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

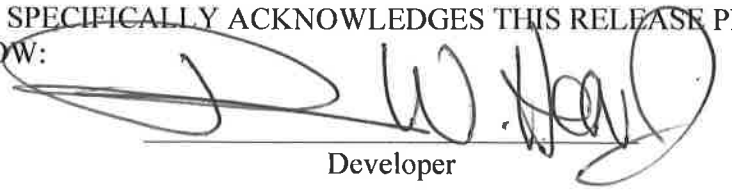
provided in this Agreement, the physical condition of the Site and Properties are and shall be delivered from City to Developer in an "as-is" condition, with no warranty expressed or implied by City, including without limitation, the presence of Hazardous Materials, the existence of refuse, or the condition 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. Hollister
Its: Manager

Dated: 7-29-21

By: _____
Name: JEFF THEIMER
Its: Manager