action appropriate in response to an Other Third Party Action, in its sole and absolute discretion. Upon being served with process in any such Other Third Party Action, the Party so served shall promptly notify the other Party to this Agreement.

308.3 Developer Release. In addition to the releases set forth in Sections 206.2 and 208.4, including the release of Section 1542 of the California Civil Code, in the event of any Third Party Action, Ballot Measure, or Other Third Party Action, the Developer hereby releases and discharges the City from any liability relating to any Third Party Action, Ballot Measure, or Other Third Party Action and any City responses, decisions or actions in response to any Third Party Action, Ballot Measure, or Other Third Party Action, including but not limited to the decision not to defend such action. This release shall survive the termination, expiration, invalidation or performance in full or in part of this Agreement, and, without limiting the foregoing, shall survive the Closing.

309. Intentionally Omitted.

310. Compliance With Laws. The Developer shall carry out the design, construction and operation of the Project in conformity with all Governmental Requirements, including but not limited to Conditions of Approval and Permit requirements imposed on the Project during City Development

Review.

310.1 Liens and Stop Notices. Prior to the issuance of Release of Construction Covenants for the Developer Improvements, the Developer shall not allow to be placed on the Properties or any part thereof any lien or stop notice except for liens to secure financing approved pursuant to Section 312. If a claim of a lien or stop notice is given or recorded affecting the Site or the Project, except as set forth above, the Developer shall within thirty (30) days of such recording or service or within five (5) days of the City's demand, whichever first occurs:

(a) pay and discharge the same; or

(b) affect the release thereof by recording and delivering to the City a statutory surety bond in sufficient form and amount, or otherwise; or

(c) cause the Title Company to issue an updated title policy, dated as of the date of the Release of Construction Covenants, which Title Policy does not include such claim as an exception to title to the Site or the Project; or

(d) provide the City with other assurance which the City deems, in its reasonable discretion, to be satisfactory for the payment or discharge of such lien or bonded stop notice, for the removal of such lien or bonded stop notice as a cloud on title, and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

311. Release of Construction Covenants. Promptly after Completion of Construction of the Developer Improvements or any portion thereof as confirmed by the City Engineer to be in conformity with this Agreement, the City shall deliver to the Developer and/or its permitted successors or assigns a Release of Construction Covenants, in form attached hereto as Attachment No. 9, executed and acknowledged by the City. The City shall not unreasonably withhold or condition such Release of Construction Covenants. Following the issuance of a Release of Construction Covenants, any third party then or thereafter leasing or otherwise acquiring any interest in the Site and/or the Developer Improvements shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to any obligation to construct the Developer Improvements.

If the City refuses or fails to furnish a Release of Construction Covenants in accordance with the preceding paragraph, and after written request from the Developer, the City shall, within fifteen (15) days after receipt of such written request therefor, provide the Developer with a written statement of the reasons the City refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the City's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. Even if the City shall have failed to provide such written statement within such fifteen (15) day period, the Developer shall not be deemed entitled to the Release of Construction Covenants unless the Developer, upon expiration of such fifteen (15) day period provides City with a written demand that the City furnish such Release of Construction Covenants as to the Developer Improvements, or provide a written statement as to the basis for denial thereof (a "Developer Notice"), which Developer Notice sets forth the terms of this Section 311 in full, and the City fails to either furnish such Release of Construction Covenants, provide a written explanation of the denial thereof, with fifteen (15) days following City's receipt of the Developer Notice, in which case the Developer shall be entitled to a Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the

Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Developer Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 8182 of the California Civil Code, nor does it indicate that the Developer has complied with all Permits, Conditions of Approval, final building construction approvals or any other approval applicable to the Project.

312. Financing of the Project.

312.1 Approval of Construction Financing. As required in this Agreement and as a City Condition Precedent to the Closing, Developer shall submit to City the Proof of Financing Commitments.

The Proof of Financing Commitments shall include the following: (a) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to fund the construction, completion of the Developer Improvements, subject to the specific requirements described above and otherwise subject to such lenders' customary and normal conditions and terms, and/or (b) a certification from the chief financial officer or manager (of a limited liability company) of Developer that Developer has sufficient funds for the construction of Developer Improvements, and that such funds have been committed to such construction, and/or other documentation satisfactory to the City as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the costs of construction and completion of the Developer Improvements, less financing but including required debt service payments.

As part of the Proof of Financing Commitments, Developer, or its general contractor, also shall provide surety bonds of the types, for such penal sums (up to the full construction cost under the contract between Developer and its general contractor), and subject to such terms and conditions as required by the City in its reasonable discretion may require. Such bonds shall be purchased and maintained from a company or companies approved by the City in its reasonable discretion and otherwise lawfully authorized to issue surety bonds in the jurisdiction where the Properties are located.

The City Manager shall approve or disapprove the Proof of Financing Commitments, as submitted, within thirty (30) days of receipt thereof, which approval shall not be unreasonably withheld, conditioned or delayed. If City shall disapprove any such Proof of Financing Commitments, City shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall endeavor to promptly obtain and submit to City new Proof of Financing Commitments. Any material and adverse changes to the terms of the Construction Financing from the approved Proof of Financing Commitments shall be subject to the City written approval, in its reasonable discretion. Developer shall close the approved Construction Financing prior to or concurrently with the Closing.

312.2 No Encumbrances Except Mortgages, or Deeds of Trust for Development. Mortgages and deeds of trust on the Developer's Ground Lease interest shall be permitted before the completion of the Developer Improvements only with the City's prior written approval, which shall not be unreasonably withheld, conditioned or delayed in accordance with Section 312.1 above, and only for the purpose of securing loans of funds to be used for financing the construction and operation of the Site and/or the Developer Improvements (including architecture, engineering, legal, Construction Period carrying costs such as rent required under the Ground Lease, property taxes, insurance and interest, and related direct costs as well as indirect costs), permanent financing, and refinancing and

any other purposes necessary and appropriate in connection with development under this Agreement, Ground Lease and operation of the Conforming Inn. In no event, however, shall the amount or amounts of indebtedness secured by mortgages or deeds of trust on the Ground Lease prior to completion of the Developer Improvements exceed the projected cost of developing the Developer Improvements, as evidenced by a pro forma and a construction contract which have been delivered to the City prior to the City's approval of such financing, setting forth such costs, unless the written approval of the City is first obtained. The Developer shall notify the City in advance of any mortgage or deed of trust financing, if the Developer proposes to enter into the same before completion of the construction of the Developer Improvements.

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

312.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. Whenever the City may deliver any notice or demand to Developer with respect to any breach or default by the Developer under this Agreement, the City shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement and approved by the City a copy of such notice or demand; provided that the failure to notify any holder of record shall not vitiate or affect the effectiveness of notice to the Developer. Each such holder shall (insofar as the rights granted by the City are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy such default or to the extent such default cannot be cured or remedied within such thirty (30) day period, to thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage or deed of trust. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 311 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder promptly and diligently pursues such proceedings to completion and thereafter cures or remedies the default.

312.5 Failure of Holder to Complete Project. In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Ground Lease or any part thereof receives a notice from the City of a Default by the Developer in completion of construction of any of the Developer Improvements under this Agreement, and such holder is not vested with ownership of the Ground Lease and has not exercised the option to construct as set forth in Section 312, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the City may (but shall not be obligated to) terminate the Ground Lease. If the ownership

of the leasehold interest in the Site pursuant to the Ground Lease ("Leasehold Estate") or any part thereof has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City of so much of the Leasehold Estate as has vested in such holder upon payment to the holder of an amount equal to the sum of the following (provided the same are incurred in compliance with this Agreement, the Ground Lease and Governmental Requirements):

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

(b) All expenses with respect to foreclosure including reasonable attorneys' fees;

(c) The net expense, if any, exclusive of general overhead, incurred by the holder as a direct result of the subsequent management of the Site or part thereof;

(d) The costs of any improvements made by such holder;

(e) Subject to discount to present value, an amount equivalent to the interest that would have accrued at the rate(s) specified in the holder's loan documents on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City; and

(f) Any or all other amounts, costs and/or expenses payable to the holder under the holder's loan documents approved pursuant to Section 312.1 above.

The City's right to such conveyance shall expire if: (i) City fails to notify the holder in writing within thirty (30) days after City receives written notice from the holder that such holder has obtained ownership of the Leasehold Estate , or (ii) within sixty (60) days after the City receives written notice from the holder that such holder has obtained ownership of the Leasehold Estate (or portion thereof), the City nevertheless fails to tender full payment for such Leasehold Estate . All of the foregoing rights and protections of the holder as set forth in this Section 312.5 shall also apply and be available to any other developer (other than an entity in which any interest is held by the Developer, or a Related Entity) pursuant to foreclosure or deed in lieu of foreclosure of the mortgage or deed of trust.

312.6 Right of the City to Cure Mortgage or Deed of Trust Default. In the event of a mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of the Developer Improvements or any part thereof, Developer shall immediately deliver to City a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the City shall have the right but no obligation to cure the default within ten (10) days following the expiration of the Developer's cure period under this Agreement (or, if the nature of the Developer's obligation is such that it reasonably requires more than ten (10) days to cure, commence to cure with such ten (10) day period and diligently prosecute such cure to completion). In such event, the City shall be entitled to reimbursement from the Developer of all reasonable and proper costs and expenses incurred by the City in curing such default. The City shall also be entitled to a lien upon the Leasehold Estate to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust permitted pursuant to this Section 312.

400. COVENANTS, RESTRICTIONS AND OTHER OBLIGATIONS

401. Construction, Use, Operating, Maintenance and Restrictive Covenants.

(a) Construction Covenant. Subject to extensions of the time periods for Developer's performance set forth in this Agreement, Developer shall cause the completion of the Developer Improvements by the dates set forth therefor in the Schedule of Performance.

(b) Use Covenants. Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Leasehold Estate or any part thereof, that upon the Closing and during construction, operation, and thereafter throughout the Use and Maintenance Covenant Period, the Developer shall devote the Site to the uses specified in this Agreement, the Permits and Conditions of Approval for the periods of time specified therein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to all applicable provisions of the City Code, Permits, and the Conditions of Approval to the Project through City Development Review. The foregoing covenants shall run with the land.

(c) Maintenance Covenants. Commencing as of the recording of the Memorandum of Ground Lease and continuing until the last day of the Use and Maintenance Covenant Period, the Developer shall maintain the Site and all improvements thereon, including all landscaping, in full compliance with the terms of all applicable provisions of the City Code, and in compliance with industry standards for the Conforming Inn. Without limiting the forgoing, the Developer shall specifically maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the "Maintenance Standards" defined below. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site. To accomplish the maintenance, the Developer shall either staff or contract with and hire qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

The following maintenance standards (the "Maintenance Standards") shall be complied with by the Developer and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the City:

(i) All improvements to the Site shall be maintained in conformance and in compliance with the reasonable commercial development maintenance standards for similar first quality inns in California, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

(ii) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road and sidewalk conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(iii) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(iv) Upon notification of any maintenance deficiency, Developer shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is graffiti or is urgent relating to the public health and safety of the City, then Developer shall have forty-eight (48) hours to rectify the problem.

402. Nondiscrimination in the Use and Operation of the Site. The Developer covenants by and for itself and any successors in interest to all or any portion of the Leasehold Estate 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 Site, nor shall the Developer 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 Site. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In leases and memorandum of leases: "The tenant herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, 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 tenant, itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(b) In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through it, 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."

403. Nondiscrimination in Employment. Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

404. Effect of Violation of the Terms and Provisions of this Agreement. The City is deemed the beneficiary of the terms and provisions of this Agreement for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement have been provided, without regard to whether the City has been, remains or is owner of any land or interest therein in the Site or in the Project. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches and to avail themselves of the rights granted in this Agreement to which it may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described in this Agreement, including the following:

(a) The covenants in Section 310 with respect to compliance with laws shall remain in effect for the Use and Maintenance Covenant Period.

(b) The covenants pertaining to use and maintenance of the Site which are set forth in Section 401(b) and Section 401(c) shall remain in effect for the Use and Maintenance Covenant Period.

(c) The covenants against discrimination, as set forth in Section 402 and 403, shall remain in effect in perpetuity.

(d) Provisions of documents recorded pursuant to this Agreement shall remain in effect according to their terms.

(e) Provisions of this Agreement which affirmatively set forth times as to which they are to remain effective shall remain effective according to the terms of those provisions.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to the extensions of time set forth in this Agreement, failure

by either Party to perform any action or covenant required by this Agreement within the time periods provided in this Agreement following Notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party claiming a Default shall give written Notice of Default to the other Party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the Party complaining of a Default shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such Party within thirty (30) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy promptly and with diligence.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, and except as to a Default by Developer which occurs prior to the Closing which shall entitle City to the Liquidated Damages provided for in Section 201.2, either Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding the foregoing, specific performance shall not be available to require the City to approve the Project through City Development Review or execute a Ground Lease should Developer fail to satisfy the City Conditions Precedent. Such legal actions must be instituted in the Superior Court of the County of Santa Barbara, State of California or in the District of the United States District Court in which such county is located. In addition to the legal actions hereinafter described and without limitation as to such remedies that may be available at law or equity, upon a Default by the Developer under this Agreement after the Closing, the City may exercise those rights defined and described in Section 504.

503. Termination.

503.1 Termination by Developer Prior to Lease Execution. In the event that prior to the Closing the Developer is not in Default of this Agreement but (i) the City is in Default in the performance of its obligations or in breach of a representation or warranty hereunder, or (ii) one or more of the Developer Conditions Precedent has not been satisfied or waived by the Outside Date, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City. In the event of such termination pursuant to (i) or (ii) above, the City shall return the Good Faith Deposit, and neither the City nor the Developer shall have any further rights or obligations under this Agreement except under the applicable provisions regarding damages contained in Section 504 and except for those provisions of this Agreement which expressly survive the termination of the Agreement.

503.2 Termination by the City Prior to Lease Execution. In the event that prior to the Closing the City is not in Default of this Agreement and:

(a) The Developer (or any successor in interest) assigns this Agreement or any rights thereon or in the Site in violation of this Agreement and such Default is not cured in accordance with Section 501; or

(b) There is a change in the ownership of the Developer contrary to the provisions of Section 603.1 and such Default is not cured in accordance with Section 501; or

(c) The Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement and the Schedule of Performance therefor and such Default is

not cured in accordance with Section 501; or

(d) One or more of the City Conditions Precedent is not either satisfied or waived by the Outside Date; or

(e) The Developer is otherwise in Default under this Agreement and such Default is not cured in accordance with Section 501;

Then, this Agreement and any rights of the Developer or any assignee or transferee in the Agreement, shall, at the option of the City, be terminated by the City by written notice thereof to Developer, and the Good Faith Deposit shall be retained by the City. In the event of termination under this Section, neither party shall have any other rights against the other under this Agreement except as set forth in Section 201.2, and except for those provisions of this Agreement which expressly survive the termination of the Agreement.

504. Specific Performance. The delineation of the Parties' rights to terminate this Agreement prior to the Closing is not intended to limit either party from exercising any other remedy for such default provided under law or equity. Without limiting the generality of the foregoing statement, in the event of a Default by either Party, the non-Defaulting Party may exercise any right or remedy available in law or equity, including, without limitation, the right to initiate an action for specific performance and to recover all damages proximately caused by such Default (except as limited in the event of City termination pursuant to Section 503.2, in which the event City shall be limited to the liquidated damages set forth in Section 201.2). Notwithstanding the foregoing, specific performance shall not be available to require the City to approve the Project through City Development Review or execute a Ground Lease should Developer fail to satisfy the City Conditions Precedent.

505. Reentry and Revesting of Title in the City after the Closing and Prior to the Completion of Construction. Subject to Section 301.1 and/or the occurrence of a Force Majeure Event, the City has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and/or terminate the Ground Lease if after the Closing and prior to the issuance of the Release of Construction Covenants as to one hundred percent (100%) of the Developer Improvements, the Developer (or its successors in interest) shall:

(a) fail to start the construction of the Developer Improvements, as required by this Agreement and the Schedule of Performance, for a period of sixty (60) days, subject to delays caused by a Force Majeure Event, after written notice thereof from the City; or

(b) abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of ninety (90) days, subject to delays caused by a Force Majeure Event, after written notice thereof from the City; or

(c) contrary to the provisions of Section 603, transfer or suffer any involuntary transfer in violation of this Agreement.

Such right to reenter, and/or terminate the Ground Lease shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Ground Lease shall contain appropriate reference and provision to give effect to the City's right as set forth in this Section 505, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and/or terminate the Ground Lease.

Should the City exercise its right to reenter and take possession of the Site without terminating this Lease as provided in this Section 505, the City shall, pursuant to its responsibilities under state law, use its reasonable efforts to re-lease the Site as soon and in such manner as the City shall find feasible and consistent with the objectives of such law, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to the City and in accordance with the uses specified for the Site by this Agreement. The Developer acknowledges that there may be substantial delays experienced by the City if the City must remarket Site. Upon such re-leasing of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the leasehold interest in the Site which is permitted by this Agreement, shall be applied to reimburse the City, on its own behalf, all reasonable costs and expenses incurred by the City, including, without limitation, City staff costs, any expenditures by the City, in connection with the recapture, management and re-leasing of the Site or part thereof (but less any income derived by the City from the Site or part thereof in connection with such management); all taxes, fees, charges, assessments, and water or sewer charges with respect to the Site or part thereof which the Developer has not paid, any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or termination of the Ground Lease, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Developer Improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing the City whether a result of the Developer's Default or otherwise.

Any balance remaining after such reimbursements shall be retained by the City as its property. The rights established in this Section are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized in this Agreement or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the City will have conveyed the leasehold interest in the Site to the Developer for development purposes, and not for speculation in land.

The rights and remedies of City are in addition to those other rights and remedies available to City under this Agreement.

506. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Manager of Developer, whether made within or outside the State of California, or in such other manner as may be provided by law.

507. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this

Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

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

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

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") which either Party may desire to give to the other Party under this Agreement must be in writing and may be given by the means specified in this Section 601 below to the Party to whom the Notice is directed at the address of the Party as set forth below, or at any other address as that party may later designate by Notice. All notices or other communications required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be considered as properly given if delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by overnight express mail or by commercial courier service, charges prepaid. In addition, notices may be provided to a Party by electronic mail provided return receipt is requested and is received. Notices so sent shall be effective upon receipt at the addresses set forth below. For purposes of notice, the addresses of the Parties shall be:

To City:
Matthew Roberts
Director of Parks, Recreation and Public Facilities
5775 Carpinteria Avenue
Carpinteria, CA 93013
Email: mattr@ci.carpinteria.ca.us

with a copy to:
Brownstein Hyatt Farber Schreck, LLP
Attention: Jena Acos
1021 Anacapa Street, Second Floor
Santa Barbara, California 93101
Email: jacos@bhfs.com

To Developer:
499 Linden Managers, LLC
201 W. Montecito Street
Santa Barbara, California 93101
Attention: Whitt Hollis and Jeff Theimer
Email: whitt.hollis@gmail.com; jeff@thetheimergroup.com

with copy to:
Eisner, LLP
9601 Wilshire Boulevard, 7th Floor
Beverly Hills, California 90210

Attention: Sam Zodeh, Esq.
Email: szodeh@eisnerlaw.com

Any Party may change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth above. The Developer shall forward to the City, without delay, any notices, letters or other communications delivered to the Site or to the Developer which could reasonably affect the ability of the Developer to perform its obligations to the City under this Agreement.

602. Intentionally Omitted.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the City and therefore the City does not contemplate a transfer of interest in Site or Agreement. Furthermore, the Parties acknowledge that the City has negotiated the terms of this Agreement in contemplation of the development and operation of the Project and the property tax, sales and use tax and transient occupancy tax revenues to be generated by the Conforming Inn and the operation of the Conforming Inn on the Site. Accordingly, for the period commencing upon the date of this Agreement and until the issuance by City of a Release or Releases of Construction Covenants for the Developer Improvements, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, further encumbrance, refinancing or lease of the whole or any part of the Site or the Project thereon, nor shall any uses other than the Project be operated thereon, either in addition to or in replacement of the Project on the Site, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Project being operated upon the Site (collectively referred to in this Agreement as a "Transfer"), without the prior written approval of the City, in its sole and absolute discretion, except as expressly set forth in this Agreement.

603.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer or other conveyance shall not be required in connection with any of the following as listed under subparts (a) and (b) ("Permitted Transfers"):

(a) Prior to the Closing, Developer may assign their rights under this Agreement and be released for their obligations under this Agreement one time without City's approval to a limited partnership or limited liability company ("Project Entity") provided (i) Developer Affiliates in the aggregate owns the majority interest in such Project Entity, (ii) one or more Developer Affiliates are the general partners or managing members of such Project Entity, and (iii) such Project Entity shall assume all obligations of the Developer pursuant to this Agreement. Developer agrees that at least thirty (30) days prior to such Permitted Transfer Developer shall provide satisfactory evidence that the Project Entity has assumed or, upon the effective date of such Permitted Transfer, will assume in writing through an assignment and assumption agreement in form reasonably acceptable to the City all of the obligations of the Developer under this Agreement which remain unperformed as of such Permitted Transfer or which arise from and after the date of such Permitted Transfer.

(b) In the case of any Developer Affiliates' interest in the Developer, a transfer of said interest to any inter vivos trust established for estate planning purposes for the sole and exclusive benefit of such owner or such owner's spouse, parents, siblings, or children, and in which

such owner is a trustee thereof with the unilateral right, power and authority to bind such trust.

603.3 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Developer and its successors and assigns, including those acquiring such interest pursuant to a Transfer. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns, including those acquiring such interest pursuant to a Transfer, as provided in this Agreement. The Developer shall be liable for the performance of all of its covenants, obligations and undertakings set forth in this Agreement.

604. Non-Liability of Officials and Employees of the City to the Developer. No member, official, director, officer, agent, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

605. Relationship Between City and Developer. It is hereby acknowledged that the relationship between the City and the Developer is not that of a partnership or joint venture and that the City and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided in this Agreement or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operations, maintenance or management of the Project. The Developer agrees to indemnify, hold harmless and defend the City from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Developer with respect to the development, operation, maintenance or management of the Site or the Project, except such claims arising from or caused by a representation by the City that such a relationship exists.

606. City Approvals and Actions. The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager. Whenever a reference is made in this Agreement to an action or approval to be undertaken by the City, the City Manager is authorized to act unless this Agreement specifically provides otherwise or the context, applicable laws should otherwise require, or the City Manager determines, in his or her sole and absolute discretion, that City Council consideration, action and written consent is required. The City Manager may seek a recommendation from the appropriate City Council committee, such as the Public Facility Site Acquisition/Development Committee, regarding whether the City Manager is authorized to act or the matter should be referred to the City Council for consideration. Upon obtaining the approval of the City Attorney, the City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or development permitted of the Project, or add to the costs incurred or to be incurred by the City as specified in this Agreement, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in this Agreement and in the Schedule of Performance and, to the extent allowable and consistent with the goals and objectives of the City pursuant to this Agreement, to reasonably accommodate requests of lenders. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

607. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

608. Integration. This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter of this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth in this Agreement and upon each Party's own independent investigation of any and all facts such Party deems material. The recitals set forth above are incorporated in this Agreement by this reference. All attachments to this Agreement are incorporated in this Agreement by this reference.

609. Real Estate Brokerage Commission. The City and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's leasing of the Site from the City. The Parties agree to defend and hold harmless the other Party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such Party.

610. Attorneys' Fees. In any action between the Parties to interpret, enforce, reform, modify, or rescind, or otherwise in connection with any of the terms or provisions of this Agreement, each Party shall pay its own costs and expenses including, without limitation, litigation costs, expert witness fees, attorneys' fees, and court costs.

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

612. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties. When a reference is made to a section of this Agreement, such reference shall be deemed to include all subparts thereof. Wherever a reference is made to "days", such reference shall refer to calendar days unless otherwise expressly set forth.

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

614. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed by a duly authorized representative on behalf of each Party.

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

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

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

618. Time of Essence. Time is expressly made of the essence with respect to the performance by the City and the Developer of each and every obligation and condition of this Agreement except as otherwise provided in this Agreement.

619. Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements; provided that this Section 619 shall not apply to the City acting under its police power.

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

621. No Third Party Rights. Except as otherwise stated in this Agreement, nothing in this Agreement whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

622. Authority. The individuals executing this and other documents on behalf of the respective Parties do hereby certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entities so indicated. Each signatory shall also indemnify the other Parties to this Agreement, and hold them harmless, from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

[Signature block begins on page S-1]

IN WITNESS WHEREOF, the parties hereto have signed this Lease Disposition and Development Agreement as of the respective date set forth below.

CITY:

CITY OF CARPINTERIA, a California municipal corporation

Dated: 7/29/21

By: _____
Name: Wade T. Nomura
Its: Mayor

APPROVED AS TO FORM:

_____
Jena S. Acos, on behalf of
Brownstein Hyatt Farber Schreck, LLP
Acting as City Attorney of the City of Carpinteria

DEVELOPER:

499 LINDEN MANAGERS LLC,
a California limited liability company

Dated: 7-29-21

By: _____
Name: R.W. Hollis IV
Its: Manager

Dated: 7-29-21

By: _____
Name: JEFF THEIMER
Its: Manager

Index of Attachments to Agreement

Attachment No. 1 – Legal Description of Properties

Attachment No. 2 – Properties Map

Attachment No. 3 – Scope of Development

Attachment No. 4 – Ground Lease

Attachment No. 5 – Memorandum of Ground Lease

Attachment No. 6 – Schedule of Performance

Attachment No. 7 – Right of Entry Agreement

Attachment No. 8 – Site Plan

Attachment No. 9 – Release of Construction Covenants

Attachment No. 10 – Guaranty Agreement

ATTACHMENT NO. 1

LEGAL DESCRIPTION

1. APN: 004-105-15 GARDEN PROPERTY

The land referred to herein below is situated in the City of Carpinteria, County of Santa Barbara, State of California and is described as follows:

Parcel One of Parcel Map No. 25,190, in the City of Carpinteria, County of Santa Barbara, State of California as shown on map recorded in Book 63 Pages 93 through 94 of Parcel Maps recorded in the Office of the County Record of said County.

2. APN 004-105-011 PARKING LOT PROPERTY

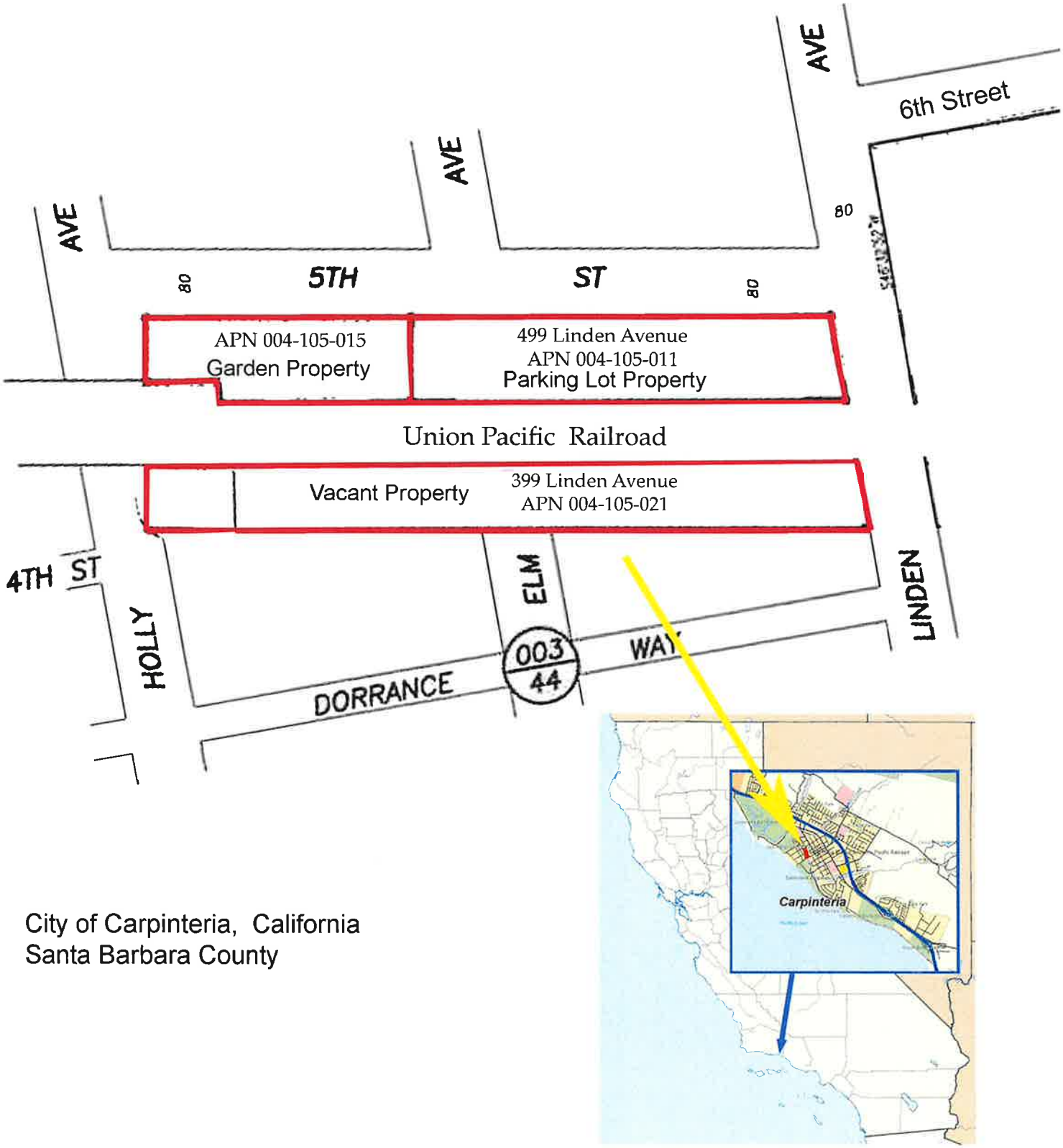
Parcel One of Parcel Map No. 25,143, in the City of Carpinteria, County of Santa Barbara, State of California as per Parcel Map filed in Book 43 Pages 62 and 63 of Parcel Maps, in the Office of the County Recorder of said County.

3. APN: 004-105-21 (portion) VACANT PROPERTY

The land referred to herein below is situated in the City of Carpinteria, County of Santa Barbara, State of California and is described as follows:

Parcel "A" and Parcel "C" of Map No. 25,192, in the City of Carpinteria, County of Santa Barbara, State of California as shown on map recorded in Book 64 Pages 40 through 41 of Parcel Maps recorded in the Office of the County Record of said County.

ATTACHMENT NO. 2
PROPERTIES MAP



City of Carpinteria, California
Santa Barbara County

ATTACHMENT NO. 3

Scope of Development

The Scope of Development[1] shall consist of:

1. The Conforming Inn located on the Site. The Conforming Inn means the proposed inn that the Developer will submit to the City in accordance with Section 302 and all subparts thereto, which generally conforms to all of the following: (i) be a building with approximately 30,395 square feet and contain consists of two (2) stories (provided that the elevator, stair tower and ancillary building elements, as shown on the Site Plan in Attachment No. 8, may be above two (2) stories); (ii) have a roof top bar and deck area with food and beverage services; (iii) have a "guest only" roof top area with one or two small splash/plunge pools, a hot tub or other similar feature; (iv) have a ground level restaurant with food and beverage service; (v) have daily contract linen service, (vi) have a 24-hour-a-day staffed front desk; (vii) consist of thirty six (36) rooms and four (4) guest suites; and (viii) be accompanied, including within the public right of way adjacent to the Site, with parking, sidewalks, curbs, gutters, street lights, landscape and hardscape amenities, benches, bike racks, integration of Amtrak platform access and other public amenities further described in the Scope of Development. The quality of the Conforming Inn is important to the Parties and therefore the Parties shall generally agree upon the budget to construct the Conforming Inn, the furniture, fixture, equipment fund, and a maintenance fund, in the Ground Lease. Based on the Basic Concept Drawings, the Conforming Inn is estimated to cost approximately Thirteen Million Dollars ($13,000,000.00) or Three Hundred Twenty-Five Thousand Dollars ($325,000.00) per key, subject to modification during City Development Review. The Conforming Inn is presently proposed to have a minimum three star rating by the American Automobile Association (AAA) for quality.

2. Parking Lot Property Reconfiguration. The remaining portion of the Parking Lot Property located west of the Site will be reconfigured and extended 60 feet to the west into the Garden Property. The Parking Lot Property will continue to be accessed from the existing westernmost entrance from Fifth Street.

3. New City Parking Lot # 4. The contemplated public parking lot (City Parking Lot #4) on the Vacant Property is proposed to have ingress/egress vehicular access from Linden Avenue. The existing public restrooms that are presently at the corner of Linden Avenue and Fifth Street will be relocated to the Vacant Property. A locked secondary vehicle emergency access gate is proposed at the end of Elm Avenue to provide emergency vehicle access and an emergency ingress/egress route to the public parking lot and adjacent neighborhood.

4. Public Trail located on the Vacant Property between and connecting Linden Avenue and Holly Avenue. This Public Trail shall match design attributes of other City trails.

[1] The Scope of Development set forth in this Attachment No. 3 is subject to modification in connection with City Development Review as set forth in Section 303. (Agreement, § 303.)

ATTACHMENT NO. 4

GROUND LEASE

THIS GROUND LEASE ("Lease"), effective as of _____, 2021 (the "Effective Date"), is made by and between **CITY OF CARPINTERIA**, a California municipal corporation ("Landlord") and **499 LINDEN MANAGERS LLC**, a California limited liability company ("Tenant"). Landlord and Tenant are individually referred to as "Party" and collectively as the "Parties" herein.

RECITALS

A. Landlord is the owner of record of the following certain real properties situated in the City of Carpinteria ("City"), Santa Barbara County ("County"), California ("State") which is commonly known as City's Parking Lot No. 3, located at 499 Linden Avenue, identified with County Assessor Parcel Number ("APN") 004-105-011, and more particularly described in Exhibit A ("Property").

B. An approximately 30,000 square feet portion of the Property is shown on the Site Map attached hereto as Exhibit B and more particularly described as Exhibit C and hereinafter referred to as the "Premises."

C. Landlord and Tenant are Parties to that certain Lease Disposition and Development Agreement, including all attachments thereto, dated as of [_____], 2021 attached hereto as Exhibit D ("Agreement").

D. Landlord wishes to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord, together with all rights, privileges, and easements appurtenant to the Premises, pursuant to the terms of this Lease and the Agreement.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and the representations, warranties, covenants and conditions contained in this Lease and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant agree as follows:

DEFINITIONS

As used in this Lease, the following capitalized terms shall have the meanings set forth below:

"Adjustment Date" is defined in Section 3.3(a) of this Lease.

"Affiliate" means any person which (1) directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Tenant or Landlord or (2) owns twenty-five percent (25%) or more of the equity interest of which is held beneficially or of record by the Tenant or Landlord, as the context may require.

"Agreement" is defined in Recital C of this Lease.

"Alterations" is defined in Section 7.2 of this Lease.

"Anniversary Date" means the date exactly one (1) year after the date on which an event occurred in a previous calendar year.

"Annual Base Rent" is defined in Section 3.1(a) of this Lease.

"Appraisal Process" is defined in Section 3.4 of this Lease.

"Appraised Value" is defined in Section 3.4 of this Lease.

"Certificate of Occupancy" means issuance of a certificate of occupancy for the Inn (defined below) consistent with Chapter 5.05 of the Carpinteria Municipal Code.

"City" means the City of Carpinteria, a municipal corporation, acting in its governmental and regulatory capacity pursuant to its police powers.

"City Community Development Director" means the City Community Development Director or its designee.

"City Engineer" means the City Engineer or its designee.

"City Development Review" means the City, acting in its governmental and regulatory capacity pursuant to its police powers, standard development review process, as described in the City Code, an application to obtain discretionary and ministerial permits, entitlements, findings and approvals, including pursuant to the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.), that the City is required to make by applicable federal, state and local law, for all development within the City. Notwithstanding what is stated in any part of the Lease, the City retains full discretion acting in its governmental capacity pursuant to its police powers to review applications for alterations or revisions to the Improvements (as described in Section 7.2) and approve, condition, or deny any elements of said applications pursuant to the City's standard development review process, City Code, and applicable federal, state and local law, including *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 and related jurisprudence.

"City Manager" means the City Manager of the City or its designee who shall represent the City in all matters pertaining to this Lease, except as otherwise provided herein.

"Commencement Date" means the calendar date following the City's acceptance of the Tenant's construction of Off-Site Improvements as provided for in this Lease and the Agreement.

"Conditions of Approval" means the public improvements, dedications, exactions, conditions of approval, mitigation measures for compliance with the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.) or other requirements on the Inn, Improvement, and Property associated with the City's approval for the construction and operation of the Inn and Improvements.

"Construction Rent" is defined in Section 3.1(f) of this Lease.

"Construction Rent Term" is the period from the calendar day following the Landlord's acceptance of the Tenant's construction of Off-Site Improvements until thirty (30) calendar days following Tenant's receipt of Certificate of Occupancy from the City Community Development Director for the Inn or the Inn completion date as specified in the Schedule of Performance, whichever occurs first. The Landlord's acceptance of construction of Off-Site Improvement shall be deemed to have occurred when a certificate of acceptance is issued by the City Engineer.

"CPI" means the Consumer Price Index for Los Angeles-Long Beach-Anaheim, CA, urban wage earners and clerical workers, not seasonally adjusted (Series ID CUURS49ASA0) (W) (1982-1984 = 100) as reported by the United States Bureau of Labor Statistics. If such index is discontinued or revised, such other index with which such index is replaced (or if not replaced, another index which reasonably reflects and monitors consumer prices) shall be used in order to obtain substantially the same results as would have been obtained if the discontinued index had not been discontinued or revised. If the CPI is changed so that the base year is other than 1982-84, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

"CPI Adjustment" is defined in Section 3.3(a)(i) of this Lease.

"Default Rate" means ten percent (10%) per annum.

"Effective Date" means the date first written above, which is the effective date upon which each Party has caused this Lease to be fully executed and delivered pursuant to the Agreement.

"Environmental Liabilities" is defined in Section 8.3 of this Lease.

"Exclusive Negotiation Period" is defined in Section 2.2 of this Lease.

"Force Majeure Event" is defined in Section 21.3 of this Lease.

"Governmental Requirements" means all current and future laws, statutes, requirements, ordinances, codes, orders, judgments, rules, regulations, administrative or judicial determinations, even if unforeseen or extraordinary, of the United States, the state, the county, the City, every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Premises now or hereafter enacted or in effect (including, but not limited to, Environmental Laws, all applicable federal, state, and local requirements, including if and to the extent required as a matter of law the payment of prevailing wages and hiring of apprentices pursuant to Labor Code Section 1720 et seq., and all applicable disabled and handicapped access requirements, all applicable federal, state, and local requirements, the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., the Unruh Civil Rights Act, Civil Code Section 51, et seq.), and all Permits, Conditions of Approval, covenants, restrictions, and conditions now or hereafter of record which may be applicable to Tenant or to all or any portion of the Premises, or to the use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the Premises.

"Gross Revenue" means all gross revenues derived by the Tenant from operation of the Inn, including but not limited to, (i) revenues from the rental, sale, use, or occupancy of guest rooms at the Inn, including forfeited room deposits, and room cancellation fees; (ii) so-called "resort fees" (by whatever name called) and any fees for use of any facilities which are customarily included by comparable inns and hotels in the guest room rental rate; (iii) revenue received from all operations on the Premises during the Lease Term, such as rental of meeting rooms, bar, and pool facilities; (iv) revenue from banquet sales and events, whether provided on or off the Premises; (v) cover charges, service charges, and miscellaneous banquet revenues; (vi) revenues from food and beverage services by the Tenant, whether provided on or off the Premises; (vii) mini-bar, telephone, cable, video, or digital television, telecommunications services, and other amenities, or operations charged separately or in addition to room rates; (viii) vending machine revenues; (ix) rentals for equipment not customarily provided guests of similar hotels; (x) revenues generated from sales from gift, sundries, and other shops owned or operated by the Tenant; (xi) all rentals or other payments to the Tenant from subtenants, licensees, or concessionaires who are not the Tenant; (xii) fees generate from any awards program for customers of the Inn, if applicable; and (xiii) the portion of net Insurance Proceeds from the proceeds of business interruption or rental loss insurance. Gross Revenue shall

be calculated by Tenant's certified public accountant pursuant to applicable hospitality industry standards, and otherwise shall be computed without deduction or allowance for costs, charges, or expenses for the purchase, sale, transportation, or delivery of merchandise or services, or for labor and materials in connection with the rendering of services or the sale of goods. Subsequent collection of bad or uncollectible debts previously not reported as Gross Revenue shall be included in Gross Revenue at the time they are collected. Gross Revenue shall not include taxes required to be collected from customers and remitted by law.

"Hazardous Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302); Hazardous Chemicals as defined in the OSHA Hazard Communication Standard; Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq.; Hazardous Substances as defined in the Toxic Substances Control Act, 15 U.S.C. § 2601-2671; or listed in any state or local statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all reauthorizations, pertaining to the protection, preservation, conservation or regulation of human health or the environment, including but not limited to all federal, state, and local laws, ordinances, and regulations relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal, or transportation of any oil, hydrocarbons, flammables, explosives, asbestos, radioactive materials or wastes, or other hazardous, toxic, contaminating, or polluting materials, substances, or wastes, including, without limitation, any hazardous substances that are the subject of any laws, ordinances, or regulations intended to protect the environment or health, safety, and welfare, and all substances now or hereafter designated as "hazardous substances," "hazardous materials," or "toxic substances" under any other federal, state or local laws or in any regulations adopted and publications promulgated pursuant to said laws, and amendments to all such laws and regulations thereto; or such substances, materials, and wastes which are or become regulated under any applicable local, state or federal law (collectively "Environmental Laws").

"Imposition" means all taxes (including possessory interest, real property, ad valorem, and personal property taxes), assessments, charges, license fees, municipal liens, levies, excise taxes, impact fees, or imposts, whether general or special, ordinary or extraordinary imposed by any government or quasi-governmental authority pursuant to law directly as a result of Tenant's leasehold ownership of the Premises or ownership of the Improvements located thereon which may be levied, assessed, charged or imposed, or may be or become a lien or charge upon the Premises, or any part thereof, or upon the leasehold estate hereby created.

"Improvements" means any structures, appurtenances or other facilities constructed on, in, under or over the Property, in accordance with Governmental Requirements, on and after the Commencement Date.

"Indebtedness" means the amount which is outstanding at any given time under a Permitted Mortgage.

"Inn" means that certain inn and related structures, appurtenances or other facilities that Tenant is to construct, operate and maintain on the Premises pursuant to the Agreement and Governmental Requirements.

"Inn Management Agreement" is defined in Section 6.4 of this Lease.

"Inn Management Company" means an entity hired by the Tenant and approved by the City to operate, manage and maintain the Inn consistent with the Agreement, Governmental Requirements, and this Lease.

"Insurance Proceeds" means any amount received by Tenant from an insurance carrier, after deducting therefrom the reasonable fees and expenses of collection which collection expenses are not reimbursed to Tenant by an insurance carrier, including but not limited to reasonable attorneys' fees and experts' fees.

"Landlord" means the City of Carpinteria, a municipal corporation, acting in its capacity as Property owner.

"Landlord's Estate" means all of Landlord's right, title, and interest in its fee estate in the Premises, its reversionary interest in the Improvements pursuant hereto, and all other Rent and benefits due Landlord hereunder.

"Landlord Indemnified Parties" means, the City and its public officials, officers, employees, agents and representatives, and consultants.

"Lease Expiration Date" means the earlier to occur of the following dates: (i) that date which is fifty five (55) years following the Commencement Date, or (ii) that date upon which this Lease is sooner terminated pursuant to the provisions of this Lease or the mutual agreement of the Parties.

"Maintenance Standards" is defined in Section 4.6 of this Lease.

"Mortgagee" means any one or more holders of the beneficial interest and secured position under any Permitted Mortgage.

"New Lease" is defined in Section 5.2(f) of this Lease.

"Non-Disturbance Agreement" is defined in Section 14.3 of this Lease.

"Official Records" means the records of Santa Barbara County, California.

"Off-Site Improvements" is defined in the Agreement and references the certain new improvements to be constructed by Tenant near the Property which are not part of the Inn and the Improvements as defined in this Lease.

"Opening Date" is defined in Section 6.5(a) of this Lease.

"Partial Taking" is defined in Section 11.2 of this Lease.

"Percentage Rent" is defined in Section 3.1(c) of this Lease.

"Permits" means any and all City and other governmental maps, plans, permits, zoning and land use approvals, building permits or all other forms of discretionary approval, entitlement, permission or concurrence, including compliance with the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.), necessary for, the construction and development of Improvements and operation of the Inn that are required by applicable law to be secured from the City or any other governmental agency with jurisdiction over the Improvements and Inn. For the purposes of this Lease, the Permits shall be deemed "final" after the applicable time periods within which to challenge, either administratively or judicially,

such Permit (including related environmental certifications under California Environmental Quality Act or otherwise) shall have expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge.

"Permitted Exceptions" means those matters affecting Landlord's title to the Property, which have been approved by Tenant pursuant to the Agreement.

"Permitted Mortgage" means collectively (a) any deed(s) of trust and other collateral security instruments (including, without limitation, financing statements, security agreements and other documentation required pursuant to the applicable Uniform Commercial Code, and any absolute or conditional assignments of rents and subleases) serving as security for one or more construction loans and or permanent loans (otherwise permitted to be incurred hereunder) which encumber Tenant's Estate, or any portion thereof, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting (otherwise permitted to be incurred hereunder) thereof and (b) any instruments required in connection with an assignment-subleaseback transaction involving Tenant's Estate; provided, however, in no event shall any such Permitted Mortgage encumber Landlord's Estate.

"Premises" is defined in Recital B of this Lease.

"Property" is defined in Recital A of this Lease.

"Quarterly Statement" is defined in Section 3.1(d) of this Lease.

"Release of Construction Covenants" means the document which evidences the Landlord's satisfactory completion of the Improvements, in the substantially the same form of as Attachment No. 9 to the Agreement.

"Rent" means all sums due and payable to Landlord by Tenant hereunder.

"Rent Commencement Date" means the date which Annual Base Rent (defined in Section 3.1(a)) commences, which shall be the first day of the first month following the City Community Development Director's issuance of a Certificate of Occupancy for the Inn pursuant to the Governmental Requirements. Upon determination of the Rent Commencement, the Parties shall mutually execute a memorandum to this Lease memorializing such information, as further described in Section 3.1(a).

"Reserve Study" is defined in Section 6.5(a) of this Lease.

"Schedule of Performance" means the Attachment No. 6 to the Agreement. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Tenant and the City Manager pursuant to the Agreement, and the City Manager is authorized to make such revisions as he or she deems reasonably necessary. The Schedule of Performance also shall be extended for the duration of the occurrence of any specified event in the Agreement, as reasonable necessary.

"Sublease" means any lease, sublease, use, or occupancy agreement between Tenant, as lessor thereunder, and a lessee, the demised premises under which are situated within the Premises or Property.

"Subtenant" means any person or entity entitled to the use of all or any portion of the Premises or Property under any Sublease.

"Tenant" means 499 Linden Managers LLC, a California limited liability company.

"Tenant's Estate" means all of Tenant's right, title and interest in its leasehold estate in the Property and Premises, its interest in the Improvements, and its interest under this Lease.

"Third-Party Action" is defined in Section 16.2 of this Lease.

"Twenty-Fifth Year Annual Base Rent Adjustment" is defined in Section 3.3(b) of this Lease.

"Twenty-Fifth Year Annual Base Rent Adjustment Date" is defined in Section 3.3(b) of this Lease.

ARTICLE 1: DEMISE OF PREMISES

1.1 Demise. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, together with all rights, privileges, easements, and appurtenances belonging to or in any way appertaining thereto, for the Term (defined in Section 2.1), at the rental, and upon all of the covenants and conditions set forth herein. Concurrently with the Commencement Date, Landlord will deliver possession of the Premises to Tenant, subject to the following matters to the extent that they affect the Premises:

(a) The Permitted Exceptions affecting the Premises as of the Commencement Date;

(b) The Permits and Conditions of Approval affecting the Premises;

(c) The effect of all current and all future Governmental Requirements, building restrictions and regulations and present and future zoning laws, ordinances, resolutions, and regulations of the City and all present and all future ordinances, regulations and orders of all boards, bureaus, commissions and bodies of the City and any county, state or federal agency, now having, or hereafter having acquired jurisdiction of the Premises and the use, operation, maintenance and improvement thereof;

(d) All taxes, duties, assessments, special assessments, water charges and sewer rents, and any other Impositions, accrued or unaccrued, fixed or not fixed, prorated as hereinafter more fully provided.

1.2 No Rights of Third Parties. Landlord represents and warrants that possession will be delivered to Tenant free and clear of any rights or claims of third parties with respect to any leases, rental agreements, occupancy agreements, licenses or other claims regarding the possession or occupancy of any part or portion of the Premises.

1.3 Memorandum of Lease. To memorialize the status of Tenant's Estate, to establish the order of priority of this Lease as a matter of record and condition of title, and to comply with Government Code Section 37393, Landlord and Tenant agree to execute and acknowledge a short form Memorandum of this Lease, in the form attached hereto as Exhibit D, which shall, be recorded in the Official Records on the Effective Date pursuant to the Agreement. In the event of a discrepancy between the provisions of such Memorandum and this Lease, the provisions of this Lease shall prevail.

ARTICLE 2: TERM

2.1 Term. The term ("Term") of this Lease shall commence on the Commencement Date and shall expire on the date which is fifty-five (55) years after the Commencement Date, unless sooner terminated as provided herein.

2.2 Exclusive Negotiation Period. Unless the Lease is terminated as provided herein, Tenant and Landlord agree upon an exclusive negotiating period for twelve (12) months beginning eighteen (18)

months prior to the expiration of the Lease ("Exclusive Negotiation Period"). If the Tenant and Landlord are unable to mutually agree on a new Ground Lease terms during the Exclusive Negotiation Period, the Landlord, in its sole discretion, may solicit for a new tenant and/or lease for the Premises.

ARTICLE 3: RENT

3.1 Payment of Rent. Tenant shall pay Rent during the Term of this Lease to Landlord as follows:

(a) Annual Base Rent. The annual rent ("Annual Base Rent") for the Premises shall be calculated as five and one-half percent (5.5%) of the Appraised Value (as described in Section 3.4) of the Premises, commencing on the Rent Commencement Date, at the rate of Annual Base Rent divided by twelve (12) months per month on the first date of each month subject to prepayment as provided in subsection (b) below. The Annual Base Rent shall be adjusted over the Term as provided in Section 3.3. Upon determination of the Rent Commencement Date and the initial Annual Base Rent, the Parties shall mutually execute a memorandum to this Lease memorializing such information.

(b) Prepayment of Annual Base Rent. No sums paid as Annual Base Rent hereunder shall be paid more than thirty (30) days prior to the date when the same becomes due and payable under this Lease. In the event that Tenant prepays rent for a period that is subject to rent adjustment as provided in Section 3.3, Tenant shall reimburse Landlord for the difference between the prepayment amount and the new Annual Base Rent.

(c) Percentage Rent. In addition to the Annual Base Rent, Tenant shall pay to Landlord for each fiscal year during the Term an amount equal to four and one half percent (4.5%) of the of monthly Gross Revenues less the monthly Annual Base Rent for such period actually paid to Landlord ("Percentage Rent"). Such Percentage Rent shall commence on the first calendar day that the Tenant receives Gross Revenues and shall be calculated on a monthly basis by Tenant's certified public accountant based on the monthly Gross Revenues received in each calendar month and paid to Landlord on a fiscal quarterly basis pursuant to Section 3.1(d) below.

(d) Quarterly Statement. Within fifteen (15) days following the last day of each fiscal quarter of each calendar year under the Term or the expiration or sooner termination of this Lease, Tenant shall furnish to Landlord a statement in writing ("Quarterly Statement"), prepared by its chief financial officer showing (i) Gross Revenues attributable to the preceding fiscal quarter and the calculation of Percentage Rate based thereon, and (ii) Tenant's actual payment to Landlord of Annual Base Rent for the preceding fiscal quarter. Tenant shall, concurrently with the delivery of the Quarterly Statement, pay to Landlord an amount equal to the Percentage Rent shown on such Quarterly Statement.

(e) Books and Records. Tenant shall maintain (and retain for at least three (3) years) books and records documenting Gross Revenues, including, without limitation records of receipts, ledgers, gross income and sales tax returns, bank deposit records, sales journals, and other supporting data. Landlord and its agents shall have the right, on no less than five (5) days' prior notice and no more often than twice per year, to examine and audit such books and records. If such audit discloses an underpayment of Percentage Rent or Gross Revenues cannot be verified due to insufficiency or inadequacy of Tenant's records, Tenant shall promptly reimburse Landlord for its reasonable audit costs and any deficiency in Percentage Rent disclosed by such audit. If such audit discloses an overpayment of Percentage Rent, Landlord shall credit the amount of overpayment against the immediately following month's (or months') rent payment.

(f) Construction Rent. During the Construction Rent Term, Tenant shall pay "Construction Rent" in the amount of fifty percent (50%) of Annual Base Rent, defined in Section 3.1(a). At no time shall Tenant be required to pay Landlord both Construction Rent and Annual Base Rent for the same period. Upon determination of the Construction Rent, the Parties shall mutually execute a memorandum to this Lease memorializing such information.

3.2 Manner of Payment. Rent to be paid to Landlord shall be paid in United States Dollars at such address as Landlord may from time to time designate in writing, or by other means, such a direct deposit or wire transfer. For any period of less than a full year for which Rent is payable, the Annual Rent shall be prorated.

3.3 Annual Base Rent Adjustments. The Annual Base Rent shall be adjusted on the schedule and terms below:

(a) Three Year Annual Base Rent Adjustments. Every three (3) years after the Rent Commencement Date until the Twenty-Five Year Annual Base Adjustment Date, and thereafter every three years following the anniversary of the Twenty-Five Year Annual Base Adjustment Date ("Adjustment Date"), Annual Base Rent shall be adjusted for the three (3) year period commencing on each such anniversary date to the greater value of

(i) A "CPI Adjustment" calculated by multiplying the original Annual Base Rent (except as adjusted by Subsection 3.3(b) below) by a fraction, which fraction shall have as a numerator the CPI for the month in which the CPI Adjustment is to occur and which fraction shall have as its denominator the CPI for the month in which the Rent Commencement Date occurred.

(ii) A "Revenue Adjustment" calculated as an amount equal to seventy five percent (75 %) of the average Gross Revenue during the three (3) year period immediately preceding the Adjustment Date.

Notwithstanding anything contained in this Lease to the contrary, under no circumstances shall a Three-Year Annual Base Rent Adjustment result in a reduction below the Annual Base Rent in effect the immediately preceding thirty-six (36) month period nor increase it more than ten percent (10%) of the amount of Annual Base Rent then in effect. When the adjusted Annual Base Rent is determined, Landlord shall give Tenant written notice to that effect indicating how the adjusted Annual Base Rent was computed. Pending receipt of such notice from Landlord as to the new Base Rent, Tenant shall continue to pay the Annual Base Rent in effect during the preceding thirty-six (36) month period; provided, however, that Landlord shall have one hundred twenty (120) days to provide Tenant with a notice of its increase Annual Base Rent and Tenant shall then make up for the difference in the Annual Base Rent for the preceding period except that in no event shall Landlord be entitled to collect such difference for a period in excess of one hundred twenty (120) days.

(b) Twenty-Five Year Annual Base Rent Adjustment. After twenty-five (25) years from the Rent Commencement Date ("Twenty-Fifth Year Annual Base Rent Adjustment Date"), the Landlord, in its sole discretion, may reset Annual Base Rent pursuant to an updated Appraised Value of the Property consistent with the Appraisal Process described in Section 3.4(a) through (e), inclusive, provided that Annual Base Rent shall not be adjusted to less than the Annual Base Rent for the preceding year ("Twenty-Fifth Year Annual Base Rent Adjustment"). Should Landlord reset the Annual Base Rent after the Twenty-Fifth Year Annual Base Rent Adjustment Date, then all subsequent three-year rent adjustments, pursuant to the preceding paragraph, will use the Twenty-Fifth Year Annual Base Rent Adjustment.

3.4 Appraisals. For the purposes of calculating Annual Base Rent, the Parties shall establish the "Appraised Value" of the Property within ninety (90) days of the Effective Date pursuant to the "Appraisal Process" described in subsections (a) through (e), inclusive. After completion of the Appraisal Process, the Parties will append a document with the Appraised Value to this Lease as Exhibit F.

(a) Appraised Value. Landlord and Tenant shall each select one appraiser to determine the Appraised Value of the Premises. Each appraiser shall be informed of the existence of the other, as well as the possibility of the appointment and role of the third appraiser appointed pursuant to Subsection (b) below at the time each appraiser is selected by Landlord and Tenant. Landlord and Tenant shall each select an appraiser and each appraiser shall submit his or her written appraisal of the value of the Premises, including the supporting analysis, in accordance within sixty (60) days of the appraiser's appointment or as soon thereafter as possible. If the appraisals differ by less than ten percent (10%) of the lower of the two appraisals, the average of the two appraisals shall be the Appraised Value.

(b) Third Appraisal. In the event that the two appraisals differ by more than ten percent (10%) of the lower of the two appraisals and the Parties are unable to reach a mutual compromise on the Appraised Value within twenty (20) days thereafter, then the two appraisers shall select a third appraiser without prior disclosure of their respective appraisals to such third appraiser. If the original two appraisers are unable to agree upon a third appraiser within such twenty (20) day period and the Parties are unable to agree upon the third appraisal within such second twenty (20) day period, the third appraiser shall be appointed by the presiding judge of the Superior Court of Santa Barbara County, California. If a third appraiser is required to be appointed by the presiding judge, the time within which to appoint the third appraiser shall be extended for the period of time from request for appointment or to the time the presiding judge makes such appointment. Once the third appraiser is chosen, both the Tenant's appraiser and the Landlord's appraiser shall deliver their respective appraisals to such third appraiser. Such third appraiser shall perform such investigations as may be required pursuant to the Uniform Standards of Professional Appraisal Practice so as make a determination as to which of the first two appraisals is closer to the third appraiser's opinion of the Appraised Value. Within sixty (60) days after the appointment of the third appraiser, the third appraiser shall select one of the two initial appraisals (as described in Subsection (a)) that such appraiser believes most closely approximates the Appraised Value and such Appraised Value, as selected, shall be the conclusive "Appraised Value" for purposes of this Lease. At no time after the Effective Date shall Landlord, Tenant, their respective appraisers, or any agent or employee of them contact the third appraiser with respect to the Inn or in any manner attempt to influence the determination of the third appraiser, except discussions relating to the scope of employment and compensation therefor and providing such third appraiser copies of both of the first two appraisals as provided above.

(c) Each Party shall be responsible for payment of its selected appraiser and, if a third appraiser is selected to determine any matters, the Parties shall each pay fifty percent (50%) of said third appraiser's costs.

(d) Appraiser / Appraisal Standards. All appraisers appointed pursuant to this Lease shall be Members of the Appraisal Institute (MAI) with not less than ten (10) years' experience appraising hotels. Each appraiser shall know the identity of the other appraiser, or the other two appraisers, as the case may be. Each Party shall pay the cost of the appraiser selected by such Party and one-half (1/2) of the cost of the third appraiser, if necessary. For purposes of determining the Appraised Value, the results of such appraisals shall be binding upon Tenant and Landlord.

(e) Highest and Best Use. The Appraised Value shall be determined based on the current status of the Premises and the Permits for the Inn, as of the date of the appraisal and with no assumptions on completion of construction of any Improvements, in accordance with California Code of Civil Procedure Section 1263.320.

ARTICLE 4: PAYMENT OF TAXES AND OTHER CHARGES

4.1 Notice of Possessory Interest; Payment of Impositions. Landlord states and Tenant acknowledges that the Lease creates a possessory interest subject to property taxation pursuant to Revenue and Taxation Code Sections 107 and 107.6. Commencing on the Commencement Date and continuing for the entire Term of this Lease and any extension(s) thereof, Tenant covenants and agrees (except as otherwise expressly provided in Sections 4.2 and 4.4 below) to pay and discharge or cause to be paid and discharged all Impositions promptly before delinquency and before any fine, interest or penalty shall be assessed by reason of its nonpayment. If, at any time during the Term the methods of taxation prevailing at the Commencement Date shall be so altered so that in lieu of any Imposition described in this Section 4.1 there shall be levied, assessed or imposed an alternate tax, however designated, such alternate tax shall be deemed an Imposition for the purposes of this Article and Tenant shall pay and discharge such Imposition as provided by this Article. If the Commencement Date is a day other than the first day of a "tax fiscal year", i.e. July 1 (a "Tax Year"), all such Impositions shall be prorated such that Tenant shall be responsible only for those Impositions payable in connection with the Premises following the Commencement Date, such proration to be based on the ratio that the number of days in such fractional Tax Year bears to 365. Payment of Impositions with respect to the final Tax Year within the Term shall be similarly prorated.

Notwithstanding the foregoing, to the extent the amount of an Imposition is assessed or imposed as the result of a sale, transfer, conveyance of, or change of ownership in, Landlord's Estate (by Landlord or any successor thereof) the payment of the amount of such Imposition resulting therefrom shall be the obligation of Landlord. Landlord shall pay all taxes (including possessory interest, real property, ad valorem, and personal property taxes), assessments, charges, license fees, municipal liens, levies, excise taxes, impact fees, or imposts, whether general or special, ordinary or extraordinary imposed by any government or quasi-governmental authority regarding all portions of the Property that do not include the Premises.

4.2 Contesting Impositions. In the event that Tenant shall desire to contest or otherwise review by appropriate legal or administrative proceeding any Imposition, Tenant shall give Landlord written notice of its intention to so contest same; after giving such notice to Landlord, Tenant shall not be in default hereunder by reason of the non-payment of such Imposition if Tenant shall have (a) obtained and furnished to the applicable taxing authority (other than Landlord) a bond or other security to the extent required by applicable law in order to prevent a foreclosure, and (b) established reserves sufficient to pay such contested Imposition and all penalties and interest that may be reasonably payable in connection therewith. Any such contest or other proceeding shall be conducted solely at Tenant's expense and free of expense to Landlord. Landlord shall reasonably cooperate with Tenant and expeditiously, within a commercially reasonable period of time and acknowledging that time is of the essence, provide such assistance as may be reasonably requested by Tenant in any such contest. Tenant shall pay the amount so determined to be due, together with all costs, expenses, interest, and penalties related thereto.

4.3 Utilities. All water, gas, electricity, sewage and trash disposal, or other public utilities used upon or furnished to the Premises during the Term of this Lease shall be promptly paid by Tenant as billed and prior to delinquency. Landlord shall pay for the cost of all such utilities regarding all portions of the Property that do not include the Premises.

4.4 Payment by Landlord. Unless Tenant is contesting any Impositions as provided in Section 4.2 above, Landlord may, at any time after the date any Imposition is delinquent, give written notice to Tenant specifying same, and if Tenant continues to fail to pay or contest such Imposition, then at any time after ten (10) days from Tenant's receipt of such written notice, Landlord may pay the Imposition specified in said notice. Tenant covenants to reimburse and pay Landlord any amount so paid or expended in the

payment of such Imposition upon demand therefor, with interest thereon at the Default Rate from the date of such payment by Landlord until repaid by Tenant. Failure to pay such Impositions or the Default Interest thereon shall constitute a breach by Tenant of this Lease.

4.5 Landlord's Obligations. Notwithstanding anything herein to the contrary, Tenant shall not be required to pay any franchise, capital levy, or transfer tax of Landlord, or any net income tax measured by the income of Landlord from all sources, or any tax which may, at any time during the Term, be required to be paid on any gift, or demise, deed, mortgage, descent or other alienation of any part or all of the estate of Landlord in and to the Premises or any buildings or improvements which are now or hereafter located thereon, except as hereinafter provided. If Tenant shall be required by law to pay, and pursuant thereto does pay, any tax, assessment or charge specified in this Section 4.5, Landlord shall, immediately upon request, reimburse Tenant for any such payments. If such immediate reimbursements are not forthcoming, and the Lease is in full force and effect, Tenant shall receive a credit against the rental payment next due hereunder for the full amount of such delinquent reimbursements.

ARTICLE 5: ENCUMBRANCE OF TENANT'S ESTATE; MORTGAGEE PROTECTION

5.1 Encumbrance of Tenant's Estate. Upon not less than fifteen (15) days' prior written notice to Landlord (the receipt of which notice Landlord shall acknowledge in writing promptly upon Tenant's request therefor), Tenant shall have the right, without Landlord's consent, to mortgage, pledge or encumber Tenant's Estate or any portion thereof or interest therein pursuant to one or more Permitted Mortgages, or any Sublease, provided Tenant shall refrain from encumbering or purporting to encumber, by means of a Permitted Mortgage or otherwise, (a) any portion of the Property other than Tenant's Estate and Tenant's interest in the Premises or (b) any portion of the Landlord's Estate. The documentation of any such Permitted Mortgage shall include the Mortgagee's acknowledgment of the foregoing restrictions. Tenant shall, promptly following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, deliver a true and correct copy thereof to Landlord.

5.2 Mortgagee Protections. Provided that any Mortgagee provides Landlord with a conformed copy of each Permitted Mortgage which contains the name and address of such Mortgagee for the purpose of delivery of Notices (as described below in Section 5.2(b)) and, and provided such Permitted Mortgage was executed in compliance with the terms of this Lease, Landlord hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage:

(a) No Termination. No action by Tenant or Landlord to cancel, surrender, or materially modify the terms of this Lease or the provisions of this Article 5 shall be binding upon a Mortgagee without its prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Notices. If Landlord shall give any notice, demand, election or other communication which may adversely affect the security for a Permitted Mortgage, including without limitation a notice of an Event of Default hereunder (hereinafter collectively, "Notices"), to Tenant hereunder, Landlord shall simultaneously give a copy of each such Notice to the Mortgagee at the address theretofore designated by it. Such copies of notices shall be sent by Landlord and deemed received as described in Article 18 below. No Notice given by Landlord to Tenant shall be binding upon or affect said Mortgagee unless a copy of said Notice shall be given to Mortgagee pursuant to this Section. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent. Landlord shall not be bound to recognize any assignment of such Permitted Mortgage unless and until Landlord shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with

respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord to give Notices or copies thereof to said Mortgagee shall be binding upon Landlord unless and until all of said holders shall designate in writing one of their number to receive all such Notices and copies thereof and shall have given to Landlord an original executed counterpart of such designation.

(c) Performance of Covenants. The Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by Tenant hereunder within the time periods specified herein, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of Landlord.

(d) Delegation to Mortgagee. Tenant may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Tenant's rights hereunder, but no such delegation shall be binding upon Landlord unless and until either Tenant or the Mortgagee shall give to Landlord a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon Landlord of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Article 5, together with written notice specifying the provisions therein which delegate such authority to said Mortgagee, shall be sufficient to give Landlord notice of such delegation.

(e) Default by Tenant. Upon the occurrence of an Event of Default by Tenant in the payment of any monetary obligation hereunder Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such Event of Default to any Mortgagee and such Mortgagee shall have failed to cure such Event of Default within thirty (30) days following delivery of such notice. Upon the occurrence of an Event of Default by Tenant in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides written notice of such Event of Default to any Mortgagee and such Mortgagee shall have failed to cure such Event of Default within sixty (60) days following the expiration of any grace or cure periods granted Tenant herein; provided, however, if such Event of Default cannot practicably be cured by the Mortgagee without taking possession of the Premises, or if such Event of Default is not susceptible of being cured by the Mortgagee, then Landlord shall not terminate this Lease if and as long as:

(i) In the case of an Event of Default which cannot practicably be cured by the Mortgagee without taking possession of the Premises, the Mortgagee has delivered to Landlord, prior to the date on which Landlord shall be entitled to give notice of lease termination, a written undertaking wherein the Mortgagee agrees that it will cure such Event of Default.

(ii) In the case of an Event of Default which cannot practicably be cured by the Mortgagee without taking possession of the Premises, said Mortgagee shall proceed diligently to obtain possession of the Premises as Mortgagee (including possession by receiver) and, upon obtaining such possession, shall proceed diligently to cure such Event of Default in accordance with the undertaking delivered pursuant to Subsection (i) above but in no event later than one hundred and eighty (180) days after obtaining possession; and

(iii) In the case of an Event of Default which is not susceptible to being cured by the Mortgagee (for example, the insolvency of Tenant), the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant's Estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, such Event of Default shall be deemed to have been cured.

The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Premises pursuant to Subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant to Subsection (iii) above, if and when such Event of Default shall be cured by Tenant. Nothing herein shall preclude Landlord from exercising any of its rights or remedies with respect to any other event of Default by Tenant during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Tenant's Estate hereunder and shall cure all Events of Default which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior Events of Default which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed Events of Default hereunder.

(f) Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Mortgage, or any conveyance of Tenant's Estate hereunder, or any portion thereof, from Tenant to any Mortgagee or its designee through, or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provisions of or a default under this Lease, and upon such foreclosure, sale or conveyance Landlord shall recognize the Mortgagee or such designee as the Tenant hereunder upon Mortgagee's attornment to Landlord. If any Mortgagee or other third party shall acquire Tenant's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee or such other third party purchaser shall thereafter have the right to further assign or transfer Tenant's Estate to an assignee upon obtaining Landlord's consent with respect thereto, which consent shall not be unreasonably withheld or delayed, and subject to all of the other provisions of Article 15 below. Upon such acquisition of Tenant's Estate as described in the preceding sentence by Mortgagee or its designee, Landlord and Mortgagee shall immediately execute and deliver to each other a new lease of the Premises to such Mortgagee, upon the written request therefor by such Mortgagee given not later than one hundred twenty (120) days after such Mortgagee's or its designee's acquisition of the Tenant's Estate. Such new lease shall be substantially similar in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining Term of this Lease, and the elimination of any requirements which have been fulfilled by Tenant prior thereto, and to the extent within Landlord's control, such new lease shall have priority equal to the priority of this Lease ("New Lease"). Upon execution and delivery of such New Lease, Landlord shall cooperate with the new tenant under such New Lease, at the sole expense of said new tenant under such New Lease, in taking such action as may be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Premises.

(g) Mortgagee Loss Payable. Landlord agrees that the names of each Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on condition that the Insurance Proceeds are to be applied in the manner specified herein. Tenant's failure to do so shall not constitute a default by Landlord.

(h) New Lease. Landlord agrees that in the event of any termination of this Lease (including termination as the result of Mortgagee's failure to timely exercise its cure rights for an Event of Default by Tenant), or by reason of the disaffirmance of this Lease by a receiver, liquidator or trustee for Tenant or its property, Landlord will enter into a New Lease of the Premises with the most senior Mortgagee requesting a New Lease for the remainder of the Term, effective as of the date of such termination, at the rent, and upon the terms, provisions, covenants of agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Premises as provided in Section 5.2(f), provided:

(i) The senior Mortgagee shall make written request upon Landlord for the New Lease within sixty (60) days after the date of termination;

(ii) The senior Mortgagee shall pay to Landlord at the time of the execution and delivery of the New Lease any and all expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected by reason of the Event of Default and Landlord's reasonable attorney's fees in connection with Landlord's issuance of the New Lease;

(iii) Upon execution and delivery of a New Lease, the senior Mortgagee shall perform and observe all covenants herein contained on Tenant's part to be performed which are susceptible to being performed by the senior Mortgagee, and shall further remedy any other conditions which Tenant under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the senior Mortgagee; and

(iv) The tenant under the New Lease shall have the same right, title and interest in and to all improvements located on the Premises as Tenant had under the terminated Lease immediately prior to its termination.

(v) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any New Lease shall be prior to any Permitted Mortgage or other lien, charge or encumbrance on the Premises, to the same extent as the terminated Lease, and shall be accompanied by a conveyance of title to the existing improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Landlord) for a term of years equal to the term of the New Lease, subject to the reversion in favor of Landlord upon expiration or sooner termination of the New Lease. Subordination agreements necessary to effectuate the foregoing shall be procured by Landlord solely in the event the lien, charge or encumbrance to be subordinated is created by Landlord. The rights granted any Mortgagee to a New Lease shall survive any termination of this Lease.

(vi) If a Mortgagee shall elect to demand a New Lease under this Section 5.2(h), Landlord agrees, at the request of, on behalf of, and at the sole cost and expense of the Mortgagee, to institute and pursue diligently to conclusion any appropriate legal remedy or remedies to oust or remove the original Tenant or any successor thereof from the Premises, and those Subtenants actually occupying the Premises, or any part thereof, as designated by the Mortgagee subject to any non-disturbance or attornment agreements with such Subtenants. Such Mortgagee shall indemnify, defend and hold harmless Landlord for any losses, claims, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of Landlord's compliance with the provisions of this subparagraph (vi).

(vii) Unless and until Landlord has received notice from all Mortgagees that the Mortgagees elect not to demand a New Lease as provided in Section 5.2(h), or until the period therefor has expired, Landlord shall not cancel or agree to the termination or surrender of any existing Subleases nor enter into any new Subleases hereunder without the prior written consent of the Mortgagee.

(i) No Obligation to Cure. Nothing herein contained shall require any Mortgagee to enter into a new lease pursuant to Section 5.2(h) above, or to cure any default of Tenant referred to above.

(j) Limited Personal Liability. In the event any Mortgagee or its designee becomes the "Tenant" under this Lease or under any New Lease obtained pursuant to either Section 5.2(f) or 5.2(h) above, the Mortgagee or its designee shall be personally liable for the obligations of Tenant under this Lease or a New Lease only for the period of time that the Mortgagee or its designee remains the actual beneficial holder of the Tenant's Estate, and only to the extent provided in this Lease or such New Lease. No Mortgagee (or anyone whose title derives from a Mortgagee) shall have any personal liability prior to the date Mortgagee becomes the "Tenant" as set forth in the immediately preceding sentence. Any personal liability which may exist pursuant to this clause (j) shall be limited to such Mortgagee's interest in the Premises for the performance or payment of any covenant, liability, warranty or obligation hereunder or

under any New Lease, new agreement or other agreement entered into in connection herewith, and the Landlord agrees that it shall look solely to the interests of such Mortgagee in the Premises for payment or discharge of any such covenant, liability, warranty or obligation.

(k) Condemnation; Insurance Proceeds. Tenant's share of any condemnation award shall be no less than the total condemnation award less the value of Landlord's remainder interest in the Premises, considered as if unimproved and as if the Lease had not terminated. The proceeds from any insurance policies or arising from a condemnation which are payable to Tenant shall be paid to and held by the senior Mortgagee and distributed pursuant to the provisions of this Lease.

(l) Material Notices. The Parties shall give all Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Premises, and any Mortgagee shall have the right to intervene therein and shall be made a Party to such proceedings. The Parties do hereby consent to such intervention. In the event that any Mortgagee shall not elect to intervene or become a Party to the proceedings, such Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(m) Separate Agreement. Landlord shall, upon request, execute, acknowledge and deliver to each Mortgagee an agreement prepared at the sole cost and expense of Tenant, in a form satisfactory to Landlord and each Mortgagee, between Landlord, Tenant and the Mortgagees, agreeing to all of the provisions of this Lease.

(n) Further Amendments. Landlord and Tenant hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage, as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment as well as such other documents containing terms and provisions customarily required by Lenders in connection with any such financing; provided, however, that any such amendment shall not in any way affect the aggregate term or Rent under this Lease, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

(o) Priority of Fee Mortgages. Any mortgage on Landlord's Estate (a "Fee Mortgage") shall be subject and subordinate to this Lease. Landlord shall not enter into any Fee Mortgage that violates the previous sentence. Landlord shall not subordinate this Lease to any Fee Mortgage without the prior written consent by all Mortgagees.

(p) No Merger. If this Lease and the Landlord's Estate are ever commonly held, then they shall remain separate and distinct estates and shall not merge without the prior written consent by all Mortgagees.

5.3 Additional Mortgagee Protection. Notwithstanding anything to the contrary in this Lease, Mortgagee: (i) may exercise its rights through an affiliate, assignee, designee, nominee, subsidiary, or other person, acting in its owns name or in Mortgagee's name (and anyone so acting shall automatically have the same protections, rights, and limitations of liability as Mortgagee); (ii) shall never be obligated to cure any Tenant default except pursuant to a written undertaking as provided in Section 5.2(e)(i); (iii) may abandon Mortgagee's cure of Tenant default at any time; and (iv) may withhold its consent or approval for any reason

or no reason, except where this Lease states otherwise. Any such consent or approval must be written. To the extent any Mortgagee's rights under this Lease apply after this Lease terminates, they shall survive.

ARTICLE 6: POSSESSION, USE, COMPLIANCE WITH LAWS, MAINTENANCE AND REPAIRS, MANAGEMENT

6.1 Possession. Tenant acknowledges that as of the Commencement Date it shall have made such inspections as deemed necessary by Tenant, and Tenant shall accept possession of the Premises in its "AS IS" condition, including but not limited the Premises being located adjacent to an existing and operational commercial and passenger railroad, as of the Commencement Date. Tenant shall conduct a diligent and thorough investigation of all matters described in this Lease and such other matters and conditions as Tenant, in its sole and absolute discretion, may deem material. Tenant hereby represents and warrants to Landlord that, by the Commencement Date, it will have completed its investigation with respect to the Premises and any other matters with respect to the Lease that Tenant has deemed to be material pursuant to the Agreement; that Tenant does not rely and has not relied on any statement, act or omission of Landlord in determining the scope of the investigation it conducted other than as provided in the Agreement; that Tenant will not complete the transaction unless it is satisfied with the results of its investigation and not in reliance on any information or disclosures provided by Landlord other than as specifically provided pursuant to the Agreement.

6.2 Use. Subject to the provisions of this Article 6, the Governmental Requirements, and the Agreement, Tenant shall have the right to use the Premises for the construction, ownership, and operation of the Inn pursuant to the terms and conditions of the Agreement and consistent with all Governmental Requirements.

6.3 Compliance With Laws. Subject to the provisions of Article 8 below, Tenant shall comply with the Agreement and all Governmental Requirements in the use, occupation, control and enjoyment of the Premises and in the operation and conduct of its business thereon. Tenant shall have the right, at its own cost and expense, to contest or review by appropriate legal or administrative proceeding the validity or legality of any such Governmental Requirements.

6.4 Maintenance. Tenant shall, during the Term of this Lease, keep and maintain the Premises in compliance with the Agreement, this Lease, all Governmental Requirements and all appurtenances thereto in commercially good order, condition and repair for inns of similar high quality within the County of Santa Barbara, and shall allow no nuisance to exist or be maintained therein. Landlord shall have no obligation at any time or in any manner whatsoever to maintain or repair the Premises or any improvements located thereon or any personal property located therein. Tenant expressly waives the benefit of any right, statute, rule or regulation, now or hereafter in effect, which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition or repair. Without limiting the forgoing, the Tenant shall specifically maintain the Premises and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti and in accordance with the "Maintenance Standards" hereinafter defined. Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Premises and any and all other improvements on the Premises. To accomplish the maintenance, Tenant shall either staff or contract with and hire qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Lease.

The following maintenance standards (the "Maintenance Standards") shall be complied with by Tenant and its maintenance staff, contractors or subcontractors, in addition to any requirements or restrictions imposed by the City:

(a) All improvements to the Premises shall be maintained in conformance and in compliance with the reasonable commercial development maintenance standards for inns of similar high quality within County of Santa Barbara, including but not limited to: painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curbline.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road and sidewalk conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) Upon notification of any maintenance deficiency, Tenant shall have thirty (30) days within which to correct, remedy or cure the deficiency. If the written notification states the problem is graffiti or is urgent relating to the public health and safety of the City, then Tenant shall have forty-eight (48) hours to rectify the problem.

6.5 Maintenance Reserve Fund.

(a) To ensure the quality of maintenance after the commencement of operations of the Inn, a maintenance reserve fund ("Maintenance Reserve Fund") shall be established by Tenant. Commencing from the date the Inn is open to the public ("Opening Date") and continuing until the fourth anniversary of the Opening Date, the Tenant shall set aside four percent (4.0%) of Gross Revenue as reserves for the Maintenance Reserve Fund to be used for maintenance of the Inn at the Tenant's reasonable discretion, subject to the limitations provided in Section 6.4. Within thirty (30) days following the third anniversary of operations of the Inn, the Tenant shall commission a Reserve Study ("Reserve Study") of the Inn produced by a qualified consultant with at least ten (10) years' experience in the preparation of reserve studies for commercial buildings, including inns, hotels and other residential properties. Tenant shall submit a draft Reserve Study to the Landlord for its review and comments. Landlord shall have the right to approve or reject the Reserve Study within thirty (30) days of the completion of the Tenant's Reserve Study. In the event that Landlord rejects the Tenant's Reserve Study, Landlord shall commission a new Reserve Study, at its own expense and with a consultant of its own choosing, which Landlord's Reserve Study shall be pursuant to the same standards as required on the Reserve Study commissioned by Tenant. Tenant shall have the right to approve or reject Landlord's Reserve Study. In the event that Tenant rejects the Landlord's Reserve Study, Landlord and Tenant shall jointly commission a third Reserve Study, at the Parties mutual expense and with a consultant mutually approved by both Parties, which third Reserve Study shall conclusively establish the approved Reserve Study by both Parties. The approved Reserve Study's recommendations shall establish the future percentage of the amount of Gross Room Revenue to be set aside for the Maintenance Reserve Fund commencing on the fourth anniversary of the Opening Date.

(b) Tenant shall keep the Maintenance Reserve Fund in a separate bank account, and shall provide an annual accounting of the Maintenance Reserve Fund to the Landlord that will include expenditures as well as deposits into the account. The Maintenance Reserve Fund account shall not be used

as collateral or otherwise be encumbered, unless required by a Mortgagee. Deposits into the Maintenance Reserve Fund shall be on the same schedule as Percentage Rent payments to the City.

(c) Tenant's use of the Maintenance Reserve Fund shall be limited to fund material repairs and replacements of Improvements or equipment of the Inn as well as unexpected expenses or emergencies. The Maintenance Reserve Fund shall not be used for routine operating and maintenance expenses, or any other furniture, fixtures, and equipment with less than a five (5) year useful life. Examples of the permitted use of the Maintenance Reserve Fund include, without any limitation, disbursement for any of the following: (i) furniture, fixtures, and equipment; (ii) building weather and water proofing including roof replacement; (iii) construction or significant renovation of Inn amenities; (iv) pool repair/pump replacement; (v) significant landscaping projects; (vi) replacing or adding outdoor hardscape; (vii) significant Painting inside or outside, and (viii) other non-routine unexpected significant repairs or replacements that require a building permit.

(d) Notwithstanding the foregoing, the Maintenance Reserve Fund shall be subject to any additional requirements required by a Mortgagee.

6.6 Management by Approved Inn Management Company; Changes in Inn Management Company and New or Amended Inn Management Agreement; Removal/Replacement of Inn Management. At all times from the Opening Date through the remainder of the Term, Tenant shall cause the day-to-day operation of the Inn to be managed by the Tenant or a Inn Management Company approved by the City Council and, in this regard, Tenant shall cause the Inn Management Company to continuously (24 hours per day during all days that the Inn is open for business) maintain competent and professional staff on the Premises.

Should the Tenant desire to use a Inn Management Company, the Tenant shall submit to the City Manager or its designee for review and the City Council's approval the identity of the Inn Management Company that the Tenant desires to have manage the Inn which approval shall not be unreasonably withheld, conditioned or delayed. The City Council's criteria for review of approving the Inn Management Company shall be limited to examining the following: (i) the executive management of the Inn Management Company who will be responsible for the management of the Inn shall have a minimum of ten (10) years' experience in the successful operation of inn and hotels in Southern California on a par with or better than the prevailing standard in comparable quality to the Inn; and (ii) the Inn Management Company, its principals, and all of the individuals who will be responsible for managing the Inn on the Premises are of good moral character and none of them ever has been convicted of a felony involving moral turpitude, including without limitation any crime involving dishonesty, theft, embezzlement, forgery, violence, or physical force against another person or persons. Concurrently with submitting its request for approval of the Inn Management Company, Tenant shall submit to the City Manager or its designee reasonable information needed to demonstrate compliance with the foregoing criteria and thereafter, upon the City Manager's request, Tenant shall cooperate with City Manager and provide such additional reasonable information as City Manager may reasonably request relating to such criteria.

In addition to the foregoing, prior to the time that any new or different Inn Management Company commences to manage and operate the Conforming on the Premises, Tenant shall submit to the City Manager or its designee for the City Council's approval the form of the inn management agreement that Tenant proposes to enter into with the Inn Management Company ("Inn Management Agreement"). The City Council shall, in its reasonable discretion, review the Inn Management Agreement only to conform that it is consistent with the terms of this Lease. In addition, upon City Manager's request, Tenant shall cooperate with City Manager and provide such additional reasonable information as City Manager may reasonably request relating to such criteria bearing upon City Council's approval of the Inn Management Agreement. The City Council shall grant such approval if Tenant provides evidence reasonably satisfactory

to the City Council that the Inn Management Agreement is consistent in all respects with this Lease. Within five (5) days after Tenant and the Inn Management Company execute and deliver the Inn Management Agreement, Tenant shall deliver to City Manager a complete final executed copy consistent with City Council's approval.

If after City Council's approval of the Inn Management Company and the Inn Management Agreement, as provided herein, Tenant desires either to (i) change the Inn Management Company or (ii) enter into a new Inn Management Agreement (provided that a mere amendment for an extension of the term of the previously approved Inn Management Agreement or any amendment that does not affect the criteria which is the basis of approval of the Inn Management Agreement by the City Council shall not be deemed to constitute a new Inn Management Agreement for purposes of this Section), Tenant shall be required to submit such matter(s) to the City Manager or its designee. The City Council shall grant such approval(s) consistent with the criteria and procedures set forth above. In no event shall Tenant change the Inn Management Company or amend or enter into a new Inn Management Agreement requiring the City Council's approval hereunder without first obtaining the City Council's approval. Within five (5) days after Tenant enters into any new or amended Inn Management Agreement, Tenant shall deliver to City Manager a complete final executed copy consistent with City Council's approval.

6.7 Discount Room Rates. Tenant shall offer a room discount for any guest either arriving via train, or who is a resident of the City residing within the 93013 zip code ("Special Guests"). The room discount for Special Guests shall be equal to or greater than the best available discount for an equivalent type of room for the rental dates. In no instance, will the discount to a Special Guest be less than the discount available to members of the Automobile Club of Southern California (AAA) or other similar entities.

ARTICLE 7: INITIAL CONSTRUCTION AND ALTERATIONS

7.1 Initial Construction. Tenant shall construct the Inn pursuant to the terms of the Agreement and the Governmental Requirements.

7.2 Alterations. After completion of construction of the Inn and Improvements pursuant to the Agreement and the Governmental Requirements (as memorialized by the recordation of the Release of Construction Covenants defined in the Agreement), Tenant shall have the right at any time during the Term, and in Tenant's sole and absolute discretion, cost, and expense, subject only to the terms and conditions of this Lease and Governmental Requirements, to make alterations to the Improvements or the Premises ("Alterations"). Any Alternation shall be subject to all Governmental Requirements in effect at the time the alteration is made, including, but not limited to, compliance with City Development Review. Notwithstanding the foregoing, the Parties agree and acknowledge that City Development Review may require Landlord sign-off on an application for Alterations. The Landlord shall not unreasonably delay sign-off on any Alterations that do not result in material changes to the Conforming Inn as defined in the Agreement. In the event Alterations require material changes to the Conforming Inn as defined in the Agreement, the Tenant shall obtain the Landlord's prior written consent to the Alterations, which the Landlord can withhold or condition in its reasonable discretion, before seeking the appropriate approval for the Alterations pursuant to City Development Review.

7.3 Title to Improvements. All Improvements constructed or installed upon the Premises by Tenant at any time prior to the Lease Expiration Date shall be and thereafter remain real property, and are and shall be the property of Tenant and part of Tenant's Estate; provided, however, that upon the Lease Expiration Date, title to such Improvements shall vest in Landlord and the same shall become the property of the Landlord. Notwithstanding anything to the contrary contained in this Section 7.3, Tenant hereby covenants and agrees to promptly execute and acknowledge (at no cost or expense to Landlord) a grant

deed in recordable form or any other documentation reasonably required by Landlord to effectuate the provisions of this Section 7.3; Tenant's covenant to do so shall survive the Lease Expiration Date.

7.4 Use of Plans. The contracts with any architect, other design professional or any general contractor shall provide, in form and substance reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder, and Landlord shall be furnished with any such agreement, together with the further agreement of the parties thereto, that if this Lease is terminated due to Tenant's default, Landlord may use any plans and specifications to which Tenant is then entitled pursuant to any such contract without payment of any further sums to any party thereto. Landlord agrees that the assignment of contracts per this Section shall be subject to and subordinate to any assignment made to the holder of an encumbrance made pursuant to Article 5 of this Lease for the purpose of constructing the Improvements and Off-Site Improvements.

7.5 No Liens on Fee. Landlord's interest in the Premises or the Property shall not be subjected to liens of any nature by reason of Tenant's construction, alteration, repair, restoration, replacement or reconstruction of any Improvements on the Premises, or by reason of any other act or omission of Tenant (or of any person claiming by, through or under Tenant) including, but not limited to, design professionals, mechanics' and materialmen's liens. All persons dealing with Tenant are hereby placed on notice that such persons shall not look to Landlord or to Landlord's credit or assets (including Landlords interest in the Improvements constructed thereon or furnishings, fixtures and equipment contained therein) for payment or satisfaction of any obligations incurred in connection with the construction, alteration, repair, restoration, replacement or reconstruction thereof by or on behalf of Tenant. Tenant has no power, right or authority to subject Landlord's interest in the Premises or the Property to any mechanic's or materialman's lien or claim of lien. Tenant covenants and agrees to give Landlord written notice not less than twenty (20) days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of Two Hundred Thousand Dollars ($200,000) (which amount shall be subject to upward adjustment on every fifth Anniversary Date of the Commencement Date to reflect changes in the CPI from the Commencement Date to the date of such adjustment) in order that Landlord may post appropriate notices of Landlord's non-responsibility. Tenant shall keep the Premises and the Property free from any and all mechanics', materialmen's, design professionals' or similar liens or charges resulting from any of Tenant's activities with respect to construction, alteration, repair, restoration, replacement or reconstruction of any improvements on the Premises. Tenant shall have the right to contest the correctness or validity of any such lien if, not later than ten (10) business days after demand by Landlord, Tenant procures and records a lien release bond issued by an insurer authorized to issue surety bonds in California in an amount equal to one and one-quarter (1-1/4) times the amount of claim of lien. The bond shall meet the requirements of California Civil Code Section 8424 and shall provide for the payment of any sum that the claimant may recover on the claim, together with the costs of suit if the claimant recovers in such action.

ARTICLE 8: ENVIRONMENTAL MATTERS

8.1 Environmental Compliance. Commencing on the Effective Date, Tenant shall at all times comply with applicable Environmental Laws affecting the Premises. Tenant shall at its own expense maintain in effect any permits, licenses or other governmental approvals relating to Hazardous Substances, if any, required for Tenant's use of the Premises. Tenant shall make all disclosures required of Tenant by any such Environmental Laws, and shall comply with all orders, with respect to Tenant's and its employees', agents', contractors' and invitees' use of the Premises, issued by any governmental authority having jurisdiction over the Premises and take all action required by such governmental authorities to bring Tenant's and its employees', agents', contractors' and invitees' activities on the Premises into compliance with all Environmental Laws affecting the Premises.

8.2 Notices. If at any time Tenant or Landlord shall become aware or have reasonable cause to believe that any actionable level of Hazardous Substance has been released or has otherwise come to be located on or beneath the Premises, such Party shall immediately upon discovering the release or the presence or suspected presence of the Hazardous Substance, give written notice of that condition to the other Party. In addition, the Party first learning of the release or presence of a reportable or actionable level of Hazardous Substance on or beneath the Premises, shall immediately notify the other Party in writing of: (i) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws; (ii) any claim made or threatened by any person against Landlord, Tenant or the Premises arising out of or resulting from any actionable level of Hazardous Substances; and (iii) any reports made to any local, state, or federal environmental agency arising out of or in connection with any reportable or actionable level of Hazardous Substance.

8.3 Environmental Indemnity. Tenant agrees, with respect to the Premises, to indemnify, defend and hold Landlord Indemnified Parties harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees) by third parties, for bodily injury or property damage, resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Substances, under, in, about, or from or the transportation of any such Hazardous Substances to or from, or the migration of Hazardous Substances onto the Premises, and (ii) the violation, or alleged violation, of any Environmental Laws regarding the Premises or neighboring properties or otherwise affecting the Premises (collectively "Environmental Liabilities") except the Environmental Liabilities arising out of the gross negligence or willful misconduct of the Landlord occurring after the Effective Date or occurring prior to the Effective Date but discovered after the Effective Date. Tenant shall establish with substantial evidence the date that the Environmental Liability occurred. This indemnity obligations in this Section 8.3 shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment by any third party. At the request of Tenant, but at no cost to Landlord, Landlord will cooperate with and assist Tenant in its defense of any such Environmental Liability. The foregoing indemnity obligations in this Section 8.3 shall survive the termination, expiration, invalidation, or performance in full or in part of this Lease.

ARTICLE 9: INSURANCE

9.1 All Risk Insurance. Tenant, at its sole cost and expense, shall upon substantial completion of any Improvement and throughout the entire Term keep the Premises insured against loss or damage by fire, windstorm, tornado, hail, water damage, lightning, vandalism, malicious mischief and against loss and additional risks as now are or hereafter may be embraced by the standard Special Form of Coverage, and any coverage available under the Installation Floater Form, in each case in the full amount of the replacement value of the Premises and one hundred percent (100%) of the replacement value of the rental receipts of the Premises on an actual loss-sustained basis (the "Full Insurable Value"). For purposes of the immediately preceding sentence, any building or structure and the Improvements related thereto or contained therein shall be deemed to be substantially completed when such building or structure and its related Improvements, taken as a whole, are substantially completed.

9.2 Additional Insurance. Tenant or any subtenant, at its sole cost and expense, shall throughout the entire Term procure and maintain:

(a) Workers' Compensation Insurance. Workers' compensation insurance in statutory limits as required by California law, with Coverage B- for employer's liability and also occupational

disease, to limits of not less than the statutory minimums required, covering Tenant's operations and the Premises.

(b) Liability Insurance. Liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Premises in a form no less than a commercial general liability policy coverage, such insurance to afford immediate protection at the Commencement Date for not less than $4,000,000 per occurrence/aggregate and $2,000,000 complete operations per occurrence/aggregate. Such insurance shall, among other things, provide broad form contractual liability coverage (including without limitation indemnification or hold harmless obligations of Tenant under this Lease) and personal injury.

(c) Automobile Insurance. For commercial automobile liability coverage of all claims for personal injury, death and property damage arising from the use of owned, non-owned and hired vehicles used in connection with providing services for the Premises, in a combined single limit of $1,000,000.

9.3 Builder's Risk Insurance. During the construction of any Improvements during the Term the insurance required by Section 9.1 shall, as to such Improvements which are part of the Premises, be in the form commonly known as "Builder's Risk" on an "all risk" basis including without limitation coverage against fire, lightning, wind damage, water damage, hail and earthquake. The policy shall be secured and maintained by Tenant in a form and amount as may from time to time be determined by Tenant. Coverage shall include all materials, supplies and equipment that are intended for specific installation in the Premises while such materials, supplies and equipment are located in or on the Premises, in transit and while temporarily located away from the Premises for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

9.4 Named Insureds. All policies of insurance required under this Lease shall include as named insureds Tenant, any leasehold Mortgagee, Tenant's managers, members, and their respective officers, directors, trustees, partners, employees and agents, as their respective interests may appear, and Landlord as an additional insured as its interest may appear. All such policies of insurance shall provide that the loss, if any, shall be payable to Tenant, provided that payments may be made directly to the third-party claimants under liability policies. Promptly upon Tenant's receipt of any payments under any such policy, Tenant shall (a) reimburse Landlord and any Mortgagee for their reasonable expenses incurred in the collection of the insurance proceeds and (b) pay to Landlord and any Mortgagee their respective shares of the proceeds paid under any such policy.

9.5 Insurance in General.

(a) Each policy of insurance required under this Lease shall include provisions that the holder of such policy shall not cancel or terminate such policy, or accuse such policy to expire, due to non-renewal by Tenant, and that coverages under such policy shall not be materially reduced, unless at least 30 days' notice of such proposed expiration or reduction has been provided to all the insureds named in such policy by such holder, including Landlord.

(b) Unless waived in writing by Landlord, each such policy shall be issued by an insurance company duly authorized to conduct business in the State of California with an A.M. Best Company, Inc. general policyholders rating of at least "B+ 14".

(c) To the extent allowed by Tenant's lenders, all proceeds of such policies shall be used for the restoration or repair of the Premises.

(d) Each policy of insurance required under this Lease shall include a provision for a waiver of subrogation in favor of Landlord, Tenant and all other insureds.

(e) Each policy of insurance may incorporate commercially reasonable deductibles.

9.6 Certificates of Insurance to Landlord. Upon the Commencement Date and thereafter not less than ten (10) days prior to the expiration date of any insurance policy delivered pursuant to this Article, Tenant shall deliver to Landlord certificates of insurance of all required policies of insurance.

9.7 Adjustment of Loss. Any loss under any policy of insurance required to be furnished under this Lease shall be adjusted solely by Tenant.

9.8 Unearned Premiums. The unearned premiums on all insurance policies in force at the end of the Term which Landlord desires to keep in effect shall be reimbursed by Landlord to Tenant and, upon such reimbursement, Tenant shall transfer to Landlord all of Tenant's interest in such insurance policies, unless a new lease is entered into by Landlord, in which case Tenant shall transfer to the new lessee under such new lease all of Tenant's interest in such insurance policies.

9.9 Blanket Insurance. Nothing in this Article shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article under any blanket insurance policy which covers other properties owned, leased or operated by Tenant or its Affiliates as well as the Premises, provided that any such policy of insurance (a) shall specify therein, or Tenant shall furnish Landlord with a written statement from the insurers under such policy specifying the amount of the total insurance allocated to the Premises, which amount shall be not less than the amount required by this Article to be carried, and (b) shall not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the Premises in an amount equal to a minimum specified percentage of the Full Insurable Value of such Premises in order to prevent the named insured therein from becoming a co-insurer of any loss with the insurer under such policy.

9.10 Primary and Excess Coverages. Limits of liability for insurance required hereunder may be provided by primary insurance or a combination of both primary and excess insurance coverages.

9.11 Insurance Non-Contributory. All insurance required to be carried by this Article 9 shall be non-contributing with any insurance carried by any of the named or additional insureds under said policies.

ARTICLE 10: DAMAGE OR DESTRUCTION

10.1 Termination. If substantial and material damage to or destruction of the Premises, or any part thereof which damage materially impairs Tenant's ability to use and occupy the same, occurs from any cause other than Tenant's gross negligence or willful misconduct, such that the cost to repair and restore the same to a useable, occupiable state materially exceeds the insurance proceeds available for any repairs necessary to restore the Premises or such repairs cannot be made within three hundred and sixty-five (365) days after obtaining all requisite Permits and approvals, Tenant may by written notice to Landlord, terminate this Lease, and Tenant's duties, liabilities and obligations hereunder, within sixty (60) days after such damage, in which case Tenant shall without demand by Landlord, pay or cause to be paid to Landlord all insurance proceeds, if any, with respect to such damage or destruction attributable to the Improvements but subject to Section 10.3 below.

10.2 Restoration. If this Lease is not terminated as provided in Section 10.1 above, Tenant shall, subject to the terms of any Permitted Mortgage, proceed diligently with the repair or restoration of the

damaged Premises as the Insurance Proceeds are available therefor (subject to payment by Tenant of deductibles), and once commenced such restoration shall be diligently pursued to completion. During such restoration of the Improvements and Premises, any unpaid Annual Base Rent due hereunder shall be equitably abated for each day and to the extent the Inn is unable to open for operations.

10.3 Insurance Proceeds. All Insurance Proceeds shall be collected, held and disbursed in accordance with the terms of the applicable Permitted Mortgage. All Insurance Proceeds payable as a result of any damage or destruction which are to be used by Tenant for such repairs and restoration shall be payable to Tenant and used by Tenant to the extent necessary for payment of the cost of repairs and restoration required hereby. Any unused proceeds may be retained by Tenant (subject to the requirements of the applicable Permitted Mortgage).

ARTICLE 11: EMINENT DOMAIN

11.1 Total Taking. If the whole or substantially all of the Premises shall be taken for a public or quasi-public use by the exercise of the power of eminent domain or by purchase under threat of condemnation by any governmental agency, this Lease shall terminate in its entirety on the date the condemning authority actually consummates such taking of the Premises, and the Rent required to be paid by Tenant hereunder shall be appropriately prorated and paid to such date of taking or reduced as provided herein below. If the whole or substantially all of the Premises shall be so taken, then the condemnation proceeds shall be distributed: (1) to Landlord for the value of the underlying land so taken, if any, then (2) to Tenant (subject to the rights of the applicable Mortgagee under its Permitted Mortgage) to the extent that it is attributable to Tenant's Estate, or Tenant's personal property or the Improvements (or that of its invitees, agents or Subtenants) other than Landlord's reversionary estate in the Improvements, then (3) to Landlord for its reversionary interest in the Improvements.

11.2 Partial Taking. If less than substantially all of the Premises shall be taken for any public or quasi-public use under the power of eminent domain or by purchase under threat of condemnation by any governmental agency, or if any appurtenances of the Premises or any vaults or areas outside the boundaries of the Premises or rights in, under or above the streets adjoining the Premises or the rights and benefits of light, air or access from or to such streets, shall be so taken, or the grade of any such streets shall be changed, in any such case in a manner that the remaining portion of the Premises can reasonably be adapted and economically operated for the purposes and in substantially the same manner as it was operated prior thereto in Tenant's good faith business judgment, Tenant shall give prompt notice thereof to Landlord, this Lease shall continue in full force and effect and Annual Rent shall be equitably abated. Tenant shall proceed, with reasonable diligence, to perform any necessary repairs and to restore the Premises to an economically viable unit in strict accordance with all Governmental Requirements and the requirements of Article 7 above, and as nearly as possible to the condition the Premises was in immediately prior to such taking. The condemnation proceeds shall be paid (1) to Tenant or as Tenant may direct (subject to the rights of any Mortgagee) as the restoration of the Premises progresses, to pay or reimburse Tenant for the cost of such restoration, then (2) to Landlord for the value of the underlying land so taken, if any, then (3) to Tenant (subject to the rights of any Mortgagee) to the extent that it is attributable to Tenant's Estate, or Tenant's personal property or the Improvements (or that of its invitees, agents or Subtenants) other than Landlord's reversionary estate in the Improvements, then (4) to Landlord for its reversionary interest in the Improvements.

11.3 Temporary Taking. If the temporary use (but not leasehold title) of the whole or any part of the Premises shall be taken as aforesaid, this Lease shall not be affected in any way and Tenant shall continue to pay all Rent due hereunder. All Condemnation Proceeds as a result of such temporary use attributable to the Term of this Lease shall be paid to Tenant.

11.4 Proceedings. In any condemnation proceeding affecting the Premises which may affect Landlord's Estate and Tenant's Estate, both Parties shall, at their own cost, have the right to appear in and defend against such action as they deem proper in accordance with their own interests. To the extent possible, the Parties shall cooperate to maximize the Condemnation Proceeds payable by reason of the condemnation. Issues between Landlord and Tenant required to be resolved pursuant to this Article shall be joined in any such condemnation proceeding to the extent permissible under then applicable procedural rules of such court of law or equity for the purpose of avoiding multiplicity of actions and minimizing the expenses of the Parties.

ARTICLE 12: DEFAULT

12.1 Events of Default. A breach of this Lease by Tenant shall exist if any of the following events (individually an "Event of Default" and collectively "Events of Default") shall occur and be continuing:

(a) Tenant shall have failed to pay the Rent within ten (10) days following when due and such failure shall not have been cured within five (5) days after receipt of written notice from Landlord respecting such overdue payment; or

(b) Tenant shall have failed to pay any other charge, Imposition or any obligation of Tenant requiring the payment of money under the terms of this Lease (other than the payment of Rent but including any reimbursement or indemnification provision of this Lease) within ten (10) days following when due and such failure shall not have been cured within five (5) days after receipt of written notice from Landlord respecting such overdue payment; or

(c) Tenant shall have failed to perform any term, covenant, or condition of this Lease or shall otherwise have breached, the Agreement including without limitation Section 505 of the Agreement, any covenants applicable to the Premises or Improvements, or the Governmental Requirements to be performed by Tenant, other than the payment of money, and Tenant shall have failed to cure same within thirty (30) days after written notice from Landlord, delivered in accordance with the provisions of this Lease, where such failure could reasonably be cured within said thirty (30) day period (subject to the occurrence of a Force Majeure Event); provided, however, that where such failure could not reasonably be cured within said thirty (30) day period, that Tenant shall not be in default unless it has failed to promptly commence and thereafter continue to make diligent, good faith and otherwise commercially reasonable efforts to cure such failure as soon as practicable.

(d) Abandonment of the Premises, Improvements or of the leasehold estate, except in accordance with Article 13 of the Lease; or

(e) The subjection of any right or interest of Tenant under this Lease to attachment, execution, or other levy, or to seizure under legal process, if not released or appropriately bonded within ninety (90) days after receipt of written notice by Landlord; or

(f) The appointment of a receiver to take possession of the Premises and/or Improvements or of Tenant's Estate or of Tenant's operations for any reason if not discharged within one hundred eighty (180) days following such appointment including but not limited to, assignment for the benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (i) pursuant to administration of the estate of any deceased or incompetent Tenant or of any deceased or incompetent individual partner of Tenant, or (ii) pursuant to a Permitted Mortgage, or (iii) instituted by Landlord, the event of default being not the appointment of a receiver at Landlord's instance but the event justifying the receivership, if any;

(g) An assignment by Tenant for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant as bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liabilities to creditors generally; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within one hundred eighty (180) days after the assignment, filing, or other initial event; or

12.2 Notice to Certain Persons. Landlord shall, before pursuing any remedy, give notice of any Event of Default to Tenant and to all Mortgagees whose names and mailing addresses were previously given to Landlord in the manner provided in this Lease. Each notice of an Event of Default shall specify the Event of Default and shall describe any damage resulting from any such act.

12.3 Landlord's Remedies. If any Event of Default by Tenant shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under the applicable provision of this Lease, subject to the rights of any Mortgagee under Article 5 of this Lease, it shall be deemed a material breach of this Lease and Landlord shall have the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative:

(a) Termination. Landlord may at its election terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, all of Tenant's rights in the Premises and in the Improvements shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Premises and the Improvements in broom-clean condition, and Landlord may reenter and take possession of the Premises and the Improvements and eject all parties in possession or eject some and not others or eject none; provided that no Subtenant provided with a Nondisturbance Agreement shall be ejected and provided Landlord shall not eject a Mortgagee in possession that is then in compliance with the provisions of this Lease. Termination shall not relieve Tenant from the payment of any sums then due to Landlord hereunder plus interest thereon from the date due at the Default Rate, or from any claim for damages previously accrued or then accruing against Tenant up to the date of termination.

(b) Reentry Without Termination. Landlord may, at its election, exercise the remedy available to it such that whether or not Tenant abandons the Premises, Landlord may continue this Lease in effect until such time as Landlord elects to terminate Tenant's right to possession, reenter the Premises and, without terminating this Lease, at any time and from time to time, subject to the rights of Subtenants provided with Nondisturbance Agreements and rights of Mortgagee in possession that is then in compliance with the provisions of this Lease, relet the Premises and Improvements or any part or parts of them for the account and in the name of Tenant or otherwise. Landlord may at its election eject all persons or eject some and not others, or eject none; provided that no Subtenant provided with a Nondisturbance Agreement shall be ejected and provided that no Mortgagee in possession that is then in compliance with the provisions of this Lease shall be ejected. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord shall be entitled to all rents from the use, operation, or occupancy of the Premises or Improvements or both. In the event of any re-entry by Landlord Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's reasonable expenses, plus interest thereon from the date due at the Default Rate, less the proceeds of any reletting or attornment which shall be applied, when received, as follows: (1) to Landlord to the extent that the proceeds for the period covered do not exceed the amount due from and charged to Tenant for the same period, and (2) the balance to Tenant. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant notice of termination.

(c) Tenant's Personal Property Located in the Premises. Subject to any rights pursuant to the applicable Uniform Commercial Code of any secured creditor of Tenant holding a perfected security interest in Tenant's personal property, which rights are acknowledged by Landlord to have priority over the rights of Landlord hereunder, Landlord may at its election use Tenant's personal property and trade fixtures located on and used in connection with the management and operation of the Premises and the Improvements, or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of Tenant. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(d) Damages. Should this Lease be terminated by Landlord pursuant to any provision of this Lease, Landlord shall be entitled to: (i) the remedies described in California Civil Code Section 1951.2, including, without limitation, the right to recover the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of section 1951.2 of the California Civil Code; and (ii) the remedies described in California Civil Code section 1951.4, including, without limitation, the right to collect, by suit or otherwise, each installment of rent or other sums that become due hereunder, or to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition of this Lease on the part of Tenant to be performed or observed.

12.4 Cumulative Remedies. The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

12.5 Waiver of Breach. No waiver by a Party of any default by the other shall constitute a waiver of any other breach or default by the other, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given performed by a Party shall give the other any contractual right by custom or estoppel, or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default in the payment of the particular rental payment so accepted, regardless of Landlord's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension, or renewal of this Lease or revocation of any notice or other act by Landlord.

12.6 Tenant Remedies. Without limiting remedies available to Tenant under this Lease or applicable law, in the event Landlord shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed within thirty (30) days after written notice of default (or if more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after written notice thereof), then in that event Landlord shall be liable to Tenant for any and all actual damages sustained by Tenant as a result of Landlord's breach from the date of such breach. If Landlord fails to cure such default and the Parties are not successful in resolving the matter through negotiations conducted or endeavored to be conducted over a reasonable period of time, not to exceed thirty (30) days, the Parties shall first use their good faith efforts to settle the dispute by mediation in Santa Barbara County, California. Tenant shall set forth its claim in a Notice to Landlord. The Landlord shall then designate the identity of the mediator subject to the reasonable approval of Tenant. The mediator shall be a lawyer or retired judge with experience in matters upon which the dispute is based. The mediation shall take place not later than thirty (30) days from the date of the delivery of Tenant's Notice. In the event the matter is not resolved by mediation within the time set forth herein Tenant shall have all rights and remedies available under this Lease or applicable law.

ARTICLE 13: SURRENDER OF THE PREMISES

On the Lease Expiration Date or earlier termination of this Lease pursuant to the provisions of this Lease, Tenant shall quit and surrender the Premises to Landlord without delay, and in good order, condition and repair, ordinary wear and tear (and damage and destruction or condemnation if this Lease is terminated pursuant to either Article 10 or 11) excepted. Such surrender of the Premises shall be accomplished without the necessity for any payment therefor by Landlord. Upon such event, title to the Improvements shall automatically vest in Landlord without the execution of any further instrument; provided, however, Tenant covenants and agrees, upon either such event to execute (at no cost or expense to Landlord) such appropriate documentation as may be reasonably requested by Landlord to transfer title to the Improvements to Landlord. No such surrender shall cause or be deemed to cause a merger of Landlord's Estate and Tenant's Estate, unless Landlord, and any Mortgagee holding a Permitted Mortgage, the lien of which was not reconveyed upon such surrender, expressly so agree in writing.

ARTICLE 14: PERMITTED SUBLEASES

14.1 Tenant's Right to Sublease. Tenant may, with Landlord's written consent, which consent shall not be unreasonably withheld, sublease or sub-sublease, on commercially reasonably terms, portions of the Improvements during the Term of this Lease pursuant to Subleases with Subtenants who will occupy all or any portion of the Premises for the conduct of the uses permitted herein, subject to the requirements set forth in this Article 14. Landlord acknowledges that uses consistent with this Lease include, without limitation, restaurants, bars, operations of the Inn and other uses consistent with the Agreement and Governmental Requirements. Tenant shall be responsible for Landlord's reasonable attorney's fees incurred in connection with Landlord's review of any request to sublease.

14.2 Required Sublease Terms. Each Sublease shall contain the following terms and conditions:

(a) The Sublease shall state that it is subject and subordinate to this Lease and to any extension, modifications or amendments of, this Lease; and

(b) That in the event of the cancellation or termination of this Lease prior to the Lease Expiration Date, the Subtenant under such Sublease shall make full and complete attornment to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant.

14.3 Non-Disturbance Agreements. If requested by a Subtenant, Landlord shall issue a commercially reasonable subordination, non-disturbance, and attornment agreement ("Non-Disturbance Agreement") as reasonably agreed to by Landlord, Subtenant and any Mortgagee, to each Subtenant requesting same; which Non-Disturbance Agreement shall require such Subtenant to acknowledge in writing to the effect that this Lease is prior to and paramount to the Sublease, and providing that Landlord shall recognize the Sublease and not disturb the Subtenant's possession thereunder so long as Subtenant is not in default (after applicable notice and cure) under its Sublease (subject to the following sentence) and agrees to attorn to Landlord for the balance of the term of such Sublease with the same force and effect as though said Sublease were originally made directly from Landlord to the Subtenant.

14.4 Obligations under Lease. Landlord acknowledges and agrees that Tenant may assign any obligation or obligations under this Lease to any Subtenants without Landlord's prior consent; provided that Tenant shall not be released from any such obligations in the event such Subtenant fails to perform same.

ARTICLE 15: TRANSFER

15.1 Assignment. Prior to the completion of the initial Improvements and recordation of the Release of the Construction Covenants pursuant to the Agreement, the terms of Section 603 of the Agreement govern any transfer of Tenant's interests under this Lease. After the completion of the initial Improvements and recordation of the Release of the Construction Covenants pursuant to the Agreement, Tenant may assign this Lease, or any interest therein, at any time provided that (i) Landlord provides its prior written consent which cannot be unreasonably withheld or conditioned, and (ii) all the conditions described in Section 15.2 below are satisfied; and (iii) an executed original of such assignment shall be delivered to Landlord. Upon the transfer by the Tenant or by any successor or assign of its leasehold interest to a transferee pursuant to this Section 15.1, the Tenant shall be relieved and released of each of the duties and obligations as Tenant under this Lease.

15.2 Conditions Precedent to Assignment. The following are conditions precedent to Tenant's right of assignment pursuant to Section 15.l:

(a) Tenant shall give Landlord thirty (30) days prior written notice of the proposed disposition with appropriate documentation as to the identity of the proposed transferee and the proposed transferee's proposed use of the Premises and financial condition and history, business description and qualifications to operate the Improvements, and business reputation.

(b) The proposed transferee shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord. Upon consummation of any assignment of Tenant's Estate, the assignee shall cause to be recorded in the Official Records an appropriate instrument reflecting such assignment.

(c) No uncured Event of Default shall exist hereunder on the date of transfer.

(d) Tenant shall have paid, or caused to be paid, to Landlord all reasonable costs and expenses incurred by Landlord in connection with the disposition, if any, including without limitation all recording fees, transfer and other taxes, staff and attorneys' fees, escrow fees and fees for title insurance and similar charges.

(e) If any existing Permitted Mortgage is to remain in place after any such disposition, Tenant shall have obtained the consent of any Mortgagee thereof to the proposed disposition or if, in connection with such proposed disposition, a prepayment penalty or other similar charge is assessed by such Mortgagee in connection with the release or reconveyance of such Permitted Mortgage Tenant or the proposed transferee shall have paid such amount so assessed.

(f) If Tenant is transferring all of Tenant's interest in the Lease, Tenant shall cause to be paid via escrow simultaneously upon such conveyance, to Landlord an amount equal to three percent (3%) of the gross sale price for all of Tenant's interest in the Lease.

15.3 Not Applicable to Permitted Mortgages. Nothing contained in this Article 15 shall be deemed to apply to or prohibit (i) Tenant's right to create Permitted Mortgages, or (ii) any Mortgagee's rights under Article 5.

ARTICLE 16: INDEMNITY

16.1 Tenant's Indemnity. Tenant shall indemnify and hold Landlord free and harmless from and against any and all claims, liabilities, judgments, liens, including but not limited to reasonable attorney fees in respect thereof, arising from Tenant's use, operation and maintenance of the Premises or from the

conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere, including but not limited to any renovation, rehabilitation of the Premises or the construction of new improvements and the issuance of Permits with respect thereto and shall further indemnify and hold Landlord free and harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease or arising from any acts of the Tenant or any of Tenant's agents, contractors or employees, and from and against all costs, attorney fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant, as a material part of the considerations to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord with the exception of those caused by the gross negligence or intentional misconduct of Landlord or its agents, contractors or employees. Notwithstanding the foregoing, Tenant shall not be liable for property damage or bodily injury to the extent caused by the gross negligence or willful misconduct of Landlord or its agents, contractors or employees. This indemnity shall survive the termination, expiration, invalidation or performance in full or in part of this Lease. Landlord and Tenant acknowledge and agree that the indemnity obligations set forth in this Article 16 shall not apply to any Environmental Liabilities and that such Environmental Liabilities shall be governed solely by Section 8.3 of this Lease.

16.4 Landlord's Indemnity. Landlord shall indemnify and hold Tenant free and harmless from and against any and all claims, liabilities, judgments, liens, including but not limited to reasonable attorney fees in respect thereof, arising from or related to the use, operation or occupancy of the Premises, or from any activity, work or things done, permitted or suffered by Landlord in or about the Premises prior to the Commencement Date.

16.5 Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant or any loss of income or for damage to the property of Tenant, Tenant's sublessees or assignees, nor shall Landlord be liable for injury to the person of Tenant's employees, agents or contractors, whatever the cause of such damage or injury, whether said damage or injury results from conditions arising on or after the date of this Lease upon the Premises or of the improvements thereon or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or omission of any other tenant, sublessee, or occupant of the Premises or any part thereof or any improvement thereon.

ARTICLE 17: NON-DISCRIMINATION

17.1 Nondiscrimination in the Use and Operation. Tenant covenants 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, or any applicable Governmental Requirements, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, nor shall the Tenant or any person claiming under or through it, 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.

Tenant shall refrain from restricting the rental, sale or lease of the Premises on any of the bases listed above. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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 Tenant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Lease, nor shall the Tenant or any person claiming under or through it, 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."

17.2 Nondiscrimination in Employment. Tenant certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other anti-discrimination laws and regulations of the United States, the State of California, and City as they now exist or may hereafter be amended.

ARTICLE 18: NOTICES

18.1 Notices. All notices, requests, demands or other communications given or required to be given hereunder shall be writing, and can be either personally delivered, in which case notice shall be deemed given as of such delivery date, sent by electronic mail in PDF format, in which case each notice shall be deemed received as of the date transmitted, sent by reputable air express service carrier (e.g., UPS or Federal Express), in which case notice shall be deemed given on the business day following the date transmitted (so long as so designated with such carrier), or deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, in which case each notice shall be deemed received seventy-two (72) hours after the same shall have been deposited in the United States mail, in all cases addressed as set forth below:

If to Landlord: Matthew Roberts
Director of Parks, Recreation and Public Facilities

5775 Carpinteria Avenue
Carpinteria, California 93103
E-mail: mattr@ci.carpinteria.ca.us

With a copy to: Brownstein Hyatt Farber Schreck, LLP
Attention: Jena Acos
1021 Anacapa Street, Second Floor
Santa Barbara, California 93101
E-mail: jacos@bhfs.com

If to Tenant: 499 Linden Managers LLC
201 W. Montecito Street
Santa Barbara, CA 93101
Attn: Whitt Hollis and Jeff Theimer
Email: whitt.hollis@gmail.com; jeff@thetheimergroup.com

With a copy to: Eisner, LLP
Attn: Sam Zodeh
9601 Wilshire Boulevard, 7th Floor
Beverly Hills, California 90210
E-mail: szodeh@eisnerlaw.com

Either Landlord or Tenant may change their respective addresses by giving written notice to the other in accordance with the provisions of this Section. Any notice required to be given hereunder may be given by the attorney for the respective Parties.

ARTICLE 19: NO MERGER

19.1 Permitted Mortgages. Landlord agrees that neither the surrender, cancellation, expiration or termination of this Lease, nor Landlord's acquisition of Tenant's Estate by any means contemplated hereunder shall, either by the election of Landlord or by operation of law, work a merger of Landlord's Estate and Tenant's Estate unless and until all indebtedness under any Permitted Mortgage has been repaid pursuant to the terms thereof. The lien of such Permitted Mortgage shall remain unaffected and in full force and effect upon and following the occurrence of any of the events described in the preceding sentence, and Landlord shall be subject to, and bound by, the provisions of such Permitted Mortgage as the successor tenant hereunder following the occurrence of any of such events.

ARTICLE 20: QUIET ENJOYMENT

20.1 Quiet Enjoyment. Landlord covenants that, provided no uncured Event of Default exists under the terms of the Lease which has continued beyond all applicable cure periods set forth in this Lease or any other written agreement between Landlord and any Mortgagee, Tenant shall have quiet and peaceful possession of the Premises as against Landlord and any person claiming the same by, through or under Landlord, subject to all of the provisions of this Lease and applicable Governmental Requirements. The Tenant acknowledges and agrees that the City, acting in its regulatory capacity, to approve maps, plans, permits, zoning and land use approvals, building permits and all other forms of discretionary approval, entitlement, permission or concurrence for nearby properties shall not constitute a breach of the covenant of quiet enjoyment.

ARTICLE 21: GENERAL

21.1 Captions. The captions used in this Lease are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Lease.

21.2 Counterparts. Any executed copy of this Lease shall be deemed an original for all purposes. This Lease may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument.

21.3 Time of Essence. Time is of the essence for the performance of each covenant and term of this Lease. Notwithstanding the foregoing, any non-monetary obligation of Tenant or Landlord which cannot be satisfied due to war, insurrection, terrorism, strikes, lockouts, riots, floods; earthquakes, fires, casualties acts of God, acts of the public enemy, pandemics or epidemics where a local government with jurisdiction over the Properties declares a local emergency, freight embargoes, governmental restrictions or priority, government orders and restrictions, or other similar events which are beyond the reasonable control of Tenant or Landlord (each, a "Force Majeure Event") shall be excused pursuant to the terms of this Section 21.3. Each Party shall notify the other of the occurrence of a Force Majeure Event within thirty (30) days from the date the Party seeking the excused performance first experienced the Force Majeure Event and such notice is not reasonably rejected in writing by the other Party within ten (10) days after receipt of the notice. In no event shall the cumulative extensions exceed one hundred eighty (180) days, unless otherwise agreed to by the Parties in writing. Further, all dates for the performance of any of Tenant's other obligations hereunder, including Tenant's Rent obligations, shall be automatically extended on a day for day basis in the event of any act of Landlord in violation of this Lease which actually delays Tenant's performance.

21.4 Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

21.5 Interpretation. This Lease shall be construed and enforced in accordance with the laws of the State of California. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. In construing this Lease, no consideration shall be given to the fact or presumption that any Party had a greater or lesser hand in the drafting of this Lease. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture or other entity, and the singular includes the plural.

21.6 Successors and Assigns. The covenants and agreements contained in this Lease shall be binding upon and shall inure to the benefit of the Parties and their respective permitted heirs, successors, and assigns.

21.7 Waivers; Amendment. The provisions of this Lease shall not, unless this Lease expressly provides otherwise, be waived, modified, or amended except by a writing executed by the Parties. The waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition upon any subsequent breach of the same or any other term, covenant or condition herein contained.

21.8 Remedies. All remedies herein conferred shall be deemed cumulative and no one remedy shall be exclusive of any other remedy herein conferred or created by law.

21.9 Good Faith. Except where a Party is specifically permitted to act in its sole and absolute discretion, each Party agrees to act reasonably and in good faith with respect to the performance and fulfillment of the terms of each and every covenant and condition contained in this Lease.

21.10 Other Instruments. The Parties shall, whenever and as often as reasonably requested to do so by the other Party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting Party to carry out the intent and purposes of this Lease, provided that the requesting Party shall bear the reasonable cost and expense of such further instruments or documents (except that each Party shall bear its own attorneys' fees).

21.11 No Partnership. The Parties hereto agree that nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, or other association between Landlord and Tenant, or cause either Party to be responsible in any way for the debts or obligations of the other Party and neither the method of computing Rent nor any other provisions contained in this Lease nor any acts of the Parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

21.12 Integration. All Exhibits attached to this Lease are incorporated herein by such reference. The Exhibits and addendums, if any, attached hereto, constitute the entire agreement between the Parties, and there are no agreements or representations between the Parties. All prior negotiations and agreements between Landlord and Tenant with respect to the subject matter of this Lease are superseded by this Lease with exception of those agreements within the Agreement. Except as otherwise provided herein, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the Parties.

21.13 Commissions. Landlord and Tenant each represent and warrant to the other that they have employed no broker, finder or other person in connection with the transactions contemplated under this Lease which might result in the other Party being held liable for all or any portion of a commission hereunder. Landlord and Tenant each hereby agree to indemnify and hold the other free and harmless from and against all claims and liability arising by reason of the incorrectness of the representations and warranties made by such Party in this Section, including, without limitation, reasonable attorneys' fees and litigation costs.

21.14 Survival. Notwithstanding anything to the contrary contained in this Lease, the provisions (including, without limitation, covenants, agreements, representations, warranties, obligations, and liabilities described therein) of this Lease which from their sense and context are intended to survive the expiration or earlier termination of this Lease (whether or not such provision expressly provides as such) shall survive such expiration or earlier termination of this Lease and continue to be binding upon the applicable Party.

21.14 Additional Rent. Any monetary obligations of Tenant to Landlord under the terms of this Lease shall be deemed to be rent.

21.15 Interest on Past-Due Obligations. Except as otherwise expressly provided herein, any amount due to Landlord and not paid when due shall bear interest at ten percent (10%) per annum from the due date. Payment of such interest shall not excuse or cure any default by Tenant under this Lease; provided, however, that interest shall not be payable on late charges incurred by Tenant, nor on any amounts upon which late charges are paid by Tenant.

21.16 Attorneys' Fees. If any Party to this Lease commences an action or proceeding against any other Party to this Lease to interpret or enforce any of the terms of this Lease or because of the breach of

the other Party to any of the terms of this Lease, each Party shall pay its own attorneys' fees and other costs and expenses incurred in connection with the prosecution or defense of such action or proceeding, whether or not the action or proceeding is prosecuted to a final judgment. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

21.17 No Third Party Rights. Except as otherwise stated in this Agreement including without limitation the rights provided to a Mortgagee, nothing in this Agreement whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

21.18 Authority. The individuals executing this and other documents on behalf of the respective Parties do hereby certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entities so indicated. Each signatory shall also indemnify the other Parties to this Agreement, and hold them harmless, from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Ground Lease is executed to be effective as of the Effective Date set forth above.

TENANT:

499 LINDEN MANAGERS LLC,
a Delaware limited liability company

By: _____

Name: _____
Its: _____

LANDLORD:

CITY OF CARPINTERIA,
a California municipal corporation

By: _____

Name: _____
Its: _____

APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY

By: _____
Jena S. Acos, on behalf of
Brownstein Hyatt Farber Schreck, LLP
Acting as City Attorney of the City of Carpinteria_____

EXHIBIT A

(Legal Description of Parking Lot Property)

All that certain real property located in the City of Carpinteria, County of Santa Barbara; State of California, described as follows:

EXHIBIT B

PREMISES - SITE MAP

EXHIBIT C

LEGAL DESCRIPTION OF PREMISES

EXHIBIT D

Agreement

EXHIBIT E

FORM OF MEMORANDUM OF LEASE

EXHIBIT F

APPRAISED VALUE

ATTACHMENT NO. 5

Memorandum of Ground Lease

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

499 Linden Managers LLC
201 W. Montecito Street
Santa Barbara, California 93101

City Clerk
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, California 93013

APN: 004-105-011

(ABOVE SPACE FOR RECORDER'S USE ONLY)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE ("**Memorandum**"), dated as of [_____] ("**Effective Date**") is by and between **CITY OF CARPINTERIA**, a California municipal corporation ("**Landlord**") and **499 LINDEN MANAGERS LLC**, a California limited liability company ("**Tenant**").

Landlord and Tenant hereby acknowledge the following:

1. Landlord and Tenant have entered into a certain Ground Lease dated [_____] ("**Lease**"), whereby Landlord leases to Tenant approximately 30,000 square feet of that certain real property located at 499 Linden Avenue, identified with County Assessor Parcel Number: 004-105-011, and more particularly described in Exhibit A attached hereto and incorporated herein by such reference ("**Premises**").

2. Term. The initial term of the Lease commences on the Commencement Date (as defined in the Lease) and expires fifty-five (55) years from the Commencement Date.

3. Conflicts. This Memorandum is intended for recording purposes to comply with Government Code Section 37393 and to provide notice of certain terms and conditions contained in the Lease and is not to be construed as a complete summary of the terms and conditions thereof. This Memorandum is subject to the Lease and any amendments, modifications, alterations, renewals, and extensions of the Lease. The terms and provisions of the Lease are incorporated in this Memorandum by reference. In the event of any conflict between this Memorandum and the Lease, the provisions of the Lease shall control.

4. Counterparts. This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first above written.

LANDLORD

CITY OF CARPINTERIA,
a California municipal corporation

By: _____
Name: _____
Title: _____

TENANT

499 LINDEN MANAGERS LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM: OFFICE OF THE CITY ATTORNEY

_____

Jena S. Acos, on behalf of
Brownstein Hyatt Farber Schreck, LLP
Acting as City Attorney of the City of Carpinteria

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)

)

COUNTY OF SANTA BARBARA)

On _____, 202__, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)

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On _____, 202__, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____

Notary Public

EXHIBIT A

Legal Description of Property

ATTACHMENT NO. 6

Schedule of Performance[1]

REQUIRED ACTION	TIMING
1. Submit Design Development Drawings and Proposed Improvement Plans to the City pursuant to Section 302 of the Agreement and subparts thereto.	Six (6) months after execution of the Agreement
2. Submit Project Application for City Development Review pursuant to Section 303 of the Agreement and subparts thereto.	Within ninety (90) days after City Council approval of the Design Development Drawings and Proposed Improvement Plans by the City Council
3. Submit any and all documents required for the Conditions Precedent to Closing pursuant to Section 205 of the Agreement and subparts thereto.	Prior to Closing
4. Submit Construction Drawings.	Nine (9) months after final approval of all necessary Permits for the construction of Developer Improvements. As specified in the Agreement, Permits are final once the applicable time periods within which to challenge, either administratively or judicially, have expired without the filing (or, if filed, there has been a favorable resolution) of any such administrative or judicial challenge.
5. Commence Construction Period.	Sixty (60) days after all required approvals of the Construction Drawings or any and all other approvals or permits necessary to commence construction.
6. Completion of Construction Period.	Twenty-Four (24) months after commencement of the Construction Period.

[1] This Schedule of Performance is subject to revision and modification pursuant to the Agreement.

ATTACHMENT NO. 7

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT ("Right of Entry") is entered into_____,20__ ("Effective Date"), by and between 499 LINDEN MANAGERS, LLC, a California limited liability company ("LICENSEE"), and the CITY OF CARPINTERIA, a California municipal corporation ("CITY").

RECITALS

A. CITY, as "City," and LICENSEE, as "Developer," entered into that certain Lease Disposition and Development Agreement dated as of _____, 2021 (the "Agreement"), pursuant to which the CITY agreed, subject to the fulfillment of the Conditions Precedent, to lease the Site to the LICENSEE and LICENSEE agreed, subject to Conditions Precedent, to accept a Ground Lease of the Site and construct a portion of the Project thereon. All capitalized terms not defined herein shall have the meaning set forth in the Agreement, unless the context dictates otherwise.

B. The Site and Properties, as more particularly described in Recitals A and B and in Attachment Nos. 1 and 2 of the Agreement, is the subject of that certain Agreement by and between the City and LICENSEE.

C. Subject to the covenants and conditions set forth below and as specified in the Agreement, the CITY and LICENSEE desire to enter into this Right of Entry to provide LICENSEE with access to the Properties for the purposes and in accordance with the terms and provisions set forth herein.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, LICENSEE and CITY agree as follows

1. Grant of License. The CITY hereby grants the LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees, permission to enter upon the Properties for the purpose of performing or causing to be performed the following acts or activities on the Properties: (1) obtain soil samples, make land surveys, and tests necessary to determine the suitability of the Properties for the development of the Project; (2) conduct reasonable investigations on, over, and under the Properties to determine the presence of Hazardous Materials; (3) allow LICENSEE'S engineers or architects to obtain data for drawings, calculations, plans and specifications; and (4) perform other studies, testing, investigations, explorations and/or reconnaissance as reasonably approved by City Engineer in order for LICENSEE to assess the feasibility of the Project ("Investigations"), subject to all licenses, easements, encumbrances and claims of title affecting the Properties, including general use of the Properties by the public, for the period of time set forth in this Right of Entry ("License"). LICENSEE agrees that the Investigations shall be completed in accordance with any permits and authorization issued by the

City or any other governmental entity having jurisdiction over the Properties in connection with the Investigation as further described in Paragraph 3. LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees use of the Properties shall not interfere with the use and enjoyment of the Properties by the City, its directors, officers, members, employees, agents and independent contractors, or members of the public, without the express written consent of the City Engineer or his or her designee, which may be withheld in his or her reasonable discretion. LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees shall not perform any work other than the Investigations on the Properties.

2. Purpose of Right of Entry. Subject to the provisions of this Right of Entry, LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees may, during the Term (hereinafter defined), enter onto the Properties at reasonable times (and during working hours) to perform the Investigations in a good, substantial and workmanlike manner. Once undertaken, the Investigation shall be diligently pursued to completion.

3. Permits; Compliance with Laws and Regulations. Any and all Investigations undertaken by LICENSEE pursuant to this Right of Entry shall be performed in conformance with all laws, ordinances, codes, and regulations of, or approved by, the applicable federal, state and local governments with respect to LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees use of and activities upon the Properties associated with Investigations. LICENSEE, at its sole cost and expense, shall obtain all required governmental permits and authorizations for LICENSEE use of and activities upon the Properties associated with Investigations pursuant to this Right of Entry, and LICENSEE'S use of and activities upon the Properties shall be in conformance with any such permits and authorizations. CITY, in its capacity as owner of the Properties, shall cooperate with LICENSEE in applying for such permits and authorizations, subject to the approval of Director or designee.

4. Assumption of Risk. LICENSEE enters the Properties and performs or causes to be performed the Investigation, at its own risk and subject to whatever hazards or conditions may exist on the Properties.

5. Term; Termination. This Right of Entry shall commence on the date hereof and shall expire one (1) year after the Effective Date of the Agreement, unless sooner terminated as hereinafter provided ("Term"). LICENSEE and CITY each shall have the right to terminate this Right of Entry for either's sole convenience at any time during the term hereof by giving seven (7) days' written notice to the other.

6. No Possessory Interest. LICENSEE acknowledges and agrees that CITY's grant of this Right of Entry to use the Properties creates no possessory interest in the Properties and therefore LICENSEE shall abandon the use of the Properties without the necessity of a judicial proceeding by the CITY no later than the expiration of this Right of Entry, or, in the event of an earlier termination of this Right of Entry, LICENSEE shall abandon the use of the Properties immediately upon such earlier termination. LICENSEE further acknowledges and agrees that any failure to abandon the use of the Properties upon expiration or termination of this Right of Entry shall constitute a trespass. This Right of Entry is intended to be for a short term duration.

7. Condition Of The Properties. The Properties are licensed to LICENSEE in an "as is" condition, existing as of the Effective Date of this Right of Entry. LICENSEE shall not construct any temporary or permanent improvements or make any material changes to the Properties, including improvements or changes that would limit public access to the Properties, as part of LICENSEE'S use of the Properties without CITY'S prior written consent, which may be withheld in its sole and absolute discretion. Such prohibition on construction of improvements or material changes to the Properties shall include, but not be limited to, any signs, paving, construction of fencing, retaining walls, buildings or structures, or the removal of any living trees.

8. Duty to Repair, Restore, or Replace. Prior to termination of this Right of Entry and unless CITY has leased the Site to LICENSEE pursuant to the Agreement, LICENSEE shall repair, restore, and/or replace the Properties to their original condition to the satisfaction of the City Engineer to the extent damaged or materially modified by LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees and to the extent such damage is not caused by the gross negligence or willful misconduct of the CITY, its officers, agents, employees or volunteers. Repair, restoration, and replacement shall include, but not be limited to, any landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by LICENSEE'S employees, contractors, subcontractors, agents and designees.

9. Reports and Studies. In consideration of the CITY'S granting of this Right of Entry, LICENSEE shall promptly provide the CITY with a copy of all final reports from third parties engaged by LICENSEE as part of the Investigations, without creating any liability for LICENSEE or the preparer of such reports.

10. Liens. LICENSEE shall not suffer or permit to be enforced against the Properties, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any work performed by LICENSEE, its employees, consultants, contractors, subcontractors, agents and designees or LICENSEE'S use of and activities upon the Properties pursuant to this Right of Entry. Subject to any contest undertaken by LICENSEE in accordance with the requirements of this Paragraph 10 to challenge payment, LICENSEE shall pay, or cause to be paid, all said liens, claims or demands before any action is brought to enforce the same against the Properties. The CITY reserves the right at any time and from time to time to post and maintain on the Properties, or any portion thereof or improvement thereon, such notices of non-responsibility as may be necessary to protect CITY against any liability for all such liens, claims or demands. In the event LICENSEE undertakes a contest of any lien, claim or demand to challenge payment, LICENSEE shall first deliver to the CITY bonds or other adequate security in form and amount approved in writing by Director or designee.

11. Indemnification and hold harmless. LICENSEE shall, indemnify, defend and hold harmless the CITY, its officers, directors, employees, contractors, subcontractors, agents, and affiliates and volunteers from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the LICENSEE or any person directly or indirectly employed by or acting as agent for LICENSEE in the performance of this Right of Entry, except that such indemnity shall not apply to the extent such

matters are caused by the gross negligence or willful misconduct of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of LICENSEE to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Right of Entry does not relieve LICENSEE from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

12. Waiver Of Subrogation. LICENSEE hereby waives any and every claim which arises or may arise in its favor and against the CITY during the term of this Right of Entry or any extension or renewal hereof for any and all loss or damage to LICENSEE'S property, or property of LICENSEE'S officers, representatives, employees, agents, subcontractors, patrons or invitees covered by valid and collectible insurance policies of LICENSEE to the extent that such loss or damage is covered under such insurance policies and to the extent such loss or damage is not caused by the gross negligence or willful misconduct of the CITY, its officers, agents, employees or volunteer. Such waiver shall be in addition to, and not in derogation of, any other waiver or release contained in this Right of Entry. LICENSEE also agrees that any insurer providing worker's compensation coverage for LICENSEE shall agree to waive all rights of subrogation against the CITY, its directors, officers, members, employees, agents and independent contractors for losses arising from activities and operations of LICENSEE and the use of the Properties pursuant to this Right of Entry.

13. Insurance. During the term of this Right of Entry, LICENSEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California and with the City's insurance specifications in the City's standard Engineering Permit, a copy of which is attached to this Right of Entry as Exhibit "A".

14. Recording. Neither CITY nor LICENSEE shall record this Right of Entry.

15. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Right of Entry is brought by either party to this Right of Entry, each party shall pay its own costs and expenses including, without limitation, litigation costs, expert witness fees, attorneys' fees, and court costs.

16. No Agency Relationship. It is understood that LICENSEE is not an agent of the CITY. No partnership, joint venture, or other association of any kind between CITY and the LICENSEE is formed by this Right of Entry. CITY shall not be liable for any acts or omissions of LICENSEE, its officers, representatives, employees, agents, subcontractors, patrons or invitees and nothing herein contained shall be construed as creating the relationship of employee and employer between LICENSEE and CITY. LICENSEE shall be solely responsible for all matters relating to payment of its employees, including payment of Social Security taxes, withholdings and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such employees, including any related assessments or

contributions required by law or any other regulations governing such matters.

17. CITY'S Proprietary Capacity. LICENSEE agrees that CITY, in making and entering into this Right of Entry, is acting and shall be deemed to be acting solely in CITY'S proprietary capacity for all purposes and in all respects; and nothing contained in this Right of Entry shall be deemed directly or indirectly to restrict or impair in any manner or respect whatsoever any of CITY'S governmental powers or rights or the exercise thereof by CITY, whether with respect to the Properties or LICENSEE'S use thereof or otherwise. It is intended that LICENSEE shall be obligated to fulfill and comply with all such requirements as may be imposed by any governmental agency or authority of the CITY having or exercising jurisdiction over the Properties in its governmental capacity.

18. Notices. All notices or other communications required or permitted to be given pursuant to the provisions of this Right of Entry shall be in writing and shall be considered as properly given if delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by overnight express mail or by commercial courier service, charges prepaid. In addition, notices may be provided to a party by electronic mail. Notices so sent shall be effective upon receipt at the addresses set forth below. All notices required or permitted under the terms of this Right of Entry shall be in writing and sent to:

LICENSEE	499 Linden Managers, LLC 201 W Montecito Street Santa Barbara, California 93101 Attention: Whitt Hollis and Jeff Theimer Email: whitt.hollis@gmail.com; jeff@thetheimergroup.com
with copy to:	Eisner, LLP 9601 Wilshire Boulevard, 7th Floor Beverly Hills, California 90210 Attention: Sam Zodeh, Esq. Email: szodeh@eisnerlaw.com
CITY	Matthew Roberts Director of Parks, Recreation and Public Facilities 5775 Carpinteria Avenue Carpinteria, CA 93013 Email: mattr@ci.carpinteria.ca.us
with copy to:	Brownstein Hyatt Farber Schreck, LLP Attention: Jena Acos 1021 Anacapa Street, Second Floor Santa Barbara, California 93101 Email: jacos@bhfs.com

Any Party may change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

19. Assignability. This Right of Entry may not be assigned or transferred without the express written consent of the Director (which may be withheld in his or her sole and absolute discretion), whether voluntarily or involuntarily, and LICENSEE shall not permit the use of the Properties, or any part thereof, except in strict compliance with the provisions hereof, and any attempt to do otherwise shall be null and void. Any approved assignee of this Right of Entry shall enter into an assignment and assumption agreement in a form reasonably approved by the Director. No legal title or leasehold interest in the Properties are created or vested on LICENSEE.

20. Time is of the Essence; Entire Agreement. Time is of the essence of the terms and provisions of this Right of Entry. This Right of Entry and Agreement, to the extent applicable, constitute the entire agreement between LICENSEE and CITY with respect to the matters contained herein, and no alteration, amendment or any part thereof shall be affective unless in writing signed by CITY and LICENSEE sought to be charged or bound thereby.

21. Governing Law. The laws of the State of California shall govern this Right of Entry.

22. Counterparts. This Right of Entry may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

23. Severability. In the event that any provisions of this Right of Entry shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Right of Entry.

24. Authority to Sign. LICENSEE hereby represents that the persons executing this Right of Entry on behalf of LICENSEE have full authority to do so and to bind LICENSEE to perform pursuant to the terms and conditions of this Right of Entry.

[Signatures on the following page.]

APPROVED BY:

"LICENSEE"

499 LINDEN MANAGERS, LLC,
a California limited liability company

Dated: _____, 2021

By:_____
Name: _____
Its: _____

"CITY"

CITY OF CARPINTERIA,
a California municipal corporation and

Dated: _____, 2021

By:_____
Name:_____
Its:_____

EXHIBIT A

CITY ENGINEERING PERMIT TEMPLATE

PERMIT NO. _____

City of Carpinteria, California

PUBLIC WORKS DEPARTMENT

Engineering Permit Application

Select all boxes that apply to your project

☐ **GRADING**
Type _____

☐ **EXCAVATION**
Type _____

☐ **CONSTRUCTION**
Type _____

☐ **ENCROACHMENT**
Type _____

☐ **OTHER**
Type _____

For Official City Use Only

Date of Permit Application _____

Date of Permit Issuance _____ Date of Permit Expiration _____

List of Attachments _____

_____

_____

Required Bond Amount _____ City Account Number _____

Engineering ☐ Deposit ☐ Fee _____

Applicant Information

Full Name _____

Mailing Address _____

Phone _____ Alternate Phone _____

Contact Person _____ Email _____

Location of Work _____

Project Duration _____

Approximate Value of Work Items Listed $ _____

PERMIT NO. _____

Description of Work _____

_____

Property Owner Information (If Applicable)

Full Name _____

Mailing Address _____

Phone _____ Alternate Phone _____

Contact Person _____ Email _____

Assessor's Parcel No. (APN) _____

Contractor Information

ATTENTION: All work shall be performed by a Class A- General Engineering Contractor with the license issued by the Contractors State License Board and in good standing. The Contractor shall maintain insurance in conformance with the Insurance Specifications for Engineering Permit.

☐ Same as Applicant

Business Name _____

Mailing Address _____

Phone _____ Alternate Phone _____

Contact Person _____ Email _____

License Type _____ License No. _____

Bonding Company _____ Bond Amount _____

Standard Conditions

The Permittee shall schedule a preconstruction conference with the City by calling (805) 684-5405 extension 445 at least two working days before the start of any work under this permit.

1. A copy of this permit shall be kept at the location of work at all times.
2. All work shall conform to the Standard Specifications for Public Works Construction latest edition, supplements, and errata thereto, written and promulgated by Public Works Standards, Inc., and additions and amendments by the City of Carpinteria. All work is subject to the Carpinteria Municipal Code.
3. All work shall be performed by a Class A- General Engineering Contractor with the license issued by the Contractors State License Board and in good standing.

4. The Permittee agrees to these Standard Conditions and special conditions incorporated herein permit. Deviation from any condition will result in revocation of this permit, unless otherwise approved by the City.
5. The Permittee acknowledges that the fee and/or deposit set for this permit is an estimate only, and that if the City's cost exceeds the deposit, the Permittee shall make additional payments as necessary to maintain a positive account balance.
6. The Permittee shall defend, indemnify, and save harmless the City, its officers, agents and employees from any and all claims, demands, damages, costs, expenses including attorney's fees, judgments or liabilities arising out of this permit or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of its agents or employees or other independent directly responsible to it; except those claims, demands, damages, costs, expenses including attorney's fees, judgments or liabilities resulting solely from the negligence or willful misconduct of the City.
7. The Permittee shall be responsible for providing convenience and safety to the public.
8. All improvements constructed under this permit shall be guaranteed for a period of one (1) year from the permit clearance date.
9. The work shall be inspected by the City. Any part of the work that is not inspected will be subject to removal at the expense of the Permittee.
10. Call 811 for Underground Service Alert of Southern California (Dig Alert) no less than two working days before the start of any excavation activities. This permit is not valid without a Dig Alert ticket.
11. The Permittee shall notify the Santa Barbara County Sheriff's Department and the Carpinteria-Summerland Fire Protection District at least 24 hours before the start of hauling operations or road closures.
12. The Permittee shall be responsible for protecting all survey monuments in place and resetting of any disturbed monuments by a Licensed Land Surveyor or Registered Civil Engineer authorized to practice land surveying as required by state law.
13. Permit for excavation only grants permission to excavate at the location stated herein this permit. Installation of or connection to underground utility facilities may require separate permits from the respective utility companies.
14. The Permittee shall immediately stop work in the event of discovering any archaeological resources and shall immediately notify the City. A qualified archaeologist, retained by the Permittee, will evaluate the situation and make recommendations to the City concerning the continuation of the work.
15. Issuance of this permit does not in any way constitute approval for work not related to this permit and/or work which requires issuance of a separate permit by other City departments, regulatory agencies, or utility companies before the start of such work.
16. The Permittee shall be responsible for protecting all existing improvements and shall restore, replace, or repair, at its own expense, any improvements damaged during the course of the work.
17. For earthwork operations including the grading, removal, replacement, placement, backfill, and compaction of soil materials shall be performed under the responsible charge of a Registered Geotechnical Engineer or Registered Civil Engineer qualified to practice geotechnical engineering as required by state law. A final soils engineering report of earthwork operations including tests and observations shall be submitted to the City prior to the issuance of a building permit.
18. Trenches and potholes shall be backfilled and compacted, and protected with steel covers before the end of the working day.
19. Construction activities that disturb one or more acres of land surface, or that are part of a common plan of development or sale that disturbs more than one acre of land surface shall comply with the NPDES

General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CA000002) as amended.

20. The Permittee shall be responsible for controlling surface water run-on to and run-off from the location of work. Control of surface water shall be such that existing drainage patterns are not disturbed or altered to increase the amount and/or intensity of surface water run-off to adjacent properties, public right-of-way, and storm drainage facilities.
21. Dust control shall be in accordance with the Santa Barbara Air Pollution Control District rules and regulations. Dust palliative shall be implemented appropriate for the location of work including traffic conditions and climate. All earthwork loads to be hauled shall be covered.
22. Working hours shall be between 7:00 a.m. and 5:00 p.m. Monday through Friday. Lane closures will only be permitted between 9 a.m. and 4 p.m. Monday through Friday and with an approved temporary traffic control plan and public noticing.
23. Truck or haul route shall be approved by the City before the start of any hauling operations.
24. This permit shall expire and become null and void if the work authorized under such permit is not commenced within one hundred twenty (120) calendar days, completed within one year of the date of issue, or otherwise extended by the City.
25. Prior to final clearance of this permit, any outstanding City fees shall be paid in full. The Permittee continues to be responsible for all activity under this permit until final clearance of this permit.
26. The City reserves the right to revoke this permit without cause and at any time. Upon written revocation of this permit by the City, the Permittee shall promptly restore the location of work as determined by the City.
27. If the Permittee fails to perform the work to fulfill the permit, the City will perform the work at the expense of the Permittee.
28. The Permittee shall notify the City when work is completed. This permit is not completed until final clearance and all outstanding City fees are paid in full.

Applicant as PERMITTEE:

_____ _____

Signature Date

For Official City Use Only

Issued By:

_____ _____

Public Works Director/City Engineer Date

Final Clearance By:

_____ _____

Inspector Date

INSURANCE SPECIFICATIONS FOR ENGINEERING PERMIT

Prior to the beginning of and throughout the duration of the Work, Contractor shall maintain insurance in conformance with the requirements set forth below. Contractor shall use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it shall be amended to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this permit and which is applicable to a given loss, shall be available to City.

Contractor shall provide the following types and amounts of insurance:

1. **Commercial General Liability Insurance** using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than $1,000,000 per occurrence for all covered losses and no less than $5,000,000 general aggregate.

   Contractor's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

   - Explosion, collapse or underground hazard (XCU)
   - Products and completed operations
   - Pollution liability
   - Contractual liability

   Coverage shall be applicable to City for injury to employees of contractors, subcontractors or others involved in the Project. Policy shall be endorsed to provide a separate limit applicable to this project.

2. **Workers Compensation** on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than $1,000,000 per accident for all covered losses.

3. **Business Auto Coverage** on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent. Limits shall be no less than $1,000,000 per accident, combined single limit. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability coverage for each such person.

4. **Excess or Umbrella Liability Insurance** (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum $25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than $1,000,000 per occurrence and aggregate.

5. **Course of Construction** insurance shall provide "all risk" coverage for the completed value of the Project. Policies shall contain the following provisions: (1) City shall be named as loss payee; and (2) the insurer shall waive all rights of recovery against the City. This insurance shall include coverage, but not by way of limitation, for all damage or loss to the Work and to appurtenances, to materials and equipment to be used on the Project while the same are in transit, stored on or off the Project site, to construction plant and temporary structures. The policy shall provide the Owner the right to utilize the facilities without termination of the policy until acceptance of the Project.

   Such insurance may have a deductible clause not to exceed the below listed limits:

   - Coverage for "Acts of God" in excess of five percent (5%) of Contract amount as defined in Sections 4150 and 4151 of the Government Code is subject to separate coverage if Bid Items for Act of God insurance are awarded.
   - Flood and earthquake deductible shall not exceed five percent (5%) of the value at risk at the time of risk.
   - All other perils: $5,000.

Contractor and City agree as follows:

1. Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City, its elected officials, employees, agents, consultants and volunteers using standard ISO endorsement No. CG 2010 with an edition date of 1985. Contractor also agrees to require all contractors, subcontractors, and any one else involved in any way with the Project contemplated by this Permit to comply with these provisions.

2. Any waiver of subrogation express or implied on the part of City to any party involved in this Permit, the Contract Documents or related documents applies only to the extent of insurance proceeds actually paid. City, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any parts for sums not paid by insurance. For its part, Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the project(s) contemplated by this Permit, to do likewise.

3. All insurance coverage maintained or procured by Contractor or required of others by Contractor pursuant to this Permit shall be endorsed to delete the subrogation condition as to City, or to specifically allow Contractor or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.

4. Insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of City, or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this or any other agreement (express or implied) in any way relating to City is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving City in relation to the Project contemplated by this Permit is intended to be construed to limit the application of insurance coverage in any way.

5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of this kind that has not been first submitted to City and approved of in writing.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) which may affect City's protection without City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, unless waived by the City, shall be delivered to City at or prior to the execution of this Permit. The Contractor shall, upon demand of the City, deliver to the City certified copies of such policy or policies of insurance and the receipts for payment of premiums. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at City option.

8. Contractor agrees to endorse, and to require others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to City and the appropriate tender prior to cancellation of such liability coverage and notice of any material alteration, non-renewal or reduction in coverage limits of any such coverage, and to require contractors, subcontractors and any other party in any way involved with the project contemplated by this Permit to do likewise.

9. It is acknowledged by the parties of this Permit that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self insurance available to City.

10. Contractor agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the Project by contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and other engaged in the Project shall be submitted to the City for review.

11. Contractor agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, shall have the same starting and expiration date. Contractor agrees further that all other third party coverages required herein shall likewise have concurrent starting and ending dates.

12. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it shall not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this Permit to self-insure its obligations to City. If contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Contractor, which may include reduction or elimination of the deductible or self-inured retention, substitution of other coverage, or other solutions.

13. City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.

14. For purposes of applying insurance coverage only, all contracts pertaining to the Project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this Permit.

15. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

16. Contractor shall renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Permit. This obligation applies whether or not the agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until City executes a written statement to that effect.

17. Contractor agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the City, and to require all subcontractors and any other person or entity involved in the Project contemplated by this Permit to do likewise.

18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.

19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Permit and are intended by the parties here to be interpreted as such.

20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the Project that is the subject of this Permit and evidencing products and completed operations coverage for not less than two (2) years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by City.

21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the Project reserves the right to charge City or Contractor for the cost additional insurance coverage required by this Permit. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

22. Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Best rating of A- or better and a minimum financial size of VII.

23. Any policy of insurance procured pursuant to these requirements shall be an "occurrences" policy.

24. The above insurance coverage shall not limit the indemnification obligations of Contractor as provided in the Contract Documents and the failure to maintain the required coverages shall constitute a material breach of this Permit.

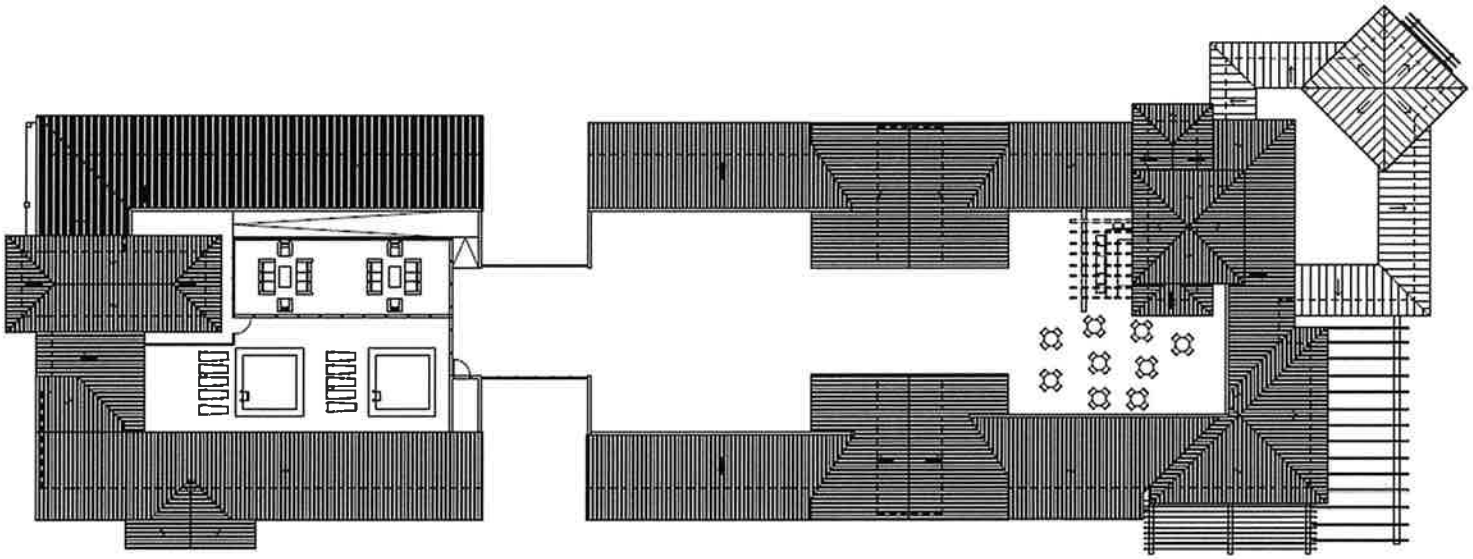
ATTACHMENT NO. 8

Site Plan[1]

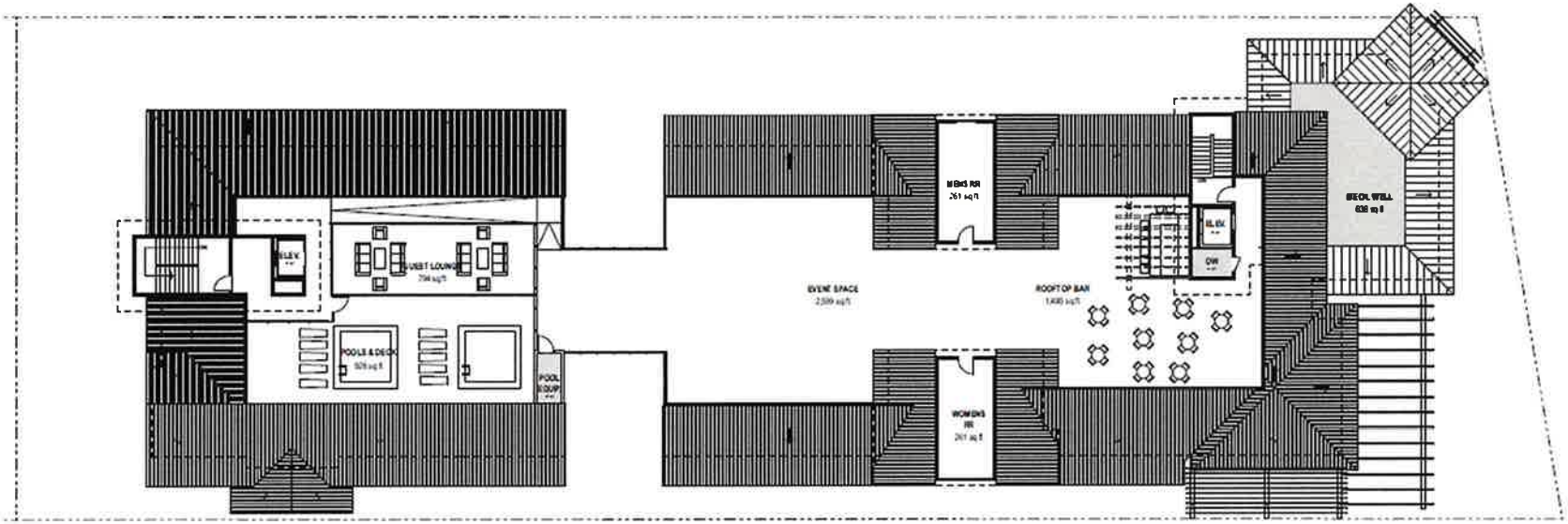
Approximate Boundary of the Site.

[1] The Site Plan set forth in this Attachment No. 8 is subject to modification in connection with City Development Review as set forth in Section 303. (Agreement, § 303.)

22700102.4



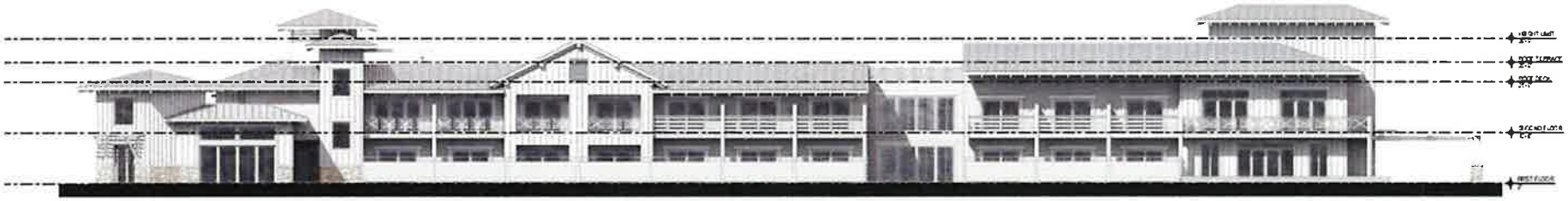
ROOF PLAN 2



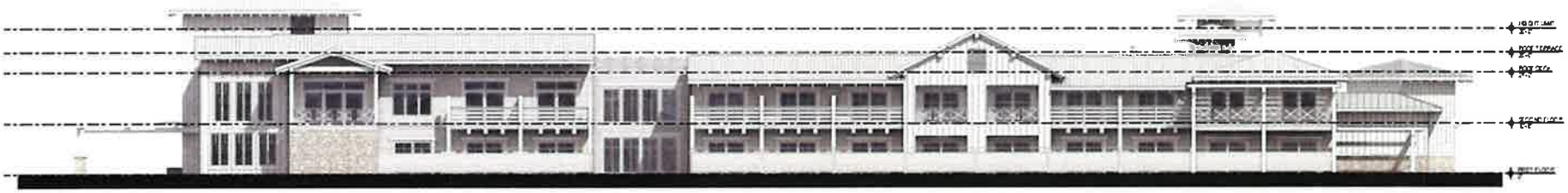
ROOF TERRACE PLAN 1

EAST ELEVATION 4

WEST ELEVATION 3



NORTH ELEVATION 2



SOUTH ELEVATION 1

ATTACHMENT NO. 9

RELEASE OF CONSTRUCTION COVENANTS

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

499 Linden Managers, LLC
201 W. Montecito Street
Santa Barbara, California 93101

City Clerk
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, California 93013

APN: SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELEASE OF CONSTRUCTION COVENANTS

This RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made by the CITY OF CARPINTERIA, a California municipal corporation (the "City"), in favor of 499 LINDEN MANAGERS, LLC a California limited liability company (the "Developer"), as of the date set forth below.

RECITALS

A. The City and the Developer have entered into that certain unrecorded Lease Disposition and Development Agreement (the "Agreement") dated as of _____, 2021 concerning the redevelopment of certain real property situated in the City of Carpinteria, California as more fully described in Exhibit "A" attached hereto and made a part hereof. A copy of the Agreement is on file with the City as a public record.

B. As referenced in Section 311 of the Agreement, the City is required to furnish the Developer or its successors with a Release of Construction Covenants (as defined in the Agreement) upon completion of construction of the Developer Improvements (as defined in the Agreement), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Santa Barbara County. This Release is conclusive determination of satisfactory completion of the construction and development required by the Agreement of the Developer Improvements.

C. The City Engineer has conclusively determined, in its reasonable discretion, that such construction and development as required by the Agreement has been satisfactorily completed.

NOW, THEREFORE, the City hereby certifies as follows:

1. The Developer Improvements to be constructed by the Developer have been fully and satisfactorily completed in conformance with the Agreement. Any requirements and all use, maintenance or nondiscrimination covenants contained in the Agreement and other documents executed and recorded pursuant to the Agreement shall remain in effect and enforceable according

to their terms.

2. This Release is not a notice of completion as referenced in Section 3093 of the California Civil Code.

3. Nothing contained in this instrument shall modify in any other way any other provisions of the Agreement.

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

CITY:

CITY OF CARPINTERIA, a California municipal corporation

By:
Name: _____
Its: _____

APPROVED BY DEVELOPER:

499 LINDEN MANAGERS, LLC,
a California limited liability company

By:_____
Name: _____
Its: _____

EXHIBIT "A"

Legal Description of Properties

ATTACHMENT NO. 10

GUARANTY AGREEMENT

GUARANTY AGREEMENT

Dated as of_____

In order to induce the City of Carpinteria, a municipal corporation (the "**City**") to enter into the Lease Disposition and Development Agreement with 499 Linden Managers, LLC, a California limited liability company, ("**Developer**") dated _____, 20___ (the "**Agreement**"), and in consideration thereof, a _____ (hereinafter referred to as the "**Guarantor**") executed this Guaranty ("**Guaranty**") in favor of the City. The Guarantor and the City are individually referred to as "**Party**" and collectively as the "**Parties**" herein. This Guaranty is made, in part, with reference to the following relevant facts:

RECITALS

A. Pursuant to the terms of the Agreement attached hereto as Exhibit 1, the City agrees to lease to the Developer certain property as defined in the Agreement pursuant to the terms and conditions of the Agreement and all attachments thereto. Any capitalized terms not defined herein shall have the same meaning as in the Agreement.

B. Developer has agreed to, among other things, the following:

1. To construct [INCLUDE APPROVED PROJECT DESCRIPTION] ("**Project**").

2. Construction of the Project shall commence and be completed within the time limits set forth in the Schedule of Performance, attached to the Agreement as Attachment No. 6, as extended pursuant to the terms of the Agreement.

3. The Project is to be constructed and completed in accordance with the Scope of Development and the plans and drawings approved by the City as provided in the Agreement, without substantial deviation there from unless approved by the City in writing.

4. The Project is to be constructed and completed free and clear of any mechanic's liens, materialmen's liens or equitable liens.

5. All costs of constructing the Project shall be paid when due.

6. The Lease shall take effect in accordance with Agreement and the Schedule of Performance.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants exchanged herein, and as part of the consideration for the City to enter into the Agreement with Developer, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

A. Definitions.

1. "Guarantor" means [DEVELOPER TO PROVIDE] or another entity approved in writing by City in its sole and absolute discretion which satisfies the financial requirements in the capital guaranty.

B. Guaranty. The obligations, responsibilities, and undertakings to be carried out, performed, or observed by Developer under the Agreement are hereafter referred to as the "**Guaranty Obligations**."

C. Terms.

1. Guarantor absolutely, unconditionally, and irrevocably guarantees and promises to fully, completely and punctually satisfy the Guaranty Obligations in accordance with the terms of this Guaranty. Notwithstanding any contrary provision in this Guaranty, the City shall not have the right to enforce this Guaranty against Guarantor, unless Developer is in Default of its obligations under the Agreement which are Guaranty Obligations.

2. This Guaranty is an absolute guaranty of performance of the Guaranty Obligations and not of collection and shall survive termination of the Agreement until completion of the Guaranty Obligations. Guarantor expressly agrees that until the Guaranty Obligations are performed in full, Guarantor shall not be released by or because of any waiver, extension, modification, forbearance, delay, or other act or omission of the City, or City's failure to proceed promptly against Developer or Guarantor.

3. Guarantor agrees that (i) it is directly and primarily liable to the City with respect to the Guaranty Obligations, (ii) the Guaranty Obligations are independent of the obligations of Developer, and (iii) a separate action, or actions may be brought and prosecuted against Guarantor whether or not Developer is joined in any such action or actions. Guarantor agrees that the liability of Guarantor under this Guaranty shall in no way be limited by (a) the release or discharge of Developer in any creditor proceeding, receivership, bankruptcy or other similar proceeding, (b) the impairment, limitation or modification of the liability of Developer or of any remedy for the enforcement of Developer's liability, resulting from the operation of any present or future provision of Title 11 of the United States Code, as amended, or any other statute or proceeding affecting creditors' rights generally, (c) the rejection or disaffirmance of the any Guaranty Obligations or any portion thereof in any such proceeding, or (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of the liability of Developer to the City.

4. In the event that bankruptcy, insolvency, receivership or similar creditor's rights proceedings are instituted against Developer, Guarantor hereby waives any rights of indemnification and/or subrogation it may have against Developer.

5. In the event of a default by Developer in the performance of the Guaranty Obligations, City shall give written notice of such default to Guarantor and Guarantor shall commence to cure such default within five (5) business days of the receipt of the notice of default. If Guarantor fails to satisfactorily commence to cure the default within such five (5) business day business day period, City may perform any and all of the Guaranty Obligations by or through itself and/or any agent, contractor or subcontractor selected by City, in its sole discretion, and Guarantor shall indemnify City with respect to claims and liabilities suffered or incurred by City.

6. Guarantor hereby waives any right to assert against the City as a defense, counterclaim, set-off or cross-claim any defense (legal or equitable), set-off, counterclaim, and/or claim which Guarantor may now or at any time hereafter have against Developer.

7. Guarantor hereby waives all presentments, demands for payment and/or performance, notices of non-performance, protests, notices of protest, notices of dishonor, notices of default, notice of acceptance of this Guaranty, diligence in collection, and all other notices or formalities to which Guarantor may be entitled or notices which may be required in order to charge Guarantor with liability hereunder.

8. Without limiting the generality of any of the foregoing waivers or any other provision of this Guaranty, Guarantor further waives any waiver by City of any of City's rights under California Civil Code Section 2822. Guarantor further waives any rights, defenses and benefits which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, inclusive, (including, without limitation, California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849 and 2850) 2899 and 3433, and any successor sections. Guarantor acknowledges and agrees that all waivers of defenses arising from any impairment of Guarantor's rights of subrogation, reimbursement, contribution and indemnification and waivers of any other rights, privileges, defenses or protections available to Guarantor by reason of Sections 2787 to 2855, inclusive, of the California Civil Code are intended by Guarantor to be effective to the maximum extent permitted by applicable law.

9. Guarantor agrees that it shall file all claims against Developer in any bankruptcy or other similar proceeding in which the filing of claims is required by law on any indebtedness of Developer to Guarantor, and will assign to the City, all rights of Guarantor. If Guarantor does not file such claim, the City, as attorney-in-fact for Guarantor, is authorized to do so in the name of Guarantor to the extent of amounts guaranteed hereunder or, in the City's discretion, to assign the claim and to file a proof of claim in the name of the City or the City's nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the City the full amount of any such claim, and, to the full extent necessary for that purpose, Guarantor assigns to the City all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled.

D. <u>General Provisions</u>

1. Guarantor Acknowledgement. Guarantor is presently informed of the financial condition of Developer and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment or nonperformance of the Guaranty Obligations. Guarantor hereby covenants that it will continue to keep itself informed of Developer's financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Indemnity Obligation. Guarantor hereby waives its rights, if any, to require, and the City is relieved of any obligation or duty to disclose to Guarantor any information which the City may now or hereafter acquire concerning such condition or circumstances.

2. Incorporation by Reference; Conflicts. The Recitals and terms of the Agreement are hereby incorporated into this Agreement by reference. In the event of any conflict between the terms of the Agreement and the description thereof in Recital B, the terms of the Agreement shall prevail.

3. Effect. This Guaranty shall continue in full force and effect until the Guaranty Obligations are fully paid, performed, and discharged.

4. Binding on Successors. This Guaranty shall be binding upon the successors and assigns of Guarantor and shall inure to the benefit of the City's successors and assigns.

5. Modification; Amendment. No modification of this Guaranty shall be effective for any purpose unless it is in writing and executed by an officer of the City authorized to do so.

6. Enforcement. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent City in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent City in any proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to City upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "**Enforcement Costs**"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding or multiple proceedings brought to enforce this Guaranty.

7. Severability. The Parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of the Parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of City under the remainder of this Guaranty shall continue in full force and effect.

8. Waiver; Jurisdiction.

TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY CITY. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "**PROCEEDING**"), CITY AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY, COUNTY OF SANTA BARBARA AND STATE OF CALIFORNIA, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE CITY FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. CITY AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, SERVICE MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE PERSON TO BE SERVED AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

9. Construction. All acts and transactions hereunder and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California. Guarantor consents to the jurisdiction of the State of California and consents to service of process by any means authorized by California law, including, without limitation, service of process by mail.

10. Guarantor Representation and Warranty. Guarantor herein warrants and represents that (i) as of the date hereof, it has net assets of at least at least three times project costs or not less than one and a half times the required equity in the project in liquid assets, (e.g., cash and/or marketable securities exclusive of any other contingent obligations), and (ii) will maintain such financial condition until completion of the Project. Prior to the Closing, Guarantor shall provide City with an audited financial statement dated within thirty (30) days of the Closing to satisfy the net asset test. Prior to the Closing, Guarantor shall provide City with current bank statements and/or similar instruments demonstrating the immediate availability of liquid assets (e.g. cash and/or marketable securities exclusive of any other contingent obligations) to satisfy the liquid asset test. Guarantor further warrants and represents that the Guarantor will not materially change its financial condition during the term of the Guaranty and Guarantor shall provide City with updated audited financial statements on each anniversary date of this Guaranty.

11. Notices. Any notice, demand, request or other communication which any Party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

To Guarantor: [GUARANTOR TO PROVIDE]

With a copy to: [GUARANTOR TO PROVIDE]

To City: Matthew Roberts
Director of Parks, Recreation and Public Facilities
5775 Carpinteria Avenue
Carpinteria, CA 93013

With a copy to: Brownstein Hyatt Farber Schreck, LLP
1021 Anacapa Street, Second Floor
Santa Barbara, California 93101

Attention: Jena Acos
Email:jacos@bhfs.com

or at such other address as the Party to be served with notice may have furnished in writing to the Party seeking or desiring to serve notice as a place for the service of notice.

E. Release of Construction Covenants. At such time as Developer has completed the Project in accordance with this Agreement, it shall request a Release of Construction Covenant. If the City determines that the Project has been completed in accordance with this Agreement, it shall furnish the Developer and Guarantor with a Release of Construction Covenants. The City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion the Project and release of Developer and Guarantor of all obligations pertaining to the completion of the Project, and the Release of Construction Covenants shall so state. Any third party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Project for which a Release of Construction Covenants has been furnished shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as described in this Agreement and the Ground Lease, and any other obligations which, by their terms, remain in effect following issuance of the Release of Construction Covenants.

IN WITNESS WHEREOF, the undersigned have caused this Memorandum to be executed by their duly authorized representative as of the date first set forth above.

"CITY"	"GUARANTOR"
CITY	[INSERT GUARANTOR'S NAME]
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____
Dated:_____	Dated:_____

APPROVED AS TO FORM

By:_____
Name:_____
Its: City Attorney

Dated:_____

EXHIBIT 1

Lease Disposition and Development Agreement